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MONITORING

PUBLIC PROCUREMENT AT THE LOCAL GOVERNMENT LEVEL





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Tatjana B. Eftimoska

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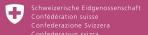
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INTRODUCTION: GOALS AND METHODOLOGY

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

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

public procurement are organized and implemented and guarantees compliance with the Law and application of general principles governing the public procurements.

This report is prepared on the basis of monitoring results from a sample of 40 public procurements implemented by local institutions across Macedonia, in the period from 1 April – 30 October 2016.

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

The monitoring process is carried out by collection of primary and secondary data, including CCC monitors'

attendance at public opening of bids, interviews with bidding companies, browsing and searching EPPS database, researching information on appeals lodged in front of and decisions taken by the State Commission on Public Procurement Appeals (SCPPA) available on its website and by means of Freedom of Information (FOI) applications requesting information that is otherwise unavailable. Questionnaires and other forms used as part of the monitoring process are structured in a manner that enables the most effective monitoring of public procurements in terms of compliance with the legislation and adherence to general principles governing the public procurements.

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

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



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

SUMMARY

he already low competition in tender procedures organized on local level continues to decline. Monitored tender procedures were marked by an average participation of 2.4 bidding companies, while 35% of tender procedures were presented with only one bid or no bids. For comparison purposes, in the previous reporting period the average number of bidding companies per tender procedure accounted for 2.8, while 29% of tender procedures were presented with only one bid or no bids.

Although duration of tender procedures is extended, companies have shorter deadlines for development and submission of their bids. In most cases, contracting authorities set the minimum law-stipulated deadline for bid submission. However, unlike these calendar-based deadlines, the actual deadlines for companies to develop and submit their bids are much shorter. There are cases in which companies have only had one day to develop and submit their bids.

The share of tender annulments in the monitoring sample remains at the same high level of 18%. Dominant reasons indicated for annulment of public procurements include high prices and absence of bidding companies in tender procedures.

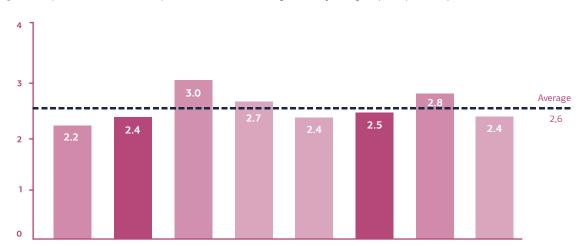
Although they are mandatory for all procurements, e-auctions were organized in only 55% of monitored tender procedures. On the contrary, the share of so-called e-procurements or tender procedures fully organized in electronic manner accounted for 58%. The average price reduction at e-actions accounted for decrease by only 10%.

There are numerous examples in which contracting authorities have taken different actions in same situations, i.e. when bidding companies have not submitted complete bids. Some contracting authorities requested them to provide the necessary additional documents, while others immediately excluded said companies from the procurement procedure.

COMPETITION IN LOCAL TENDER PROCEDURES IS DECLINING

The already low competition in tender procedures organized on local level continues to decline. Monitored tender procedures were marked by an average participation of 2.4 bidding companies, while 35% of tender procedures were presented with only one bid or no bids. For comparison purposes, in the previous reporting period the average number of bidding companies per tender procedures accounted for 2.8, while 29% of tender procedures were presented with only one bid or no bids.

fter the mild increase observed in the previous reporting period when, for the first time after a long period of time, competition in tender procedures exceeded the average number of 2.6 bidding companies and accounted for 2.8 bidding companies per tender procedure, in this reporting period monitoring activities again observed deterioration under this indicator, as one of the most significant indicators on efficiency of the system of public procurements.



Okt.12Mar.13 Apr.-Sep.13 Okt.13-Mar.14 Apr.-Sep.14 Okt.14-Mar.15 Apr.-Sep.15 Okt.15-Mar.16 Apr.-Sep.16

Figure 1: Competition in monitored tender procedures on local level: average number of bidding companies per tender procedure

In addition to the arithmetic mean (2.4), low competition in tender procedures is further confirmed by other measures used to establish the general tendency, such as the median and the mode.

