

JANUARY-JUNE/2017



REPORT

FROM MONITORING OF
PUBLIC PROCUREMENTS
IN THE REPUBLIC OF MACEDONIA



Citizens for change!



Center for Civil Communications
Центар за граѓански комуникации

29

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

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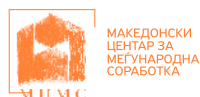
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PUBLIC PROCUREMENT
MONITORING REPORT

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

- AS MANY AS 35% OF MONITORED TENDER PROCEDURES HAVE REJECTED A NUMBER OF BIDS AS UNACCEPTABLE. THIS ADDITIONALLY HINDERS COMPETITION IN TENDER PROCEDURES.

RECOMMENDATION: IN ALL PUBLIC PROCUREMENT PROCEDURES, ELIGIBILITY CRITERIA FOR ECONOMIC OPERATORS, EXCEPT FOR LEGAL STATUS AND ABILITY TO PERFORM THE BUSINESS ACTIVITY (WHICH CONTRACTING AUTHORITIES SHOULD AUTOMATICALLY DOWNLOAD FROM ECONOMIC OPERATORS' PROFILES ON EPPS) SHOULD BE CONFIRMED BY MEANS OF A STATEMENT.

- IN SOME TENDER PROCEDURES, E-AUCTIONS HAVE RESULTED IN ATTAINMENT OF SUCH LOW PRICES THAT BRING UNDER QUESTION REALITY OF TENDER PROCEDURES' ESTIMATED VALUE AND QUALITY OF PROCUREMENTS.

RECOMMENDATION: THE CURRENT LEGAL SOLUTION ON MANDATORY ORGANIZATION OF E-AUCTION IN ALMOST ALL PUBLIC PROCUREMENT PROCEDURES AND FOR ALMOST ALL PROCUREMENT SUBJECTS SHOULD BE REVOKED AND E-AUCTIONS SHOULD BE STIPULATED AS LEGAL POSSIBILITY (OPTION), AS ANTICIPATED IN THE APPLICABLE EU DIRECTIVE FROM 2014.

- ⊙ 'LOWEST PRICE' DEFINED AS THE SINGLE CRITERION ON CONTRACT AWARDING LEADS TO TENDER PROCEDURES WHICH HAVE ATTAINED ABSURD PRICES OF 0.01 MKD AND 0.01 PERCENT. SUCH MARKET INCONSEQUENCE INCREASES THE RISK OF POSSIBLE MANIPULATIONS IN THE COURSE OF TENDER IMPLEMENTATION.

RECOMMENDATION: THE CURRENT LEGAL SOLUTION ACCORDING TO WHICH 'LOWEST PRICE' IS THE SINGLE CRITERION ON CONTRACT AWARDING SHOULD BE REVOKED. THE NEW LEGAL SOLUTION SHOULD BE BASED ON THE CONCEPT OF 'ECONOMICALLY MOST FAVOURABLE BID', AS ENLISTED IN THE NEW EU DIRECTIVE FROM 2014.

- ⊙ IN THE FIRST HALF OF 2017, THE COUNCIL OF PUBLIC PROCUREMENTS WAS ADDRESSED WITH 7,583 APPLICATIONS FROM CONTRACTING AUTHORITIES, I.E. BY 9% LESS APPLICATIONS COMPARED TO THE SAME PERIOD LAST YEAR. IN THAT, THE COUNCIL INVOICED CONTRACTING AUTHORITIES FOR ISSUANCE OF OPINIONS/APPROVALS IN TOTAL AMOUNT OF 806,172 EUR.

RECOMMENDATION: THE COUNCIL OF PUBLIC PROCUREMENTS SHOULD BE CANCELLED, WHILE ACTIVITIES THAT HAVE CREATED BENEFITS SHOULD BE REALLOCATED TO OTHER EXISTING INSTITUTIONS.

- ⊙ IN THE FIRST HALF OF 2017, THE NON-TRANSPARENT NEGOTIATION PROCEDURE WITHOUT PRIOR ANNOUNCEMENT OF CALL FOR BIDS WAS USED TO SIGN CONTRACTS IN ACCUMULATIVE VALUE OF 7.4 MILLION EUR, WHICH IS BY 12% HIGHER COMPARED TO THE SAME PERIOD LAST YEAR.

RECOMMENDATION: CONTRACTING AUTHORITIES SHOULD CONTINUE LOW USE OF THE NON-TRANSPARENT NEGOTIATION PROCEDURE WITHOUT PRIOR ANNOUNCEMENT OF CALL FOR BIDS.

- NUMBER AND SHARE OF ANNULLED TENDER PROCEDURES IS INCREASING. IN THE FIRST HALF OF 2017, A TOTAL OF 2,033 TENDER PROCEDURES WERE ANNULLED (FULLY OR IN PART), REPRESENTING A SHARE OF 23.7% FROM THE TOTAL NUMBER OF PROCUREMENT NOTICES ANNOUNCED IN THE SAME PERIOD.

RECOMMENDATION: AN OBLIGATION SHOULD BE INTRODUCED FOR BPP TO DEVELOP AND PUBLISH ANNUAL IN-DEPTH ANALYSES OF ANNULLED TENDER PROCEDURES.

- IN THE FIRST HALF OF 2017, AS HIGH AS 77.5% OF TENDER PROCEDURES WERE IMPLEMENTED AS ELECTRONIC PROCEDURES USING EPPS, ALTHOUGH THE LAW MANDATES AT LEAST 50%.

