

Policy Brief

IMPROVING THE IMPLEMENTATION OF PUBLIC PROCUREMENTS *in Macedonia*



INSIDE
THIS
ISSUE



2

Introduction



4

Problems that need to
be addressed



8

Proposals to improve
the implementation
of public
procurements

INTRODUCTION

In the Republic of Macedonia, for years now public procurements are one of the most important economic activities by means of which state institutions purchase goods, services and works in total amount of almost one billion EUR (2014), accounting for 12 percent of the gross domestic product in the country. With a view to better understand the scope and importance of public procurements, it should be noted that they account for one third of the state budget.

PUBLIC PROCUREMENTS ACCOUNT FOR ONE THIRD OF THE STATE BUDGET

Except for providing a means for state institutions to purchase goods, services and works needed to maintain their normal operation, public procurements imply provision of goods that facilitate normal conditions for life and work of the population and their continuous improvement. Therefore, it is of great importance for public procurements to be implemented in a manner that would guarantee obtaining the best market value for the money spent, i.e. cost-effectiveness in public spending.

The fact that public procurements account for as much as one third of the state budget shows that they are an important source for doing business in the private sector and, as such, must ensure free competition among all interested business entities.

Having in mind that public procurements are financed with public funds, i.e. money collected from citizens and companies by means of taxes and other levies, they need to be implemented in transparent, clear, public and responsible manner, including accountability before the public whose money is being spent.

TO ENSURE AN EFFECTIVE SYSTEM OF PUBLIC PROCUREMENTS BASED ON TRANSPARENCY, COMPETITIVENESS AND INTEGRITY

As an activity by means of which the state and the private business are usually in contact, and having in mind that they account for almost one billion EUR in trading exchange, public procurements worldwide are assessed as an area liable to high risk from corruption. Thus, governments and institutions are expected to take special measures, as part of or beyond the rules governing public procurements, to prevent and eliminate corruption and conflict of interests in public spending. Numerous international organizations recommend an array of measures aimed at preventing and eliminating abuse of public procurements. In summary, they are reduced to ensuring an effective system of public procurements based on transparency, competitiveness and integrity.

LAW ON PUBLIC PROCUREMENTS, ALIGNED WITH THE EU DIRECTIVES, IS IN EFFECT FROM 2008 AND WAS SUBJECT TO FREQUENT AMENDMENTS

In Macedonia, public procurements are regulated under the Law on Public Procurements adopted in 2007 and enforced from 2008, which was drafted in line with the then-existing directives of the European Union. From its adoption, the Law underwent ten rounds of significant amendments with variable effect on ensuring the basic principles of public procurements in the country – competition among bidding companies and equal treatment and non-discrimination thereof; transparency and integrity of the public procurement contract-awarding process; cost-effective and efficient utilization of public funds in procedures on public procurement contract-awarding.

Frequent changes, especially those brought by the last round of amendments in 2013 and 2014, adopted without public consultations, introduced significant novelties in implementation of public procurements. Some of these changes have made the country a unique example in broader geographic terms according to the manner in which certain important aspects of this matter are regulated. Examples thereof include: mandatory organization of electronic auction as the final stage in all tender procedures; lowest price defined as the single contract-awarding criterion, thus ignoring quality of what is being purchased; effect of the so-called negative references by means of which an entity is prohibited to participate in any tender procedures for a period of at least one year on the grounds of having committed misdemeanours usually related to poor quality of contract performance; obligation for obtaining an approval for public procurements issued by a special body in particular circumstances, etc.

In that, serious arguments were missing in support of the need for and justification of these changes, and there are no analyses of their results and effects. On the other hand, there are frequent remarks and arguments about the negative effects on implementation of public procurements caused by the regulations in effect and the manner in which public procurements are organized and implemented.

CENTER FOR CIVIL COMMUNICATIONS IS MONITORING THE IMPLEMENTATION OF PUBLIC PROCUREMENTS FROM 2008 ONWARDS

Center for Civil Communications, being the single non-governmental organization engaged in daily and thorough monitoring of public procurements in the country from 2008 onwards, in parallel to publishing monitoring findings, is recommending specific measures aimed to address identified weaknesses and to narrow the space for malpractices and corruption in public procurements.

