

JULY-DECEMBER 2015



REPORT

FROM MONITORING OF **PUBLIC PROCUREMENTS** IN THE REPUBLIC OF MACEDONIA



USAID
FROM THE AMERICAN PEOPLE



ФОНДАЦИЈА
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МАКЕДОНИЈА



Center for Civil Communications
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26

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MONITORING OF
PUBLIC PROCUREMENTS
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OF MACEDONIA

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ABBREVIATIONS:

BPP	Bureau of Public Procurements
SCPPA	State Commission on Public Procurement Appeals
CA	contracting authorities
EO	economic operators
EPPS	Electronic Public Procurement System
EU	European Union
LPP	Law on Public Procurements
CCC	Center for Civil Communications

KEY FINDINGS AND RECOMMENDATIONS

FINDINGS FROM THE SURVEY CONDUCTED AMONG 254 COMPANIES RELATED TO THEIR EXPERIENCE IN PUBLIC PROCUREMENTS:

- TWO MOST FREQUENT PROBLEMS FACED BY COMPANIES CONCERN LOWEST PRICE DEFINED AS THE SINGLE CRITERION FOR AWARDING PUBLIC PROCUREMENT CONTRACTS AND DELAYED PAYMENT OF CONTRACT PERFORMANCE. LOWEST PRICE WAS INDICATED AS PROBLEM IN TENDER PROCEDURES BY 52.4% OF SURVEYED COMPANIES, WHILE DELAYED PAYMENT WAS INDICATED BY 39.4% OF THEM.
- IN AVERAGE, SURVEYED COMPANIES WAIT 8 MONTHS TO RECEIVE PAYMENT FOR PERFORMANCE OF PUBLIC PROCUREMENT CONTRACTS. THIS REPRESENTS A SIGNIFICANT INCREASE BY TWO MONTHS IN TERMS OF THE AVERAGE TIME OF WAITING COMPARED TO THE SITUATION OBSERVED YEAR AND A HALF AGO WHEN THIS PERIOD ACCOUNTED FOR 6 MONTHS.
- MORE THAN 90% OF COMPANIES BELIEVE THAT E-AUCTIONS RESULT IN ATTAINMENT OF UNREALISTICALLY LOW PRICES AND UNDERMINE QUALITY OF PROCUREMENTS ON THE ACCOUNT OF THEIR PRICE.

- 79% OF SURVEYED COMPANIES BELIEVE THAT CORRUPTION IS PRESENT IN PUBLIC PROCUREMENTS, BUT HAVE DIFFERENT PERCEPTIONS ABOUT ITS LEVEL AND FREQUENCY. LARGE PORTION OF COMPANIES (37%) BELIEVE THAT CORRUPTION IS OFTEN PRESENT IN PUBLIC PROCUREMENTS, 10% STATED IT IS ALWAYS PRESENT, WHILE 32% OF SURVEYED COMPANIES INDICATED THAT CORRUPTION IS RARE IN PUBLIC PROCUREMENTS. ONLY 21% OF COMPANIES INDICATED THAT CORRUPTION IS NEVER PRESENT IN PUBLIC PROCUREMENTS.
- DOMINANT SHARE OF SURVEYED COMPANIES INDICATED THAT THEY ARE OFTEN OR RARELY WITNESSING NON-COMPLIANCE WITH THE LAW ON PUBLIC PROCUREMENTS IN TENDER PROCEDURES WHERE THEY PARTICIPATED AS BIDDING COMPANIES.
- AS MANY AS 93% OF SURVEYED COMPANIES NEVER OR RARELY LODGE APPEALS CONTESTING TENDER PROCEDURES WHERE THEY PARTICIPATED, MAINLY DUE TO HIGH FEES AND COSTS RELATED TO THE APPEAL PROCEDURE AND THEIR DISTRUST IN SCPA.
- PROPOSALS TO AMEND THE LAW ON PUBLIC PROCUREMENTS MADE BY SURVEYED COMPANIES PREDOMINANTLY CONCERN DEMANDS TO REVOKE USE OF “LOWEST PRICES” AS THE SELECTION CRITERION AND INTRODUCTION OF THE CRITERION “ECONOMICALLY MOST FAVOURABLE BID”.

FINDINGS FROM THE MONITORING OF PUBLIC PROCUREMENTS:

- IN 2015, COSTS FOR ENGAGEMENT OF EXPERTS BY THE COUNCIL OF PUBLIC PROCUREMENTS IN CASES OF ISSUING APPROVAL FOR TENDER PROCEDURES AMOUNTED TO TOTAL OF 2.2 MILLION EUR, PAID BY CONTRACTING AUTHORITIES. THE EXCESSIVE SCOPE OF THIS AMOUNT IS FURTHER SUPPORTED BY THE FACT THAT, ON ANNUAL LEVEL, MORE THAN 60 MUNICIPALITIES IN REPUBLIC OF MACEDONIA DISPOSE WITH LESS THAN 2 MILLION EUR INTENDED FOR ORGANIZATION AND IMPLEMENTATION OF PUBLIC PROCUREMENTS. HIGH COSTS GENERATED BY ENGAGEMENT OF EXPERTS ARE NOT JUSTIFIED, ESPECIALLY WHEN COMPARED TO THEIR EFFECT IN TERMS OF COMPETITION IN TENDER PROCEDURES.
- EVERY FOURTH TENDER PROCEDURE FROM THE MONITORING SAMPLE IS CHARACTERIZED

BY ONLY ONE BIDDING COMPANY. LOW LEVEL OF COMPETITION IS ADDITIONALLY DETERIORATED WITH THE EXCLUSION OF COMPANIES FROM THE BID EVALUATION PROCESS.

- IN 2015, PUBLIC PROCUREMENT CONTRACTS SIGNED WITHOUT PREVIOUSLY ANNOUNCED CALL FOR BIDS ACCOUNTED FOR MORE THAN 29 MILLION EUR. TOTAL VALUE OF THESE CONTRACTS IS ALMOST HALF THE VALUE OF SAME TYPE OF CONTRACTS SIGNED IN 2014. THE BIGGEST CONTRACT SIGNED BY MEANS OF NEGOTIATION PROCEDURE WITHOUT PREVIOUSLY ANNOUNCED CALL FOR BIDS CONCERNED ANNEX CONTRACT FOR CONSTRUCTION OF THE BUILDING "CITY HOUSE" IN THE AMOUNT OF MORE THAN 3.2 MILLION EUR.
- IN 2015, TOTAL OF 19.9% OF ALL PUBLIC PROCUREMENT PROCEDURES HAVE BEEN ANNULLED. MOST FREQUENTLY USED GROUNDS FOR TENDER ANNULMENT CONCERNS THE FACT THAT NO BIDS HAVE BEEN RECEIVED.

FINDINGS RELATED TO APPEAL PROCEDURES LED IN FRONT OF THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS IN THE PERIOD JANUARY-DECEMBER 2015

- FOR THE ENTIRE 2015, ONLY 523 APPEALS HAVE BEEN LODGED AMONG THE TOTAL OF MORE THAN 18,000 TENDER PROCEDURES IMPLEMENTED, WHICH IS INDICATIVE OF AN EXCEPTIONALLY SMALL PERCENTAGE OF PUBLIC PROCUREMENT PROCEDURES APPEALED – 2.8%. IN THAT, FROM THE TOTAL NUMBER OF APPEALS LODGED 43.6% HAVE BEEN APPROVED AND 37.3% HAVE BEEN REJECTED.
- DOMINANT SHARE OF APPEALS, OR MORE SPECIFICALLY 67%, HAS BEEN LODGED AGAINST SELECTION DECISIONS FOR THE MOST FAVOURABLE BID. NEXT MOST IMPORTANT REASONS FOR LODGING APPEALS CONCERNED TENDER DOCUMENTS (10%) AND DECISIONS ON TENDER ANNULMENT (9%).

GOALS AND METHODOLOGY

From November 2008, the Centre for Civic Communications is continuously analysing the implementation of public procurements in the Republic of Macedonia, as regulated under the Law on Public Procurements. The analysis aims to assess the implementation of public procurements in the light of the new Law on Public Procurements and application of the underlying principles of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal proceedings, cost-effectiveness, efficiency, effectiveness and rational public spending, commitment to obtain the best bid under the most favourable terms and conditions, as well as accountability for public spending in procurements.

In the period November 2008 – June 2014, the monitoring activities were implemented on a quarterly monitoring sample comprised of randomly selected public procurement procedures; however, starting from the second half of 2014 the monitoring sample is defined on semi-annual level and includes random selection of 60 public procure-

ment procedures. Monitoring activities start with the publication of procurement notices in the “*Official Gazette of the Republic of Macedonia*” and in the Electronic Public Procurement System, followed by attendance at public opening of bids and data collection on the course of procedures, and use in-depth interviews and structured questionnaires submitted to economic operators, as well as data collected from contracting authorities through EPPS and by means of Freedom of Information (FOI) applications. Some monitoring parameters (number, share and structure of annulled tender procedures, value of signed contracts per particular type of procedure and the like) are now analysed by processing all data submitted to EPPS.

The analysis presented in this report is performed on the basis of monitoring a randomly selected sample comprised of 60 public procurement procedures organized by contracting authorities on central level, whose public opening of bids took place in the period July-December 2015. Nevertheless, majority of findings presented here include

data for the entire 2015 and integrate findings from the monitoring activities implemented in the first half of 2015. Portion of data has been secured by means of processing data available in the Electronic Public Procurement System.

In addition to results from regular monitoring of public procurements, this report includes an analysis and results from the regular survey of companies related to their experience from participation in tender procedures. The survey was conducted among 254 companies based in all bigger towns across the country in the period November 2015 – January 2016.

Moreover, this report features an analysis of appeal procedures led before the State Commission on Public Procurement Appeals in the period July – December 2015. Data for this analysis were secured by means of processing the total number of appeals lodged in front of SCPPA and decisions taken upon them, as published on the official website of this institution in the reporting period.