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

Increasing order of the number of bidders:

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

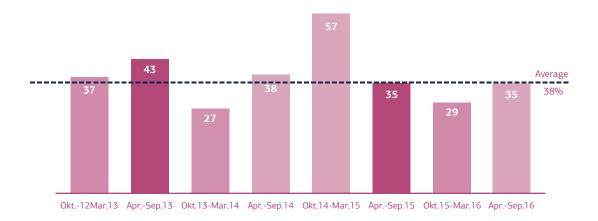
Median: 2 bidders (middle of the order: 2). Another measure, the mod e, i.e. the most frequently occurring number of bidding companies, accounts for

1, because as many as 11 tender procedures from the monitoring sample were presented with only one bid.

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

In this monitoring period, except for the average number of bidders, deterioration was also observed in terms of another big problem affecting public procurements, i.e. the share of tender procedures presented with only one bid or no bids. In particular, after this share was marked by a decrease, thus indicating improvement of state-of-affairs, the monitoring sample for this reporting period again showed increase under the share of such tender procedures to 35% (Figure 2).

Figure 2: Competition in monitored tender procedures on local level: share of tender procedures with one bid or no bids.



The monitoring sample included numerous examples that are indicative of reasons behind low competition in public procurements, consequences thereof, as well as certain absurd cases. Many tender procedures were marked by participation of only one bidding company, although contracting authorities have previously conducted successful market researches to demonstrate competition or have obtained an approval from the Council of Public Procurements.

Under its procurement procedure for services and spare parts intended for traffic lights maintenance, the contracting authority conducted, in its own opinion, a successful market research which confirmed existence of the required number of companies (in this case, at least six companies)

able to perform the procurement in question. However, the procurement notice was not presented with any bids and the tender procedure was annulled. One possible reason for such outcome could be identified in eligibility criteria defined for tender participation:

- to have performed at least 3 (three) services in the last 3 years, in the area of the procurement subject;
- to dispose with necessary technical equipment intended for performance of specific services. (Bidding companies must dispose with at least 1 vehicle for passenger transportation and at least 1 special vehicle with lift basket in minimum working height of 10 meters). Bidding companies must dispose with at least 1 (one) earth

resistance testing instrument and 1 (one) electrical installation testing instrument – conductor insulation resistance, short circuit current and clamp meter, by attaching relevant certificates. Bidding companies must dispose with at least 1 petrol or diesel AC generator - 50 Hz, 220 V, min. 2 KW);

- to dispose with certificate for earth resistance calibration, not older than one year, issued by the Bureau of Metrology;
- to have an insurance policy for damage caused to third parties, in the amount of at least 600,000.00 MKD (liability for business activity performance) and to enclose statement of liability;
- to dispose with technical staff and technical bodies required for performance of specific matters;
- to have a developed methodology in line with European standards, which will be applied when performing ongoing maintenance work;
- notification on contract items/works which the economic operator intends to subcontract;
- statement whereby the bidding company assumes full responsibility for consequences on traffic (material and non-material) that might occur due to faulty operation of traffic lights or untimely removal of defects falling on its burden.

Again, this case confirms that market research, performed in the relevant stage of the public procurement and in a manner stipulated by law, does not guarantee competition in tender procedures and does not prevent contracting authorities from setting eligibility criteria that might limit competition.

As part of its procurement procedure for sodium hypochlorite, the local public enterprise purchasing this compound conducted an unsuccessful market research, followed by request for approval of this procurement, which was issued by the Council of Public Procurements after submission of the second request. In the end, only one bid was submitted to the procurement notice by the same bidding company that has been awarded procurement contracts for this type of goods for years back.

In the procedure for procurement of firefighter protection gear, the committee on public procurement excluded two from the total of three bidding companies. One bidding company was excluded as early as the bid-evaluation stage due to "formal shortcomings", i.e. because it failed to provide samples of the protection gear, while the second bidding company was excluded after the bid-evaluation stage on the grounds that offered products do not correspond to characteristics enlisted in technical specifications. Ultimately, when there was only one bid left, it was easy for this committee to declare it as the most favourable bid and to award the tender procedure to that bidding company, which actually happened in this procurement procedure.