RECOMMENDATION: IN COMPLIANCE WITH ITS LAW-STIPULATED COMPETENCES, BPP SHOULD ORGANIZE A SERIES OF FREE TRAINING FOR ENTERPRISES, WITH FOCUS ON SMALL AND MICROENTERPRISES, IN ORDER TO FACILITATE THEIR PARTICIPATION IN E-PROCUREMENTS.

- TOTAL OF 19 NEGATIVE REFERENCES FOR 17 COMPANIES WERE ISSUED IN THE FIRST HALF OF 2017.

RECOMMENDATION: THE CURRENT LEGAL PROVISIONS THAT GOVERN ISSUANCE OF NEGATIVE REFERENCES NEED TO BE REVOKED.

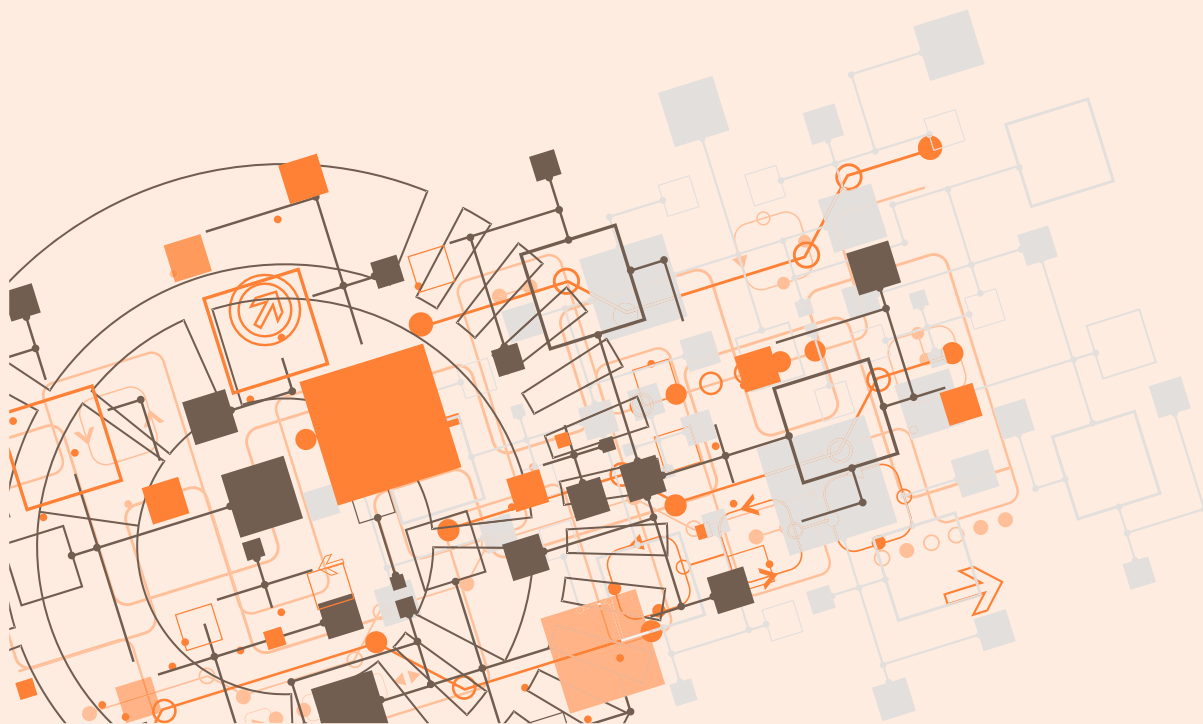
GOALS AND

METHODOLOGY

From November 2008 onwards, 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 public procurements: 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 procurement 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 (EPPS), 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 January-June 2017.

PUBLIC PROCUREMENT MONITORING REPORT

- AS MANY AS 35% OF MONITORED TENDER PROCEDURES HAVE REJECTED A NUMBER OF BIDS AS UNACCEPTABLE. THIS ADDITIONALLY HINDERS COMPETITION IN TENDER PROCEDURES.

Reasons indicated for rejection of bids can be divided into three groups: (1) non-fulfilment of requirements defined under technical specifications (description of requested goods); (2) non-fulfilment of eligibility criteria for economic operators; and (3) series of administrative omissions on the part of bidding companies. In that, some tender procedures raise concerns about tendentious rejection of bids. For example, the tender procedure organized for procurement of three passenger vehicles was presented with four bids. During the bid evaluation process, the public procurement commission took a decision on rejecting three from the four bids received. One bid was rejected because the bidding company failed to submit statement on quality performance of contract, while the remaining two bids were excluded from the tender procedure because their relevant statements on bid independence failed to enlist type and number of the tender procedure for which they are submitted. More specifically, the contracting authority did not clearly indicate the place where bidding companies should enter these data on the statement

template. Hence, the impression is obtained that, in spite of approval sought from the Council of Public Procurements, the contracting authority demonstrated false desire to ensure greater competition in this procurement procedure. After the three bids were rejected, this procurement procedure was not completed with organization of planned e-auction and the contract was signed with the single remaining, acceptable, bidding company, which submitted a minimal price reduction by 0.5%.

Two bids were submitted in the monitored procedure for procurement of network equipment (firewalls, log collection device). The public procurement commission took a decision to reject both bids because their respective forms have not indicated that it is a matter of bid submitted by group of companies.

Furthermore, series of cases were observed in which bids have been rejected due to incorrect completion of the template for financial offer. Particularly striking among the list of administrative omissions that have led to rejection of certain bids from participation in tender procedures is the monitored tender procedure for reconstruction of primary and secondary schools, whereby the contracting authority has rejected one bid because the second member from the group of joined bidding companies failed to submit the statement on bid independence.

