

JULY-DECEMBER 2017



FROM MONITORING OF
PUBLIC PROCUREMENTS
IN THE REPUBLIC OF MACEDONIA



Citizens for change!



Center for Civil Communications
Центар за граѓански комуникации

30

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

JULY - DECEMBER 2017

SKOPJE, MAY 2018

Monitoring of public procurements in the Republic of Macedonia
REPORT NO. 30 (July–December 2017)

Publisher:

Center for Civil Communications

Translation into English:

Abakus

Design & Layout:

Brigada design

Print:

Propint

Circulation

250 copies

Free/non-commercial circulation

CIP - Каталогизација во публикација

Национална и универзитетска библиотека „Св. Климент Охридски“, Скопје

35.073.53:005.584.1(497.7)“2017“(047)

30 Извештај од мониторингот на јавните набавки во Република Македонија : јули-декември / 2017. - Скопје : Центар за граѓански комуникации, 2018. - 40, 40 стр. : граф. прикази ; 23 см

Насл. стр. на припечатениот текст: 30 Report from monitoring of public procurements in the Republic of Macedonia : July - December 2017. - Обата текста меѓусебно печатени во спротивни насоки. - Текст на мак. и англ. јазик

ISBN 978-608-4709-68-8

1. Гл. ств. насл.

а) Локална самоуправа - Јавни набавки - Мониторинг - Македонија - 2017 - Извештаи

COBISS.MK-ID 107710986

The contents of this publication are sole responsibility of the Center for Civil Communications and can in no way be taken to reflect the views of Civica Mobilitas, Swiss Agency for Development and Cooperation (SDC) or implementing organizations.



МАКЕДОНСКИ
ЦЕНТАР ЗА
МЕЃУНАРОДНА
СОРАБОТКА



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Agency for Development
and Cooperation SDC

Civica Mobilitas is a Swiss Agency for Development and Cooperation project that is implemented by NIRAS from Denmark, the Macedonian Center for International Cooperation (MCIC) and the Swedish Institute for Public Administration (SIPU).

CONTENTS:

5 KEY FINDINGS

8 GOALS AND METHODOLOGY

10 PUBLIC PROCUREMENT
MONITORING REPORT

24 ANALYSIS OF PROCEDURES LED BEFORE THE STATE COMMISSION ON
PUBLIC PROCUREMENT APPEALS IN THE PERIOD
JANUARY - DECEMBER 2017

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

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

SURVEY FINDINGS BASED ON INTERVIEWS WITH 210 COMPANIES RELATED TO THEIR EXPERIENCE FROM PARTICIPATION IN PUBLIC PROCUREMENTS, CONDUCTED IN THE PERIOD FEBRUARY-MARCH 2018

- ③ 'LOWEST PRICE' DEFINED AS SINGLE CRITERION TO AWARD PUBLIC PROCUREMENT CONTRACTS, DELAYED PAYMENT FOR CONTRACT PERFORMANCE AND REQUIREMENTS RELATED TO VOLUMINOUS DOCUMENTS FOR TENDER PARTICIPATION ARE THE MAIN PROBLEMS IN PUBLIC PROCUREMENTS INDICATED BY THE COMPANIES.
- ③ IN AVERAGE, SURVEYED COMPANIES WAIT 6 MONTHS AND 21 DAYS FOR PAYMENT OF CONTRACTS PERFORMED. THIS AVERAGE WAS 8 MONTHS UNDER THE SURVEY CONDUCTED TWO YEARS AGO AND 6 MONTHS UNDER THE SURVEY CONDUCTED LAST YEAR.
- ③ 95% OF SURVEYED COMPANIES BELIEVE THAT E-AUCTIONS RESULT IN ATTAINMENT OF UNREALISTICALLY LOW PRICES AND UNDERMINE QUALITY OF PROCUREMENTS ON THE ACCOUNT OF THEIR PRICE.

- ③ AS MANY AS 88% OF SURVEYED COMPANIES BELIEVE CORRUPTION IS PRESENT IN PUBLIC PROCUREMENTS, BUT INDICATED DIFFERENT ASSESSMENTS ABOUT ITS PRESENCE. THE HIGHEST SHARE, I.E. 47% OF THEM BELIEVE CORRUPTION IS PRESENT IN PUBLIC PROCUREMENTS, BUT RARELY; 5% INDICATED CORRUPTION IS ALWAYS PRESENT; AND 36% OF COMPANIES REPORTED THAT CORRUPTION IS OFTEN PRESENT. ONLY 12% OF COMPANIES INDICATED THERE IS NO CORRUPTION IN PUBLIC PROCUREMENTS.
- ③ DOMINANT SHARE OF COMPANIES INDICATED THAT THEY OFTEN OR RARELY WITNESSED NON-COMPLIANCE WITH THE LAW OF PUBLIC PROCUREMENTS IN TENDER PROCEDURES IN WHICH THEY PARTICIPATED.
- ③ AS MANY AS 96% OF SURVEYED COMPANIES NEVER OR RARELY LODGED APPEALS TO CONTEST TENDER PROCEDURES IN WHICH THEY PARTICIPATED, MAINLY DUE TO HIGH CHARGES RELATED TO APPEAL PROCEDURES AND THEIR DISTRUST IN SCPPA.
- ③ ON THE SCALE FROM 1 (NEGATIVE) TO 5 (EXCELLENT), COMPANIES GAVE AN AVERAGE SCORE OF 2.85 FOR THE OVERALL PROCESS OF PUBLIC PROCUREMENTS IN THE REPUBLIC OF MACEDONIA. COMPARED TO RESULTS OBTAINED UNDER THE PREVIOUS SURVEY, DETERIORATION BY 0.28 POINTS WAS OBSERVED IN TERMS OF COMPANIES' SATISFACTION WITH TENDER PROCEDURES IN WHICH THEY PARTICIPATED, WHEREBY THE AVERAGE SCORE IS AGAIN LOWER THAN 3.

FINDINGS FROM MONITORING OF PUBLIC PROCUREMENTS:

- ③ PUBLIC PROCUREMENTS REACHED A RECORD LOW LEVEL IN 2017. VALUE OF PUBLIC PROCUREMENT CONTRACTS SIGNED THIS YEAR AMOUNTED TO 624 MILLION EUR COMPARED TO 962 MILLION EUR CONTRACTED UNDER PUBLIC PROCUREMENTS IMPLEMENTED IN 2016.
- ③ COUNCIL OF PUBLIC PROCUREMENTS WAS TERMINATED IN LATE NOVEMBER 2017. THERE ARE NO AVAILABLE DATA ON EFFECTS FROM ITS OPERATION IN THE LAST FIVE MONTHS (JULY-NOVEMBER 2017). THE SPECIAL COMMISSION ESTABLISHED

AT THE MINISTRY OF FINANCE DID NOT DISCLOSE REQUESTED INFORMATION.

- ON ANNUAL LEVEL, ANNULLED TENDER PROCEDURES ACCOUNTED FOR 24% OF ALL PUBLIC PROCUREMENTS ORGANIZED IN 2017, WHICH IS THE HIGHEST SHARE RECORDED IN THE PERIOD 2013-2017.
- IN 2017, SATISFACTORY LEVEL OF COMPETITION IN TENDER PROCEDURES (3 AND MORE BIDDERS) WAS RECORDED WITH 48% OF MONITORED PUBLIC PROCUREMENTS. THE SHARE OF TENDER PROCEDURES PRESENTED WITH ONLY ONE BID IS THE LOWEST SHARE RECORDED IN THE LAST 4 YEARS AND STANDS AT 21%.
- IN 2017, TOTAL OF 496 PUBLIC PROCUREMENT CONTRACTS WERE SIGNED WITHOUT PREVIOUSLY ANNOUNCED CALL FOR BIDS AND THEIR VALUE AMOUNTED TO 29 MILLION EUR. AS MANY AS 12 MILLION EUR OR 42% OF THE TOTAL VALUE WERE CONTRACTED BY TWO INSTITUTIONS: MINISTRY OF EDUCATION AND SCIENCE AND JSC POWER PLANTS OF MACEDONIA (ELEM).

FINDINGS FROM ANALYSIS OF PROCEDURES LED BEFORE THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS IN THE PERIOD JANUARY - DECEMBER 2017

- IN 2017 COMPANIES LODGED A TOTAL OF 507 APPEALS BEFORE THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS (SCPPA), WHICH REPRESENTS A DECREASE BY AROUND 9% COMPARED TO LAST YEAR.
- MOST APPEALS WERE LODGED AGAINST DECISIONS ON SELECTION OF THE MOST FAVOURABLE BID (65%). NEXT IMPORTANT GROUNDS FOR LODGING APPEALS, ACCOUNTING FOR 15% OF ALL APPEALS, CONCERNED DECISIONS TAKEN BY CONTRACTING AUTHORITIES TO ANNUL TENDER PROCEDURES, WHILE 8% OF APPEALS WERE LODGED TO CONTEST TENDER DOCUMENTS.

GOALS AND METHODOLOGY

From November 2008 onwards, the Center for Civil Communications is continuously analysing 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 on 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, monitoring activities were implemented on 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



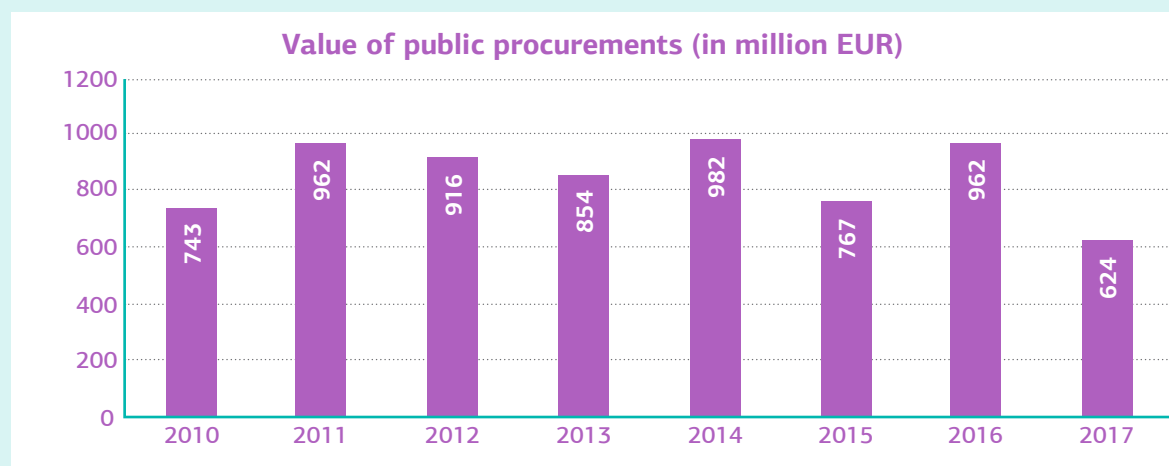
data collection on the course of procedures, and use in-depth interviews and structured questionnaires submitted to economic operators, as well as data collected from contracting authorities through EPPS and by means of Freedom of Information (FOI) applications. Some monitoring parameters (number, share and structure of annulled tender procedures, value of contacts signed 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 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 2017. In addition, this report features an analysis of procedures led before the State Commission on Public Procurement Appeals in the period January-December 2017, and survey research conducted among companies about their experience related to participation in public procurements.