Based on this tender procedure it can be concluded that in cases when it is established that particular bid is marked by formal shortcoming, mere qualification of the shortcoming as "formal" implies the possibility for the contracting authority to request the bidding company to eliminate said formal (and not essential) shortcoming, i.e. to assign an additional deadline for the bidding company to submit what is missing from the bid in order to complete it, i.e. to allow the bidding company to be included in the bid-evaluation stage, knowing that changes to bids are inadmissible, except for clarifications and corrections of arithmetic errors. Most certainly, the possibility to choose between two bids and the possibility to attain better quality and lower price

are much greater compared to situations in which selection is reduced to only one bid, which is not a selection, but some form of done deal.

Under its procurement procedure in estimated value of 6.8 million MKD, another contracting authority requested interested companies to demonstrate annual turnover of at least 30 million MKD in the last three years, as well as positive financial results. The requested annual turnover is 4.4 times higher than the procurement's estimated value. The requirement concerning positive financial results, which was duly elaborated on many occasions in the previous monitoring reports on public procurements, does not represent relevant benchmark for financial performance of companies, because many good companies rationalize their financial results and might demonstrate negative financial results, but still operate successfully. Hence, reguirements related to the amount of annual turnover and profits can be qualified as discriminatory eligibility criteria that limit competition in public procurements.

Other elements of public procurements that also limit competition include requirements for bank guarantees, especially when they are required in order to secure the bid and when their amount is disproportional to the tender procedure's scope and the procurement subject. Examples from the monitoring sample show that, by rule, these tender procedures are marked by participation of only one bidding company, which is almost always big company with greater financial capacity. This type of requirements reverse the main tenant of public procurements in the country, i.e. it turns out that public procurements are organized in order to select "the most favourable bidder" instead of what has been anticipated by the law and what is considered legal procedure, i.e. to select "the most favourable bid".

Low competition in tender procedures is a long-standing problem and efficient solutions aimed to address this problem have not been offered for years. On the other hand, it is a matter of one of the key, and maybe the most essential problem affecting public procurements, which is multifaceted, occurs as a result of various factors and has further negative effects on many aspects of public procurements. Hence, competent institutions must urgently engage in more detailed analysis and design solutions aimed to improve competition in public procurements, which will ultimately imply greater cost-effectiveness of public procurements, i.e. obtaining the best value for the money spent.

DEADLINES FOR BID SUBMISSION ARE SHORTENED, BUT DURATION OF TENDER PROCEDURES IS EXTENDED

Although duration of tender procedures is extended, companies have shorter deadlines for development and submission of their bids. In most cases, contracting authorities set the minimum law-stipulated deadline for bid submission. However, unlike these calendar-based deadlines, the actual deadlines for companies to develop and submit their bids are much shorter. There are cases in which companies have only had one day to develop and submit their bids.

t is a matter of problem that has persisted for years in public procurements implemented by institutions on local level. Namely, although contracting authorities are obliged to set at least the minimum law-stipulated deadlines for companies to secure necessary documents, in the reality these deadlines are significantly shorter. Calendar days from these deadlines do not include the day when the procurement notice was announced, weekend days, and it seems that not much can be done on the last day, because the final deadlines are usually set by noon. When these days are subtracted from the calendar-based deadline, companies have just a couple of days to develop complete, accurate and quality bids.

This problem is especially prominent in the case of small tender procedures whose value ranges from 500 to 20,000 EUR, which are organized as bid-collection procedures. The law stipulates two minimum deadlines for this type of tender procedures in duration of five

days for so-called small procurements in the value of 500 to 5,000 EUR and in duration of at least ten days for procurements in the value of 5,000 to 20,000 EUR. On the account of such short law-stipulated deadlines and on the account of the fact that contracting authorities often set these minimum deadlines, in the reality companies hardly have a couple of days to develop and submit their bids. In this monitoring sample, the situation related to this problem, expressed in figures, is presented below.

Table 1:Deadlines for bid submission (in days)

companies the first day and the next two weekend days from this deadline could be considered unproductive. The next first working day was Monday, 1st August, followed by yet another non-working day, i.e. one of the biggest national holidays in the country – 2nd August, and the final deadline for bid submission was set on 3rd August, at 10 a.m. This means that all interested companies had no more and no less than one day (1st August) to prepare their documents, develop the bid and submit it to the contracting authority. Therefore, it could be concluded that the contracting authority did not intent to collect good, quality and multiple bids for

| Type of procedure | Minimum law- stipulated deadlin e | Average deadline set in tender procedures | Actual number of days |
|---|---|---|-----------------------------|
| Small procurements (up to 5,000 EUR) | 5 | 7 | 3 |
| Bid-collection procedures (5,000 to 20,000 EUR) | 10 | 11 | 5 |