PUBLIC PROCUREMENT MONITORING REPORT

- IN 2015, COSTS FOR ENGAGEMENT OF EXPERTS BY THE COUNCIL OF PUBLIC PROCUREMENTS IN CASES OF ISSUING APPROVAL FOR TENDER PROCEDURES AMOUNTED TO TOTAL OF 2.2 MILLION EUR, PAID BY CONTRACTING AUTHORITIES. THE EXCESSIVE SCOPE OF THIS AMOUNT IS FURTHER SUPPORTED BY THE FACT THAT, ON ANNUAL LEVEL, MORE THAN 60 MUNICIPALITIES IN REPUBLIC OF MACEDONIA DISPOSE WITH LESS THAN 2 MILLION EUR INTENDED FOR ORGANIZATION AND IMPLEMENTATION OF PUBLIC PROCUREMENTS. HIGH COSTS GENERATED BY ENGAGEMENT OF EXPERTS ARE NOT JUSTIFIED, ESPECIALLY WHEN COMPARED TO THEIR EFFECT IN TERMS OF COMPETITION IN TENDER PROCEDURES. NUMEROUS EXAMPLES FROM THE MONITORED SAMPLE PROVIDE EVIDENCE IN SUPPORT OF THIS ASSESSMENT.

Financial implications arising from the work of the Council of Public Procurements are best mirrored in several tender procedures from the monitoring sample. One of them concerned small procurement of computer equipment (2 laptops, 1 desktop computer and external hard disk) in estimated value of 66,600 MKD, without VAT. According to the Law on Public Procurements, the contracting authority was obliged to apply for approval in terms of characteristics defined as part of technical specifications (Article 36-a, paragraph 1 of LPP). For that purpose, the Council of Public Procurements was presented with two applications. The first application was issued negative opinion, while the second application was issued approval for the tender procedure. According to the tariff list related to fees for issuance of expert opinion (expert opinion for procurement procedures whose value does not exceed 5,000 EUR), the institution had to pay 8,400 MKD for these two applications.

In this manner, obligation to obtain approval from

the Council of Public Procurements increased costs for this procurement by 12.6% from the value of the equipment being purchased. Moreover, when issuing their approval for the tender procedure, experts have assessed that technical specifications are good and precisely describe products being purchased, but they do not refer to particular manufacturer and ensure conditions for fair and true competition. Nevertheless, despite this opinion issued by the Council of Public Procurements, the tender procedure was presented with only one bid, i.e. it lacked competition, which experts believed would be achieved having in mind the technical specifications defined. Thus, it is concluded that time and money invested to obtain approval have been spent to no avail. This is just one example of the fact that financial implications related to costs charged for expert opinions are most prominent in small procurements (public procurements whose value does not exceed 5,000 EUR), but their number is even more dominant. In 2015, 45% or 8,393 among total of 18,469 tender procedures implemented represent so-called small procurements in estimated value of up to 5,000 EUR.

Effects from the work of the Council of Public Procurements are non-existing even in the case of large tender procedures, such as the monitored tender procedure for procurement of oil derivatives for mandatory stock, estimated in the value of more than 5.3 million EUR. In this case, the contracting authority had to apply for approval from the Council of Public Procurements because it was unable to demonstrate existence of at least 5 producers of oil derivatives in Republic of Macedonia and 5 producers on foreign markets (Article 36-a, paragraph 1 of LPP). In this procedure, the approval needed from the Council concerned use of eligibility criteria

for bidding companies. Approval for this aspect of the tender procedure was deemed necessary because the contracting authority could not prove that at least 6 companies on the market in Republic of Macedonia fulfil the eligibility criteria for tender participation. The Council issued its approval for implementation of this tender procedure on both grounds.

Such situation is absurd, as it is broadly known that five producers of oil derivatives do not exist in the country. Considering the fact that Macedonia has only one producer of oil derivatives, there is an inevitable need to apply for approval from the Council. At the same time, obvious is that 6 companies do not exist and operate in the country, let alone fulfil eligibility criteria defined in this tender procedure, which had been approved by experts acting on behalf of the Council of Public Procurements:

- minimum annual turnover in the amount of 20,000,000.00 MKD, in the last financial year;
- dispose with at least 5 own or rented technically approved tanks for transport of oil and oil derivatives, in compliance with applicable regulations in Republic of Macedonia;
- minimum 3 contracts signed for delivery of liquid fuels performed in the last three years, in individual value of at least 1,500,000 MKD;
- provide own and/or rented excise storage capacity for said oil derivative; and
- oil derivative being purchased must be in compliance with fuel specifications as enlisted in applicable Rulebook on Quality of Liquid Fuels in Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 88/2007, 91/2007, 97/2007, 105/2007, 157/2007, 15/2008, 78/2008, 156/2008 and 81/2009) and standard MKS EN 590:2007

cor.mk adopted by the Institute of Standardization in Republic of Macedonia or “equivalent”, in compliance with Article 33, paragraph 2, line 1 of LPP.

In the course of 2015, more than 400 tender procedures have been organized for procurement of oil and oil derivatives, which means all of them needed to apply for previous approval and implied unnecessary administrative and financial burden for institutions. Such situation imposes the need to clearly distinguish procurements for which it is already known that they are not produced by Macedonian companies, so they would be exempted from the legal obligation to obtain approval.

In this regards, one procedure from the monitoring sample should be noted here and concerned procurement of terrain motor vehicle in the value of 1.6 million MKD. In this public procurement as well the contracting authority had to apply for approval from the Council of Public Procurements because it was unable to prove that there are at least 5 manufacturers of terrain vehicles in Republic of Macedonia and 5 manufacturers on the foreign markets (Article 36-a, paragraph 1 of LPP). According to documents obtained, two of the three experts have assessed that technical specifications are sufficiently precise to describe the procurement subject without making direct reference to particular production, make, trade mark or specific origin of the vehicle. The Council has issued the requested approval, but despite the high number of car dealers in the country this tender procedure was presented with only one bid. Again, this raises the question about the purpose of requesting said approval knowing that it failed to secure minimum competition that could be expected under normal market conditions.

Absence of effects from the work of the Council

of Public Procurement is clearly visible also in the case of the monitored procedure concerning procurement of audio and video equipment in the value of 917,513 MKD, with VAT. This tender procedure complied with the obligation imposed by the Council of Public Procurements made as part of their decision to issue the second approval for the bid collection procedure, which included specific instructions for the contracting authority about what needs to be changed in tender documents prior to announcing the call for bids. Therefore, as part of its second decision for this public procurement, the Council supported remarks made by all three experts and instructed the contracting authority that prior to implementing this tender procedure it must adjust the relevant tender documents according to the instructions provided. Analysis of documents and decisions taken by the Council showed that the institution purchasing audio and video equipment has not acted in compliance with the decision issued. In that, one of the instructions enlisted in both approval decisions implied that the procurement subject must be divided into lots according to different types of equipment. However, the contracting authority did not comply with this instruction and the tender procedure was announced as single lot procurement. Later, the procedure was presented with one bid and the contract was signed with the single bidder in the value of 777,554 MKD without VAT, which is by 122% more than the estimated value indicated in the procurement notice (350,000 MKD). This case, inter alia, opens another significant question related to control in terms of compliance with law-stipulated obligations concerning CPP, i.e. which institution is in place to control institutions and establish whether in all law-stipulated cases they have applied for approvals needed and

whether they acted upon the decision issued by CPP after having sought its approval.

The fact that approval obtained from the Council of Public Procurements concerning technical specifications and eligibility criteria for tender participation does not necessarily ensure competition was supported by the monitored tender procedure concerning procurement of 8 vax figures in estimated value of 4 million MKD. Notably, despite the approval obtained on both grounds for which the contracting authority paid total of 18,900 MKD, the Museum procuring vax figures had not been presented with a single bid, after which the tender procedure was annulled.

These are just few examples from procurement procedures included in the monitoring sample. However, in terms of all public procurements implemented in the Republic of Macedonia in 2015, according to data secured by means of the Law on Free Access to Public Information, a total of 19,475 approval applications have been submitted to CPP for the entire year.

In financial terms, institutions had to pay 135.4 million MKD or 2.2 million EUR to obtain these approvals, which is an exceptionally high amount to finance this law-stipulated obligation.

Approval applications submitted to the Council of Public Procurements

Period	Number of procurement notices	Number of approval applications	Value of costs incurred by the Council of Public Procurements (in EUR)
January-June 2015	8.657	10.362	1.207.626
July-December 2015	9.812	9.113	993.162
Total 2015	18.469	19.475	2.200.788

As regards decisions taken by the Council, the ratio between positive and negative opinions is 50.3% : 49.7%. More specifically, the Council has taken positive decisions for 9,795 approval applications and has not issued approvals for 9,680 of them.

Structure of opinions issued by the Council of Public Procurements

Period	Number of approvals issued	Number of negative opinions
January-June 2015	5.054	5.308
July-December 2015	4.741	4.372
Total 2015	9.795	9.680

RECOMMENDATION:

SEVERAL SIGNIFICANT CHANGES NEED TO BE MADE TO THE LAW ON PUBLIC PROCUREMENTS TO ENCOURAGE GREATER COMPETITION. THROUGHOUT THE TEXT IN ARTICLE 36-A, PARAGRAPH (1) OF LPP, THE WORD “PRODUCERS” SHOULD BE REPLACED WITH THE WORD “ECONOMIC OPERATORS”. IN ARTICLE 36-A, PARAGRAPH (1), LINE (1) OF LPP THE CONJUNCTION “AND” IN THE PROVISION “THREE PRODUCERS ON THE MARKET IN REPUBLIC OF MACEDONIA AND THREE PRODUCERS ON THE FOREIGN MARKETS” SHOULD BE REPLACED WITH THE CONJUNCTION “OR”. THESE CHANGES WILL CREATE PRECONDITIONS FOR ACTUAL IMPLEMENTATION OF MARKET RESEARCH, INSTEAD OF THE FORMAL WHICH, BY RULE, IS UNSUCCESSFUL AND IS USUALLY FOLLOWED BY APPLICATION FOR APPROVAL SUBMITTED TO THE COUNCIL OF PUBLIC PROCUREMENTS. FURTHERMORE, IN ORDER TO REDUCE ADMINISTRATIVE AND FINANCIAL BURDENS, LPP NEEDS TO BE AMENDED WITH A VIEW TO INTRODUCE LEGAL SOLUTION WHEREBY IN CASES WHEN CONTRACTING AUTHORITIES HAVE PRESENTED THE COUNCIL OF PUBLIC PROCUREMENTS WITH EVIDENCE THAT THEY HAD ACTED UPON RECOMMENDATIONS ISSUED WHEN THEY HAVE NOT BEEN ISSUED APPROVAL, THE COUNCIL WOULD BY DEFAULT ISSUE THE APPROVAL FOR THE PROCUREMENT PROCEDURE IN QUESTION, WITHOUT ADDITIONAL ENGAGEMENT OF EXPERTS (ARTICLE 14 OF LPP).