In addition to regular monitoring reports and for the purpose of improving the state-of-affairs in the field of public procurements, we have developed a series of other documents, such as: Recommendations Aimed to Improve the System of Public Procurements (February 2010), Proposed Amendments to the Law on Public Procurements (November 2011), Recommendations for Easier Access of Microenterprises to Public Procurements (February 2013 and the revised edition from February 2015), Policy Brief on Improving Legal Protection in Public Procurements (June 2014), Proposed Amendments to the Law on Public Procurements (February 2015), and Suggestions, Guidelines and Proposals for Drafting the "State Programme on Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interests 2016 – 2019" (September 2015).

According to weaknesses and inconsistencies identified in implementation of public procurements, as well as the behaviour on the part of state institutions when implementing public procurements, including the weaknesses and inconsistencies identified in the Law on Public Procurements, CCC's recommendations are geared in two directions: adherent implementation of legal provisions and correction of legislative solutions.

PARLIAMENT OF THE REPUBLIC OF MACEDONIA ACKNOWLEDGED AND ADOPTED SEVERAL RECOMMENDATIONS PUT FORWARD BY CCC

In the last nine years, the Parliament of the Republic of Macedonia has adopted several recommendations put forward by CCC. Most significant recommendations include: greater independence of the State Commission on Public Procurement Appeals and its positioning under the jurisdiction of the Parliament instead of the Government; awarding the status of legal entity to the Bureau of Public Procurements; introduction of shorter deadlines for contracting authorities to take decisions on bid selection or tender annulment; enabling SCPPA to annul tender procedures in cases when the contracting authority failed to submit necessary documents related to the procurement procedure; setting deadlines for contracting authorities to take action upon SCPPA's decisions; mandatory and free-of-charge publication of tender documents together with the publication of procurement notices; publication of public procurement's estimated value; revoking the obligation on bank guarantees for bids in public procurements of the smallest scope; setting proportional eligibility criteria for tender participation; reducing flexibility in use of direct negotiations; introducing topic reviews of public procurements, etc.

CURRENT REGULATIONS ON PUBLIC PROCUREMENTS IN THE REPUBLIC OF MACEDONIA DEViate FROM CURRENT AND NEW EU DIRECTIVES

Moreover, on the initiative raised by CCC, certain obligations for contracting authorities have been integrated in the Open Government Partnership Action Plan for the period 2014 – 2016, aimed at greater transparency and accountability in public spending.

However, the current regulations on public procurements are not only deviating from the current EU directives that provided the baseline for their adoption, but also from the new, reformed EU rules, which will enter in effect from April 2016. All these impose the need for a new round of revisions concerning the manner in which public procurements in the country are regulated and implemented, especially in terms of legislative solutions, institutional setup and practical enforcement.



PROBLEMS THAT NEED TO BE ADDRESSED

On the basis of several years of direct monitoring of public procurement procedures, interviews and surveys conducted with bidding companies and daily contacts with representatives of contracting authorities, a number of problems faced by market entities have been identified when participating in public procurements organized in the country. Below is a summary overview of problems that have been explained and argued in detail as part of regular monitoring reports on public procurements available at www.ccc.org.mk and printed editions thereof.

THE MOST PRESSING PROBLEM WAS CREATED WITH THE ESTABLISHMENT OF THE COUNCIL OF PUBLIC PROCUREMENTS

The most acute and, currently, most pressing problem affecting implementation of public procurements in the country was created with the establishment of the Council of Public Procurements, tasked with issuance of approvals to contracting authorities for their public procurements prior to publication of procurement notices. This Council represents an additional administrative and financial burden in the system of public procurements due to several reasons. On annual basis, the Council is addressed with more than 15,000 approval applications, thus significantly extending time-frames for implementation of public procurements – from the procurement decision to the contract-awarding decision. This body imposes obligations for officers responsible for public procurements that are neither skilled nor trained and creates confusion for companies (both domestic and foreign) by means of requests whereby they should confirm whether they fulfil the requirements defined in technical specifications and tender documents (or confirm whether they manufacture goods as required under the tender procedure and whether they fulfil eligibility criteria for tender participation). Introduction of the Council in the system on public procurements has decreased the already low competition in tender procedures, while all contracting authorities cover the costs for experts engaged by the Council and tasked with resolution of approval application in the amount of around two million EUR annually. Money charged for engagement of experts and covered by contracting authorities is secured from funds allocated for public procurements.