.Several prominent examples from the monitoring sample implied only one day for companies to submit their bids. Such is the procurement procedure organized by one municipality for services defined as expert review of projects. This tender procedure was organized during one of the calendar periods considered to be "the quietest period" in terms of doing business. More specifically, the procurement notice was published on 29th July 2016. It seems that announcement of this procurement notice on Friday is not accidental. Hence, from the perspective of bidding

this public procurement. It does not take special skills to assume that only one bidding company participated in this tender procedure and was awarded the contract.

Although it is a matter of legal procedure, practices employed by this contracting authority are far from good and professional. Statistics from the monitoring sample show that, in average, companies have only 3 or 5 days to develop and submit their bids to contracting authorities. Moreover, it is a matter of tender procedures in the value of up to 20,000 EUR, many of

which implied procurement of serious and long lists of goods or services. It should be noted that each of these goods and services necessitates submission of individual price, whose formation requires time on the part of companies to assess the tender procedure, competitors, time aspects and the like.

Unlike deadlines for bid submission, duration of tender procedures is becoming increasingly longer. Subtracting days or better said months which contracting authorities spend on market research and securing necessary approvals from the Council of Public Procurements, the time passed from tender announcement until contract signing is becoming longer and longer. In the monitoring sample, the average duration of small procurements accounted for 23 days, the average duration of tender procedures in the value of up to 20,000 EUR accounted for 34 days, while the average duration of open procedures accounted for 58 days. Adding the months needed for market research and securing approvals from the Council of Public Procurements, it seems that several months pass by from the decision on announcing public procurement until contract signing. It seems that throughout duration of the public procurement procedure, the deadline on bid submission, which is the most crucial for obtaining complete, accurate and quality bids as basis for selection of the most favourable bid, is actually the shortest.

Having this in mind, contracting authorities are recommended to be particularly careful when setting deadlines for bid submission by companies. When setting these deadlines, in addition to making due care of weekend and non-working days, contracting authorities should be guided by complexity of

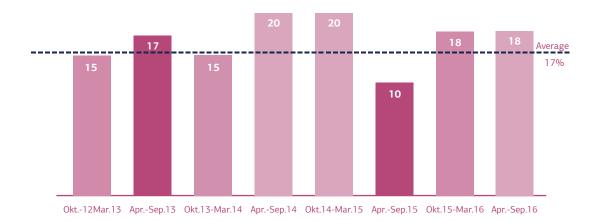
procurement subject, requirements and technical specifications defined, and should assess the potential of possible bidding companies. By setting deadlines in duration longer than the law-stipulated minimum of five and ten days, they increase their chances to obtain more bids and bids of better quality, and thereby improve selection of the most favourable bid. Hence, due consideration should be made of changing the law-stipulated deadlines to minimum of seven days for small procurements and to minimum of 12 days for procurements in the value of 5,000 to 20,000 EUR, since practices have shown certain manipulation of law-stipulated deadlines on the part of contracting authorities.

TENDER ANNULMENTS REMAIN ABOVE THE AVERAGE – MAIN PROBLEMS ARE HIGH PRICES AND ABSENCE OF BIDDING COMPANIES

The share of tender annulments in the monitoring sample remains at the same high level of 18%. Dominant reasons indicated for annulment of public procurements include high prices and absence of bidding companies in tender procedures.

s many as 18% of monitored tender procedures were annulled, thereby maintaining the share of tender annulments at identical level with the previous reporting period. This means that tender annulments are again above the average of 17%.

Figure 3: Share of tender annulments in the monitoring sample on local level



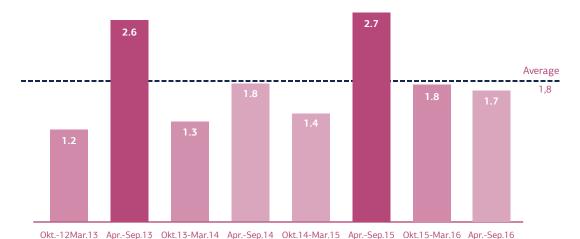
Unlike the situation observed in the previous six-month period when the main reason for tender annulment implied that bids submitted are unacceptable, the problem of inadequate or higher prices bided in tender procedures re-emerged as the most frequently indicated reason for tender annulment in this monitoring sample.