- EVERY FOURTH TENDER PROCEDURE FROM THE MONITORING SAMPLE IS CHARACTERIZED BY ONLY ONE BIDDING COMPANY. LOW LEVEL OF COMPETITION IS ADDITIONALLY DETERIORATED WITH THE EXCLUSION OF COMPANIES FROM THE BID EVALUATION PROCESS.

Competition in public procurement procedures remained low in the second half of 2015, as it was noted in the first half of the year. For the entire 2015, satisfactory level of competition was noted in only half of tender procedures monitored. Among other procurement procedures, 26% have been presented with only 1 bid, while 20% of them were characterized by 2 bids, as it was established with direct monitoring activities (attendance at public opening of bids).

Competition in tender procedures on semi-annual level*

Period	No bidders	1 bidder	2 bidders	3 and more bidders
January-June 2015	4%	26%	19%	51%
July-December 2015	2%	26%	20%	52%
Average 2015	3%	26%	20%	51%

*Calculations are based on the monitoring sample for the year 2015.

Low level of competition is additionally deteriorated in the further course of the procurement procedure, i.e. with the exemption of bidding companies from the bid evaluation process. For example, in the procedure on procurement of in-country and international insurance for aircrafts, estimated in the value of 14.6 million MKD, according to the approval obtained by the Council of Public Procurements potential bidders were required to fulfil following conditions to demonstrate capacity for contract performance:

- to have performed insurance services for same or similar risks for at least three legal entities in the last three years;
- to have reinsurance coverage by reinsurance company with minimum credit rating of A+ determined by Standard and Poor's;
- to have engaged (by means of employment or other contract) expert staff qualified for assessment of damages related to the public procurement;
- to provide list of clients (references) for which they have provided insurance for same or similar risks in the last three years, by enlisting the name of clients, validity period of the insurance contract or year when services were performed, together with confirmation documents signed by clients concerning services performed or statements signed by responsi-

ble persons at the economic operator in cases when economic operators are not able to secure conformation documents due to reasons beyond their control;

- confirmation document on reinsurance with reinsurance company holding minimum rating of A+ determined by Standard and Poor's, enlisting the subject of insurance (aircrafts with their registration details) in an open procedure and number of the open procedure, including CUT THROUGH clause, in original and translated in Macedonian language;
- statement that the economic operator has engaged expert staff with precise enlistment of their number, education and/or professional qualifications of expert staff profiled in assessment of damages adequate to the public procurement in question.

Two bids were submitted, but after having reviewed relevant documents the public procurement commission assessed that one of the bidding companies does not fulfil requirements in terms of the reference list, confirmation document from reinsurance company with minimum rating of A+ determined by Standard and Poor's and statement that the economic operator has engaged expert staff.

Having in mind that it is a matter of a big insurance company, unclear is why they have submitted a bid in

this tender procedure if they do not fulfil the eligibility criteria. Otherwise, if their bid had been excluded without providing reasonable grounds, it is unclear why they have not lodged an appeal to the State Commission on Public Procurement Appeals. These questions were also raised with the bidding company exempted from the bid evaluation process, but they refused to answer with the justification that such information is of confidential nature.

Among procedures included in the monitoring sample, one tender procedure organized for procurement of 130 tablet computers falls within the group of procedures marked by high competition, with participation of three bidding companies. However, as part of the bid evaluation process in this tender procedure,

two of the three bids were rejected and assessed as unacceptable. One bid was rejected on the grounds that it does not comply with minimum requirements defined in technical specifications, while the second bid was rejected due to the bidder's failure to provide certificates with a list of expert staff for installation and servicing by the manufacturer. Given that only one bid was assessed as acceptable, the single bidding company was called to offer its final price. The bidder reduced the final price by 10% compared to the price announced at the public opening of bids. Although higher than the procurement's estimated value by 12%, this price was accepted and the contract was signed in total value of 6.1 million MKD, with VAT.

RECOMMENDATION:

COMPETENT AUTHORITIES SHOULD DEVELOP A DETAILED ANALYSIS TO ASSESS EFFECTS AND PURPOSEFULNESS OF HAVING INTRODUCED THE COUNCIL OF PUBLIC PROCUREMENTS AS ADDITIONAL ADMINISTRATIVE AND FINANCIAL BURDEN IN THE SYSTEM OF PUBLIC PROCUREMENTS. OBVIOUSLY, THERE IS A NEED FOR A MORE SYSTEMIC APPROACH IN ADDRESSING THE ISSUE OF LOW COMPETITION, FOCUSED ON REDUCING RISKS FOR CORRUPTION AS PRECONDITION FOR RESTORING PREVIOUSLY LOST TRUST OF THE BUSINESS SECTOR IN FAIR SELECTION OF THE BEST BID IN TENDER PROCEDURES.

- IN 2015, PUBLIC PROCUREMENT CONTRACTS SIGNED WITHOUT PREVIOUSLY ANNOUNCED CALL FOR BIDS ACCOUNTED FOR MORE THAN 29 MILLION EUR. TOTAL VALUE OF THESE CONTRACTS IS ALMOST HALF THE VALUE OF SAME TYPE OF CONTRACTS SIGNED IN 2014. THE BIGGEST CONTRACT SIGNED BY MEANS OF NEGOTIATION PROCEDURE WITHOUT PREVIOUSLY

ANNOUNCED CALL FOR BIDS CONCERNS ANNEX CONTRACT FOR CONSTRUCTION OF THE BUILDING "CITY HOUSE" IN THE AMOUNT OF 3.2 MILLION EUR.

The decrease in total value of contracts signed under non-transparent negotiation procedures without prior announcement of call for bids that started in 2014 continued in the course of 2015. Processing of all data

submitted by contracting authorities to the Electronic Public Procurement System revealed that in 2015 a total of 951 contracts have been signed without prior announcement of call for bids. Value of these contracts amounted to 29 million EUR and is by 48.6% lower compared to their total value in 2014. This reduction in use of non-transparent procurement procedures is a direct result of the obligation imposed on institutions to seek approval from the Council of Public Procurements for organization of negotiation procedures without prior announcement of call for bids.

adapted for local use in the school year 2015/2016, as well as the Bureau for Development of Education in relation to taking and adapting curricula in mathematics, biology, physics and chemistry for VII to IX grade from the International Centre for Curricula at Cambridge (Cambridge International Examinations) and promotion, didactic guidance (training) and monitoring of their application in primary schools across Republic of Macedonia.

Overview of the value of contracts signed under negotiation procedures without prior announcement of call for bids, per year

Year	Number of contracts signed	Value of contracts signed (in million EUR)	Change in annual value
2012	1,194	72.5	+75.5%
2013	1,491	97.3	+34.2%
2014	834	56.4	-42.0%
2015	951	29.0	-48.6%

Detailed overview of these contracts is available on the official website of CCC, opendata.mk

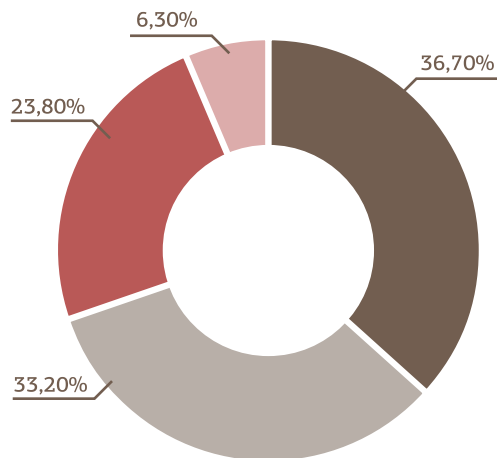
In terms of grounds indicated for signing such contracts in 2015, first place in value terms is held by contracts signed in cases when due to technical or artistic reasons, i.e. reasons related to protection of exclusive rights (patents and the like) the contract can be performed only by particular economic operator. This ground was indicated for contracts whose accumulative value amounted to 10.6 million EUR and whose share in total direct contracts accounted for 36.7%. This group of contracts included those signed by the Ministry of Education and Science for batch purchase of textbooks for primary and secondary education and additional didactic and working materials accompanying foreign textbooks

Second most frequently indicated grounds for use of negotiation procedures without prior announcement of call for bids concerned urgent need for the procurement, i.e. lack of time to organize public procurement procedure. This reason was used as grounds for signing contracts in accumulative value of 9.6 million EUR and they account for 33.2% of all funds spent by means of such procedure. Next significant share of 23.8% represent annex contracts, in accumulative value of 6.9 million EUR. This group included the contract with the highest value which concerned additional works for construction of the building "City House" in the amount of 3.2 million EUR.

Overview of Contacts signed under negotiation procedures without prior announcement of call for bids, January-December 2015

- Technical or artistic reasons
- Urgency reasons
- Annex contracts
- Other reasons

*The structure of reasons indicated for contracts awarded by means of negotiation procedure without prior announcement of call for bids is based on detailed processing of 951 notifications for such contracts submitted to EPPS.



As shown in the chart, other grounds indicated for use of negotiation procedures without prior announcement of call for bids accounted for 1.8 mil-

lion EUR, i.e. their share in total amount of funds spent by means of this procedure was 6.3%.

RECOMMENDATION: THE TREND ON REDUCED USE OF NEGOTIATION PROCEDURES WITHOUT PRIOR ANNOUNCEMENT OF CALL FOR BIDS SHOULD BE MAINTAINED.

