MONITORING

PUBLIC PROCUREMENT AT THE LOCAL GOVERNMENT LEVEL





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INTRODUCTION: GOALS AND METHODOLOGY

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

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

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

This report is developed on the basis of monitoring results from a sample of 40 public procurements implemented by local institutions across Macedonia, in the period from 1 April to 30 September 2017.

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

The monitoring process is carried out by collection of

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

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

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



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

SUMMARY

ow competition in local tender procedures, whose multiannual average is calculated at 2.6 bids per tender procedure, continues this trend and stands below three bidders, which is considered minimum level of competition. In average, monitored tender procedures were marked by competition of 2.8 bidders, which is the same level observed in the previous period. Additional concern is raised by increased share of tender procedures presented with one bid or no bids, which has risen to high 40% in this monitoring period and is the highest share observed in the last three years.

Poor assessment of procurements' estimated value often leads to failure of local tender procedures. Some tender procedures are annulled for several times and are successful only after correction of their estimated value. This costs time and money, inefficient procurements and greater insecurity for companies.

The share of annulled public procurements in the monitoring sample has risen to 20%, reaching the highest threshold for the second time in the last five years. In as many as 50% of annulled tender procedures, reasons indicated for their annulment implied no bids received.

Electronic auctions were held in only 58% of monitored tender procedures. They were successfully completed only in public procurements marked by higher competition, whereas downward bidding in the remaining share of tender procedures was formality and often raises concerns about previous arrangements between companies about their actions during e-auctions.

Unlike any period in the past, throughout this monitoring period relevant data for as many as 28% of tender procedures requested through the instrument for free access to public information were secured only after appeals were lodged before the relevant commission for protection of this right.

COMPETITION IN LOCAL TENDER PROCEDURE REMAINS LOW

Low competition in local tender procedures, whose multiannual average is calculated at 2.6 bids per tender procedure, continues this trend and stands below three bidders, which is considered minimum level of competition. In average, monitored tender procedures were marked by competition of 2.8 bidders, which is the same level observed in the previous period. Additional concern is raised by the increased share of tender procedures presented with one bid or no bids, which has risen to high 40% in this monitoring period and is the highest share observed in the last three years.

ow competition remains one of the main indicators about negative state-of-affairs in local public procurements. As was the case before, in this reporting period as well the average number of bidders per tender procedure accounts for 2.8 and is slightly higher that the multiannual average calculated at 2.6 bidders (Figure 1).

Figure 1.

Competition in monitored tender procedures at local level: average number of bidders per tender procedure



In addition to the arithmetic mean, negative developments related to low competition in local public procurements is further confirmed by two other measures used to establish the general tendency, those being: the median and the mode.

In this monitoring period, the median, i.e. the middle number of bidders when ranked in ascending order accounts for 2 and is lower than the arithmetic mean calculated at 2.8.

Ascending order of the number of bidders: 0000111111111111111112222233333344445799

MEDIAN:

2 bidders

(middle of the order: 2+2 = 4/2 = 2).

The other measure, i.e. the mode or the most frequently occurring number of bidders, accounts for 1, because as many as 12 tender procedures were marked by participation of only one bidder.

MODE:

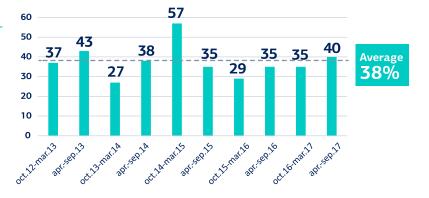
1 bidder

(most frequently occurring number of bidders).

The next parameter, defined as the share of tender procedures presented with one bid or no bids, provides the same conclusion. In the monitoring period, this share has risen to 40% and is the highest share of such tender procedures observed in the last two and a half years (Figure 2).

Figure 2.