Unlike the situation observed last year, in the first half of 2017 there is decreased occurrence of problems related to electronic signatures; however, this monitoring sample included one tender procedure in which the bidding company was excluded because its documents were not electronically signed by using valid digital certificate.

These cases are indicative of the fact that bidding companies, even those falling within the group of large enterprises, are still struggling to comprehend all rules governing public procurement procedures. The need for submission of voluminous documents still represents a barrier to stimulating greater competition. In fact, as shown by surveys and research conducted among companies in relation to their experiences from participation in public procurements, one of the biggest problems is the large number of documents required for participation in tender procedures, whose obtaining or completion require knowledge and consume time and money. As part of the survey conducted at the begging of this year, 35.8% of surveyed companies indicated that this is one of the biggest problems in public procurements.

Frequent exemption of bidding companies from participation in tender procedures additionally hinders the already low competition observed in significant share of public procurements.

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%
January-June 2016	5%	39%	19%	37%
January-June 2017	3%	25%	23%	48%

*Calculations are based on the monitoring sample for the period January-June 2017. In the case of tender procedures comprised of several lots, the number of bids was analysed at the level of individual lots.

In the first half of 2017, monitoring activities observed that 25% of tender procedures were presented with only one bid and 23% of them were presented with only two bids. Satisfactory level of competition was observed in 48% of monitored tender procedures. Nevertheless, this situation shows certain improvement when compared to the exceptionally low competition observed in the first half of 2016. As shown in the table above, the share of tender procedures marked by competition among three or more bidding companies is increased compared to the same period last year.

RECOMMENDATION: IN ADDITION TO THE MULTITUDE OF DOCUMENTS MANDATED BY THE LAW, CONTRACTING AUTHORITIES HAVE THE POSSIBILITY TO ALSO REQUEST SERIES OF OTHER DOCUMENTS WHICH ARE ISSUED BY OTHER INSTITUTIONS OR WHOSE OBTAINING AND COMPLETION CONSUME TIME AND MONEY. THIS REPRESENTS PARTICULAR BURDEN AND HAS DEFERRING EFFECT ON COMPANIES WITH LIMITED HUMAN AND FINANCIAL RESOURCES WHICH, AT THE SAME TIME, DO NOT HAVE POSSIBILITIES TO PARTICIPATE IN LARGE NUMBER OF TENDER PROCEDURES THROUGHOUT THE CALENDAR YEAR DUE TO THEIR LIMITED BUSINESS POTENTIALS. THEREFORE, IN ALL PUBLIC PROCUREMENT PROCEDURES, ELIGIBILITY CRITERIA FOR ECONOMIC OPERATORS, EXCEPT FOR LEGAL STATUS AND ABILITY TO PERFORM THE BUSINESS ACTIVITY (WHICH CONTRACTING AUTHORITIES SHOULD AUTOMATICALLY DOWNLOAD FROM ECONOMIC OPERATORS' PROFILES ON EPPS) SHOULD BE CONFIRMED BY MEANS OF A STATEMENT. THIS STATEMENT SHOULD BE

SUBMITTED ON STANDARDIZED TEMPLATE AND SHOULD BE MANDATORY FOR SUBMISSION IN ATTACHMENT TO THE BID. THIS METHOD ON ESTABLISHING ELIGIBILITY OF ECONOMIC OPERATORS SHOULD BE MANDATORY IN CASES OF OPEN PROCEDURES AND BID-COLLECTION PROCEDURES, WHEREAS USE THEREOF IN OTHER PROCEDURES SHOULD BE PURSUED WHEN CIRCUMSTANCES ALLOW THAT.

- ③ **IN SOME TENDER PROCEDURES, E-AUCTIONS HAVE RESULTED IN ATTAINMENT OF SUCH LOW PRICES THAT BRING UNDER QUESTION REALITY OF TENDER PROCEDURES' ESTIMATED VALUE AND QUALITY OF PROCUREMENTS.**

E-auctions were held in 61% of tender procedures from the monitoring sample. This means that in 39% of tender procedures, although planned, e-auctions intended for price reduction did not take place because they were presented with only one bid or only one bid was assessed as acceptable. Having in mind that e-auctions were planned in all tender procedures in which they were not organized, there is an increased risk that contracts awarded in 39% of tender procedures were signed under prices higher than the actual prices. On the other hand, the monitoring of public procurements organized in the first half of 2017 revealed that problems in tender procedures that were completed with organization of planned e-auctions are much deeper. More specifically, some tender procedures were marked by exceptionally big price reductions, thereby bringing under question reality of procurements' estimated value, as well as quality of procurements.

Among monitored tender procedures the biggest difference between estimated value and contract value was observed in the tender procedure organized for procurement of medicines intended as first-line therapy for non-small-cell lung carcinoma (EGFR inhibitor). In that, bidding companies were also allowed to offer non-registered medicines which will later be approved for interventional import. A total of six bids were submitted, ranging from 14,990,550 MKD and 39,420,000 MKD. During the e-auction, characterized by participation of all 6 bidding companies, the price for this medicine was reduced to 2,248,625 MKD, representing a reduction by 85% from the lowest price offered at the public opening of bids. Moreover, attainment of this price implies exceptionally high difference from the estimated value for procurement of this medicine set by the contracting authority. Namely, the estimated value of this tender procedure was set in the amount of 15 million MKD, compared to the attained price of 2.2 million MKD. The decision on selection of the most favourable bidding company did not offer any explanation about the low price for this medicine, nor it explained why the contracting authority initially estimated that procurement of this medicine will cost 15 million MKD, but ultimately procured it for only 2.2 million MKD, as well as whether these

savings are accrued on the detriment of quality of medicines purchased. At the same time, valid is the question why the tender procedure allowed equitable participation of bidding companies that have registered their medicine and bidding companies that offer unregistered medicine, given that responsibility towards patients and costs of wholesale pharmacies are quite different things.