“LOWEST PRICE” USED AS THE ONLY SELECTION CRITERION, TOGETHER WITH A SERIES OF OTHER PROVISIONS, BRING UNDER QUESTION THE QUALITY OF GOODS/ SERVICES/WORK BEING PROCURED

Another problem affecting public procurements in the country is the use of “lowest price” as the only criterion for contract-awarding. When combined with mandatory electronic auction for all tender procedures and absence of eligibility criteria for tender participation in order to avoid the need for obtaining an approval from the Council (approval is needed when tender documents include eligibility criteria), this brings under question the quality of goods, services and works being purchased. This applies to all procurements, including those organized for procurement of medicines, food for kindergartens and hospitals, construction works, computer equipment, etc. In that, it is unrealistic to expect contracting authorities to define the quality by means of technical specifications, primarily due to the expertise needed on the part of officers tasked with implementation of public procurements to define such technical specifications for different types of procurements and, secondly, due to the pressure on contracting authorities not to limit competition by “excessively detailed descriptions” of goods/services/works they wish to obtain by public procurements.

E-AUCTIONS DO NOT NECESSARILY AND NOT IN ALL PROCUREMENTS RESULT IN ATTAINMENT OF LOWER PRICES

Another problem in this context, but also a problem in its own right, is identified in mandatory e-auctions for all tender procedures marked by participation of more than one bidding company. In practice, e-auctions do not necessarily and not in all procurements result in attainment of lower prices. Notably, as part of their initial bids, companies offer higher prices for the purpose of leaving space to reduce the price during e-auctions. However, having in mind that more than one third of tender procedures are marked with participation of one company and e-auctions do not take place, these higher prices remain in effect and are considered final prices, provided they

LOW COMPETITION CONTINUES TO DECREASE

fall within the procurement's estimated value. Furthermore, a sizeable share of cases with two bidding companies participating in the tender procedure result in exclusion of one company from further participation and, ultimately, there is only one bidding company and the e-auction does not take place. Mandatory character of e-auctions raise problems also in cases of small tender procedures due to the unrealistically low prices attained, failure to ensure cost-effectiveness of the procurement procedure (for example, in cases of procurements whose value does not exceed 500 EUR, sometimes costs for organization of e-auctions are equal to the procurement's value), as well as due to the limited possibilities for microenterprises to participate in the tender procedure, as they lose the downward bidding battle against bigger companies. This prevents utilization of advantages offered by microenterprises, such as the quality offered, speed delivery, flexibility and innovativeness.

Low competition is another long-standing problem affecting public procurements in Macedonia. Throughout the years, average number of bidders ranges between two and three, whereas half of tender procedures are presented with two or less bids. Almost one third of tenders are presented with only one bid. Factors contributing to decreased competition in public procurements are numerous. Monitoring findings, including those from company surveys, show that while in the past the most pressing problems were identified in "notorious" calls for bids submitted to only three companies and the inability for all interested companies to participate in tender procedures, as well as definition of unattainable eligibility criteria for tender participation, today they range from mandatory e-auctions, rigorous sanctions implying prohibition for companies to participate in tender procedures on the grounds of having withdrawn their bids and refusing to sign the procurement contract, to late payment for contract performance, complicated procedures, cumbersome documents required, favouring certain bidding companies, low exercise of the right to appeal on the part of companies participating in tender procedures, long-term cooperation of contracting authorities with particular companies, unwilling division of tenders into lots even in cases when such division is cost-effective for the contracting authority, pre-arranged tender participation among bidding companies, specific knowledge, required equipment and capacity for companies to participate in tender procedures, etc. As indicated previously, competition in tender procedures has not increased - on the contrary, it has decreased with the introduction of the Council of Public Procurements. Low competition, by rule, implies lower chances for obtaining bids of better quality and possibility for greater choice in public procurements.

HIGH SHARE OF ANNULLED TENDER PROCEDURES IS A PERMANENT PROBLEM

High share of annulled tender procedure is one of the long-standing problems affecting public procurements. Throughout the years, share of annulled procedures ranges from one fourth to one fifth of all tender procedures. The series of measures taken in the meantime had a very limited effect, in particular because the total share of annulled tender procedures was not marked by significant decrease, but resulted in change of reasons indicated as grounds for tender annulment. Hence, while in the past the most common reason indicated for tender annulment was the fact that no bids had been submitted, today the most frequently indicated reason is unfavourable prices bided. Of course, this is closely related to the selection

criterion defined as lowest price, inadequate assessment of procurement's estimated value and low competition in tender procedures. Frequent annulments can be brought in relation to suspicions that tender procedures are being annulled because the contracting authority was unable to realize its previous intention on awarding the contract to a favoured bidding company. Tender annulments have multifold consequences on both - contracting authorities and companies - due to delay of procurements, failed planning, insecurity of business decisions, etc.