- SECOND HALF OF 2015 WAS CHARACTERIZED BY INCREASED NUMBER OF TENDER PROCEDURE ANNULMENTS, UNLIKE THE SITUATION OBSERVED IN THE FIRST HALF OF THE YEAR. IN 2015, TOTAL OF 19.9% OF ALL PUBLIC PROCUREMENT PROCEDURES HAVE BEEN ANNULLED. MOST FREQUENTLY USED GROUNDS FOR TENDER ANNULMENT CONCERNS THE FACT THAT NO BIDS HAVE BEEN RECEIVED.

Among the total of 18,469 public procurement procedure initiated in 2015 - 3,673 have been annulled. Given the fact that some institutions are late in submitting their notifications on tender procedures annulled, this number would likely increase

in the next months. According to data available in the Electronic Public Procurement System by March 2015, it can be concluded that the share of annulled tender procedures in total number of public procurement procedures announced accounts for 19.9%, and represents a decrease by 3.1 percentile points compared to the situation observed last year. Contrary to this modest trend of decrease in tender annulments, more worrying is the unfavourable structure of annulments in terms of the size of tender procedures.

Analyses showed that the share of tender annulments increases in proportion to their increasing value. Hence, share of tender annulments among procurements whose value does not exceed 5,000 EUR accounts for 17%, their share in procurements

whose value ranges from 5,000 to 20,000 EUR accounts for 18.2%, and the share of annulments among large scale tender procedures in value of more than 20,000 EUR which necessitate organization of open procedures accounts for as many as 24.3%. It seems that large scale tender procedures are more frequently annulled compared to low scale tender procedures.

Second most frequently indicated reason for tender annulment implied that no acceptable bids have been submitted, i.e. bids were not in compliance with what has been required under tender documents, which was the case in 15% of all tender procedures annulled. Third frequently indicated reason for tender annulment is the fact that prices bided are less favourable than market prices, which had been used as grounds

Annulment of tender procedures, per year

Year	Number of announced procurement notices	Number of decisions on tender annulment	Share of annulled tender procedures
2012	11,765	3,090	26.3%
2013	18,787	3,478	18.5%
2014	15,746	3,625	23.0%
2015	18,469	3,673	19.9%

In terms of grounds enlisted for tender annulment, most contracting authorities have indicated that no bids have been received, accounting for 34% of all tender procedures annulled.

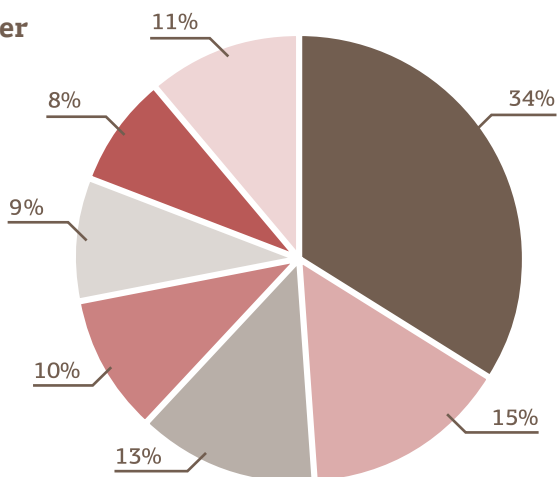
for annulment of 13% of public procurement procedures.

As regards 10% of annulled tender procedures, the reason indicated implied that bids are not adequate,

Structure of reasons indicated for tender annulment

- No bids
- No acceptable bids
- Bids received are less favorable than market terms and conditions
- No adequate bids
- Omissions in tender documents
- Significant violations to LPP
- Other reasons

*The structure of reasons indicated for tender annulments is based on processing of data from all 3,673 notifications on tender annulments in 2015 submitted to EPPS.



meaning that value of bids submitted is higher than the procurement's estimated value.

In as many as 9% of annulled tender procedures, institutions have established significant omissions in their respective tender documents, which means that in the course of their procedures they have established existence of omissions.

In the case of 8% of annulled tender procedures, significant violations to the Law on Public Procurements have been established by the public procure-

ment commissions at the contracting authority or by the State Commission on Public Procurement Appeals.

Share of annulled procurement procedures in Republic of Macedonia is continuously high and indicative of a serious problem affecting the system of public procurements, which is partially a result of non-existing control mechanisms for contracting authorities.

RECOMMENDATION: FURTHER DECREASE OF THE SHARE OF ANNULLED TENDER PROCEDURES IS NEEDED, AS THE RATE OF 19.9% IS UNREASONABLY HIGH. IN CASE THE RELEVANT RATE OF TENDER ANNULMENTS IS NOT REDUCED BELOW 10 PERCENT IN THE FORTHCOMING PERIOD, SANCTIONS SHOULD BE INTRODUCED FOR CONTRACTING AUTHORITIES CHARACTERIZED BY HIGH SHARE OF ANNULLED TENDER PROCEDURES.

- **MONITORING ACTIVITIES NOTED REDUCED USE OF BANK GUARANTEES FOR BIDS, AS WELL AS REDUCED USE OF GUARANTEES FOR QUALITY PERFORMANCE OF CONTRACTS REQUIRED FROM COMPANIES.**

Bank guarantees for bids were requested in 17% of tender procedures monitored in the course of 2015, which represents a decrease by 5 percentile points compared to the previous year. On the contrary, guarantees for quality performance of contracts were required in 47% of monitored tender procedures, which accounts for a reduction by 6 percentile points compared to the previous year.

The trend on decreased use of requirements related to bank guarantees for bids is positive and efforts should continue for contracting authorities to fully

abandon use of this financial burden to companies, having in mind that the law offers the possibility for use of so-called statement of serious intent.

Negative trend has been observed in terms of decreased use of guarantees for quality performance of contracts, which is indicative of lowered efforts to ensure adherent performance of public procurement contracts. Namely, adherent implementation of procurement contracts and adherent spending of public funds by means of public procurements is in the interest of citizens in Republic of Macedonia. Contracting authorities' right to subjective assessment whether they will require guarantees for quality performance of contracts puts companies in unequal position. Notably, companies that need to submit such guarantees do not only have an additional financial burden compared to those that have

been awarded a tender contract but are not obliged to submit such guarantees, but are also liable to being issued negative reference, which is not the case

among companies that have not been required to submit guarantees for quality performance of contracts.

RECOMMENDATION:

THERE IS A NEED FOR CLEAR DEFINITION OF CONDITIONS REQUIRING USE OF BANK GUARANTEES FOR QUALITY PERFORMANCE OF CONTRACTS, AS WELL AS INTRODUCTION OF STATEMENT ON QUALITY PERFORMANCE OF CONTRACTS. IN PRACTICE, THIS WOULD MEAN THAT ANY PUBLIC PROCUREMENT CONTRACT MUST IMPLY STATEMENT ON QUALITY PERFORMANCE OF CONTRACTS OR BANK GUARANTEE FOR THE SAME PURPOSE, DEPENDING ON THE SCOPE OF THE TENDER PROCEDURE IN QUESTION. THIS WOULD ADDRESS THE PROBLEM EMERGING IN TENDER PROCEDURES WHERE BANK GUARANTEES FOR QUALITY PERFORMANCE ARE NOT REQUIRED, BUT THE SUPPLIER THAT HAS ACTED IN BREACH OF THE CONTRACT CANNOT BE ISSUED NEGATIVE REFERENCE. SINCE THE MECHANISM ON SANCTIONING COMPANIES BY ISSUING NEGATIVE REFERENCES IS ALREADY IN PLACE, THE SAME MUST ENSURE EQUAL TREATMENT OF ALL ECONOMIC OPERATORS.

BID GUARANTEES REFERRED TO ARTICLE 47 OF LPP (IN THE FORM OF BANK GUARANTEES OR BANK DEPOSITS) SHOULD BE REVOKED AND SHOULD BE REPLACED WITH "STATEMENT OF SERIOUS INTENT". GUARANTEES FOR QUALITY PERFORMANCE OF CONTRACTS REFERRED TO UNDER ARTICLE 48 OF LPP (IN THE FORM OF BANK GUARANTEES) SHOULD BE MANDATORY FOR ALL PUBLIC PROCUREMENTS WHOSE VALUE EXCEEDS THE AMOUNT OF 500,000 EUR IN MKD COUNTER VALUE OR ADEQUATE FINANCIAL THRESHOLD SHOULD BE DEFINED, IN CONSULTATIONS WITH THE BUSINESS SECTOR..

- IN ANNUAL TERMS, A TOTAL OF 58 NEGATIVE REFERENCES HAVE BEEN ISSUED TO COMPANIES IN THE COURSE OF 2015. THE LIST OF COMPANIES PROHIBITED TO PARTICIPATE IN TENDER PROCEDURES IS SUBJECT OF CONTINUES CHANGES BY ENLISTMENT OF NEW ENTRIES AND DELETION OF OLD ENTRIES ONCE THEIR PROHIBITION PERIOD HAS EXPIRED.

In the second half of 2015, a total of 33 negative references were issued which, together with 25 negative references issued in the first half of the year, provide the total number of 58 negative references issued.

Most frequent reasons for issuance of negative ref-

erences in 2015 include:

- refusal on the part of companies selected as the most favourable bidder to sign the public procurement contract;
- activation of guarantees for quality performance of contracts;
- companies have failed to submit bank guarantees for quality performance of contract, which has been anticipated in relevant tender documents;
- withdrawal of bids prior to expiration of their validity.

Law-stipulated possibility for contracting authorities to issue negative references, i.e. prohibit companies from participation in all tender procedures in Republic of Macedonia for a period from 1 to 5 years is contrary to the legal regulations of the European Union.

RECOMMENDATION:

NEGATIVE REFERENCES FROM ARTICLE 47, PARAGRAPH (5) OF LPP SHOULD NOT BE ISSUED WHEN BIDDING COMPANIES WITHDRAW THEIR BIDS PRIOR TO EXPIRATION THEREOF AND WHEN BIDDING COMPANIES DO NOT SIGN THE PUBLIC PROCUREMENT CONTRACTS ACCORDING TO TERMS AND CONDITIONS SET IN THE TENDER DOCUMENTS AND THE BID THEY SUBMITTED. ISSUANCE OF NEGATIVE REFERENCES FROM ARTICLE 47, PARAGRAPH (6) OF LPP SHOULD RESULT IN EXEMPTION OF THE BIDDER IN QUESTION FROM FUTURE PROCEDURES ON AWARDING PUBLIC PROCUREMENT CONTACT ORGANIZED ONLY BY THE CONTRACTING AUTHORITY THAT ISSUES THE NEGATIVE REFERENCE.