Another example was identified in the monitored tender procedure for procurement, delivery and installation of equipment at kindergarten (linen, household appliances, kitchen and other utensils, didactic aids etc.) in which, depending on the individual procurement lot, two to five bidding companies participated in the e-auction. The initial lowest prices set as starting point for downward bidding were reduced from 1,962,938 MKD to 1,184,902 MKD, i.e. were reduced by 40%. The estimated value for all six lots was set in the amount of 2,500,000 MKD, whereby the final price attained is by 53% lower. Such epilogue leads to two assumptions: either the estimated value is unrealistically high, or unrealistically low prices were offered under pressure from competitors, in an attempt to win the tender procedure. This situation is indicative of serious problems in the stage on planning the tender procedure or in the stage of implementing the tender procedure, in the sense of procurement of goods of low quality which, in the long run, might generate contingency costs for repairs.

The monitored tender procedure for reconstruction and refurbishment of business premises at one public health facility in the Republic of Macedonia was presented with 5 bids, and after one of them was rejected, the e-auction took place. Prices were reduced from the initial lowest price of 7.4 million MKD to 4 million MKD, representing price reduction by 45.6%. This tender procedure is also marked by major difference between the estimated value set in the amount of 8.5 million MKD and value of the contract signed.

Major difference between estimated value, which is publicly announced, and contract value was also observed in the procurement procedure organized for office supplies whereby, contrary to the estimated value in the amount of 1 million MKD, the price attained at the e-auction amounted to 453,000 MKD, i.e. it was lower by 55%. Such major deviations between estimated values and contract values were also observed in number of other procurement procedures.

Monitoring of tender procedures in the first half of 2017 recorded other such cases. Nevertheless, it seems that the effect of competition on prices attained is best depicted by the monitored tender procedure for procurement of medical equipment, comprised of five lots. In that, individual lots marked by participation of only one bidding company implied price reduction by 2.70% and by 3.0%, while individual lots marked by participation of two or three bidding companies implied price reduction by up to 48%. In that, in all these cases the crucial question whether attainment of such low prices implies procurement of goods whose quality is seriously brought under question was broadly disregarded. In fact, the purpose of public procurements is not to purchase the cheapest items, irrespective of their quality, but to obtain the best value for the money spent.

All these examples of major price reduction were observed in tender procedures marked by higher competition. Hence, at state level, financial savings accrued on the detriment of quality in tender procedures marked by higher competition are spent in tender procedures marked by no competition, where contracts are signed under “inflated” prices.

RECOMMENDATION THE CURRENT LEGAL SOLUTION ON MANDATORY ORGANIZATION OF E-AUCTION IN ALMOST ALL PUBLIC PROCUREMENT PROCEDURE AND FOR ALMOST ALL PROCUREMENT SUBJECTS SHOULD BE REVOKED AND E-AUCTIONS SHOULD BE STIPULATED AS LEGAL POSSIBILITY (OPTION), AS ANTICIPATED IN THE EU DIRECTIVE FROM 2014. DUE CONSIDERATION SHOULD BE MADE OF THE POSSIBILITY FOR E-AUCTIONS TO BE MANDATORY ONLY FOR PROCUREMENT SUBJECTS OF HOMOGENOUS NATURE (FOR WHICH TECHNICAL SPECIFICATION CAN BE ACCURATELY DEFINED) AND WHICH ARE MARKED BY ACTUAL COMPETITION ON THE MARKET. THESE PROCUREMENT SUBJECTS SHOULD BE ESTABLISHED BY THE BUREAU OF PUBLIC PROCUREMENTS BY MEANS OF BYLAW, WHICH COULD BE SUBJECT OF ANNUAL REVISION. AT THE SAME TIME, NEW TECHNIQUE FOR ORGANIZATION OF E-AUCTIONS SHOULD BE INTRODUCED, THUS ADDRESSING EXISTING ANOMALIES IN TERMS OF IRRATIONAL PRICE REDUCTION.

➤ **‘LOWEST PRICE’ DEFINED AS THE SINGLE CRITERION ON CONTRACT AWARDING LEADS TO TENDER PROCEDURES WHICH HAVE ATTAINED ABSURD PRICES OF 0.01 MKD OR 0.01 PERCENT. SUCH MARKET INCONSEQUENCE INCREASES THE RISK OF POSSIBLE MANIPULATIONS IN THE COURSE OF TENDER IMPLEMENTATION. AT THE SAME TIME, NONE OF THESE TENDER PROCEDURES HAS REQUESTED BIDDING COMPANIES TO JUSTIFY THEIR UNREALISTICALLY LOW PRICES (IN COMPLIANCE WITH ARTICLE 163, PARAGRAPH 1 OF THE LAW ON PUBLIC PROCUREMENTS).**

Monitoring sample in the first half of 2017 included tender procedures in which the contract was signed under price of 0.01 MKD for services provided by mobile operator and for services provided by marketing agency, and under price of 0.01% for services concerning engagement of copyright agency for payment of royalties.

In that, the procurement procedure organized for mobile operator services attained a price of 0.01 MKD for calls in duration of one minute ending in the mobile operator's network and for calls in duration of one minute ending in other national mobile and landline networks after utilization of free minutes included in subscription packages, and was offered by two mobile operators in the course of initial submission of bids. Moreover, both bidding companies offered the lowest price possible, having in mind that tender documents for this procurement enlisted that: "The offered price that will be subject of electronic auction must not contain more than two decimals and the lowest possible offered price on the list, VAT excluded, is 0.01 MKD. All bids failing to meet these requirements will be rejected as unacceptable".