GREATER TRANSPARENCY IS NEEDED IN PUBLIC SPENDING

(Non)transparency of public procurements has always been a burning issue. Here, one should distinguish between openness of public procurements, i.e. mandatory publication of notices for all public procurements whose value exceeds 500 EUR, and information on public procurements made broadly available to the citizens. In Macedonia, procedures on public procurement contract signing are implemented through the single internet portal – the Electronic Public Procurement System (EPPS). This portal hosts publications of procurement notices, together with eligibility criteria and technical specifications of goods/services/works being procured, as well as basic information on contracts signed, etc. Nevertheless, one must have in mind that EPPS is not intended as tool for broad information dissemination for citizens and interested entities outside the field of public procurements concerning the manner in which state institutions are spending public funds. Information of this type made available beyond EPPS is truly scarce and rare. On the other hand, browsing and searching information on EPPS requires certain skills and knowledge which people outside the field of public procurements cannot be expected to have. Otherwise, the Law on Public Procurements stipulates an obligation whereby particular information related to transparency and accountability in public spending by means of public procurements should be published in EPPS within precisely defined deadlines. However, beyond compliance with this legal obligation, only few state institutions feel the need to voluntarily publish information related to public procurements on their official websites in a reader-friendly form, manner or format. Some institutions fail to comply with their obligations and delay publication of the minimum required information as stipulated by the Law on Public Procurements. There is a possibility for more detailed information on implemented tender procedures to be obtained by means of addressing contracting authorities with information requests, but this mechanism on freedom of information is rarely used by citizens as it necessitates certain pre-acquired knowledge. In summary, information concerning planned procurements, on-going tender procedures, bidding companies, contract-defined terms and conditions, contract performance, effects of implemented public procurements and the like remain unavailable or inaccessible for citizens, and even for portion of companies interested in submitting bids.

THE NUMBER OF APPEALS LODGED BY COMPANIES PARTICIPATING IN TENDER PROCEDURES IS DECREASING, CONTRARY TO THE INCREASING NUMBER OF COMPLAINTS AND TENDER PROCEDURES

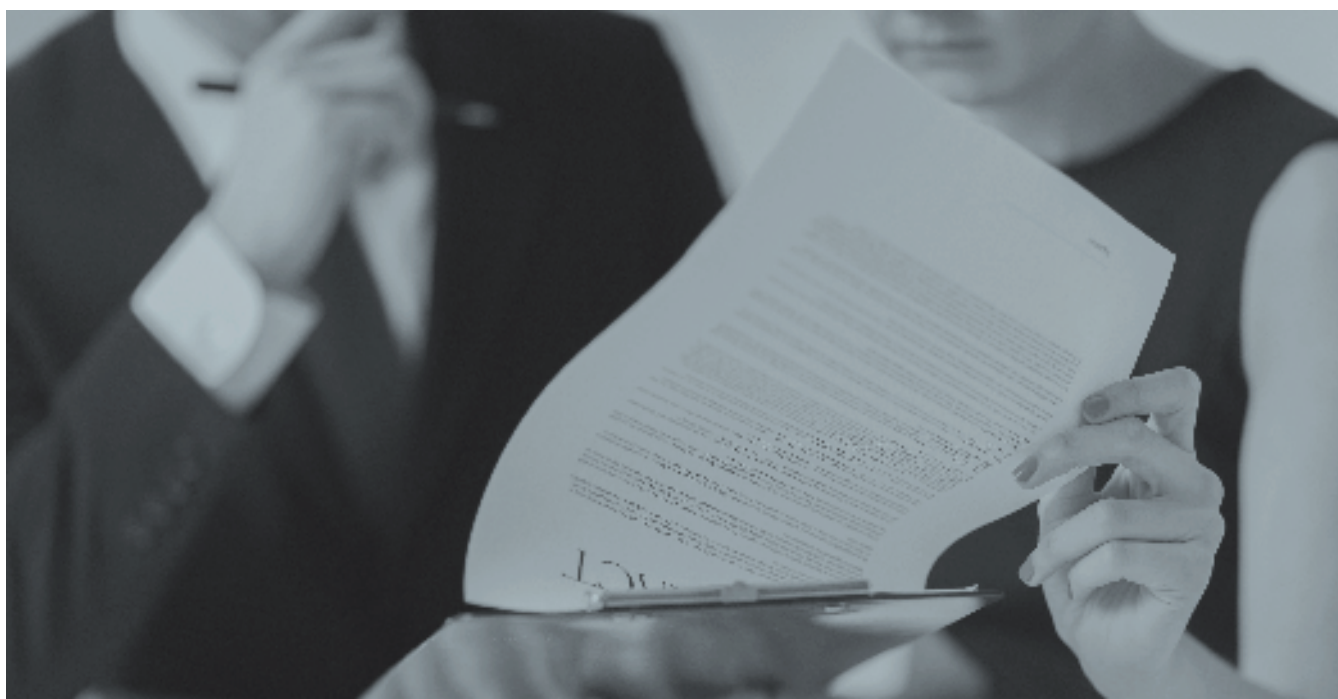
As regards legal protection of companies participating in tender procedures, it has been established that the number of appeals lodged is decreasing, contrary to the increasing number of tender procedures and complaints made by companies. Deadlines for lodging appeals, especially in the case of small tender procedures, are shorter compared to those applied in EU member-states and the neighbouring countries. Furthermore, the manner in which charges for legal protection are calculated renders the appeals related to big tender