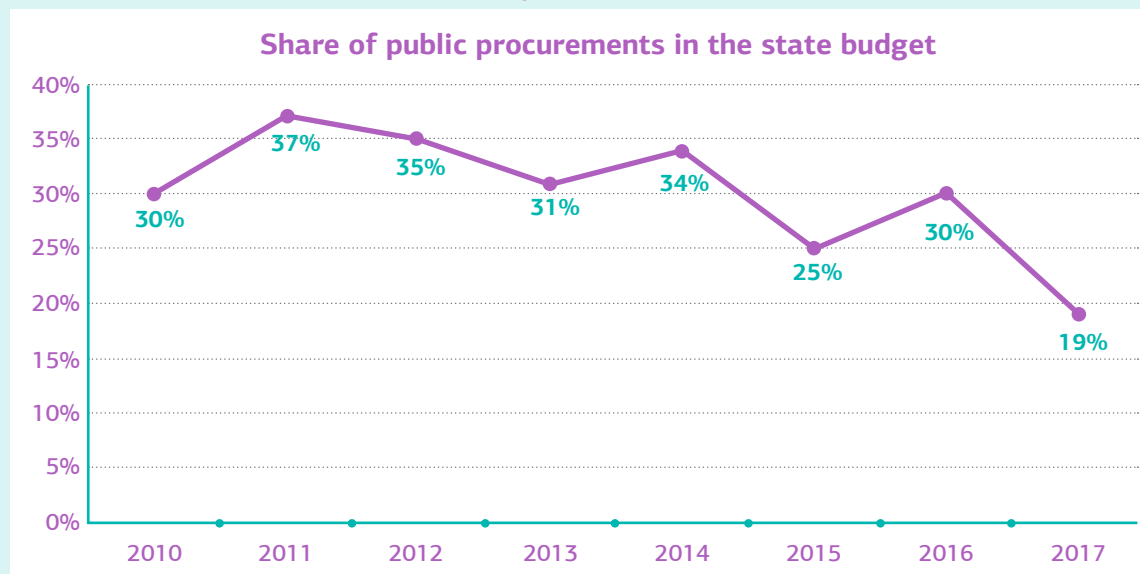
PUBLIC PROCUREMENT MONITORING REPORT

- **PUBLIC PROCUREMENTS REACHED A RECORD LOW LEVEL IN 2017. VALUE OF PUBLIC PROCUREMENT CONTRACTS SIGNED THIS YEAR AMOUNTED TO 624 MILLION EUR, WHICH ACCOUNTED FOR ONLY 19% OF THE STATE BUDGET.**

In 2017, a total of 27,488 public procurement contracts were signed, in cumulative value of 38.4 billion MKD, i.e. 624 million EUR. Compared to 2016 figures, the number of contracts is reduced by 11%, while their total value is decreased by high 35%. This is the lowest level of public procurements observed since 2010, i.e. the year when the state started keeping accurate records on public procurement contracts signed by institutions.



Public procurements awarded in 2017 account for only 19% of state budget funds, which is by 11 percentile points lower compared to last year.



Experiences have shown that elections organized in the country could not have had such great impact on the value of public procurements and that they commonly have an opposite effect. Analysed in retrospective for the last several years, the highest value of public procurements was reached in the year when both parliamentary and presidential elections were organized, i.e. 2014. Hence, there is evident need for in-depth analysis of state-of-affairs. Based on results of that analysis, in case the observed change under the value of public procurements is a result of rational public spending, that trend should be maintained in the future. However, in case the observed change is a result of general refrainment from public spending, that trend could have negative effect on effective operation of state institutions.

RECOMMENDATION: HAVING IN MIND THE MAJOR DECREASE UNDER THE VALUE OF PUBLIC PROCUREMENTS, THE NEED IS IMPOSED FOR COMPETENT AUTHORITIES TO EXAMINE WHETHER THIS LEVEL OF SPENDING UNDER PUBLIC PROCUREMENTS WILL BE MAINTAINED IN 2018 AND TO CONDUCT IN-DEPTH ANALYSIS AIMED TO DETERMINE WHETHER THE REASON BEHIND SUCH DECREASE IS SOLELY A RESULT OF THE CHANGE OF GOVERNMENT OR THE PRIORITIES AND MANNER IN WHICH PUBLIC FUNDS ARE SPENT HAVE CHANGED. MECHANISMS SHOULD BE INTRODUCED TO MONITOR THE VALUE OF PUBLIC PROCUREMENTS AT STATE LEVEL, INCLUDING THEIR STRUCTURE, WHICH WOULD ALLOW TIMELY IDENTIFICATION OF REASONS CONTRIBUTING TO OBSERVED OSCILLATIONS.

- ② **COUNCIL OF PUBLIC PROCUREMENTS WAS TERMINATED IN LATE NOVEMBER 2017. HOWEVER, THERE ARE NO AVAILABLE DATA ON EFFECTS FROM ITS OPERATION IN THE LAST FIVE MONTHS (JULY-NOVEMBER 2017). THE SPECIAL COMMISSION ESTABLISHED AT THE MINISTRY OF FINANCE DID NOT DISCLOSE REQUESTED INFORMATION.**

On the account of negligible positive effects achieved and great administrative and financial burden imposed to public procurements, the Council of Public Procurements that was tasked with limited ex-ante control of public procurements was terminated with adoption of amendments to the Law on Public Procurements, published in “Official Gazette of the Republic of Macedonia” no. 165/17. According to these law amendments, overall equipment and documents in possession of CPP were transferred to the Ministry of Finance. For the first time from the start of monitoring activities, data published in regular monitoring reports and related to the number of applications submitted by contracting authorities to obtain approval for implementation of tender procedures from the Council of Public Procurements, reasons for submission of such applications for approval, decisions taken by CPP, as well as funds spent on this process, were not disclosed. In that, the Center for Civil Communications addressed the Ministry of Finance with two FOI applications and was notified that transfer of equipment, documents and data is still underway. More specifically, in its response dated January 2018 the Ministry of Finance indicated: “In response to your information request, we hereby inform you that the minister of finance has adopted a decision to establish commission that would assume possession over complete equipment, inventory, archive, documents, operational and other assets, receivables and liabilities of the Council of Public Procurements, archived under no.03-8590/1 from 19 December 2017. Due to the fact that transfer of complete documents between the two commissions is still underway, the Ministry of Finance is unable to disclose the requested information”.

In March 2018, CCC submitted second FOI application and received the following response: “The procedure on assuming possession over equipment, inventory, archive, documents, operational and other assets, receivables and liabilities of the Council of Public Procurements is underway, and therefore the Ministry of Finance is unable to disclose the requested information.”

This prevented the monitoring team to assess overall performance of the Council of Public Procurements which, from body established to encourage competition in public procurements, had turned into unnecessary administrative and financial burden.

RECOMMENDATION: THE COMMISSION ON TRANSFER OF EQUIPMENT, INVENTORY, ARCHIVE, OPERATIONAL AND OTHER ASSETS, RECEIVABLES AND LIABILITIES OF THE COUNCIL OF PUBLIC PROCUREMENTS AT THE MINISTRY OF FINANCE SHOULD PUBLISH DATA ON PERFORMANCE OF THE COUNCIL OF PUBLIC PROCUREMENTS IN 2017.

- **EVERY FOURTH TENDER PROCEDURE IS FULLY OR PARTIALLY ANNULLED. THE MONITORING SAMPLE INCLUDED ONE PUBLIC PROCUREMENT PROCEDURE WHICH WAS ANNULLED TWICE, ON TWO DIFFERENT GROUNDS.**

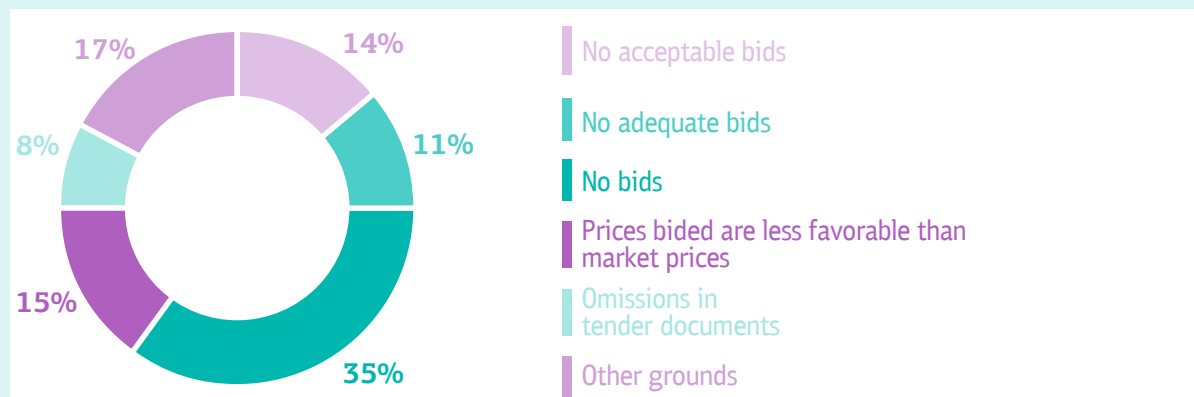
Annulment of public procurement procedures continued to increase in the course of 2017. For the entire year, total of 4,210 tender procedures were partially or fully annulled, accounting for 24% of the total number of procurement notices published. The 2017 annual share of annulled tender procedures, standing at 24%, is the highest share observed in the period 2013-2017. At the level of semesters, the share of annulled tender procedures accounted for 24% in the first half of the year and 25% in the second half of the year.