What is particularly worrying in relation to the monitored tender procedure for procurement of mobile operator services is the fact that the first bid to the procurement notice published on the Electronic Public Procurement System at 10:02 hours was received at 10:10 hours, and the second bid – at 10:38 hours. Having in mind that both mobile operators bided price of 0.01 MKD, the contract was awarded to the first bid submitted, in compliance with conditions enlisted in the tender documents, which read: "In case two or more bids offer the same price, the bidding company which submitted its bid first will be selected as the most favourable bidder." In spite of being utterly unrealistic, the possibility to submit a bid within 8 minutes, as part of electronic procurement procedure, was not contested by the supplier or by the competitive company. It remains unclear how it is possible, within a period of 8 minutes, to read 32 pages of tender documents, calculate the lowest price for 4 tariff models intended for 1,568 mobile subscription lines, complete the bid template, complete the list of prices and performance deadlines, and have statements on serious intent and bid independence signed by responsible persons.

Another tender procedure which attained price of 0.01 MKD concerned procurement of serviced provided by marketing agencies. The initial prices offered by three companies ranged from 110,000 MKD to 484,000 MKD. During the e-auction, which lasted for 1 hour and 20 minutes, the lowest price of 110,000 MKD was reduced to only 0.01 MKD. The contract signed under this price implies that the company which was awarded this tender procedure will have to offer creative solutions, charge the agency commission for rent of media space and implement the marketing campaign for only 0.01 MKD.

The third case was observed in relation to procurement of copyright agency services, where the unrealistically low price was attained at the e-auction, after six agencies participating in this tender procedure submitted initial prices in the range from 1.20% to 3.98%. After completion of the e-auction, the contract was signed with the bidding company that will charge agency commission for its services set at 0.01%.

In all three cases, the contracts were signed without applying Article 163, paragraph 1 of the Law on Public Procurement, which stipulates: *“In cases when individual bids imply uncommonly low prices that are significantly lower than the actual market price, thereby raising doubts about contract performance, the contracting authority shall request the bidding company, in written and prior to awarding the procurement contract, to provide details about the bid that are considered important and shall check the evidence submitted for the purpose of justifying the bided price.”*

RECOMMENDATION: THE CURRENT LEGAL SOLUTION ACCORDING TO WHICH ‘LOWEST PRICE’ IS THE SINGLE CRITERION ON CONTRACT AWARDING (WHILE ‘ECONOMICALLY MOST FAVOURABLE BID’ IS USED AS EXCEPTION) SHOULD BE REVOKED. THE NEW LEGAL SOLUTION SHOULD BE BASED ON THE CONCEPT OF ‘ECONOMICALLY MOST FAVOURABLE BID’ FOR AWARDING PUBLIC PROCUREMENT CONTRACTS, AS ENLISTED IN THE NEW EU DIRECTIVE FROM 2014.

- ⊙ IN THE FIRST HALF OF 2017, THE COUNCIL OF PUBLIC PROCUREMENTS WAS ADDRESSED WITH 7,583 APPLICATIONS FROM CONTRACTING AUTHORITIES, I.E. BY 9% LESS APPLICATIONS COMPARED TO THE SAME PERIOD LAST YEAR. IN THAT, THE COUNCIL INVOICED CONTRACTING AUTHORITIES FOR ISSUANCE OF OPINIONS/ APPROVALS IN TOTAL AMOUNT OF 806,172 EUR.

The trend on decreasing number of applications for approval addressed to the Council of Public Procurements continues. More specifically, a total of 7,583 applications were submitted in the first half of 2017, compared to 8,360 applications submitted in the same period last year (2016). Nevertheless, even this trend on decreasing cannot be assessed as significant, having in mind that the Council was established in May 2014 and that the number of approvals sought from the Council should have been reduced over this period of three years, as a result of experience acquired by contracting authorities.

Applications for approval submitted to the Council of Public Procurements

Period	Number of applications	Change	Value of costs invoiced by the Council (in EUR)	Change
January-June 2015	10,362	/	1,207,626	/
January-June 2016	8,360	-19%	877,595	-27%
January-June 2017	7,583	-9%	806,172	-8%

The structure of opinions issued by the Council in 2017 is more unfavourable for contracting authorities compared to the same period in 2016. The ratio between issued approvals and negative opinions in the first half of this year is 49.6%:50.4%, unlike the ratio observed for the same period last year, which accounted for 48.3%:51.7%.

Structure of opinions issued by the Council of Public Procurements*

Period	Number of approvals	Number of negative opinions
January-June 2016	3,976	4,034
January-June 2017	3,428	3,675

* In the first half of 2017, 445 applications were denied or withdrawn.

According to data obtained from the Council by using the instrument allowed under the Law on Free Access to Public Information, in 2017 as well, majority of applications concerned approval of requirements defined in technical specifications for individual lots in the public procurement for goods (Article 36-a, paragraph 1). In particular, this ground was indicated for obtaining approval in 81% of cases.