THERE ARE NO OVERSIGHT AND CONTROL IN THE COURSE OF IMPLEMENTING PUBLIC PROCUREMENTS

procedures more cost-effective compared to the appeals related to small tender procedures. Thus, costs for legal protection are lower in bigger, rather than in smaller tender procedures. For example, in the case of public procurement worth 500 EUR, the appeal fee is set at 100 EUR, whereas in the case of public procurement worth 5,000,000 EUR, the appeal fee is set at 400 EUR. Companies participating in tender procedures indicated three main reasons behind their reluctance to lodge appeals: high costs of the appeal procedure, fear from retribution on the part of contracting authorities whose decision or procedure they are contesting, and insufficient trust in the appeal procedure. Fast, efficient, transparent and non-discriminating appeal procedure is of crucial importance for full exercise of this constitutionally-guaranteed right and for protection of integrity in public spending.

Another serious problem affecting public procurements is identified in lack of oversight and control in the course of implementing public procurement procedures. Proposals put forward under the State Strategy on Prevention of Corruption 2011 – 2015 whereby BPP should be entrusted with this role were not followed up with relevant action. Although reports of the State Audit Office and monitoring reports on public procurements have established numerous violations to the Law on Public Procurements, there are no control and oversight in implementation of tender procedures that would allow timely detection and correction of problems identified. Relevant part in numerous violations of the Law is also played by the absence of sanctions for entities implementing tender procedures in cases they make purposeful violations and circumvent the rules. All these leave broad space for malpractices in all stages of public procurements, from procurement planning to contract performance.

One must have in mind that all above-indicated problems are interrelated and marked by cause and consequence relations. Therefore, the solutions should be multidimensional as well, given the numerous examples of changes to the Law on Public Procurements throughout the years and the fact that one change might positively affect a particular problem, but has negative effect on another situation. That is why any type of changes made to regulations in the field of public procurements necessitates mandatory participation of all stakeholders.



PROPOSALS TO IMPROVE THE IMPLEMENTATION OF PUBLIC PROCUREMENTS

In order to contribute to comprehensive promotion of practices and regulations in the field of public procurements, the proposals put forward in this document address the elements of LPP that are of vital importance for implementation of public procurements in the country.

Proposals are a result of several-year comprehensive monitoring of public procurements in the country, as well as series of consultations with domestic stakeholders and relevant EU factors in the field of public procurements.

Proposed law amendments aim to ensure greater cost-effectiveness and efficiency in public spending, greater transparency, encourage competition, stimulate greater participation of small companies in public procurements and align the legislation with existing and new EU directives and practices.

TO SECURE GREATER
COST-EFFECTIVENESS,
EFFICIENCY AND
TRANSPARENCY IN
PUBLIC SPENDING,
ENCOURAGE
COMPETITION,
STIMULATE GREATER
PARTICIPATION OF SMALL
COMPANIES IN PUBLIC
PROCUREMENTS AND
ALIGN THE LEGISLATION
WITH ACTUAL AND NEW
EU DIRECTIVES AND
PRACTICES