SURVEY AMONG COMPANIES RELATED TO THEIR EXPERIENCE FROM PARTICIPATION IN PUBLIC PROCUREMENT PROCEDURES

The research among companies related to their experience from participation in public procurement procedures was conducted in the period November 2015-January 2016. It targeted 254 companies from all bigger towns across the country. It was pursued by means of survey (in person and electronically) on the basis of previously developed structured questionnaire comprised of 17 questions in total.

Questions were structured in several groups and inquired about companies' opinion about the most frequent problems they face when participating in public procurements, their attitude towards e-auctions, appeal procedures, corruption and other challenges in public procurements. The questionnaire allowed interviewed representatives of companies to freely indicate problems they are facing and propose measures aimed to improve the system of public procurements.

This research represents the sixth regular survey of companies in relation to public procurements, conducted by the Centre for Civic Communications as part of their monitoring of public procurements from 2009 onwards. The last survey was organized in 2014 and results thereof were integrated in the 23rd monitoring report on public procurements.

This analysis includes results from the latest survey among companies, as well as comparison against results obtained on previous surveys, for the purpose of presenting the actual state-of-affairs, but also trends in public procurements.

As part of this survey, we first inquired about companies' experience related to public procurements. On annual level, majority of surveyed companies (42%) have participated in up to 5 public procurement procedures. Next are companies (26%) that have participated in 6 to 12 tender procedures and companies that have participated in more than 24 public procurement procedures (21%), while the last group is comprised of companies that have participated in 12 to 24 tender procedures on annual basis (11%). Average weighted participation of surveyed companies is 11 public procurement procedures on annual level.

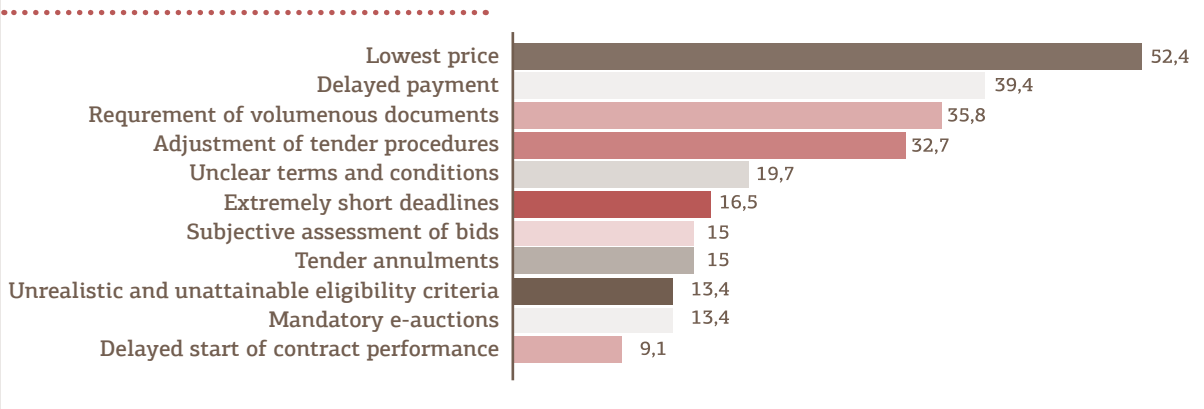
Problems in public procurements

- **LOWEST PRICE DEFINED AS SINGLE CRITERION ON AWARDING PUBLIC PROCUREMENT CONTRACTS, DELAYED PAYMENTS, REQUIREMENTS RELATED TO VOLUMINOUS DOCUMENTS FOR PARTICIPATION IN TENDER PROCEDURES AND ADJUSTMENT OF TERMS AND CONDITIONS TO PARTICULAR BIDDING COMPANIES ARE AMONG THE MAIN PROBLEMS IN PUBLIC PROCUREMENTS INDICATED BY THE SURVEYED COMPANIES.**

Problem no. 1 in public procurements, faced by more than half of surveyed companies (52.4%) is lowest price defined as the single criterion for awarding public procurement contracts.

Next is the group of three problems with similar share in answers. Problem no. 2 for companies participating in public procurements (39.4%) concerns collection of receivables from contracts performed, i.e. delayed payment thereof. This is followed by the problem (35.8%) related to voluminous documents required for participation in tender procedures, which require time and money in order to be secured from relevant institutions, while the fourth problem (32.7%) concerns adjustment of tender documents and technical specifications to suit particular bidding companies.

Main problems faced by companies in public procurement procedures (multiple answers are allowed)



Similar share in answers was observed in terms of the next group of problems enlisted by companies and related to their participation in public procurements: unclear and incomprehensible requirements for tender participation and technical specifications (19.7%); extremely short deadlines for preparation and submission of bids (16.5%); subjective approach in assessment of bids' acceptability (15%), frequency and ease of tender annulment (15%).

Last group of problems faced by companies include: unrealistic and unattainable eligibility criteria for tender participation (13.4%); mandatory organization of e-auctions in all tender procedures (13.4%) and delayed start of contract performance (9.1%).

Compared to findings from previous surveys, the main difference is noted in terms of the problem faced by majority of companies. Unlike the previous survey when problem no. 1 for companies were voluminous documents required for tender participation, this time the most acute problem was identified in lowest price defined as the single criterion. Nevertheless, it should be stressed that, under the previous survey, the problem related to lowest price as the single criterion was indicated as one of problems that companies were able to add when answering the questionnaire, beyond the list provided by interviewers.

The next most frequent problem (delayed payment), ranked as problem no. 2, has identical shares of answers both under the previous and the current survey. In 2014, delayed payment was indicated as problem by 39.3% of surveyed companies, while 39.4% of them indicated this problem under this survey.

Former problem no. 1 (voluminous documents required for tender participation) is now ranked on the third position, according to frequency of answers. Difference in answers provided by companies under this survey and the survey conducted year and a half ago was noted also in terms of other problem they face in public procurements. Adjustment of tender documents and technical specifications to favour particular companies was now indicated as problem by 32.7% of companies, while under the previous survey it accounted for 35.2% of answers. Unclear and unattainable eligibility criteria were now indicated as problem by 19.7% of surveyed companies, while under the previous survey its share accounted for 23.6% of answers. Extremely short deadlines were now indicated as problem by 16.5% of companies, but in the previous survey they accounted for 13.9% of answers.

Subjective approach in assessment of bids' acceptability is now a problem for 15% of companies, but its share under the previous survey accounted for 16.5%. Similar is the situation concerning the problem related to frequency and ease of tender annulment, which was indicated by 15% of companies in this survey and by 16.5% of companies in the previous survey.

- **TECHNICAL SPECIFICATIONS PLAY THEIR ROLE AS GUARANTOR OF QUALITY UNDER CIRCUMSTANCES WHEN THE LOWEST PRICE IS USED AS THE SINGLE CRITERION.**

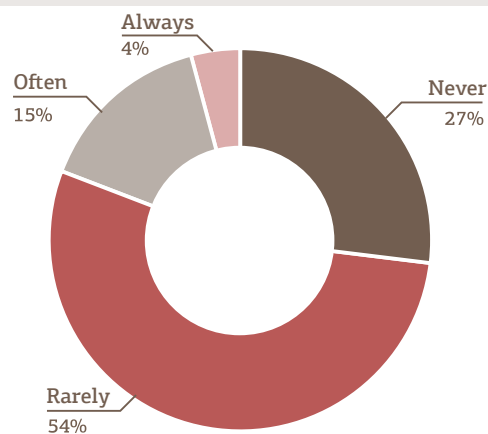
When lowest price is the single criterion for awarding public procurement contracts, contracting authorities have no other option but to develop detailed technical specifications to define quality of what they wish to purchase by means of their public procurements.

However, majority of surveyed companies in this and in the previous survey believe that technical specifications are not developed in sufficient details in order to guarantee quality of procurements. As many as 81%

of surveyed companies believe that technical specifications rarely (54%) or never (27%) contain details that precisely define the quality of public procurements.

Do you think that technical specifications are sufficiently detailed to guarantee quality of procurements?

.....



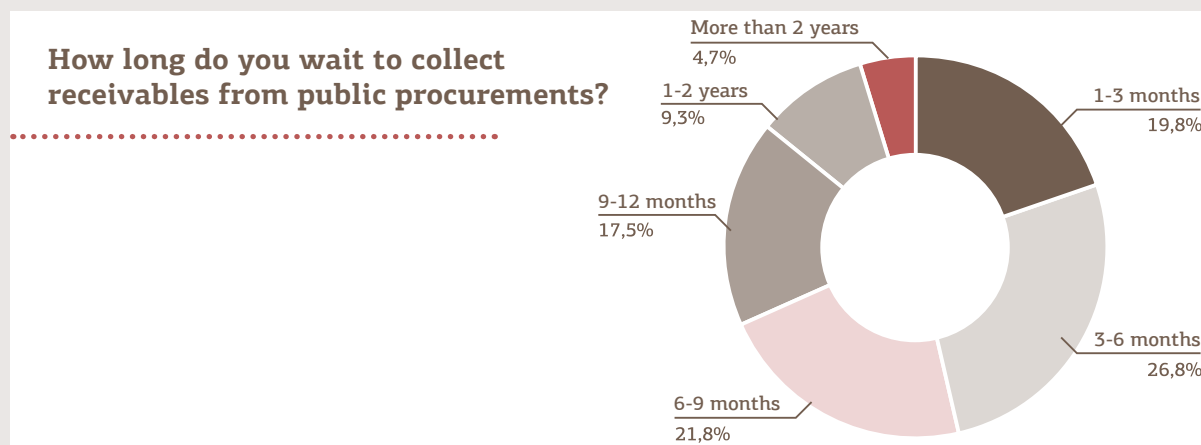
This share of answers was similar under the previous survey and accounted for 84%. Only a smaller portion of surveyed companies (19%) believe that technical specifications often (15%) or always (4%) include necessary details to guarantee quality of what is being purchased

Problem with delayed payment in public procurements

- UNDER THIS AND THE PREVIOUS SURVEY CONDUCTED YEAR AND A HALF AGO, DELAYED PAYMENT FOR PERFORMED PUBLIC PROCUREMENT CONTRACTS WAS INDICATED AS PROBLEM NO. 2 FOR COMPANIES. IN AVERAGE, COMPANIES WAIT 8 MONTHS TO COLLECT THEIR RECEIVABLES.