Structure of legal grounds indicated by contracting authorities when requesting approval from the Council (January-June 2017)

Legal ground	Number of applications
Use of requirements in technical specifications for individual lot in the public procurement for goods (Article 36-a, paragraph 1)	6,114
Use of requirements in technical specifications for individual lot in the procedure on awarding framework contracts (Article 36-b, paragraph 1)	224

Use of criteria to establish economic operators' ability (Article 36-a, paragraph 2)	810
Use of criteria to establish economic operators' ability in the procedure on awarding framework contracts (Article 36-a, paragraph 2)	47
Use of the criterion 'economically most favourable bid' (Article 160, paragraph 3)	8
Use of negotiation procedure without prior announcement of call for bids for additional works (Article 99, paragraph 3)	19
Use of negotiation procedure without prior announcement of call for bids for additional services (Article 99, paragraph 3 and Article 198, paragraph 3)	10
Use of negotiation procedure without prior announcement of call for bids due to urgency reasons (Article 99, paragraph 3)	172
Use of negotiation procedure without prior announcement of call for bids after two unsuccessfully implemented procedures (Article 99, paragraph 3)	22
Establishing procurement lot from several items in cases of medicines, medical aids and/or medical supplies (Article 15, paragraph 7)	92
Signing framework contracts with less than 7 economic operators (Article 118, paragraph 2)	19
Use of special requirements in cases of procurement, sales or lease of immovable property (Article 14-c, item 1)	2

Source: Council of Public Procurements

According to the explanation provided by CPP, difference in figures among applications submitted and approvals issued concerns the fact that a number of applications were pending decisions at the time when requested information was compiled. At the same time, the structure of legal grounds on which contracting authorities have sought approval excludes 6 applications addressed to CPP for use of eligibility criteria for economic operators in case of public-private partnerships.

Comparison with the structure of legal grounds on whose basis approval was sought in the same period last year shows decrease of the already low number of approvals sought for use of eligibility criteria for economic operators, from 1,275 applications (published in the monitoring report no. 27) to 810 applications in 2017. According to monitoring findings, institutions have adequately defined eligibility criteria for economic operators by means of conducting domestic market research (i.e. requested companies to confirm they fulfil the defined eligibility criteria). In that, concerns are raised by the practice observed among institutions in terms of continued definition of high eligibility

criteria and the fact that confirmations obtained from companies concerning fulfilment of eligibility criteria are not effectuated into submission of bids. Hence, in the tender procedure for construction of open-air swimming pool, in estimated value of 38 million MKD, eligibility criteria requested bidding companies: to have at least 3 contracts performed, each in the value of 20 million MKD; to have 50 employees under full-time contracts; to have at least 2 graduated (civil) engineers holding B permit in construction; to have at least 2 graduated (architectural) engineers holding B permit in construction; to have 1 graduated (mechanical) engineer holding B permit in construction; to have 1 graduated (electrical) engineer holding B permit in construction, as well as at least 1 geodesist and 1 attested welder.

This tender procedure also provided detailed description of equipment that should be possessed by bidding companies. The monitored contracting authority informed us that it had conducted market research for this tender procedure, but did not disclose requested documents related to the market research. Only one bid was submitted to this tender procedure. However, at the public opening of bids it was established that the company has failed to submit bid guarantee set in the amount of 3% from the bid's value. Hence, the tender procedure had to be annulled.

Another tender procedure from the monitoring sample concerning procurement of logistical support for organization of employment fairs, including employer forums and info-meetings with young people, required companies to fulfil the following criteria: at least one person tasked to manage and ensure timely implementation of events (fair events/forums/info-meetings) holding university degree in social sciences, with at least 7 years of professional experience in planning, organization and implementation of public events; at least 10 persons tasked with implementation of events (fair events/forums/info-meetings) with at least 3 years of professional experience in organization of public events; and to have organized at least 10 public events in the last three years, for at least 500 people. The contracting authority organizing this tender procedure claimed that it has obtained confirmations from 7 companies concerning fulfilment of the eligibility criteria. Nevertheless, the tender procedure was presented with only one bid and the contract, in the value of 6.9 million MKD, was signed with the single bidding company.

The monitored tender procedure for procurement of hotel and catering services, in estimated value of 617,000 MKD, VAT excluded, required bidding companies to demonstrate eligibility in terms of accommodation facilities with at least 4 stars; at least 50 rooms, which should be located within a radius of 2 kilometres from the sports halls "National Heroes"; single-bed and double-bed rooms; and to offer services on half-board basis. In the course of the market research, a total of 5 hotels confirmed fulfilment of these criteria. However, the tender procedure was presented with only one bid and the contract was signed with that hotel.

At the same time, the fact that approval obtained from the Council of Public Procurements concerning adequacy of technical specifications does not stimulate competition is best represented by the monitored tender procedure for procurement of tonners and cartridges, comprised of 9 lots, in estimated value of 3 million MKD, VAT excluded, which was presented with only 2 bids. In that, one bid was rejected on the grounds of non-fulfilment of minimum requirements from technical specifications. The procurement contract for all nine types of tonners and cartridges was signed with the single acceptable bidding company. It is interesting to note that it is a matter of supplier with which the contracting authority has signed 5 annual contracts for the same procurement subject in continuity, starting from 2013 to date.

RECOMMENDATION: THE COUNCIL OF PUBLIC PROCUREMENTS SHOULD BE CANCELLED, WHILE ACTIVITIES THAT HAVE CREATED BENEFITS SHOULD BE REALLOCATED TO OTHER EXISTING INSTITUTIONS. THE OVERALL PURPOSE IS FOR THE SYSTEM OF PUBLIC PROCUREMENTS TO BE RELIEVED FROM THE BURDEN OF INEFFICIENT AND EXPENSIVE BUREAUCRATIC MECHANISM THAT IMPOSED AN OBLIGATION ON SECURING PREVIOUS APPROVAL FROM THE COUNCIL FOR SERIES OF LEGAL GROUNDS ESTABLISHED BY THE LAW, IN CASES WHEN MARKET COMPETITION CANNOT BE DEMONSTRATED.