Overview of annulled tender procedures, per year

Year	Number of procurement notices	Number of decisions on tender annulment	Share of annulled tender procedures
2013	18,787	3,478	19%
2014	15,746	3,625	23%
2015	18,469	3,673	20%
2016	18,444	4,230	23%
2017	17,227	4,210	24%

Analysed in terms of reasons indicated for inability to complete tender procedures with contract award, it can be concluded that every third annulled tender procedure was not presented with any bids (35%). Other frequently indicated reasons include: prices bided were less favourable than market prices (15%) and no acceptable bids were received (14%).

Overview of reasons indicated for tender annulments in 2017*



**The overview of reasons indicated for tender annulments is based on data from notifications on tender annulments submitted to EPPS for public procurements organized in 2017.*

As regards the monitoring sample, 27% of tender procedures were annulled, of which 21% were fully annulled and 6% were partially annulled. The monitoring sample included several tender annulments that should be further analysed. One of them concerns the tender procedure organized for procurement of system for data storage and retrieval in estimated value of 130,000 EUR, which was annulled twice. In particular, this tender procedure was first annulled by the contracting authority and later by the State Commission on Public Procurement Appeals (SCPPA). Both tender annulments were made after one potential bidding company, dissatisfied with terms and conditions set in relevant tender documents, lodged an appeal before SCPPA. One week after this appeal was lodged, the contracting authority adopted decision to annul this tender procedure on the grounds that both bids received are unacceptable. Afterwards, the State Commission adopted decision on admitting appeal allegations indicating that tender documents are discriminatory, followed by decision to annul the decision on implementation of this public procurement on the basis of significant violations to procedure in compliance with Article 210 of LPP. In that, SCPPA annulled the entire procedure on awarding public procurement contract, but on different grounds than those indicated by the contracting authority, advising the latter to make due consideration of remarks made about tender documents when organizing this procurement again.

Particular concerns are raised with annulment of tender procedures marked by high number of bidders, especially when contracting authorities do not provide reasonable grounds for tender annulment in their respective decision rationales. Such was the example of one monitored procedure for procurement of lawnmowers and spare parts in estimated value of 1,845,000 MKD, VAT excluded. Five companies participated in this tender procedure. The decision on tender annulment was taken after the electronic auction was organized and included the following general explanation: “the contracting authority is unable to select the most favourable bid due to significant

violations to Article 210, paragraph 1, item 6 of LPP (i.e. serious violations have been made in the course of bid-evaluation)". Based on documents provided, the monitoring team was unable to identify which law violations had been committed, and it could be said with certainty that bidding companies were also unclear about them. Such practices create insecurity for companies and increase their distrust in the system. Annulment of tender procedures is regulated by law and is not considered disputable when pursued in justified manner and with relevant arguments. Otherwise, tender annulments give rise to doubts about abuse of the law to prevent contract awarding to companies different from the one favoured by the contracting authority.

The next example concerns tender procedure for procurement of 2 tractors as basic assets for one public enterprise. This procurement was divided into lots and bidding companies were able to submit bids for both or for one type of tractors. Only one company submitted a bid for both types of tractors. In that, for both tractors the bidding company offered prices that are by 15,100,000 MKD, i.e. by 100,000 MKD higher than the estimated value. Having in mind that one company submitted a bid for both procurement lots, the same was requested to submit a final offer, which was done under minimum reduction by 1 MKD from the initially bided prices. Hence, the price bided for both tractors amounted to total of 15,099,998 MKD, i.e. it was by 0.67% higher than the tender's estimated value. Without offering any additional explanation and indicating that the bid is inadequate, i.e. includes price higher than the estimated value, the public enterprise adopted decision to annul the procurement lot for the more expensive tractor (8,766,699 MKD) and to purchase the cheaper tractor (6,233,299 MKD). It is unclear how this contracting authority assessed that the price bided is adequate for one tractor and inadequate for the second tractor, having in mind that the procurement notice indicated an estimated value for the full tender procedure and not for individual procurement lots. At the same time and contrary to goals related to encouragement of greater competition, it is unclear why this public enterprise decided to request bank guarantees set at 2% of the procurement's value, given that such practices defer companies from tender participation.

This monitoring sample included cases of tender annulments on the grounds of formal omissions that could be easily addressed. In particular, the public procurement organized for building security services was annulled because the single bidder had failed to indicate total price for both buildings that are subject of security services in its price list, although this is a matter of simple sum of the two price items enlisted. This tender procedure was annulled and new public procurement was announced to which the same bidding company submitted a bid and was awarded the contract. Monitoring activities covered another tender procedure organized for procurement of furniture wherein the procurement notice did not enlist requirements for bank guarantees, but tender documents included bank guarantees set at 3% of the bid's total value. In that, the contracting authority was presented with 5 bids, one of which did not include the requested bank guarantee. Worrying is the fact that no bidding company raised the issue about this discrepancy between the procurement notice and the relevant tender documents in relation to bank guarantee requirements, and that this error was not noticed by officers employed at the institution's public

procurement department. Another monitored tender procedure that should be noted in this report concerns procurement of transport and forward services using trucks, ships and airlifts for movables and business commodities. In that, the disputable aspect of this procedure concerns the fact that the public opening of bids was held on 3 July 2017, but the decision on tender annulment on the grounds of omissions in tender documents was adopted almost five months later, on 28 November 2017.

RECOMMENDATION: AN OBLIGATION SHOULD BE DEFINED FOR THE BUREAU OF PUBLIC PROCUREMENTS TO DEVELOP AND PUBLISH ANNUAL ANALYSIS OF ANNULLED TENDER PROCEDURES, BY INDICATING CONTRACTING AUTHORITIES WITH THE HIGHEST NUMBER OF ANNULLED TENDER PROCEDURES. FINDINGS FROM SUCH ANALYSES COULD BE USED AS BASELINE FOR THE BUREAU OF PUBLIC PROCUREMENTS TO TAKE RELEVANT MEASURES AND TO IMPROVE SYSTEMIC SOLUTIONS IN PUBLIC PROCUREMENTS.

➤ **IN 2017, SATISFACTORY LEVEL OF COMPETITION IN TENDER PROCEDURES (3 AND MORE BIDDERS) WAS RECORDED WITH 48% OF MONITORED PUBLIC PROCUREMENTS. THE SHARE OF TENDER PROCEDURES PRESENTED WITH ONLY ONE BID IS THE LOWEST SHARE RECORDED IN THE LAST 4 YEARS AND STANDS AT 21%.**

The number of tender procedures presented with only one bid continued to decrease in the second half of 2017. Compared against the same period in previous years, the number of tender procedures presented with 2 bids was marked by an increase, while the number of tender procedures presented with 3 or more bids was marked by decrease.

Competition in tender procedures, on semi-annual level*

Period	No bidders	1 bidder	2 bidders	3 and more bidders
July-December 2014	2%	30%	20%	48%
July-December 2015	2%	26%	20%	52%
July-December 2016	4%	22%	16%	58%
July-December 2017	8%	17%	28%	47%

*Calculations are based on monitoring samples for relevant periods.

Analysed at annual level, the biggest improvement was noted in terms of decreased share of tender procedures marked by participation of one bidder and increased share of tender procedures marked by participation of 2 bidders.

Competition in tender procedures on annual level*

Period	No bidders	1 bidder	2 bidders	3 and more bidders
2014	3%	29%	15%	52%
2015	3%	26%	20%	51%
2016	4%	31%	17%	48%
2017	6%	21%	25%	48%

*Calculations are based on monitoring samples for relevant periods.

Having in mind that competition level presented in the tables above is based on data from monitored samples of tender procedures that were secured by attendance at public opening of bids, another acute problem concerns further deterioration of competition in next stages of public procurements by means of exemption of companies from the bid-evaluation process.

RECOMMENDATION: THE CONCEPT RELATED TO OVERSIGHT AND CONTROL ON THE OVERALL PROCESS OF PUBLIC PROCUREMENTS ANTICIPATED IN THE NEW DRAFT LAW ON PUBLIC PROCUREMENTS SHOULD REMAIN IN ORDER TO PREVENT ILLEGAL SPENDING OF PUBLIC FUNDS AND TO GUARANTEE IMPLEMENTATION OF PUBLIC PROCUREMENT PROCEDURES IN COMPLIANCE WITH THE LAW ON PUBLIC PROCUREMENTS AND PERFORMANCE OF PUBLIC PROCUREMENTS ACCORDING TO CONTRACTS SIGNED.

Oversight and control functions should be entrusted to the Bureau of Public Procurements, by expanding its competences. For that purpose, special organization unit on oversight and control should be established within the Bureau and given the following competences:

- to control ongoing public procurement procedures and performance of public procurement contracts on the basis of risk analysis system, at own initiative or after being present with information;
- to adopt and submit decision on elimination of identified irregularities and in case contracting authorities fail to eliminate them, to initiate misdemeanour procedures in front of competent bodies;
- to notify the competent prosecution office in cases of reasonable doubts for existence of criminal offences.

The Bureau of Public Procurements should present the Government of the Republic of Macedonia with reports on identified systemic problems and make them publicly available.

Separate by-laws need to be drafted and adopted in order to define the subject and scope of oversight and method of its implementation.

Introduction of oversight and control for public procurements will ensure alignment of LPP with

Article 83 of the EU Directive on Public Procurements which anticipates monitoring of application of public procurements rules.

- **IN 2017, E-AUCTIONS WERE ORGANIZED IN 63% OF MONITORED PUBLIC PROCUREMENTS COMPARED TO 37% OF THEM WHICH WERE NOT COMPLETED WITH PLANNED DOWNWARD BIDDING. AS REGARDS FULLY ELECTRONIC PUBLIC PROCUREMENTS, THE LAW-STIPULATED TARGET SET AT 50% OF ALL PUBLIC PROCUREMENTS WAS SURPASSED BY SIGNIFICANT SHARE. IN 2017, AS MANY AS 79% OF ALL PUBLIC PROCUREMENTS WERE ORGANIZED AS ELECTRONIC PROCEDURES THROUGH THE ELECTRONIC PUBLIC PROCUREMENT SYSTEM.**

In the second half of 2017, e-auctions were held in higher number of public procurements compared to the first half of this year and compared to the same period last year. Hence, in the second half of 2017 e-auctions were organized in 65% of monitored public procurements compared to 61% recorded in the first half of 2017 and 59% recorded in the second half of 2016.