Delayed payment of receivables for realized public procurements is indicated as problem by 39.4% of surveyed companies. One and a half year ago, this problem was indicated by 39.3% of surveyed companies.

Having in mind high ranks of this problem under both surveys, companies were asked to indicate the average time for collection of receivables related to performed public procurement contracts.



In average, surveyed companies wait 8 months to receive payment for contract performance. This represents a significant increase by two months compared to the average time of waiting observed year and half ago, when this period was 6 months.

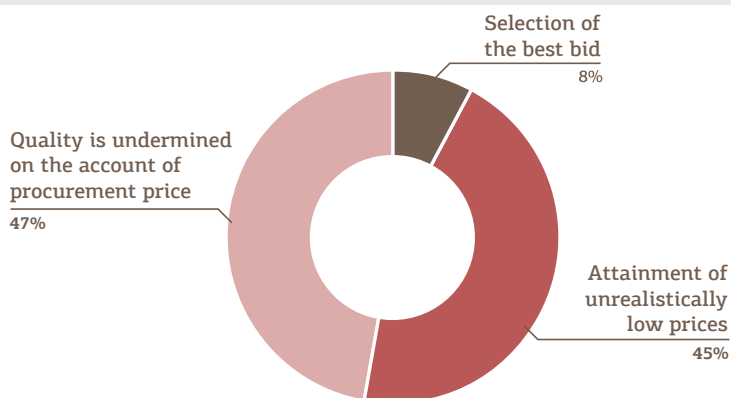
Hence, 26.8% of companies indicated that they wait 3 to 6 months to collect receivables, 21.8% wait 6 to 9 months, while 19.8% wait 1 to 3 months to collect receivables. 17.5% of them wait 9 to 12 months, 9.3% wait 1 to 2 years, while 4.7% of companies indicated that they wait more than 2 years to collect their receivables in public procurements.

E-auctions do not fulfil their main purpose

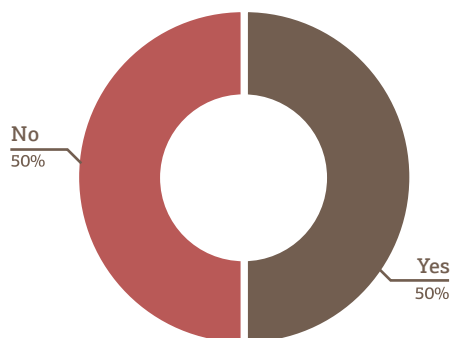
- **MORE THAN 90% OF COMPANIES BELIEVE THAT E-AUCTIONS RESULT IN ATTAINMENT OF UN-REALISTICALLY LOW PRICES AND UNDERMINE QUALITY OF PROCUREMENTS ON THE ACCOUNT OF THEIR PRICE.**

Asked to enlist what best depicts e-auctions, very small share of surveyed companies (8%) indicated that e-auctions are characterized by selection of the best bid. Majority of companies believe that e-auctions disregard quality on the account of price (47%) and result in attainment of unrealistically low prices (45%). Identical answers to this question were obtained under both this and the survey conducted one and a half year ago.

In your opinion, what best depicts e-auctions?



Half of surveyed companies (50%) believe that prior to start of e-auctions agreements among bidding companies are in place, resulting in no reduction of initially bided prices. The other half of surveyed companies (50%) negates doubts about agreements among bidding companies not to reduce their prices in tender procedures.



In case when e-auctions do not result in reduction of price, do you think there are prior agreements among companied in place?

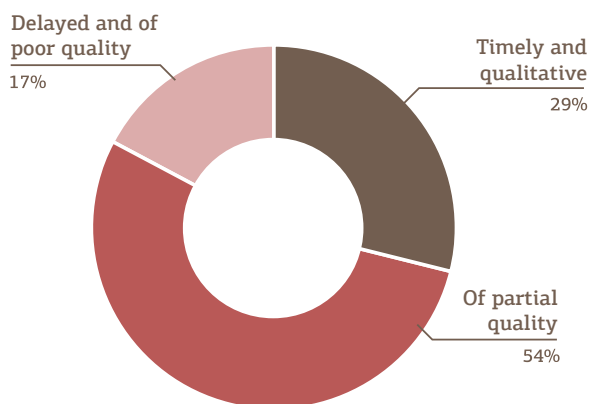
Contrary to the current results whereby 50% of surveyed companied believe that companies enter certain agreements prior to e-auctions, under the previous survey their share accounted for 40%.

Satisfaction from communications with contracting authorities

- **HALF OF SURVEYED COMPANIES (54%) ASSESSED COMMUNICATIONS WITH CONTRACTING AUTHORITIES IN THE COURSE OF IMPLEMENTING PUBLIC PROCUREMENT PROCEDURES TO BE OF PARTIAL QUALITY**

Complete satisfaction in terms of communications with contracting authorities in cases they needed clarification of tender procedures where they participated was expressed by 29% of surveyed companies, qualifying such communications as timely and qualitative. On the contrary, 17% of surveyed companies indicated that communications in such circumstances had been delayed and of low quality. Remaining 54% of companies assessed communications with contracting authorities to be of partial quality.

How do you assess communications with contracting authorities in the course of public procurement procedures where you participated?



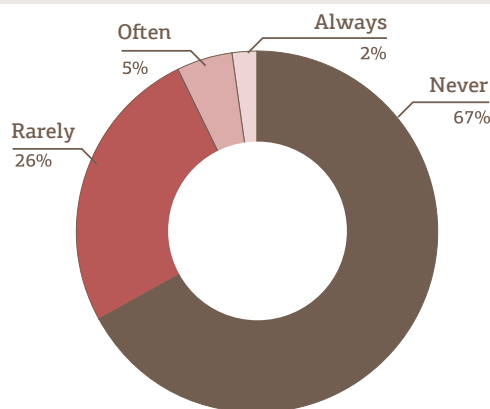
Compared to the survey conducted one and half year ago, the number of companies assessing such communications as timely and qualitative is almost identical (was 27% and now is 29%), but there is a modest decrease of the number of companies assessing such communications to be of partial quality (was 62% and now is 54%) on the account of those assessing communications with contracting authorities as delayed and of poor quality (was 11% and now is 17%).

Dominant share of companies do not lodge appeals for tender procedures

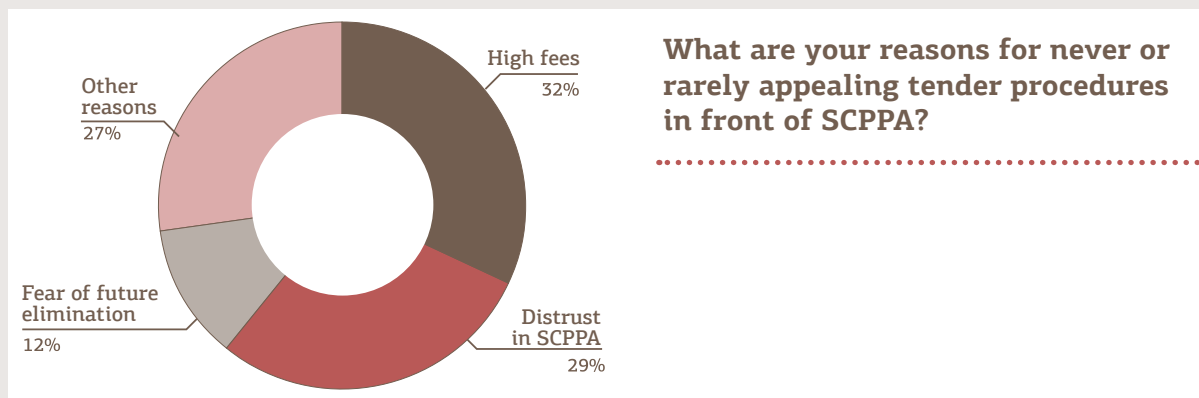
- AS MANY AS 93% OF SURVEYED COMPANIES HAVE NEVER OR RARELY LODGED APPEALS CONTESTING TENDER PROCEDURES WHERE THEY PARTICIPATED, MAINLY DUE TO HIGH FEES AND COSTS RELATED TO APPEAL PROCEDURE AND THEIR DISTRUST IN SCPPA.

Only 7% of surveyed companies indicated they often (5%) or always (2%) lodge appeals in front of the State Commission on Public Procurement Appeals (SCPPA) in cases when they are dissatisfied with the manner in which public procurement procedures are implemented. On the other hand, high share of companies indicated they have never (67%) or rarely (26%) lodged appeals in front of SCPPA when they are dissatisfied with the public procurement procedures. These figures are almost identical with those obtained under the survey conducted one and half year ago.

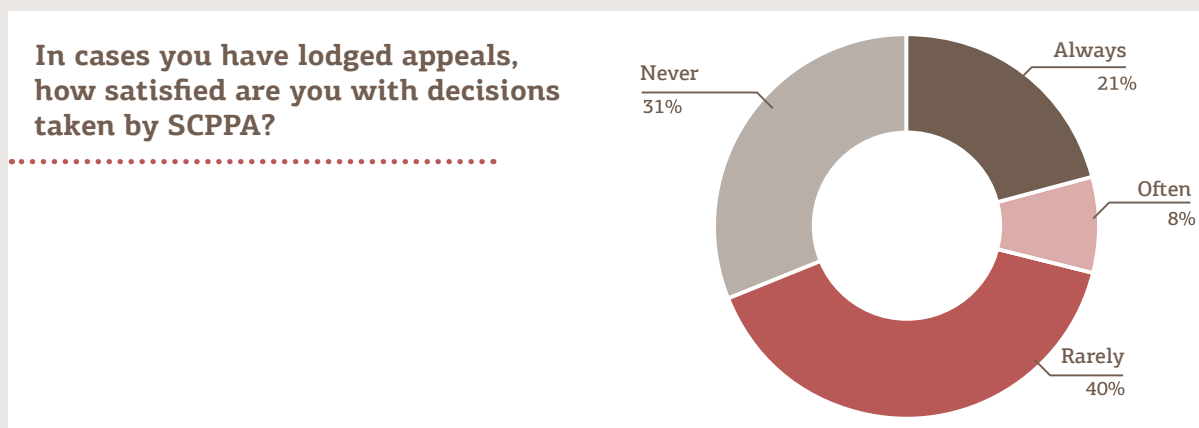
When dissatisfied with the manner in which public procurement procedures are implemented, have you lodged appeals before SCPPA?