Competition in monitored tender procedures at local level: share of tender procedures with one bid or no bids



The multiannual effort on monitoring public procurements shows that only a handful of procurement subjects are marked by somewhat satisfactory level of competition, i.e. three or more bids per tender procedure (for example, procurements organized for toner cartridges, computer equipment, and more recently, construction works of small scope). Hence, the average number of bids in tender procedures organized for construction works of small scope (such as construction of streets, small section of local roads, reconstruction of streets, etc.) from this monitoring sample was calculated at 9 bids. At the same time, it should be noted that all these tender procedures, without any exception therefrom, were completed with electronic auctions that resulted in significant price reduction.

On the other hand, concerns are raised with very low competition observed in public procurements for subjects that are generally marked by high number of bidding companies participating in the relevant market (such as passenger vehicles, office supplies, foodstuff, paving elements/ tiles, etc.).

The problem of tender procedures marked by small number of bidders lies in the fact that, in cases of procurements presented with one bid, the initially offered price is reduced because of the inability to organize e-auction, whereas submission of final bid does not result in price reduction, except in cases when the price should be lowered

to fit within the procurement's estimated value in order to avoid tender annulment due to high prices. In cases of procurement procedures presented with two bids, actual competition among bidding company is rare and commonly e-auctions are marked by one formal downward bidding which, when pursued by the first-ranked company is insignificant, and when pursued by the second-ranked company is made for the purpose of breaking ranks and coming on top of the list.

Although low competition in tender procedures has persisted for long string of years, efficient solutions are not offered to address problem. It is a matter of multifaceted problem, which is a result of numerous factors and has negative effect on different aspects of public procurements. Hence, valid is the recommendation for competent institutions to immediately engage in detailed analysis and offer solutions aimed at improving competition in public procurements, which would ultimately improve cost-effectiveness of procurements, i.e. would imply purchase of the best quality for the money available. Moreover, the need to research companies' behaviour when participating in public procurements, and especially in regard to possible illegal arrangements among them, was reiterated several times. There are daily examples that raise concerns about possible previous arrangements among companies participating in public procurements, which is prohibited by law and is liable to serious sanctions.

WHAT A DIFFERENCE COMPETITION MAKES!

Entry of competition in an area which, for years, was dominated by one company enabled price reduction. However, that did not last for long because the competitor was issued prohibition for participation in tender procedures in duration of one year.

everal tender procedures from the monitoring sample concerned procurement of services related to disinsection, i.e. aerial or terrestrial spraying against mosquitos. For the first time after many years, a new legal entity entered this business in 2017, resulting in noticeable price reduction under tender procedures organized for these services.

Hence, the monitored tender procedure organized by one municipality for procurement of aerial protection against mosquitos was completed with e-auction (with participation of both companies) at which the initial price in the amount of 620,000 MKD was reduced by 75% to final price in the amount of only 155,000 MKD, which is significantly lower from the procurement's estimated value set at 630,000 MKD.

Another monitored tender procedure organized for services related to "application of insecticide for destruction of adult mosquitos" requiring these services to performed in "aerial or terrestrial" manner was marked by even higher level of competition because, in addition to the two companies providing aircraft spraying against mosquitos, the tender procedures allowed bids from companies that perform these services terrestrially, i.e. from the land. Three bids were submitted and the initial price in the amount of 78,000 MKD was reduced to 23,010 MKD.

Conversely, two other tender procedures organized for "aircraft spraying for mosquito protection" were presented with one bid each and the bidding company did not reduce its initial price as part of submitting its final offer. The second tender procedure was also presented with one bid from the same company, which did not reduce its initial price. In both cases, prices attained are slightly lower than the procurement's estimated value.

One of these two tender procedures also featured second bidding company, which was eliminated because, during checks performed by the relevant committee into negative references, it was established that the second company is blacklisted for participation in tender procedures.