- **IN THE FIRST HALF OF 2017, THE NON-TRANSPARENT NEGOTIATION PROCEDURE WITHOUT PRIOR ANNOUNCEMENT OF CALL FOR BIDS WAS USED TO SIGN CONTRACTS IN ACCUMULATIVE VALUE OF 7.4 MILLION EUR, WHICH IS BY 12% HIGHER COMPARED TO THE SAME PERIOD LAST YEAR.**

In the first six months of this year, a total of 208 contracts were signed by means of this procedure, in individual value ranging from 1,200 MKD to 34,000,000 MKD. In that, a total of 453 million MKD, i.e. 7.4 million EUR were spent under this type of procurement procedures. The increased value of these contracts marks a discontinuation of the two-year trend on reduced application of this type of procurement procedures, which was a result of the law-stipulated obligation introduced in the second half of 2014 whereby contracting authorities have to obtain previous approval for organization of negotiation procedures without prior announcement of call for bids.

Overview of the value of contracts signed under negotiation procedure without prior announcement of call for bids

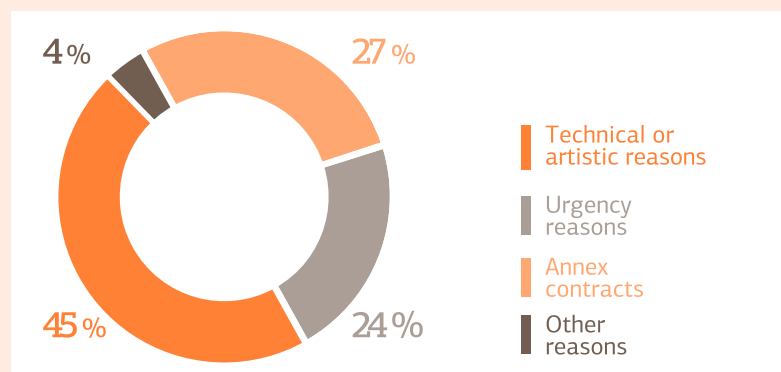
Period	Value of contracts (in million EUR)	Change
January-June 2015	11.5	-61.4%
January-June 2016	6.6	-42.6%
January-June 2017	7.4	+12.12%

The calculations are made by 10.10.2017.

In terms of reasons indicated for signing these contracts, the highest share of them were signed in cases where due to technical or artistic reasons, i.e. reasons related to protection of exclusive rights (patents and the like), the contract could be performed only by particular economic operator. This legal ground was indicated for signing of 128 contracts, whose accumulative value (3.3 million EUR) accounts for high 45% of the total value of contracts signed under negotiation procedures without prior announcement of call for bids.

According to the number of contracts signed (45), the second most frequently indicated reason implies procurement urgency and lack of time to organize public procurement procedure. Nevertheless, the total value of these contracts amounts to 1.8 million EUR and accounts for 24%, which is below the value of annex contracts. Namely, in the first half of 2017, a total of 29 annex contracts were signed in total value of around 2 million EUR, i.e. representing a share of 27%.

Structure of contracts signed under negotiation procedures without prior announcement of call for bids, in the period January-June 2017*



*Detailed overview of these contracts is available on CCC's official website: opendata.mk

Other grounds anticipated by LPP for signing contracts under negotiation procedure without prior announcement of call for bids account for 4%.

RECOMMENDATION: CONTRACTING AUTHORITIES SHOULD CONTINUE LOW USE OF THE NON-TRANSPARENT NEGOTIATION PROCEDURE WITHOUT PRIOR ANNOUNCEMENT OF CALL FOR BIDS.

- **NUMBER AND SHARE OF ANNULLED TENDER PROCEDURES IS INCREASING. IN THE FIRST HALF OF 2017, A TOTAL OF 2,033 TENDER PROCEDURES WERE ANNULLED (FULLY OR IN PART), REPRESENTING A SHARE OF 23.7% FROM THE TOTAL NUMBER OF PROCUREMENT NOTICES ANNOUNCED. MAJORITY OF TENDER PROCEDURES WERE ANNULLED DUE TO THE FACT THAT THEY WERE NOT PRESENTED WITH ANY BIDS.**

As shown in the table below, the share of annulled tender procedures in the total number of procurement procedures announced in the first half of this year is the highest in the last three years. Among total of 8,562 tender procedures announced in the first six months of this years, 2,033 decisions were taken on full or partial annulment of procurement procedures. In that, contracting authorities continue to more frequently annul large-scale tender procedures compared to small-scale tender procedures.

Tender annulments on semi-annual level

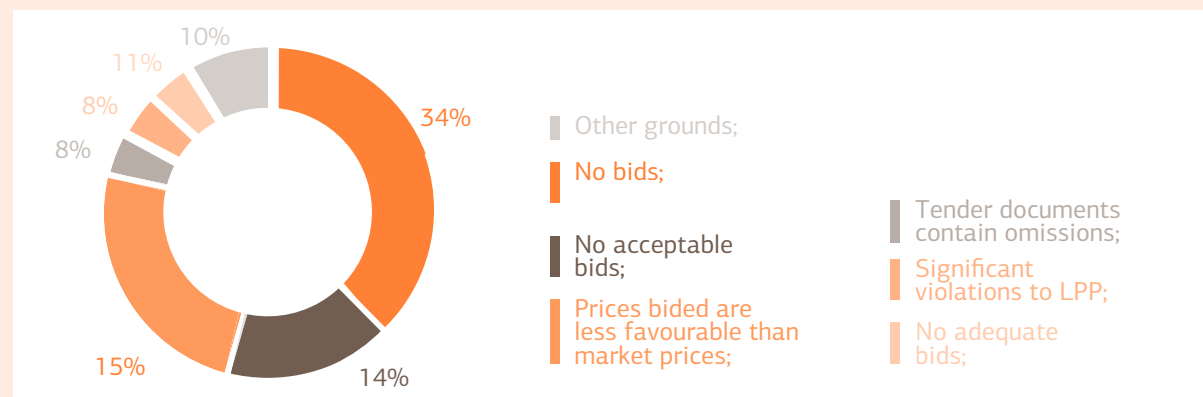
Period	Number of procurement notices	Number of decisions on tender annulment	Share of annulled tender procedures
January-June 2015	8,657	1,602	18.5%
January-June 2016	9,220	2,030	22.0%
January-June 2017	8,562	2,033	23.7%

The calculations included all tender annulments: full or in part.