Asked about reasons why they rarely or never appeal public procurement procedures in front of SCPPA, 32% of surveyed companies indicated high fees related to the appeal procedure, while 29% of them indicated their distrust in SCPPA. 12% of companies do not lodge appeals for public procurement procedures due to fear of being eliminated in future procurements, while 27% indicated various reasons for not lodging appeals in front of SCPPA.



As regards satisfaction with decisions taken by SCPPA, as many as 71% of surveyed companies are rarely (40%) or never (31%) satisfied with such decisions. On the contrary, 29% of companies are always (21%) or often (8%) satisfied with decisions taken by SCPPA.

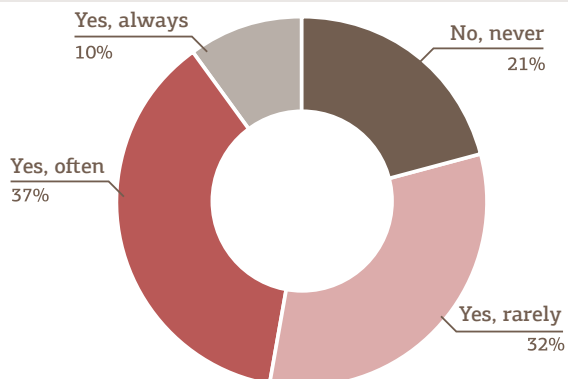


Corruption in public procurements

- **79% OF SURVEYED COMPANIES BELIEVE CORRUPTION IS PRESENT IN PUBLIC PROCUREMENTS, BUT HAVE DIFFERENT PERCEPTIONS ABOUT ITS LEVEL AND FREQUENCY.**

Large portion of companies (37%) believe that corruption is often present in public procurements, 10% stated it is always present, while 32% of surveyed companies indicated that corruption is rare in public procurements. Only 21% of companies indicated that corruption is never present in public procurements.

Do you think corruption is present in public procurements?



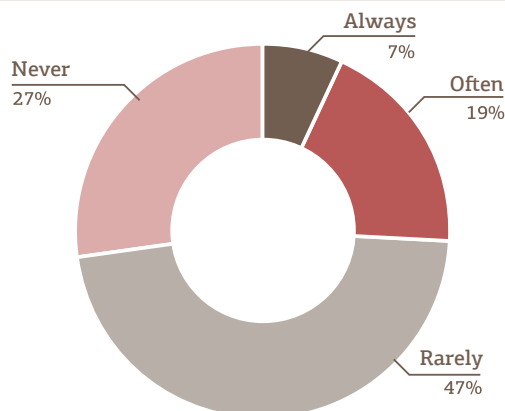
As regards forms of corruptions, companies were asked an open question and they had to indicate on their own the type of corruption they believe is present in public procurements. In that, 64% of surveyed companies answered this question. According to their answers, first on the list of corruptive practices are political relations, followed by bribes, and personal relations were ranked third on this list.

Non-compliance with the Law on Public Procurements

- **DOMINANT SHARE OF COMPANIES INDICATED THAT THEY ARE OFTEN OR RARELY WITNESSING NON-COMPLIANCE WITH THE LAW ON PUBLIC PROCUREMENTS IN TENDER PROCEDURES WHERE THEY PARTICIPATED AS BIDDING COMPANIES.**

As regards cases in which companies witnessed non-compliance with the Law on Public Procurements, 7% of them indicated they had often witnessed such cases, while according to major share of companies (47%) violations of the law have been a rare occurrence. On the other hand, 27% of surveyed companies indicated they have never witnessed non-compliance with the Law on Public Procurements as part of tender procedures where they participated.

As regards public procurements where you participated, have you remarked non-compliance with the Law on Public Procurements?

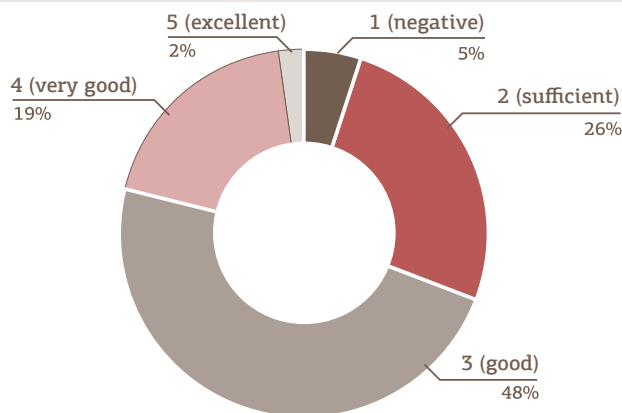


Overall assessment of the public procurement process

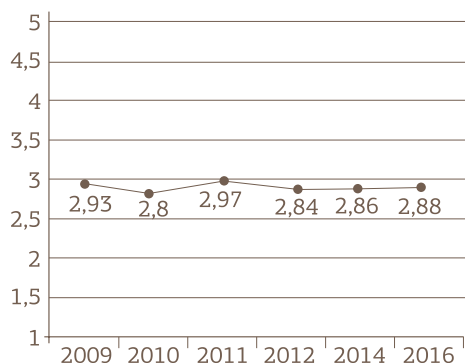
- ON THE SCALE FROM 1 (NEGATIVE) TO 5 (EXCELLENT), THE COMPANIES ASSESSED THE OVERALL PROCESS OF PUBLIC PROCUREMENTS IN REPUBLIC OF MACEDONIA WITH AN ASSESSMENT OF 2.88.

When asked to assess the overall process of public procurements in Republic of Macedonia, surveyed companies indicated an average assessment of 2.88, whereby 5% of companies gave an assessment of 1 (negative), 26% of them gave an assessment of 2 (sufficient), 48% of them gave an assessment of 3 (good), 19% of them gave an assessment of 4 (very good) and 2% of surveyed companied assessed the overall process of public procurements by indicating an assessment of 5 (excellent).

How do you assess the overall process of public procurements in Republic of Macedonia?



Compared against results obtained under the previous survey, the average assessment is almost identical. Unlike the current assessment of 2.88, companies targeted with the survey conducted one and a half year ago assessed the overall process of public procurements with an average assessment of 2.86.



Movement of companies' average assessment for the process of public procurements in Republic of Macedonia

Throughout the monitoring years, it can be observed that the highest assessment for the process of public procurements was recorded in 2011, when the average assessment accounted for 2.97.

Companies' proposals for changes to the law and the system of public procurements

Given the possibility to share their views, provide guidelines and specific proposals aimed at changing the legislation governing public procurements with the view of improving them, under this survey companies offered around hundred suggestions.

Dominant share of proposals concern changes to current legal provisions according to which lowest price is the single criterion for selection of the most favourable bid and electronic auctions are mandatory for all tender procedures.

Surveyed companies proposed to have the use of lowest price as single criterion revoked and replaced with the criterion defined as "economically most favourable bid", offering explanations as quoted below:

- lowest price, as single criterion, eliminates quality and competent bidding companies;
- lowest price cannot be used as single criterion in none of the cases; use thereof constitutes discrimination of companies that are continuously investing in their improvement and modernization with new machines, refurbishment of premises, refurbishment of their vehicle fleet, daily education of employees, introduction of novelties, and the like;
- lowest price should not be the first criterion, quality should be the first criterion;
- criterion defined as lowest price should be re-examined, because that condition is sometimes reflected on the quality of goods;
- attention should be paid to quality, instead of price being the decisive factor;
- quality needs to be included in the selection of the most favourable bid;
- selection criterion "economically most favourable bid" should be returned in the Law.

As regards electronic auctions, surveyed companies indicated that it is necessary for them to be revoked or amended. Below are some of their assessments and proposal, verbatim:

- e-auctions need to be cancelled, because they result in attainment of unrealistically low prices;
- electronic auctions should be eliminated, they are generator of non-quality;
- change of e-auctions (amendments or complete cancellation thereof);
- auctions do not fulfil the purpose they were designed for;
- revoke e-auctions for small procurements and if e-auctions must be held, products should be grouped and not individually enlisted for separate e-auction;
- to introduce lower threshold for downward bidding, i.e. to limit the percentage (lower threshold) by which prices can be bided downwards;
- electronic auctions should have only one round of downward bidding, to see the price and after 15 minutes all bidding companies to make their final reduced price and to close the auction; to avoid endless downward bidding and bidding of unrealistically low prices;
- to abandon mandatory organization of e-auctions, and instead to assess other objective criteria to determine the economically most favourable bid.