Nevertheless, the problem related to no bids or no acceptable bids (which means bids were submitted, but during the bid-evaluation process the committee on public procurement has assessed them as unacceptable and has rejected them) was observed in 43% of annulled tender procedures. Equal share of tender annulments from the-

monitoring sample implied the problem related to prices, i.e. prices bided by companies were more unfavourable compared to market prices or compared to the price estimated by contracting authorities. The remaining 14% of tender annulments indicated that the procurement procedure was annulled due to significant shortcomings in tender documents.

One favourable trend observed under this monitoring sample and related to tender annulment is the fact that the average number of bids submitted in these tender procedures has decreased to 1.7, which is slightly below the multiannual average (Figure 4).

Figure 4: Average number of bids in annulled tender procedures



Annulled tender procedures from the monitoring sample include the procurement of book-keeping services organized for the needs of one school. The contracting authority decided to annul this tender procedure after the most favourable bidder, which submitted the lowest price at the electronic auction, failed to provide the requested justification for its unusually low price. Namely, this tender procedure in estimated value of 500,000 MKD was presented with three bids. Two bidding companies participated in the e-auction and the final price was submitted in the amount of 80,000 MKD. This price was deemed unacceptable by the committee, which assessed it as unusually low and, after the bidding company failed to respond to the request to provide justification for this price, it annulled the procurement procedure. What should be noted in re-

favourable bidder offered a price in the amount of 84,999 MKD, which allows the conclusion that maybe prices attained at the e-auction are considered adequate by the bidding companies and are not unusually low. However, the committee annulled this tender procedure without any attempt to request the second-ranked bidding company to provide a justification for its low price. Also, should be noted that in many similar and even worse situations, when the price attained at the e-auction was significantly reduced, committees have not requested justification for such low prices. In that regard, it is recommended to establish more precise rules about cases in which justification for unusually low prices can be requested, in order to narrow the currently broad space for contracting authorities to take discretionary decisions in these matters.

gard to this procedure is the fact that the second most

Another procurement procedure concerning materials for water supply and sewage systems organized for the needs of one local utility enterprise was annulled in full, although it was comprised of seven lots. Reason indicated for tender annulment implied that the sum of the most favourable prices bided for the five lots which were presented with several bids was higher than the estimated value of the entire procurement, i.e. the estimated value of all seven lots. It seems that the main problem with this procurement procedure concerns the fact that the contracting authority has not set estimated values for individual lots, in order to be able to assess which lots were presented with prices higher than their estimated value. Instead, the contracting authority decided to annul the entire procedure on the grounds that it is unable secure the necessary funds. This procurement procedure was repeated in late December with deadline for bid submission set in January, and was successfully completed. What this contracting authority changed under the repeated tender procedure was the procurement's estimated value, which was increased by almost three times from the initial value set in the amount of 1,200,000 MKD to 3.000.000 MKD. Moreover, the contracting authority changed the type of procurement procedure organized from bid-collection procedure to open procedure, because the initial amount of 1.200.000 MKD bordered with the law-stipulated threshold for organization of bid-collection procedure, while the new amount required organization of open procedure. Having in mind the period needed for conducting market research and the time needed to obtain approval from the Council of Public Procurements, this contracting authority spent exactly one year for procurement of necessary materials. This tender procedure is yet another example from the large pool of tender procedures that impose the need for estimated values to be set for all individual lots under divisible procurements, which would be beneficial to both, economic operators and contracting authorities. Under another procedure for procurement of motor vehicles, the contracting authority annulled two of the total of five lots on the grounds that bidding companies offered prices higher than those planned by the contracting authority. Although it is a matter of different situation, the problem with this procurement procedure is again identified in the contracting authority's failure to set estimated values for individual lots in order to ensure that economic operators are aware of relevant thresholds when establishing their prices. Otherwise, it remains an enigma how the contracting authority established that offered prices are higher, given that relevant tender documents (at least those made publicly available) indicated only the total estimated value of this procurement. In such cases, economic operators that participate in divisible tender procedures, wherein they can submit one bid or several bids for individual lots, are put in an unfavourable position compared to those that participate in indivisible tender procedures with clearly defined estimated value.