On annual level, electronic auctions were held in 63% of monitored public procurements in 2017. As a result of low competition and due to exemption of companies that submitted bids, although planned e-auctions were not organized in 37% of monitored tender procedures. The risk arising from high share of public procurements that were not completed with e-auction concerns the unwritten rule whereby companies, in expectation of planned e-auctions, offer higher prices at public opening of bids that would be reduced in the course of downward bidding. Hence, there is real risk for tender procedures resulting in award of contract to the only bidding company without organization of e-auction to be signed under prices that are higher than actual prices.

According to the Law on Public Procurements, in 2017 all contracting authorities were obliged to organize 50% of announced tender procedures as fully electronic procurements via EPPS. According to monitoring findings and analysis of data obtained from EPPS, it was concluded that contracting authorities have significantly surpassed this target, especially in the second semester. Notably, 78% of public procurements were organized as electronic procedures in the first half of 2017, while their share in the second half of the year accounted for high 81%. At annual level, 79% of all public procurements in 2017 were implemented as electronic procedures.

Overview of e-procurement procedures

Period	Electronic procedures	Paper-based procedures	Share of e-procurements
January-June 2017	6,636	1,926	78%
July-December 2017	6,978	1,687	81%
January-December 2017	13,614	3,613	79%

On annual level, it was established that law-stipulated targets were surpassed in both years (2016 and 2017), i.e. by 18 percentile points in 2016 and by 29 percentile points in 2017.

Share of e-procurements on annual level

Period	Law-stipulated target	Achieved share of e-procurements
2016	30%	48%
2017	50%	79%

Use of electronic means for implementation of public procurements is certainly much simpler for institutions as they benefited from relevant training for years, but the question is raised whether smaller companies are prepared for such significant step forward. In that, it should be noted that the Bureau of Public Procurements did not organize additional free-of-charge training aimed to prepare small companies for this change.

RECOMMENDATION: GIVEN THAT IN 2018 ALL PUBLIC PROCUREMENTS ARE ORGANIZED AS ELECTRONIC PROCEDURES, THE BUREAU OF PUBLIC PROCUREMENTS SHOULD ORGANIZE A CYCLE OF FREE-OF-CHARGE TRAINING FOR MICROENTERPRISES ACROSS THE COUNTRY IN ORDER TO FACILITATE THEIR PARTICIPATION IN MANDATORY E-PROCUREMENTS. TRAINING SESSIONS SHOULD BE ORGANIZED ON REGIONAL LEVEL (IN SEVERAL DIFFERENT TOWNS ACROSS THE COUNTRY), IN ORDER TO MAKE THEM MORE ACCESSIBLE FOR ECONOMIC OPERATORS DOING BUSINESS ON LOCAL AND REGIONAL LEVEL. SUCH TRAINING WILL REPRESENT ONE FORM OF IMPLEMENTATION OF THE REQUIREMENT FROM THE 2014 EU DIRECTIVE ON ENSURING FREE-OF-CHARGE ASSISTANCE FOR APPLICATION OF RELEVANT RULES, WHICH SHOULD BE DELIVERED BY A COMPETENT BODY AND SHOULD BE INTENDED FOR PARTICIPANTS IN PUBLIC PROCUREMENTS. IMPLEMENTATION OF THIS MEASURE IS IN COMPLIANCE WITH COMPETENCES OF THE BUREAU OF PUBLIC PROCUREMENTS STIPULATED UNDER THE CURRENT LAW ON PUBLIC PROCUREMENTS AND DOES NOT IMPLY LEGISLATIVE CHANGES.

In terms of e-auctions, positive development was observed in the fact that the new Draft Law on Public Procurements stipulates organization of e-auctions as optional, which was a result of recommendations put forward in regular monitoring reports published for several years back.

- **IN 2017, TOTAL OF 496 PUBLIC PROCUREMENT CONTRACTS WERE SIGNED WITHOUT PREVIOUSLY ANNOUNCED CALL FOR BIDS AND THEIR VALUE AMOUNTED TO 29 MILLION EUR. AS MANY AS 12 MILLION EUR OR 42% OF THE TOTAL VALUE WERE CONTRACTED BY TWO INSTITUTIONS: MINISTRY OF EDUCATION AND SCIENCE AND JSC POWER PLANTS OF MACEDONIA (ELEM).**

In 2017, the number and the total value of public procurement contracts signed under negotiation procedures without previously announced call for bids were decreased compared to last year. In that, the number of these contacts (496) is reduced by 18% compared to 2016, while their value in the amount of 29 million EUR is by 17% lower than the value recorded in 2016.

However, having in mind the general decrease under total value of public procurements implemented in 2017, the share of these non-transparent procedures in the total value of all public procurements is increased from 3.6% in 2016 to 4.6% in 2017.

At the level of individual contracting authorities, the Ministry of Education and Science (6.2 million EUR) and JSC Power Plants of Macedonia (6 million EUR) have spent the highest amounts of public funds under this non-transparent procedure.

In particular, the Ministry of Education signed a total of 39 public procurement contracts under this type of procedures, majority of which concern purchase of textbooks for primary and secondary education. On the other hand, ELEM used this type of procurement procedures to award 16 contracts, including the individual contract of this type marked by the highest value. It is a matter of the contract signed for excavation of coal and slag for the needs of RU Mines, MEC Bitola, awarded to the company for trade, production and services MARKOVSKI COMPANY Borce LTD export-import from Bitola, in the value of 4.7 million EUR. This contract was awarded under the following rationale: "due to reasons of urgency caused by events that could not have been anticipated by or attributed as omission to the contracting authority, the law-stipulated deadline for announcement of open procedure, limited procedure, bid-collection procedure or negotiation procedure with prior announcement of call for bids cannot be applied."

The list of institutions that heavily relied on this non-transparent procedure to award public procurement contracts also includes the State Election Commission which, in 2017, signed 19 contracts in total value of around 850,000 EUR. These contracts include the public procurement for design and printing of confidential balloting materials for the local elections (municipal councils and City Council of Skopje, municipal mayors and mayor of the City of Skopje), in total value of 450,000 EUR (detailed overview of all so-called direct contracts is available on the website [opendata.mk: http://opendata.mk/Home/JavniNabavkiDetails?Category=2017](http://opendata.mk/Home/JavniNabavkiDetails?Category=2017)).

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

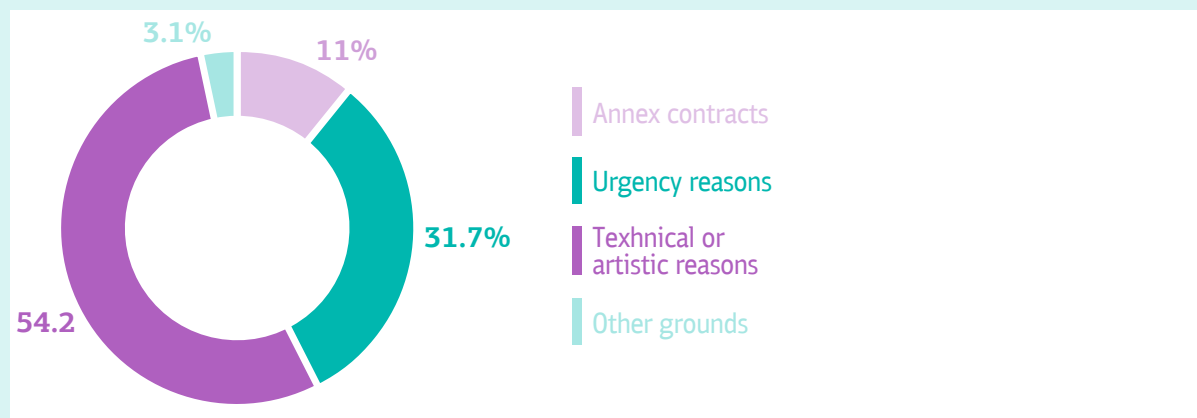
Year	Number of contracts signed	Value of contracts signed (in million EUR)	Change in annual value
2013	1,491	97	+34%
2014	834	56	-42%
2015	951	29	-49%
2016	605	35	+20%
2017	496	29	-17%

Detailed overview of all contracts is available on CCC's website opendata.mk.

Law on Public Procurements anticipates 10 grounds for use of negotiation procedure without prior announcement of call for bids. However, as shown on the chart below, institutions predominantly enlisted two grounds for award of these contracts in 2017, those being: technical or artistic reasons, i.e. reasons related to protection of exclusive rights, patents, etc. implying that the contract could be performed only by particular economic operator (54.2%); and urgent reasons, i.e. when the public procurement contract must be awarded in very short period (31.7%). Third most frequently indicated ground for use of this procedure includes annex contracts and accounted for 11% of the total value of this type of contracts.

As shown in the chart, other grounds indicated for use of negotiation procedure without prior announcement of call for bids account for 3.1% in total funds spent by means of this type of procedures.

Overview of contracts awarded by means of negotiation procedure without prior announcement of call for bids (January-December 2017)



Detailed overview of contracts is available on CCC's website opendata.mk.

RECOMMENDATION: AN OBLIGATION SHOULD BE INTRODUCED FOR THE BUREAU OF PUBLIC PROCUREMENTS TO DEVELOP AND PUBLISH ANNUAL ANALYSIS OF CONTRACTS AWARDED BY MEANS OF NEGOTIATION PROCEDURES WITHOUT PRIOR ANNOUNCEMENT OF CALL FOR BIDS, ENLISTING ALSO ECONOMIC OPERATORS THAT HAVE BEEN AWARDED SUCH CONTRACTS.

- **USE OF BANK GUARANTEES FOR BIDS CONTINUED TO DECREASE IN 2017, BUT USE OF BANK GUARANTEES FOR QUALITY PERFORMANCE OF CONTRACTS WAS INCREASED.**

In 2017, bank guarantees for bids were requested in 7% of monitored tender procedures, representing a decrease by 15 percentile points compared to last year. On the contrary, bank guarantees for quality performance of contracts were requested in 60% of monitored tender procedures, representing an increase by 7 percentile points compared to last year. This trend is assessed as positive development, knowing that bank guarantees for bids create financial barriers for potential bidders, while bank guarantee for quality performance of contracts could be viewed as safeguard mechanism for contracting authorities and therefore for public funds against poor performance of contracts.