POOR ASSESSMENT OF PROCUREMENT'S ESTIMATED VALUE IS COSTLY

Poor assessment of procurements' estimated value often leads to failure of local tender procedures. Some tender procedures are annulled for several times and are successfully only after correction of their estimated value. This costs time and money, inefficient procurements and greater insecurity for companies.

he monitoring sample for local public procurements included numerous examples that are indicative of the fact that poor calculation of procurements' estimated value negatively affects outcomes of tender procedures. Namely, the estimated value of individual procurement is the maximum amount of funds under which one institution could sign the relevant procurement contract. In cases when prices bided for the public procurement are higher than its estimated value, the tender procedure is annulled or the institution decides to increase the procurement's value in order to be able to sign the contract and save the tender procedure.

There are numerous examples of public procurements in which contracting authorities have annulled their tender procedures several times because, even after organization of e-auctions, they were presented with prices that are higher than what they planned, i.e. than the estimated value. In almost all cases, such tender procedures are successful only after their estimated value is increased.

Such example was observed in the tender procedure organized by one municipality for procurement of construction materials, which was divided into four procurement lots. This procurement was estimated in the value of 1,200,000

MKD, while all three bidders participating in the tender procedure, after organization of e-auctions for individual procurement lots, offered final prices in total amount of 1,469,000 MKD. Absurd of public procurements organized in our country is such that it attributes the fault thereof to companies and not to institutions for their poor assessment of procurements' estimated value. According to the relevant formulation in the law, such tender procedures are annulled on the grounds that "bidders offered prices and conditions for contract performance that are more unfavourable than actual market prices and conditions".

After this procurement failed, the contracting authority increased its estimated value to 1,500,000 MKD. On the second tender procedure, bidding companies offered almost identical prices to those submitted under the first procedure (1,470,000 MKD), but this time around the tender procedure was successful because their prices corresponded to the estimated value. To make the absurd greater, several months later prices in the total amount of 1,469,000 MKD which were considered "less favourable that actual market prices" under the previous tender procedure, are believed to be favourable and realistic, in spite of the fact that they are slightly higher than previously bided prices (1,470,000 MKD).

Another blatant example is the tender procedure by means of which one municipality requested construction of 12 wooden bird watching poles on concrete basis, for total amount of 133,400 MKD. No bidding companies participated in any of the three tender procedures organized by the municipality in the course of 2017. This procurement was successfully completed in 2018, but only after the municipality increased the estimated value to 180,000 MKD.

The tender procedure organized by another municipality for procurement of services for servicing and main-

tenance of four vehicles in possession of the municipality for a period of two years, estimated in the value of 300,000 MKD, failed because it was not presented with any bids. Under its repeated tender procedure the municipality increased the estimated value to an amount that is five times higher, i.e. 1,200,000 MKD, and the procurement was successfully completed.

Estimated value of procurements is a very important element in the system of public procurements. For contracting authorities, as accurate as possible establishment of this value would mean better planning and utilization of funds, as well as more efficient and timely procurements. In terms of companies, estimated values are an important benchmark of funds disposed by contracting authorities for given procurement. When procurements are estimated much lower than their actual value, they risk obtaining higher prices and ultimately tender procedure annulment. Conversely, when procurements are estimated much higher than their actual value, they risk obtaining bids with prices much higher than actual prices and spending more funds for procurement of what could be purchased at realistic price on the market.

Assessment of procurements' estimated value is a complicated procedure and most contracting authorities do not approach it with due diligence. Most often, estimated value of procurements is set according to budget funds available for that purpose, based on relevant spending in the previous year, and the like. Institutions have not developed separate methodologies on calculation of procurements' value and they do not engage in market research prior to development of their annual plan on public procurements, i.e. at the time when they engage in needs assessment for procurements and their approximate values.