Easiness and frequency of tender annulment remain one of the biggest and long-standing problems affecting implementation of public procurements in the country. The high share, calculated at 18%, implies that every fifth tender procedure is annulled, which is incomparable to other countries. This means waste of time and money and imposes difficulties in terms of planning and operation of both, contracting authorities and companies. Therefore, it is high time for this problem to be analysed separately and in great details, which would allow design and implementation of adequate measures to address it.

PROBLEMS AFFECTING ELECTRONIC ASPECT OF PUBLIC PROCUREMENTS

Although they are mandatory for all procurements, e-auctions were organized in only 55% of monitored tender procedures.

On the contrary, the share of so-called e-procurements or tender procedures fully organized in electronic manner accounted for 58%. The average price reduction at e-actions accounted for decrease by only 10%.

fter becoming mandatory for all public procurements, electronic auctions have been organized in only around 50% of tender procedures. Hence, e-auctions were organized in 55% of tender procedures from this monitoring sample, while in the case of the remaining 46% of tender procedures e-actions were not organized on the grounds that they were not presented with any bids or were presented with only one bid (or only was bid was assessed as acceptable).

Prices were not reduced in 88% of tender procedures which were completed with organization of e-auction, while prices attained at these tender procedures implied an average price reduction by 10%. However, monitoring activities observed major price reduction by means of submission of final price in tender procedures from this monitoring sample, which takes place when the tender procedure was presented with only one bid or when only one bid was deemed acceptable after the bid-evaluation process. Be that as it may, these price reductions are considered

major only when compared to initial prices bided, and not when compared to the procurement's estimated value. Actually, in cases when there is only one tender participant or when only one tender participant remained, common practices related to submission of final price imply reduction of the initial price submitted by bidding companies to a level that corresponds with the procurement's estimated value, in order for the tender procedure to be successful.

As regards prices attained at e-auctions or by means of submission of final price, the monitored tender procedures always include absurd cases.

For example, one and the same bidding company was awarded the contract under the tender procedure for procurement of livestock fodder comprised of 10 lots, although eight lots were presented with bids from four different companies, and the bidding company awarded the contract appeared as the single bidder under two lots. Here it should be noted that not a single one from other bidding companies reduced their prices at the e-auction. Actually, the tender procedure took place as if all ten lots were presented with one bid by one company, whereby the said company was ultimately awarded the entire procurement

In another small procurement of taxi services with very precise estimated value in the amount of 238,096 MKD, the contracting authority required bidding companies to submit unit prices per start and per kilometre passed. At the end, despite the price reduction submitted at the e-auction, the contracting authority signed the contract in the total amount planned, not in any lower amount based on the reduced price. This shows that emphasis is put on the amount planned by the contracting authority for procurement of these services, instead of the actual need for said services. If the contracting authority pre-

cisely established the estimated value of this procurement, it means that it had an idea about how many and what kind of services are needed. Accordingly, having in mind unit prices for these services, the contracting authority could have signed the contract under a different amount, calculated on the basis of services needed and their unit prices. What is the purpose of signing the contract in the total amount planned, irrespective of the price reduction? It either means use of more services than planned or that services will be used as planned, but the contract's total amount will not be exhausted, which has been continuously indicated by companies as major problem in public procurements. Companies have reported that contracting authorities frequently fail to perform procurement contracts in their entirety, i.e. they procure significantly smaller quantity of goods and services compared to what has been anticipated under the contract, which creates uncertainty and business insecurity for them. Moreover, some companies have demanded introduction of an obligation for contracting authorities to comply with procurement contracts, whereby if the total amount cannot be exhausted, then at least certain percentage thereof should be guaranteed.

Two bids were submitted in the procedure for procurement of portable toilets, but one of them was rejected on the grounds that the bidder failed to attach technical specifications. The second bidder was awarded the contract after having reduced the initial price in the amount of 1,605,800 MKD to 593,000 MKD, because the procurement's estimated value was set in the amount of 593,220 MKD. In these cases, which are not rare in the practice, the question is raised about business reasoning applied by bidding companies, which have initially assessed that supply of certain goods would cost 26,000 EUR, but later decided they can deliver the same goods at a price

of around 9,600 EUR. Or maybe initial prices are set in such high and unrealistic brackets in order to leave space for price reduction at e-auctions. However, initial prices often remain as the final price, which most certainly implies significant profit for companies, but major losses for contracting authorities. Hence, it has been continuously insisted for contracting authorities to seriously approach establishment of procurement's estimated value, because to great extent the estimated value determines the future course of procurement procedures. In this regard, estimated values should not be established only on the basis of previously performed procurements, but also on the basis of actual needs assessment and market conditions, which imposes the need for market research to be pursued in this stage of the procurement process.