RECOMMENDATION: CONTRACTING AUTHORITIES SHOULD CONTINUE THIS TREND AND REFRAIN FROM REQUESTING BANK GUARANTEES FOR BIDS IN THE FUTURE. INSTEAD, THEY SHOULD USE THE STATEMENT OF SERIOUS INTENT. ALTHOUGH JUSTIFIED, BANK GUARANTEES FOR QUALITY PERFORMANCE OF CONTRACTS SHOULD BE USED WHENEVER THE PROCUREMENT'S VALUE AND NATURE REQUIRE SUCH GUARANTEES, IN ORDER TO AVOID THE RISK OF TURNING THEM INTO FINANCIAL BARRIER FOR BIDDING COMPANIES.

- **IN THE SECOND HALF OF 2017, 20 NEGATIVE REFERENCES WERE ISSUED TO 19 COMPANIES, BRINGING THE 2017 TOTAL NUMBER OF BANS FOR TENDER PARTICIPATION TO 39 AND AFFECTING 36 COMPANIES.**

The highest share of negative references, accounting for 33% of all negative references, was issued to companies after collection of bank guarantees for quality performance of contracts. The second group concerns negative references (26%) issued in cases when bidding companies did not provide relevant documents that demonstrate their legal status. Other reasons (bidding companies have not signed the public procurement contract; bidding companies did not accept correction of arithmetic errors made by public procurement committees) were marked by lower frequency in 2017.

The law-stipulated possibility for institutions to issue negative reference, i.e. 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.

RECOMMENDATION: INSTEAD OF 'NEGATIVE REFERENCES', CONTRACTING AUTHORITIES SHOULD BE GIVEN THE POSSIBILITY TO PROHIBIT PARTICULAR ECONOMIC OPERATORS TO PARTICIPATE IN THEIR TENDER PROCEDURES FOR GIVEN PERIOD OF TIME, ON THE GROUNDS OF UNSATISFACTORY PERFORMANCE OF PREVIOUS CONTRACTS. THIS PROPOSAL IMPLIES CANCELLATION OF 'NEGATIVE REFERENCES' AND POSSIBILITY FOR CONTRACTING AUTHORITIES TO BAN ECONOMIC OPERATORS ONLY IN CASES OF DOCUMENTED SIGNIFICANT OR CONSECUTIVE UNDERPERFORMANCE RELATED TO PREVIOUSLY AWARDED CONTRACTS. THE PROHIBITION COULD CONCERN ONLY PARTICIPATION IN TENDER PROCEDURES ORGANIZED BY THE CONTRACTING AUTHORITY THAT HAS ISSUED THE NEGATIVE REFERENCE. THE PERIOD OF EXEMPTION COULD BE SET IN DURATION OF 1 TO 5 YEARS, DEPENDING ON THE REPETITION OF UNSATISFACTORY CONTRACT PERFORMANCE.

ANALYSIS OF PROCEDURES

LED BEFORE THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS IN THE PERIOD JANUARY-DECEMBER 2017

- **IN 2017 COMPANIES LODGED A TOTAL OF 507 APPEALS BEFORE THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS (SCPPA), WHICH REPRESENTS A DECREASE BY AROUND 9% COMPARED TO LAST YEAR.**

Among 17,227 tender procedures implemented in the course of 2017, companies lodged 507 appeals, while contracting authorities lodged 25 appeals to contest decisions of the Council of Public Procurements. The number of appeals lodged by companies is indicative of exceptionally low percentage of appealed procurement procedures, standing at only 2.94%. As shown in the table below, such decline under the number of appealed public procurements comes after two years of mild increase and accounts for decrease by 8.98%. In that, the decrease observed under the number of appeals is higher than the decrease observed under the number of tender procedures and has led to reduced share of appealed public procurements from 3% in 2016 to 2.94% in 2017.

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

Year	Number of tender procedures	% of change	Number of appeals lodged before SCPPA	% of change
2015	18,469	+17.35%	523	+3.98%
2016	18,444	-0.14%	557	+6.50%
2017	17,227	-6.60%	507	-8.98%

Calculations are based on processing of data related to appeals lodged before SCPPA and published on its official website.

Analysed in terms of companies, in 2017 SCPPA adopted decisions upon 507 motions for appeal. In that, the State Commission approved 232 motions for appeal, accounting for 45.76%. Furthermore, the State Commission rejected 190 motions for appeal as ungrounded, accounting for 37.48% of all appeals lodged. The share of denied appeals accounts for 10.26% and includes appeals that were not reconsidered by SCPPA because they were lodged beyond strict deadlines stipulated in the Law on Public Procurements or because the appealing companies did not settle relevant charges for initiation of appeal procedure. Finally, 6.50% of appeals were withdrawn by companies or relevant appeal procedures were discontinued after contracting authorities approved appeal allegations prior to their reconsideration by SCPPA.

Structure of decisions taken by SCPPA in 2017

Structure of appeals according to SCPPA decision	Number of appeals	Share (in %)
Approved appeals	232	45.8%
Rejected appeals	190	37.5%
Denied appeals	52	10.2 %
Withdrawn appeals/discontinued appeal procedures	33	6.5%
Total	507	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 last year, the structure of decisions taken by SCPPA is more unfavourable for companies that have decided to protect their rights before SCPPA. The number of approved appeals in 2017 is by 1.8 percentile points lower than their relevant share recorded in the previous year. In 2017, the share of rejected appeals is by 5.1 percentile points higher compared to their share in 2016.

Comparison data on the structure of decisions taken in appeal procedure

Type of decision	2015	2016	2017
Approved appeals	43.6%	47.6%	45.8%
Rejected appeals	37.3%	32.4%	37.5%
Denied appeals	11.5%	7.6%	10.2 %
Discontinued/terminated appeal procedures	7.6%	12.4%	6.5%
Total	100%	100%	100%

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

In-depth analysis of approved appeals shows that in dominant share of cases, i.e. in 134 from total of 232 approved appeals, the State Commission ruled to revoke decisions on selection of the most favourable bid and returned relevant procedures for repeated bid-evaluation (58%), while in the case of 98 appeals the State Commission took decisions to fully annul the public procurement (42%).

When these data are compared to previous years, it can be concluded that the share of decisions taken by SCPPA to fully annul tender procedures is further deceased by 10 percentile points compared to 2016 and by 23 percentile points compared to 2015. This piece of information, based on analysis of decisions taken by SCPPA, indicates that essential violations to the Law on Public Procurements have been reduced, given that this commission adopts decisions on tender annulment in cases when illegal activities taken in the course of public procurement procedures could not be addressed by means of changed decision on selection of the most favourable bid, meaning that 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 in approved appeals		
	2015	2016	2017
Revoked decision	35%	48%	58%
Annulled tender procedure	65%	52%	42%
Total	100%	100%	100%

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

As was the case in previous years, content analysis of appeals lodged before the State Commission shows that dominant share of appeals (65%) are lodged against decisions on the selection of the most favourable bid. In these appeals, companies claimed that the public procurement procedure has not resulted in selection of the most favourable bid because:

- the committee has awarded the contract to the bidding company which, according to the appealing company, has not offered the best bid;
- the committee has exempted from bid-evaluation the appealing company on the grounds that the latter failed to fulfil anticipated conditions and criteria.

Next important ground for lodging appeals, which accounts for 15% of all appeals, concerns contesting decisions on tender annulment taken by contracting authorities, while 8% of appeals were lodged against tender documents. All other appeal grounds account for insignificant shares and concerned remarks for procurement notices, minutes from technical dialogues performed for tender procedures of high value, e-auctions, etc.

From establishment of the Council of Public Procurements in May 2014 until its cancellation in November 2017, contracting authorities that are unsatisfied with decisions taken by CPP were also entitled to lodge appeals before SCPPA. Hence, in the course of 2017 contracting authorities lodged 25 appeals against decisions of the Council of Public Procurements, which is by 41.9% lower compared to their number in 2016. This is indicative of continuous trend on decreased number of appeals lodged against decisions of the Council of Public Procurements from 90 appeals in 2015, 43 appeals in 2016, to only 25 appeals lodged in the course of 11 months in 2017. Further analysis of the structure of decisions taken by SCPPA provides the following results: 17 appeals against CPP decisions were denied, 4 of them were rejected and only 4 were approved.

SURVEY

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

Center for Civil Communications conducts annual research survey among companies to inquire about their participation in public procurement procedures. This research is the eight consecutive survey conducted among companies related to their participation in public procurements and was conducted as part of regular monitoring activities performed by the Center for Civil Communication from 2009 onwards.

This year's research survey was conducted in the period February-March 2018. It targeted a total of 210 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 questionnaires comprised of 20 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 views on e-auctions, appeal procedures, corruption and other challenges in public procurements. The questionnaire allowed space for interviewed representatives of companies to freely indicate problems they are facing and propose measures aimed to improve the system of public procurements.

This monitoring report includes results from the last survey conducted among companies, as well as certain comparisons against results obtained under previous surveys, for the purpose of presenting the current state-of-affairs, but also trends in public procurements.