In continuation, we provide other, frequently enlisted proposals made by the companies, which are copied here in original from survey questionnaires:

- negative references should not be a measure for prohibiting economic operators to participate in tender procedures for period of one year, but should only concern the procurement subject in question and the contracting authority in question, i.e. only in the case when certain provisions have been violated;
- to reduce submission of documents together with the bid to minimum, and later the company that has won the contract to demonstrate its capacity;
- to completely abandon bank guarantees for bids; need for submission of bank guarantees only result in profits for the banks and are on the detriment of companies, because companies lose time in obtaining them;
- LPP to mandatorily set a percentage that should be performed from the signed public procurement contract (for ex. 70%-80% of goods must be delivered); this is for the purpose of avoiding stock of goods not to be spent, because they have not been delivered according to the tender procedure because the contracting authority did not issue an order for delivery within the validity period of the public procurement contract;
- deadline for submission of bids to be at least 7 days, working days nonetheless, instead of announcing the tender procedure on Friday and scheduling the opening of bid on Tuesday, with Monday being non-working day;
- Council of Public Procurements should not accept contracting authorities' procurement notices without the basic criteria on food safety stipulated under the law regulating the particular area of work;
- under certain procurement procedures, especially those concerning printing of materials, technical specifications must enlist the circulation of requested materials, because it is unrealistic to establish a price for the required product in the absence of information about the circulation, i.e. individual price per item cannot be requested;
- mandatory insurance established by other laws should be covered differently under the Law on Public Procurements;
- the term "or equivalent" should be deleted because it creates confusion among all participants in procurement procedures;
- only licensed companies, profiled in the activity they perform, should participate in public procurements;
- simplification of tender documents;
- when drafting the law, due consideration should be made of other legal regulations, because this law is often contradictory to other laws and does not contain aligned provisions, which result in problems related to different interpretation;
- more precise technical specifications;
- technical specifications should be of better quality; people working on public procurements must have better knowledge of the subject matter;
- reduce price list for submission of appeals concerning violations in public procurements;
- prior to deadline for submission of bids, possibility should be given to appeal terms and

conditions from tender documents in order to prevent favouring of one participant;

- to define reasonable deadlines for payment;
- to resolve the problem with collection of receivables because tender procedures are completed, deadline pass and we cannot collect the money for their performance; of course, we have the court and other procedures in place, but they function only in theory, not in practice;
- measures to respect the contract, i.e. oblige contracting authorities to adhere to the contract signed;
- to establish more measures to control criteria from tender documents, thus ensuring better and greater competition among participants in the public procurement;
- to introduce negative reference and prohibition for announcement of procurement notices when an economic operator has issued negative reference for the contracting authority concerning failure to perform the contract and delayed payment of liability as indicated in the procurement notice;
- greater control of contracting authorities in relation to acting within deadlines for contract performance or delivery, by defining realistic deadlines needed for contract performance or delivery, instead of setting very short deadlines for the purpose of forcing other economic operators to withdraw from the public procurement;
- to introduce control over contract performance; it should not be allowed to offer a brand product, but deliver something different;
- strong legal control that would not stop with signing of the contract, but would continue throughout contract performance;
- more rigorous fines/sanctions for non-compliance with LPP;
- public forum should be created where everybody can anonymously post knowledge or doubt about particular procedure (tender) where there is some kind of defect; later, a commission can be established to reconsider these cases. .

ANALYSIS OF APPEAL PROCEDURES LED IN FRONT OF THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS IN THE PERIOD JANUARY-DECEMBER 2015

- FOR THE ENTIRE 2015, ONLY 523 APPEALS HAVE BEEN LODGED AMONG THE TOTAL OF MORE THAN 18,000 TENDER PROCEDURES IMPLEMENTED, WHICH IS INDICATIVE OF AN EXCEPTIONALLY SMALL PERCENTAGE OF PROCUREMENT PROCEDURES APPEALED – 2.8%. PROCESSING OF DATA PUBLISHED ON THE OFFICIAL WEBSITE OF THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS SHOWED THAT, IN THE COURSE OF 2015, COMPANIES HAVE LODGED A TOTAL OF 523 APPEALS, WHICH IS BY 20 APPEALS MORE THAN THEIR NUMBER IN 2014. NEVERTHELESS, IN THE SAME TIME PERIOD A SIGNIFICANT INCREASE WAS NOTED IN THE NUMBER OF TENDERS – FROM 15,738 IN 2014 TO 18,469 IN 2015.

The mild increase of appeals lodged by companies in front of the State Commission on Public Procurement Appeals has stopped the several-year trend of decrease in the number of appeals lodged in tender procedures. In the first half of the year, 252 appeals were lodged, and in the second half of the year their number accounted for 271, or a total of 523 appeals, accounting for an increase by 3.98% compared to the situation in 2014. However, if the number of appeals is compared against the number of implemented tender procedures, the conclusion is inferred that the share of appealed public procurements continues to decrease from 11% in 2011 and 5.4% in 2012, through 3.1% in 2013 and 3.2% in 2014, to only 2.8% in 2015.

Overview of the ratio between public procurements announced and number of appeals lodged by companies in front of SCPPA

Year	Number of tender procedures	% of change	Number of appeals lodged in front of SCPPA	% of change
2011	7,801	+10.0%	856	+0.1%
2012	11,726	+50.3%	633	-26.1%
2013	18,654	+59.1%	581	-8.2%
2014	15,738	-15.6%	503	-13.4%
2015	18,469	+17.4%	523	+3.98%

Calculations are based on processing of data about appeals lodged in front of SCPPA and published on its official website.

In order to obtain a clearer image about the unfavourable decrease of appeals lodged by companies in tender procedures, here it should be noted that in 2014 the share of appeals in the total number of tender procedures accounted for only 3.2%, while in 2011 this share accounted for 10.1%.

In terms of the structure of decisions taken by SCPPA, most numerous among them in 2015 are decisions whereby appeals lodged by tender participants are approved. In that, the State Commission approved 228 of the total of 523 appeals, which account for 43.6%. On the grounds of being ungrounded, SCPPA rejected 195 appeals, which account for 37.3% of all appeals lodged. The share of denied appeals accounts for 11.5% and it is a matter of appeals that have not been reconsidered by SCPPA because they have not been submitted within the strictly stipulated deadlines from the Law on Public Procurements or companies have not settled the fees related to leading appeal procedure. Appeals withdrawn by companies that have lodged them account for 3.0%, while in the case of 4.6% of appeals the procedure was discontinued because the contracting authority in question had acknowledged appeal allegations before SCPPA took a decision on their admissibility.

Structure of decisions taken by SCPPA in the course of 2015

Structure of appeals before SCPPA reconsideration	Number of appeals	Share in %
Approved appeals	228	43.6%
Rejected appeals	195	37.3%
Denied appeals	60	11.5%
Withdrawn appeals (procedure is discontinued)	16	3.0%
Appeals acknowledged by the contracting authority (procedure is terminated)	24	4.6%
Total	523	100%

Calculations are based on processing of data related to decisions taken by SCPPA and published on its official website.

Compared against the situation observed in the previous years, the structure of decisions is increasingly more favourable for the companies that have decided to protect their rights in front of SCPPA. The number of approved appeals in 2015 compared to the previous year has increased by 1.2 percentile points, and in comparison to 2011 it has increased by as many as 18.2 percentile points. At the same time, the share of rejected appeals is higher compared to the relevant figure in 2014 by entire 5 percentile points. This increase has occurred on the account of decreasing share of denied appeals and appeal procedures that have been discontinued or terminated. .

Comparison data on the structure of decisions taken in appeal procedure

Type of decision	2011	2012	2013	2014	2015
Approved appeals	25.4%	33.5%	31.6%	42.4%	43.6%
Rejected appeals	42.0%	37.4%	41.7%	32.3%	37.3%
Denied appeals	17.6%	18.8%	17.8%	15.4%	11.5%
Discontinued/terminated appeal procedures	15.0%	10.3%	8.9%	9.9%	7.6%
Total	100%	100%	100%	100%	100%

Calculations are based on processing of data related to decision taken by SCPPA and published on its official website.

Analysis of decisions taken by SCPPA in cases when appeals lodged by companies were approved provides the conclusion that in 2015 dominant share of decisions concern complete annulment of tender procedures (65%), contrary to decisions to revoke the selection decision and returning the procedure for repeated bid-evaluation (35%). This means that serious violations to the Law on Public Procurements have been established in dominant share of tender procedures and that the entire tender procedure must be annulled, i.e. the public procurement must be organized anew.

Increase in the number of tender procedures annulled by the State Commission in the last 5 years is significant and ranged from 32% in 2011 to high 65% in 2015. This trend is indicative of an increase in essential violations of the Law on Public Procurements, i.e. unlawful actions taken in the course of tender procedures cannot be addressed by change of certain decisions, but the entire tender procedure must be annulled and organized anew.

Comparative overview of the structure of approved appeals, per year

Type of decision taken upon approved appeals	Share of approved appeals				
	2011	2012	2013	2014	2015
Revoked decision	68%	53%	45%	40%	35%
Annulled tender procedure	32%	47%	55%	60%	65%
Total	100%	100%	100%	100%	100%

Calculations are based on processing of data related to decisions taken by SCPPA and published on its official website.

Analysis of the contents of appeals submitted to the State Commission shows that dominant share of them (67%) have been lodged against decisions on selection of the most favourable bid. As part of these appeals, companies claimed that the public procurement procedure was not finalized with the selection of the best bid on the grounds that:

- the commission has awarded the tender to a bidding company that does not fulfil conditions or criteria defined under the public procurement, or
- the commission has excluded from bid evaluation the company lodging the appeal because it had established that it does not fulfil anticipated conditions and criteria.

Next significant grounds enlisted in the appeals concern tender documents and decisions on tender annulment. More specifically, around 10% of all appeals lodged to SCPPA contested tender documents, while around 9% of appeals contested decisions on tender annulment taken by contracting authorities.

With the establishment of the Council of Public Procurements in 2014, the right to lodge an appeal in front of SCPPA was also granted to contracting authorities dissatisfied with decisions taken by this Council. Hence, in 2015 contracting authorities presented SCPPA with 90 appeals related to decisions taken by the Council of Public Procurements. In that, it should be noted that in terms of semi-annual findings, enthusiasm on the part of institutions to seek protection from SCPPA against decisions of the Council of Public Procurements is decreasing. In the first months of the Council's work (May – December 2014), SCPPA was presented with 109 appeals lodged by contracting authorities, while in the period January-June 2015 institutions lodged 62 appeals and in the period July-December 2015 the number of appeals lodged by contracting authorities accounts for only 28. Analysis of the structure of decisions taken by SCPPA showed that 73 appeals contesting Council's decisions were rejected, and only 17 of them were approved. Such unfavourable ratio between rejected and approved appeals (81% : 19%) most certainly had discouraging effect on institutions. Most often, decisions by means of SCPPA approved appeals lodged by contracting authorities concern violations of the procedure stipulated in the Law on Public Procurements. Actually, SCPPA does not engage in assessing the Council's decisions issued on the basis of opinions provided by experts, as it had been initially expected by institutions.