Finally, another absurd that is inevitably identified in cases related to procurement of second hand vehicles. These tender procedures are almost always presented with only one bid and the price offered almost always matches the estimated value. All this raises concerns that contracting authorities know in advance which type of vehicle will be procured and from which company it will be procured, and that the tender procedure is organized only formally, in order to comply with the law. Due consideration should be made whether these procurements should be implemented in compliance with the law or could be pursued under certain previously established rules and exemptions. Otherwise, and in spite of its formal organization, the contracting authority requested and obtained an approval for this procurement from the Council of Public Procurements in its third attempt. One of the experts engaged to provide opinion on approval issuance for his procedure, albeit indirectly, has underlined one of the many absurdities related to this procurement. In particular, this expert remarked that, as part of its tender documents, the contracting authority anticipated visit and check of vehicles that would be offered on the tender procedure, which constitutes "limiting criterion that dramatically decreases competition". Also, the expert noted another problem that could emerge in this case and concerned "the possibility that committee members at the contracting authority would have to travel to another state, which would most certainly represent major cost". These comments raised doubts with the expert that the contracting authority already knew which vehicle will be purchased and therefore anticipated visit and check of said vehicle, prior to its procurement.

DIFFERENT YARDSTICK FOR DIFFERENT COMPANIES

There are numerous examples in which contracting authorities have taken different actions in same situations, i.e. when bidding companies have not submitted complete bids. Some contracting authorities requested them to provide the necessary additional documents, while others immediately excluded said companies from the procurement procedure.

ne such absurd case emerged in the tender procedure for patching and repairing road holes when the first-ranked bidder submitted documents demonstrating fulfilment of eligibility criteria defined under tender documents. The committee on public procurement established that the certificate on paid taxes provided by this company has been issued more than six months ago. However, instead of requesting submission of new updated certificate, which would be logical and is considered good practice, the committee issued negative reference for this company and selected the bid submitted by the second-ranked bidder as the most favourable.

The excluded bidding company lodged an appeal in front of the State Commission on Public Procurement Appeals, but the appeal was rejected on the grounds of untimely submission. Namely, the company lodging the appeal failed to comply with the relevant deadline which started to expire from the moment when the contracting authority sent an e-mail notification the company, because it was a matter of electronic procedure.

This case is indicative of insufficient preparedness on the part of companies to participate in fully electronic public procurements. During the monitoring period last year, which is subject of this report, contracting authorities were obliged to implement at least 30% of their tender procedures in electronic manner, while the relevant share of such procedures in the monitoring sample accounted for 58%.

In another case concerning procurement of services related to New Year decorations, one of the two bidding companies failed to submit evidence that it is licensed for performance of said services. The committee on public procurement requested the company to submit the relevant license. The company submitted the requested document and was awarded the tender procedure. This case is opposite to the previously analysed tender procedure when the best bid was rejected on the grounds of out-of-date certificate, which could have been additionally requested and secured.

The next case concerns procurement of works related to road graveling. None of the two bidding companies submitted any document to demonstrate disposal with or lease of necessary machines, which was required as eligibility criterion for tender participation. The committee requested both companies to submit the relevant 24 certificate within a deadline of three days. Only one bidding company submitted the requested document and was awarded the contract.

It seems that under conditions of low competition in public procurements and companies' distrust in the fact that tender procedures are organized in good spirit, these examples additionally increase their insecurity and further discourage them from participation in tender procedures.

Precise and detailed description is needed for cases in which and types of documents/evidence for which bidding companies can be requested to submit additional documents, in order to avoid the current discretionary right of committees on public procurements to apply different yardstick, i.e. to request additional documents in certain cases and from certain companies, but to refrain from requesting said documents in other cases and from other companies, followed by their exclusion from the bid-evaluation process.