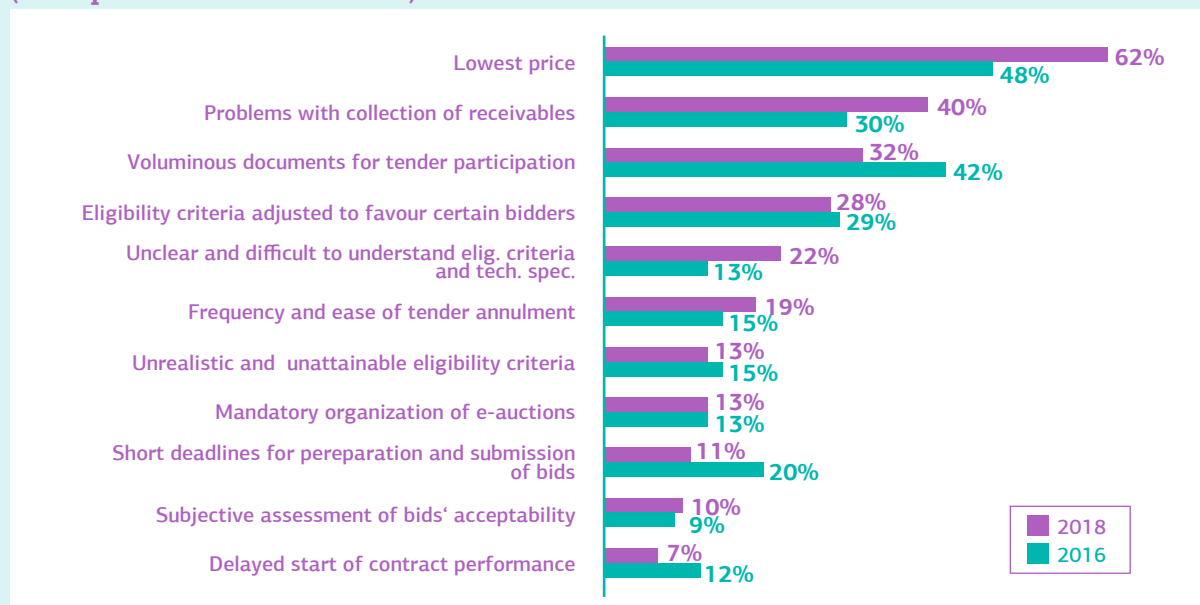
As was the case with previous surveys, we first inquired about companies' experience related to participation in public procurements. The high share of surveyed companies (39%) includes those that have participated in up to 5 public procurement procedures annually. Next in frequency are companies that have participated in 6 to 12 tender procedures annually (30%), followed by companies that have participated in more than 24 public procurements annually (25%) and companies that, on average, have participated in 13 to 24 tender procedures (6%). The average weighted participation of surveyed companies is calculated at 12 tender procedures on annual basis.

Problems in public procurements

- **'LOWEST PRICE' DEFINED AS SINGLE CRITERION TO AWARD PUBLIC PROCUREMENT CONTRACTS, DELAYED PAYMENT FOR CONTRACT PERFORMANCE AND REQUIREMENTS RELATED TO VOLUMINOUS DOCUMENTS FOR TENDER PARTICIPATION ARE THE MAIN PROBLEMS IN PUBLIC PROCUREMENTS INDICATED BY THE COMPANIES.**

Problem no. 1 in public procurements, as faced by more than half of surveyed companies (62%) is still lowest price defined as single criterion to award public procurement contracts. This problem was marked by further deterioration under the 2018 survey compared to the situation observed in late 2016. The same is applicable in regard to the problem related to collection of receivables for contract performance or the so-called late payment for contract performance (40%), which was marked by further deterioration compared to last survey (30%) and again climbed to the second place on this ranking list. The third most frequently faced problem concerns requirements related to voluminous documents for tender participation, which necessitate both time and money to be obtained by bidding companies (32%). This problem was marked by certain improvement compared to 2016 survey results (at that time, this problem was faced by 42% of companies).

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



Next two most frequently faced problems concern adjustment of tender documents and technical specifications to favour certain bidders (28%) and unclear and difficult to understand eligibility criteria and technical specifications (22%), which are among problems marked by biggest deterioration in the course of only one year.

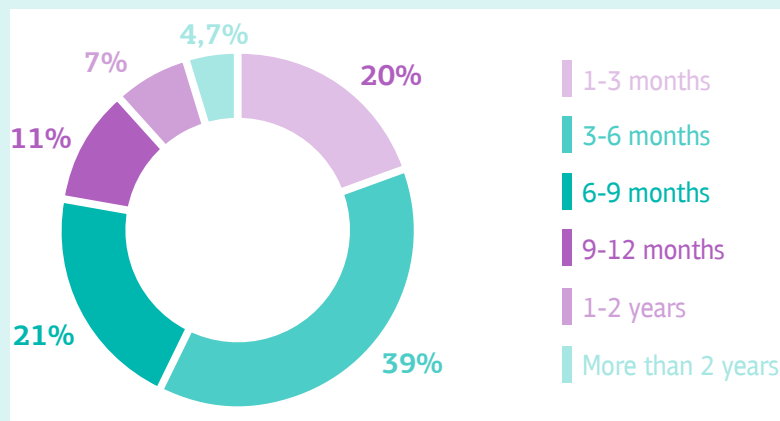
Other problems faced by companies in public procurements include: frequency and ease of tender annulments (19%); unrealistic and unattainable eligibility criteria for economic operators (13%); mandatory organization of e-auctions in all tender procedures (13%); short deadlines for preparation and submission of bids (11%); subjective approach to assessing acceptability of submitted bids (10%); and delayed start of awarded contracts (7%).

Problem of delayed payment in public procurements

- **LATE PAYMENT FOR CONTRACT PERFORMANCE IN PUBLIC PROCUREMENTS IS ALWAYS FEATURED AMONG THE THREE MOST ACUTE PROBLEMS FACED BY COMPANIES. FROM THIRD RANKED LAST YEAR, THIS PROBLEM CLIMBED TO THE SECOND PLACE. IN AVERAGE, SURVEYED COMPANIES WAIT 6 MONTHS AND 21 DAYS FOR PAYMENT OF CONTRACTS PERFORMED.**

Having in mind the continued high rank of this problem, as expressed by companies, they were also asked to indicate the average period of waiting until collection of receivables for performed public procurement contracts.

How much do you wait to collect receivables from public procurements?



In average, surveyed companies wait 6 months and 21 days to receive payment for contracts performed. This average was 8 months under the survey conducted two years ago and 6 months under the survey conducted last year.

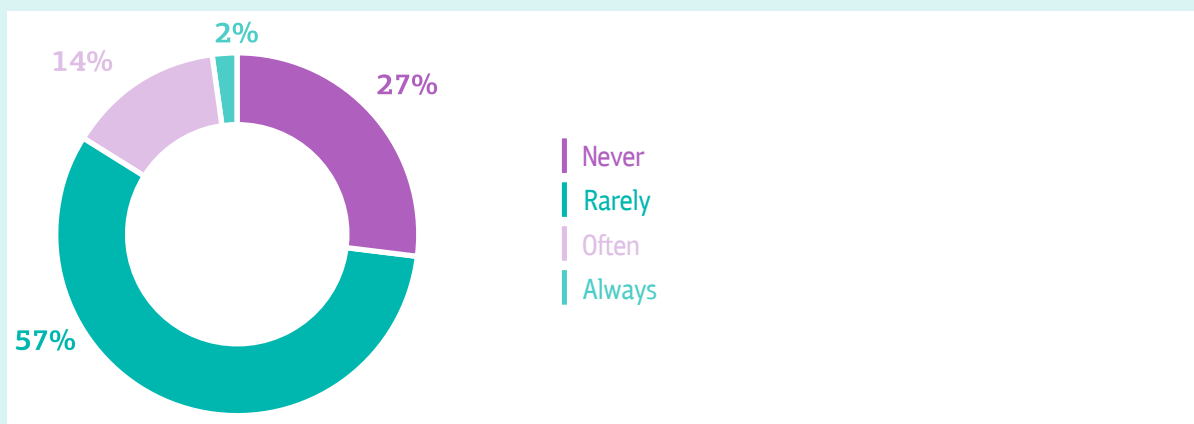
Hence, 39% of companies indicated waiting period of 3 to 6 month for collection of receivables, 21% of them wait 6 to 9 months, while 20% of them wait 1 to 3 months. 11% of surveyed companies wait 9 to 12 months, 7% of them wait 1 to 2 years, while 2% of them indicated waiting period for payment of contract performance in duration of more than 2 years.

Technical specifications do not play their role as guarantor of quality when lowest price is used as single selection criterion

When lowest price is used as the single criterion to award public procurement contracts, contacting authorities have no other option but to define quality of what they wish to purchase under public procurements by developing more detailed technical specifications.

However, as was the case in previous surveys, high share of companies believe that technical specifications are not developed in sufficient details in order to guarantee quality of public procurements. As high as 84% of companies believe that tender specifications rarely (57%) or never (27%) include details for more precise description of quality in public procurements. Similar share of answers was obtained under the previous survey.

Do you think that technical specifications include sufficient details to guarantee quality of public procurements?



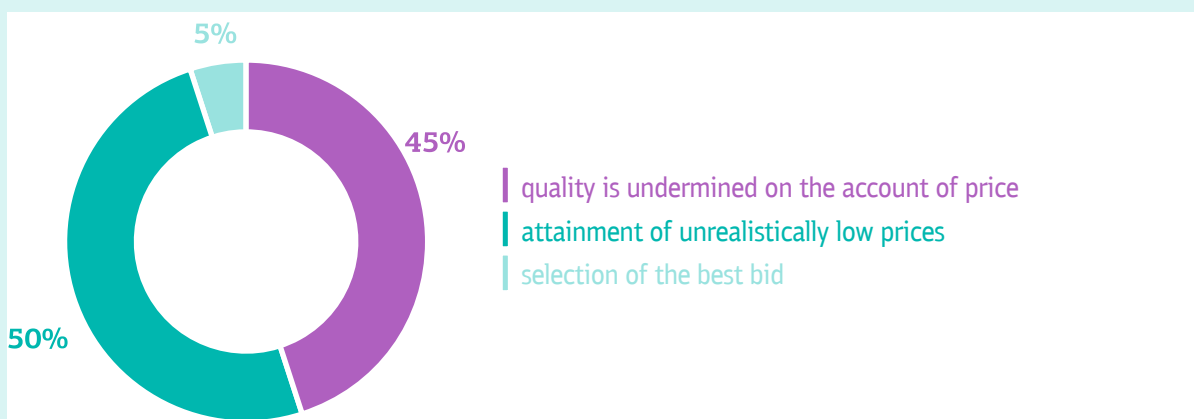
Only small share of surveyed companies (16%) indicated that technical specifications are developed in such manner that they often (14%) or always (2%) include necessary details to guarantee quality of what is being procured.