- There is an urgent need to revise the legal solution on introducing the Council of Public Procurements, for the purpose of preventing greater distortions in the country's system of public procurements. However, until a decision is taken to revoke this body, there is an urgent need for several changes to be made with a view to avoid additional administrative and financial burden in public procurements by this body. [1] When contracting authorities present the Council of Public Procurements with evidence that they have acted upon recommendations issued in cases when they have not been issued approval, the Council should by default issue the approval, without having to engage additional experts (Article 14 of LPP). [2] Throughout the text in Article 36-a, paragraph (1) of LPP, the word "producers" should be replaced with the word "economic operators". [3] In Article 36-a, paragraph (1), line (1) of LPP, the conjunction "and" in the provision "three producers on the market in RM and three producers on the foreign market" should be replaced with the conjunction "or". [4] Implementation of mandatory market research referred to in Article 36-a, paragraph (3) of LPP should be regulated in more details by means of a bylaw. Also, following the cancelation of the Council, certain issues that fall (of were planned to fall) within the Council's competences should be reformulated and further clarified for the purpose of securing their positive effect on attainment of basic principles underlying the public procurements (for example, procurement planning, market research, setting inadequate and disproportional eligibility criteria, direct negotiations, procurement of medicines, etc.).
- It is proposed for the formulation under Article 2 of LPP enlisting the principles that need to be secured with the enforcement of the Law on Public Procurements to put a special emphasis on the principle "to obtain the best value for the money spent".
- With a view to promote application of technical dialogue, in cases of tender procedures whose value exceeds 130,000 EUR, proposals imply mandatory publication of tender documents prior to the announcement of procurement notices, for the purpose of making them available for a given period of time for comments and proposing amendments aimed to improve them.

- As regards the criterion on public procurement contract-awarding, proposals include changes to the legal provision that establishes the rule on using lowest price as the only criterion for contract-awarding [Article 160, paragraph (1) of LPP] as a step towards aligning contract-awarding criteria with the new EU directives where “economically most favourable bid” is stipulated as priority criterion, comprised of several elements which, in addition to the price, determine the procurement’s quality and cost-effectiveness.
- As regards electronic auctions, the proposed solutions include: [1] making the use of e-auctions as the final stage in public procurement procedures referred to Article 121, paragraph (1) of LPP optional (i.e. e-auctions should be organized only in cases of procurement subjects that are of standard quality); and [2] e-auctions should not be organized in bid-collection procedures whose estimated value does not exceed 5,000 EUR in MKD counter value, without VAT [Article 121, paragraph (1) of LPP].
- As regards the so-called negative references, several changes are proposed, as follows: [1] negative references referred to in Article 47, paragraph (6) of LPP should only result in the company’s exemption from future public procurements organized by the contracting authority issuing the negative reference; [2] negative references referred to in Article 47, paragraph (5) of LPP should not be issued when bidding companies have withdrawn the bids before their validity period expires and when bidding companies have failed to sign the public procurement contract under the terms and conditions set forth in tender documents and the bid submitted; and [3] legal grounds for issuance of negative references and fines to bidding companies should be aligned with those applicable in other European countries.
- As regards bid and quality contract performance guarantees, it is proposed: [1] to revoke bid guarantees (in the form of bank guarantee or deposits) referred to in Article 47 of LPP and replace them with “statement of serious intent”; [2] to institute mandatory guarantees for quality contract performance (in the form of bank guarantees) referred to in Article 48 of LPP for all public procurements whose value exceeds 500,000 EUR in MKD counter value; and [3] to replace guarantees on quality contract performance (in the form of bank guarantees) referred to in Article 48 of LPP with introduction of adequate “statement on quality contract performance” for all public procurements whose value does not exceed 500,000 EUR in MKD counter value.
- In the case of bid-collection procedures, the proposals are geared towards: [1] setting deadlines for bid submission referred to in Article 100, paragraph (3) of LPP in duration of at least seven days from the procurement notice’s publication in EPPS in cases of public procurements whose value does not exceed 5,000 EUR in MKD counter value, without VAT, and in duration of fourteen (14) days from the procurement notice’s publication in EPPS in cases of public procurements whose value does not exceed 20,000 EUR in MKD counter value, and for public procure-

ments concerning works whose value does not exceed 50,000 EUR in MKD counter value, without VAT; [2] prohibiting use of eligibility criteria for tender participation (companies' economic and financial status and technical or professional capacity) in bid-collection procedures whose estimated value does not exceed 5,000 EUR in MKD counter value, without VAT (Article 102 of LPP).