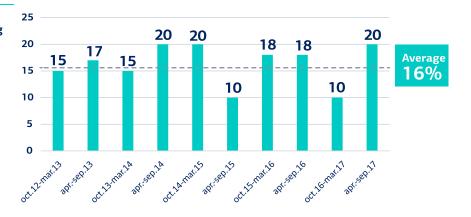
ALREADY HIGH SHARE OF TENDER ANNULMENTS CONTINUES TO INCREASE

The share of annulled tender procedures in the monitoring sample has risen to 20%, reaching the highest threshold for the second time in the last five years.

n as many as 50% of annulled tender procedures, reasons indicated for their annulment implied no bids received. Hence, this problem whish in the past was considered dominant reason for annulment of tender procedures has again climbed to the top of the list.

Figure 3.

Share of annulled tender procedures in the monitoring sample on local level

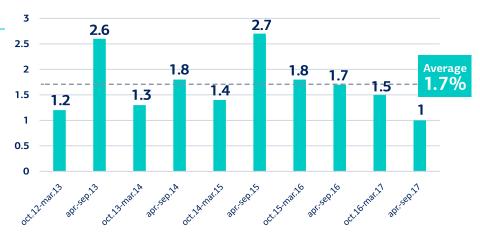


Next two most frequently indicated reasons for tender annulment are also commonly present. In the case of 25% of annulled tender procedures, reasons indicated thereof implied that bidding companies offered inadequate or higher prices, while two groups of annulled tender procedures, each accounting for 12.5%, concerned unacceptable bids or changed needs at the contracting authority due to objective reasons.

What could be assessed as favourable development under this monitoring sample in terms of tender annulment is the decrease observed in regard to the average number of bidders participating in annulled tender procedures to 1 which is, thus far, the lowest threshold and is significantly lower than the average (Figure 4).

Figure 4.

Average number of bids in annulled tender procedures



In continuity, monitoring activities have encountered interesting, and often absurd, examples of tender annulments.

In addition to already enlisted examples whereby tender procedures were annulled because they were not presented with any bids until the contracting authority acknowledged the need to increase the estimated value and thereby receive bids, examples elaborated below also deserve to be noted.

One public enterprise organized procurement procedure for wash-system facility intended for double-deck buses and servicing of existing wash system. Interesting aspect of this procurement concerns the fact that eligibility criteria for tender participation included the criterion defined as follows: "bidders should have at least one previously performed contract for delivering, assembling and putting into operation wash-system facility, including delivery of training for operation of auto-wash system for buses". It

seems that this criterion was insufficient to guarantee eligibility of companies, so they were further required to be in possession of "ISO certificate 9001:2008 or MKS EN ISO 9001:2015, or equivalent." Although experts engaged by then existing Council of Public Procurements indicated that certificates of standard had nothing in common with the procurement subject, the tender procedure was announced with these conditions included. Hence, it is easy to predict that the tender procedure was presented with one bid, submitted by the same company that had previously signed contract with this public enterprise for procurement of the previous wash system facility. Nevertheless, even under these circumstances the tender procedure failed and had to be annulled on the grounds of formal shortfalls identified in the bid, i.e. error related to electronic signing of documents. The tender procedure was repeated and the contract was signed with the same company.

Here it should be noted that when the first wash system facility was purchased, tender documents did not include eligibility criterion according to which bidding companies are required to possess certificates of standard on quality management. Of course, under the previous procurement procedure bidding companies were not required to demonstrate previously performed contract of the same type.

Another procurement procedure was annulled one month after the contracting authority took the decision on selection of the most favourable bidder. It is a matter of procedure organized by public enterprise for procurement of bus. Previously, this contracting authority organized tender procedure divided into three procurement lots, one of which concerned procurement of bus, second lot concerned procurement of four terrain vehicles, and third lot concerned procurement of freight vehicle. It was presented with bids and completed procurements under the second and third lots, i.e. terrain vehicles and truck. The tender procedure

was unsuccessful in terms of the procurement lot for the bus, because no bids were received. This procurement was repeated under new open procedure, which was presented with two bids, followed by e-auction where bidding companies did not provide any price reduction and selection of the bidder that offered lower price. Three days after e-auction was held, the contracting authority took the decision on selection of the most favourable bidder, but after more than one month after this decision was taken the contract was still not signed. One month later, the contracting authority decided to annul the tender procedure on the grounds of changed needs due to unanticipated objective reasons.