E-auctions continue to underperform in terms of their main purpose

- **95% OF SURVEYED COMPANIES BELIEVE THAT E-AUCTIONS RESULT IN ATTAINMENT OF UNREALISTICALLY LOW PRICES AND UNDERMINE QUALITY OF PROCUREMENTS ON THE ACCOUNT OF THEIR PRICE.**

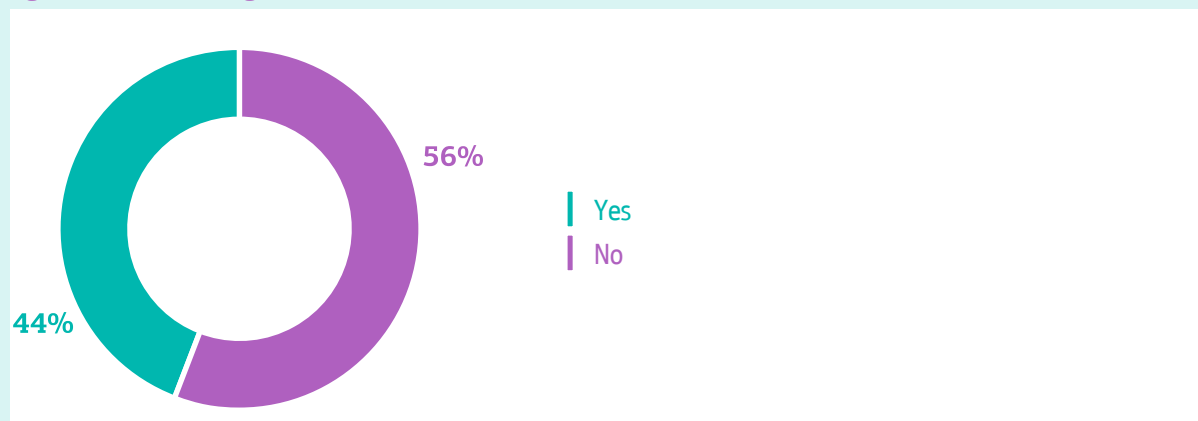
Asked about what best depicts e-auctions, only small share of surveyed companies (5%) indicated that e-auctions are characterized by selection of the best bid. Most companies believe that e-auctions result in attainment of unrealistically low prices (50%) and undermine quality on the account of price (45%). Almost identical answers to this question were obtained under the surveys conducted one and two years ago.

In your opinion, what best depicts e-auctions?



As many as 44% of surveyed companies believe that prior to the start of electronic auctions there are arrangements among bidding companies, resulting in no reduction of initially bided prices. The other half of them (56%) negates doubts that companies have agreed in advance not to reduce prices in tender procedures.

In cases when e-auctions do not result in price reduction, do you think there are prior agreements among bidders?



Similar shares of answers to this question were obtained under the previous survey.

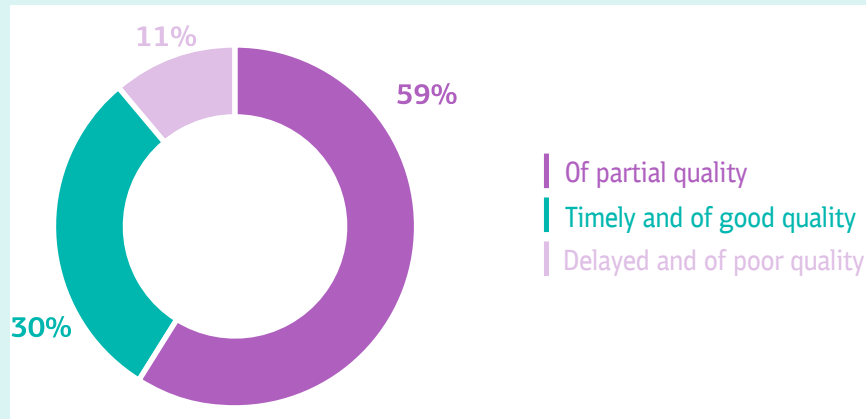
More than one third of surveyed companies (38%) believe that contracting authorities purposefully define unattainable eligibility criteria for tender participation in order to remain with one bidder and avoid the obligation to organize planned e-auctions. Nevertheless, remaining 62% of companies indicated that these practices never or rarely happen.

Satisfaction from communications with contracting authorities

- **MORE THAN HALF OF SURVEYED COMPANIES (59%) ASSESSED COMMUNICATIONS WITH CONTRACTING AUTHORITIES IN THE COURSE OF IMPLEMENTATION OF PUBLIC PROCUREMENTS TO BE OF 'PARTIAL QUALITY'.**

Complete satisfaction in terms of communications with contracting authorities in cases when they needed clarification of tender procedures in which they participated was expressed by 30% of surveyed companies, qualifying such communications as timely and of good quality. On the contrary, only 11% of surveyed companies indicated that communications in said cases is delayed and of poor quality. Remaining 59% of companies assessed communications with contracting authorities to be of partial quality.

How do you assess communications with contracting authorities in public procurement procedures in which you have participated?



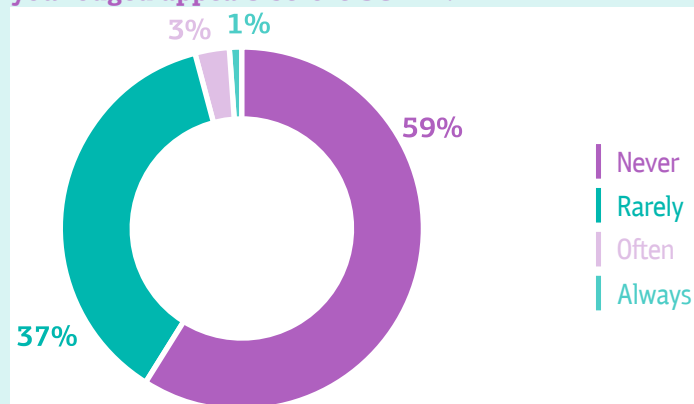
Compared to survey results obtained one year ago, it can be concluded that companies' satisfaction in regard to communications with contracting authorities is almost identical.

Dominant share of companies do not lodge appeals for tender procedures

➤ **AS MANY AS 96% OF SURVEYED COMPANIES NEVER OR RARELY LODGED APPEALS TO CONTEST TENDER PROCEDURES IN WHICH THEY PARTICIPATED, MAINLY DUE TO HIGH CHARGES RELATED TO APPEAL PROCEDURES AND THEIR DISTRUST IN SCPPA.**

Only 4% of surveyed companies reported that they often or always lodge appeals before the State Commission on Public Procurement Appeals (SCPPA) in cases when they are dissatisfied with the manner in which public procurements were implemented. On the other hand, high share of companies indicated that they never (59%) or rarely (37%) lodge appeals before SCPPA when they are dissatisfied with public procurement procedures. These figures are similar to survey results obtained one year ago.

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



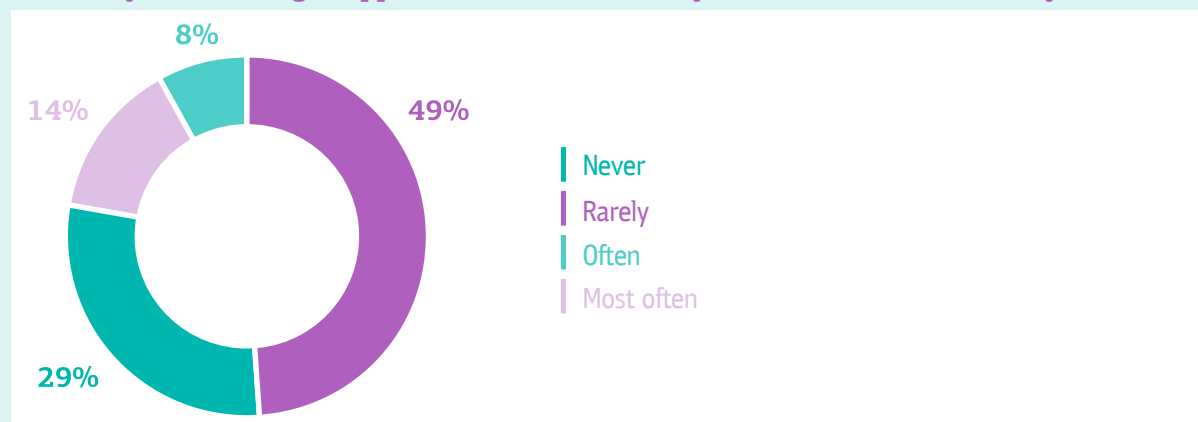
Asked about reasons why they rarely or never appeal public procurements before SCPPA, 45% of surveyed companies indicated high charges related to appeal procedures, while 41% of them indicated distrust in SCPPA as reason thereof. 9% of companies do not appeal public procurements due to fear of possible elimination in future procurements, while 5% of them enlisted other reasons for their reluctance to lodge appeals before SCPPA.

What are your reasons for never or rarely appealing tender procedures before SCPPA?



As regards satisfaction with decisions taken by SCPPA, as many as 78% of surveyed companies are rarely (49%) or never (29%) satisfied with decisions taken by SCPPA. Unlike them, 22% of companies are always (14%) or often (8%) satisfied with SCPPA decisions.

In cases you have lodged appeals, how satisfied are you with decisions taken by SCPPA?



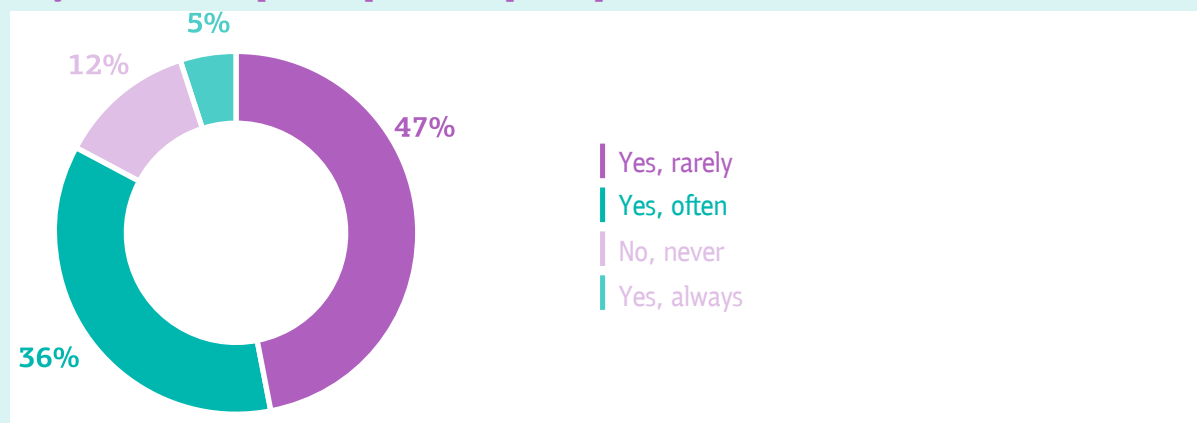
Similar results in terms of appeal procedures were obtained under the previous survey; however, modest improvement was noted in terms of reasons indicated for their reluctance to appeal tender procedures due to fear of retribution by contracting authorities targeted with appeals lodged. One year ago, this reason was indicated by 21% of companies, but the share of these answers under this survey accounts for only 9%.