- ➡ As regards framework agreements, provisions under Article 118, paragraphs (1) and (2) of LPP should be revoked, which means that the minimum number of economic operators with which framework agreements can be signed should not be limited and signing of framework agreements with economic operators should not necessitate an approval issued by the Council of Public Procurements.
- ➡ Economic operators should not be required to present documents demonstrating their eligibility as stipulated under Article 147, paragraph (2) of LPP for each and every public procurement procedure. On the contrary, contracting authorities should download these documents from online profiles of economic operators hosted on EPPS, while economic operators should be obliged to update all documents on their profile every six months.
- ➡ The maximum amount on annual revenue set as part of eligibility criteria for companies to demonstrate their economic and financial status should be limited by means of legal provision and should be set as double the amount of the procurement's estimated value, without VAT (Article 150 of LPP).
- ➡ The space for annulment of tender procedures should be further limited, as reaction to the high share of tender procedures annulled which has been identified as long-standing problem affecting public procurements in Macedonia.
- ➡ Following changes are proposed in regard to the appeal procedure: [1] to extend and align deadlines governing submission of appeals referred to Article 216, paragraph (2) of LPP from eight, i.e. three days in the case of bid-collection procedures, to ten days; [2] to establish that the deadline for submission of appeals contesting tender documents referred to in Article 216, paragraph (2), line 3 of LPP starts from the day procurement notices and tender documents are published; [3] to set charges related to appeal procedures led in front of SCPPA (Article 229 of LPP) as share of the procurement's value, in order to enable proportionality of costs and address the current situation under which appeal procedure is the most expensive for the most dominant type of tender procedures (i.e. bid-collection procedures whose value ranges from 500 to 5,000 EUR).
- ➡ As regards the law-stipulated obligation on gradual, but mandatory organization of electronic actions from 2016 onwards, it is proposed to organize and deliver free-of-charge training targeting all registered contracting authorities and economic operators, with a view to enable them to timely prepare for utilization of electronic means in public procurements.

-
- ➡ Proposals related to penal and control mechanisms are as follows: [1] to introduce gradual responsibility in cases of non-compliance with LPP ranging from disciplinary, misdemeanour, to criminal responsibility, while penal provisions in the field of public procurements to be exclusively regulated under the Criminal Code; and [2] to finally introduce control and oversight mechanisms for public procurement procedures in the course of their implementation, in order to timely prevent non-compliance with and violation of provisions contained in LPP.
 - ➡ For the purpose of facilitating access for small and microenterprise to public procurements, the following measures should be taken in implementation of public procurements (some of them were indicated above, but are reiterated here due to their particular importance for microenterprises and in this context):
 - Availability of documents and information related to procurement notices should be increased. Contracting authorities should more frequently use the law-stipulated mechanisms enlisted below, for the purpose of enabling greater dissemination of information to microenterprises concerning on-going and future procurement notices, as well as for the purpose of increasing efficiency of public procurement procedures: [1] publication of annual plans on public procurements; [2] use of additional information dissemination channels for procurement notices published in the Electronic Public Procurement System; and [3] more frequent publication of previous indicative notifications.
 - Public procurement procedures should set proportional eligibility criteria for the purpose of ensuring participation of microenterprises. Setting minimum amount of annual income for companies as part of eligibility criteria for tender participation should be an exception. In cases when such minimum amount is set, it should not exceed an amount that is double the procurement's estimated value, in compliance with EU regulations. Eligibility criteria concerning companies' technical and professional capacity should be set in a manner in which they do not impose requirements that are irrelevant to the procurement subject, thus limiting competition in public procurements. Bank guarantees for bids should not be required in small public procurements, in particular because the requirement on depositing statement of serious intent is considered an adequate alternative and provides a protection mechanism that does not imply additional financial burden for economic operators.
 - Administrative burdens for microenterprises should be reduced by requesting fewer documents for tender participation. In cases of small public procurements, requirements implying submission of broad range of documents are considered major administrative burden for microenterprises and discourage them from participation in public procurements. Therefore, contracting authorities are recommended to replace requirements on documents as evidence for fulfilment of eligibility criteria with deposition of state-

ments, as is the case with the statement on economic operators' current status.