In terms of reasons indicated for tender annulment, the most dominant is the reason implying that no bids were received, which was used to annul 34% of tender procedures. Next most frequently indicated reason for tender annulment implies that offered prices are less favourable than market prices, which was indicated as reason for annulment of 15% public procurement procedures. Third most frequently indicated reason for tender annulment implies that the contracting authority was not presented with any acceptable bid, which means that bids were not in compliance with requirements from tender documents, as observed in 14% of annulled

tender procedures. Significant omissions in tender documents were indicated as reason for annulment of 8% of tender procedures, and the same share of tender procedures were annulled on the grounds of established significant violations to the Law on Public Procurements.

Structure of reasons indicted for annulment of tender procedures in the first half of 2017*



*Structure of reasons for annulment of public procurement procedures is based on analysis of all 2,033 notifications on tender annulment in the first half of 2017, submitted to EPPS by September 2017.

RECOMMENDATION: AN OBLIGATION SHOULD BE INTRODUCED FOR THE BUREAU OF PUBLIC PROCUREMENTS TO DEVELOP AND PUBLISH ANNUAL ANALYSES OF ANNULLED TENDER PROCEDURES, BY INDICATING CONTRACTING AUTHORITIES WITH ABOVE AVERAGE NUMBER OF ANNULLED TENDER PROCEDURES. FINDINGS FROM THESE ANALYSES WOULD BE LATER USED BY THE BUREAU OF PUBLIC PROCUREMENTS TO TAKE SPECIFIC MEASURES, AS WELL AS TO IMPROVE SYSTEMIC SOLUTIONS IN THE FIELD OF PUBLIC PROCUREMENTS.

➤ **IN THE FIRST HALF OF THIS YEAR, AS HIGH AS 77.5% OF TENDER PROCEDURES WERE IMPLEMENTED AS ELECTRONIC PROCEDURES USING EPPS, ALTHOUGH THE LAW MANDATES AT LEAST 50%. IN DOING SO, THE ALREADY HIGH TARGETS WERE SURPASSED, WITHOUT DUE CONSIDERATION OF PREPAREDNESS ON THE PART OF BIDDING COMPANIES, ESPECIALLY OF SMALL AND MICROENTERPRISES.**

Among total of 8,562 tender procedures organized in the first six months of 2017, as many as 6,636, i.e. 77.5% are fully implemented as electronic procedures, while 1,926 of them were

implemented in hardcopy. Advantages offered by electronic procedures in terms of financial savings and in terms of reduced possibilities for malpractices are significant. However, implementation of electronic procedures must not neglect unpreparedness on the part of companies, especially of micro and small companies.

RECOMMENDATION: IN COMPLIANCE WITH ITS LAW-STIPULATED COMPETENCES, THE BUREAU OF PUBLIC PROCUREMENTS SHOULD ORGANIZE A SERIES OF FREE TRAINING FOR ENTERPRISES, WITH FOCUS ON MICRO AND SMALL COMPANIES. THAT WOULD AVOID THE RISK OF PUSHING OUT FROM THE MARKET OF PUBLIC PROCUREMENTS SMALL COMPANIES, WHICH MOST CERTAINLY HAVE POTENTIAL FOR PARTICIPATION IN TENDER PROCEDURES, HAVING IN MIND THE LOW THRESHOLD OF 500 EUR STIPULATED FOR ORGANIZATION OF PUBLIC PROCUREMENT.

➤ **TOTAL OF 19 NEGATIVE REFERENCES FOR 17 COMPANIES WERE ISSUED IN THE FIRST HALF OF 2017.**

By means of 19 negative references, 16 companies were prohibited to participate in all tender procedures organized in the country for a period of 1 year, while one company was issued 3 negative references and was thereby prohibited to participate in tender procedures for a period of 3 years, i.e. by 2021. Majority of negative references (42%) were issued to companies after collection of bank guarantees on quality performance of contracts.

Second in frequency are negative references (26%) issued in cases when the bidding company failed to submit documents intended to demonstrate its legal status. Other reasons (bidding company refused to sign the procurement contract; bidding company did not accept correction of arithmetic errors made by the commission) have smaller shares in the total number of negative references issued in the first half of 2017.

RECOMMENDATION: THE LAW-STIPULATED POSSIBILITY FOR CONTRACTING AUTHORITIES TO ISSUE NEGATIVE REFERENCES, I.E. TO PROHIBIT COMPANIES TO PARTICIPATE IN ALL TENDER PROCEDURES ORGANIZED IN THE REPUBLIC OF MACEDONIA FOR A PERIOD OF 1 TO 5 YEARS, IS NOT IN COMPLIANCE WITH LEGAL REGULATIONS ADOPTED BY THE EUROPEAN UNION. THEREFORE, THE LEGAL PROVISIONS THAT GOVERN ISSUANCE OF NEGATIVE REFERENCES NEED TO BE REVOKED.