It remains unclear how the contracting authority needed the bus under the previous and under this tender procedure, but one month later and after two completed tender procures realized that its needs had changed. In addition to money spent and time wasted for organization of this procurement, such tender procedures create insecurity and distrust among companies.

The share of annulled tender procedures in Macedonia which, at local level, account for an average of 16%, during some monitoring periods has climbed up to 20% and is incomparably high to relevant shares observed in other countries. Although it is a matter of long-standing problem, thus far, competent institutions failed to undertake any serious analysis of reasons behind tender annulments in order to identify possible abuses of this law-stipulated mechanism. It seems that contracting authorities are given broad space to use tender annulments whenever matters do not turn out as they had planned or desired. Analysis of this problem is needed in order to facilitate adoption of adequate measures, unless contracting authorities are purposefully given this discretionary right that has far-reaching negative consequences.

e-AUCTION

- REGULAR PROBLEM IN PUBLIC PROCUREMENTS

Electronic auctions were held in only 58% of monitored tender procedures. They were successfully completed only in public procurements marked by higher competition, whereas downward bidding in the remaining share of tender procedures was formality and often raises concerns about previous arrangements between companies about their actions during e-auctions. lectronic auctions are envisaged as the final stage of public procurement procedures wherein bidding companies, whose bids have been evaluated as acceptable, would compete against each other in downward bidding, i.e. reduction of initially offered prices. Although stipulated as mandatory for all tender procedures, throughout their existence e-auctions were held in only half of tender procedures. Under this monitoring sample, e-auctions were organized in 58% of tender procedures, while the remaining 42% of tender procedures were not completed with e-auction because they were not presented with any bids or were presented (or remain) with only one bid.

In more than 90% of cases where e-auctions were held, they were not concluded with price reduction. Often, price reductions are the highest in cases when several companies participate in downward bidding. Nevertheless, monitoring activities show that in cases of public procurements organized for construction works, project design services, etc. price reductions are made within reasonable boundaries, while in cases of public procurements marked by lower number of bidders (most often, three bidders) prices were reduced tenfold, after which contracting authorities - prior to signing the contract - request the bidder that has offered the lowest price to provide explanation/justification of low prices.

The procurement procedure organized for asphalting local streets in one municipality was marked by participation of five companies, with individual prices ranging from 17,000 MKD to 41,350 MKD. Only one bidding company participated in the e-auction and offered one price reduction, from initial price in the amount of 20,232 MKD to 16,830 MKD, thereby breaking rank and wining this tender procedure. None of the other four companies responded to this challenge, although the new and final price is by only 170 MKD better than the price offered by the previously first-ranked bidder.

Another public procurement organized by one municipality for works related to construction of faecal sewage was presented with two bids, and only one bidding company participated in e-auction with price reduction by only 554 MKD, from 1,368,554.60 MKD to 1,368,000.60 MKD, representing decrease by 0.004%. The second bidder, although it offered price that is by 1,064 MKD higher than the competitor's price, did not respond to this reduction.

Unlike these examples, e-auction for the tender procedure related to procurement of works for cleaning drainage channels and marked by participation of 12 bidders resulted in price reduction from 1,241,625 MKD to 285,585 MKD.

Similar outcome was observed under the procurement procedure for services provided by temporary employment agency wherein agency surcharge was reduced from

initial 6.9% to 2% during the e-action marked by participation of four bidders.

The tender procedure for development of technical documents for local road was marked by participation of ten bidders, which reduced the starting price in the amount of 153.000 MKD to 69.000 MKD.