Corruption in public procurements

- **AS MANY AS 88% OF SURVEYED COMPANIES BELIEVE CORRUPTION IS PRESENT IN PUBLIC PROCUREMENTS, BUT INDICATED DIFFERENT ASSESSMENTS ABOUT ITS PRESENCE.**

The highest share of companies, i.e. 47%, believe that corruption is rarely present in public procurements, 5% of them indicated corruption is always present, while 36% of them reported that corruption is often present. Only 12% of companies indicated there is no corruption in public procurements.

Do you think corruption is present in public procurements?



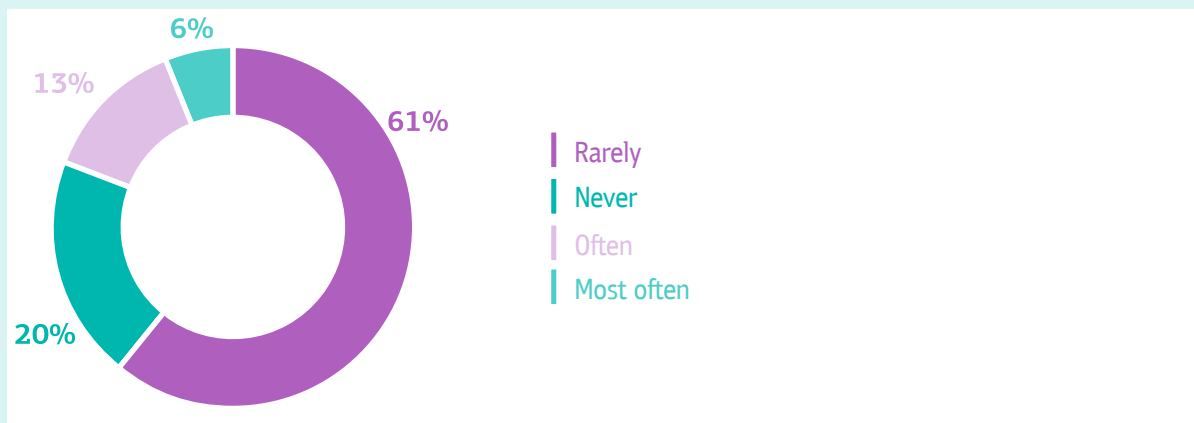
Under the survey conducted one year ago, 79% of companies indicated presence of corruption in public procurements with the difference that higher number of companies answered there is no corruption compared to results obtained under this survey (21% versus 12% this year). On the other hand, results obtained under the current survey include higher number of companies that indicated corruption is rarely present in public procurements (47% versus 38% last year).

Non-compliance with the Law on Public Procurements

- **DOMINANT SHARE OF COMPANIES REPORTED THAT THEY, OFTEN OR RARELY, WITNESSED NON-COMPLIANCE WITH THE LAW ON PUBLIC PROCUREMENTS IN TENDER PROCEDURES IN WHICH THEY PARTICIPATED.**

As regards cases in which companies witnessed non-compliance with the Law on Public Procurements, 6% of surveyed companies indicated that they often witnessed such non-compliance. In the opinion of 13% of companies, non-compliance happened often, while the highest share of companies (61%) reported rare occurrence of law violations. Answers that they have never witnessed non-compliance with the Law on Public Procurements were provided by 20% of surveyed companies.

How often did you have remarks concerning non-compliance with the Law on Public Procurements in tender procedures in which you participated?



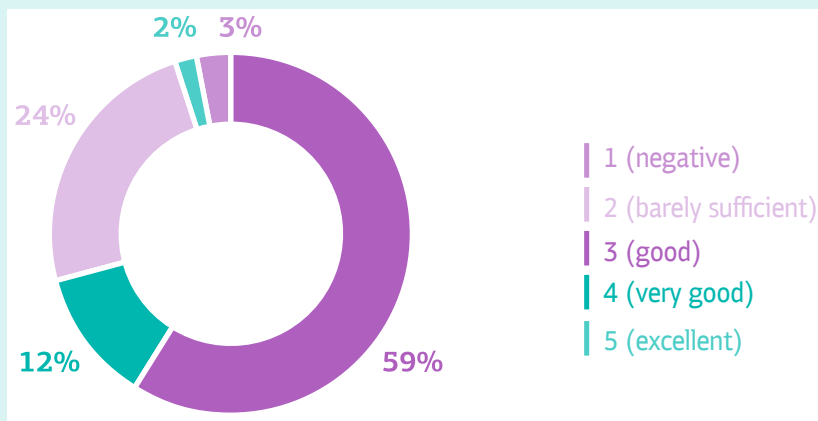
Almost identical answers to this question were obtained under the previous survey conducted in late 2016.

Overall assessment for the process of public procurements

➤ ON THE SCALE FROM 1 (NEGATIVE) TO 5 (EXCELLENT), COMPANIES GAVE AN AVERAGE SCORE OF 2.85 FOR THE OVERALL PROCESS OF PUBLIC PROCUREMENTS IN THE REPUBLIC OF MACEDONIA..

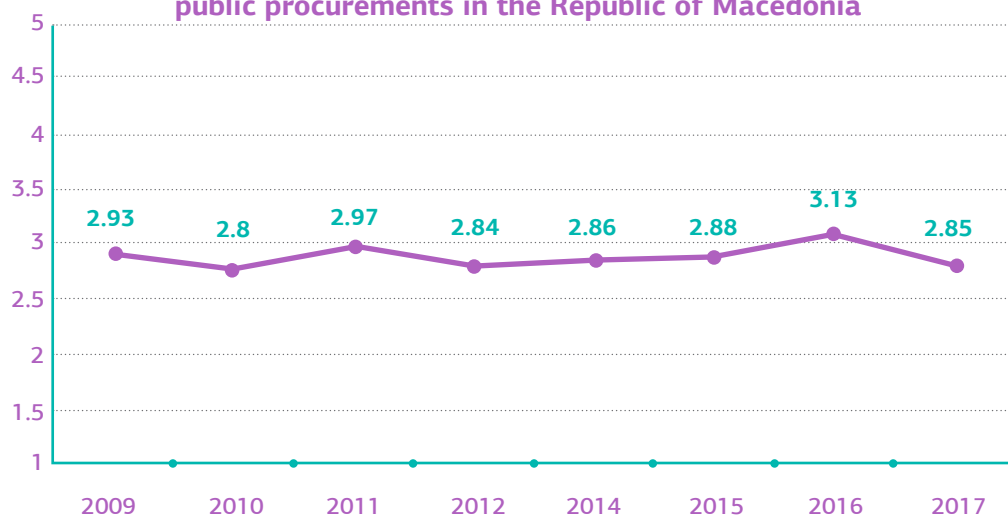
When asked to assess the overall process of public procurements in the Republic of Macedonia, surveyed companies gave an average score of 2.85, whereby 3% indicated assessments of 1 (negative), 24% indicated assessments of 2 (barely sufficient), 59% indicated assessments of 3 (good), 12% indicated assessments of 4 (very good); and 2% of surveyed companies assessed the process of public procurements with assessments of 5 (excellent).

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



Compared to results obtained under the previous survey, deterioration by 0.28 points was observed in terms of companies' satisfaction with tender procedures in which they participated, whereby the average score is again lower than 3.

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



Comparison of average scores obtained across the years provides the conclusion that companies indicated the highest assessments for the process of public procurements under the survey conducted in 2011, when the average score was calculated at 2.97.

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

Using the possibility to share their views, provide guidelines and make specific proposals aimed at changing and improving legislation that governs public procurements, surveyed companies offered around hundred suggestions.

Dominant share of their proposals concerns changes to current legal provisions according to which lowest price is the single criterion for selection of the most favourable bid. Hence, almost all economic operators making suggestions for law changes referred to the need to have this legal provision amended. Significant share of surveyed companies requested quality to be taken into consideration when awarding public procurement contracts, justifying their request with the fact that lowest price undermines quality which, when made due consideration of, would ensure participation of more companies in public procurements.

The next frequently indicated group of proposals is related to mandatory electronic auctions. In that regard, companies' proposals range from cancellation of e-auctions for small-scale procurements, through introduction of limits to price reductions, all the way to introduction of one-round of price reduction during downward bidding.

Following is the group of proposals related to control of public procurements, especially in terms of performance of public procurement contracts and participation of experts in development of technical specifications.

Below is selection of proposals for law changes as expressed by companies:

- lowest price cannot be the single and the highest criterion for selection of the most favourable bid because it results in low quality;
- use of lowest price as single criterion should be revoked;
- methods need to be designed to ensure quality in public procurements;
- solution should be designed to obtain the best quality for prices offered;
- highest and lowest bids should be immediately exempted as unserious;
- criteria on quality should be introduced, without denying companies their right to tender participation;
- it is ridiculous to organize e-auction starting with the lowest price bided; a company with 10-year experience feels stupid when losing the contract to recently established company as result of roulette-like auction;

- certain quality requirements should be in place for goods being purchased, instead of selecting the lowest bid;
- quality should be controlled more often and more rigidly;
- the highest price should be accepted; priority should be given to quality; second and third ranked bidders should perform supervision of contract performance; if the contract is not performed, penalties should be paid to other bidders;
- detailed, clear and unbiased definition of eligibility conditions and criteria for companies in tender documents;
- e-auctions should be cancelled;
- expert staff should be engaged in development of technical specifications and tender documents;
- attention should be paid to specificity of procurement subjects, i.e. separate tender documents should be developed for different types of products;
- tender specifications should be clear;
- scope of documents required for tender participation should be reduced;
- tender procedures should be announced only when contracting authorities dispose with sufficient budgets for their performance;
- due consideration should be made of establishing a single body tasked with monitoring the overall process of public procurements;
- strict control should be introduced to check whether what was requested under tender documents is actually performed;
- special body should be tasked to monitor the process of public procurements from start to end;
- the overall process should be controlled, in particular performance of public procurements;
- control mechanism should be introduced, including an external person that would verify whether what is written in tender documents is delivered to contracting authorities;
- complete control is needed, meaning that the process should not be reduced only to what is written on paper, i.e. reliability of documents should be checked;
- control should be introduced for contract performance;
- transparency and unbiased assessment should be ensured in the entire procedure and fines should be imposed for non-compliance;
- checks should be made whether what was agreed is actually delivered;