Experiences related to e-auctions impose the recommendation for this phase of public procurements to be optional, because they do not always yield the desired results. In some cases, when e-auctions are not organized due to lack of competition, the initial price remains as the final offer and is usually higher, in expectation of downward bidding during anticipated e-auction. In other cases, e-auctions result in extremely low prices, thus making it obvious that they are unrealistic, but contracting authorities still sign contracts under those prices in spite of serious doubts that contract performance would not meet the requirements related to deadline, quantity or quality.

On the other hand, even if under conditions when eauctions are optional contracting authorities are recommended to engage in though research of procurement subjects marked by sufficient competition to ensure that e-auctions will be held and will imply healthy competition among companies, resulting in reduction of initially bided prices to reasonable level for themselves, which are also acceptable for contracting authorities.

DATA FOR EVERY THIRD TENDER PROCEDURE WERE SECURED AFTER LODGING AN APPEAL

Unlike any period in the past, throughout this monitoring period data for as many as 28% of tender procedures requested through the instrument for free access to public information were secured only after appeals were lodged before the relevant commission for protection of this right.

n all cases where appeals were lodged against contracting authorities that provided partial responses or did not disclose requested information (administration's silence), the Commission for Protection of the Right to Free Access to Public Information (CPRFAPI) admitted them as reasonably grounded and ordered contracting authorities to disclose requested information, which was complied with.

Nevertheless, this added several months to the process on data collection for monitored tender procedures which provide basis for detailed analysis and development of this monitoring report.

Regular practice observed in all monitoring periods and observed in regard to this monitoring sample concerns the fact that significant part of tender procedures for which contracting authorities do not disclose information and comply with this obligation after appeals are lodged were ultimately annulled, although they were marked by competition among several bidders. Almost one third of tender procedures in this monitoring sample belong to this group, i.e. relevant information was obtained only after appeals were lodged.

As regards access to public information, two tender procedures elaborated below allowed the monitoring team to infer recommendations and lessons learned in relation to availability of information and greater transparency of tender procedures.

The procurement procedure organized for development of project documents for reconstruction of local road was completed with e-auction at which the initial price of 161,500 MKD was reduced to 95,000 MKD. The committee concluded that said price reduction is significantly lower than actual market prices, thus raising concerns about contract performance, and therefore requested the bidding company to provide explanation/justification of this price. The bidding company submitted the requested explanation that was deemed justified by this committee, followed by signing of the procurement contract.

Nevertheless, question is raised why this explanation/justification is not part of official documents published for the tender procedure, i.e. documents which the contracting authority disclosed as response to the request made pursuant to the instrument for free access to public information. This information would be useful for other bidding companies, which are the best control mechanism of the reality, i.e. the bidder's justification for the dramatic price reduction which has triggered fear with the committee fear that the contract cannot be performed.

Another example concerns the tender procedure for procurement of foodstuff organized for the needs of one municipality, which was presented with only one bid. This procurement was estimated in the value of 300,000 MKD, but the price offered by the bidding company amounted to 251,100 MKD. Nevertheless, during submission of its final offer the bidding company reduced the initial price to only 150,000 MKD, i.e. to almost half of funds allocated by the contracting authority for this procurement. Such cases are extremely rare throughout the existence of the mechanism called "submission of final offer". Commonly, when they remain the single bidder, companies do not reduce their initially offered price or provide minimum price reduction to accommodate the procurement's estimated value.

Hence, situations like this impose the need for disclosure of information related to possible negotiations that might have taken part between the bidding company and the public procurement committee, so they would clarify maters why the bidding company, without any reason, voluntarily halved its initially offered price, although it was not obliged to do so.

In addition to these two recommendations, another appeal should be made to contracting authorities that data and information related to their public procurements are public and should be made available to citizens whose money they dispose with and spend. That will improve public procurements, their efficiency and purposefulness, as well as the trust of companies and citizens in the system of public procurements.