- The possibility for division of procurement subjects into lots should be more frequently used. Division of the procurement into several lots, where possible and allowed by law, would facilitate access for microenterprises to bigger public procurements, in particular because they will be able to participate in tender procedures on their own and deliver the quantity of goods/services/works defined under individual lots for which they wish to submit bids.
- Contracting authorities should set more reasonable deadlines for economic operators to prepare and submit their bids. In many situations, contracting authorities need to stipulate deadlines for submission of bids that are longer than the law-stipulated minimum deadlines, especially in cases of bid-collection procedures. By doing so, they would allow more microenterprises to prepare and submit their bids which, in some cases, will contribute to better quality of bids.
- Regular and better communication and information exchange, including feedback mechanisms, should be established between contracting authorities and economic operators. In order to attain better information dissemination, communication and trust between contracting authorities and economic operators, which will most certainly result in more successful public procurement procedures, the following steps need to be taken: [1] officers tasked with organization and implementation of public procurements and representatives from microenterprises should attend relevant training; [2] technical dialogues should be organized also in cases of public procurements whose value is lower than the law-stipulated threshold for such dialogues; [3] information sessions should be organized for economic operators concerning specific public procurement procedures, but also as regular annual meetings; and [4] detailed notifications in written should be submitted to economic operators explaining the reasons behind the selection decision and rejection of their bids, including feedback mechanism for bidding companies concerning strengths and weaknesses of already implemented tender procedures.
- Cooperation and joint bidding on the part of microenterprises should be encouraged, as well as between microenterprises and bigger companies. Regulations on public procurements allow economic operators to engage in joint ventures (joint bids) and rely on their combined economic and financial status (except in regard to their profit and loss statements) and technical capacity (except in regard to their reference lists, previously signed contracts and licenses), as well as the possibility to engage subcontractors. If these possibilities are used, more microenterprises will be able to fulfil eligibility criteria and participate in public procurement procedures.

- With a view of achieving greater transparency, responsibility and accountability in public spending, contracting authorities need to take a series of measures geared towards implementation of the worldwide initiative called “Open Contracting Partnership”. Thus, they are proposed to mandatorily publish on their respective websites the following information as minimum: [1] annual plans on public procurements; [2] links to procurement notices announced in EPPS; [3] data on procurement contracts signed; [4] contracts on public procurements; [5] documents related to contract performance (invoices, notice of requisition, notice of delivery, status and the like); [6] information on realization of their public procurement plans, etc. Moreover, notifications on contracts signed should be linked with annexes to such contracts, for the purpose of enabling complete insight in the total amount of funds spent on particular procurement.

Situations and problems identified, as well as measures proposed with a view to improve public procurements in the country primarily concern those that are considered most important and pressing in terms of urgent solutions, although this policy paper includes proposals for long-term resolution of particular problems and concerns. Possible future efforts implying significant amendments to the Law on Public Procurements for the purpose of aligning it with the new EU regulations in the field of public procurements should be pursued by means of broad, public consultations and should take into consideration all remarks concerning the observed situation in the field of public procurements made by stakeholders in this process, as well as experiences, solutions and good practices from other countries, remarks made by other international institutions, and specificities of the domestic market. Only when regulated in this manner, the system of public procurements can fully attain its multidimensional purpose and function.



This publication is made possible by the generous support of the American people through the United States Agency for International Development (USAID) within the USAID Project for Microenterprise Access to Public Procurements. The contents of this publication are the sole responsibility of the Center for Civil Communications and do not reflect the views of USAID or the United States Government.

* * *

The Center for Civil Communications (CCC) was established in April 2005 as a non-governmental, non-for-profit and non-partisan association of citizens. CCC's mission is to develop and improve communications among all societal actors in Macedonia and inform them about processes of broader importance. CCC monitors, analyses and strengthens societal processes in the state and the region, especially in terms of anti-corruption and good governance, media and economic development. Throughout its ten years of operation, CCC has focused its work on two groups of interrelated activities: (1) monitoring state institutions and, on that basis, recommending measures and policies aimed to improve their operation and narrow the space for corruption; and (2) promoting the capacity of journalists and the special role played by media and non-governmental organizations in the fight against corruption. For that purpose, to present, CCC has developed and proposed several hundreds of specific recommendations for measures aimed to improve the regulations and practices, with a view to enable more transparent, responsible and accountable performance on the part of central and local governments, has trained more than five hundred journalists from national and local media outlets and representatives of civil society organizations, and has published around forty research studies/reports and manuals.

CIP - Каталогизација во публикација

Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

37.073.53:005.584.1(497.7)

POLICY brief : improving the implementation public procurements
in Macedonia / [German Filkov]. - Skopje : Center for civil
communications, 2016. - 16 стр. : илустр. ; 21 см

ISBN 978-608-4709-34-3

а) Јавни набавки - Мониторинг - Македонија
COBISS.MK-ID 100445450



CENTER FOR CIVIL COMMUNICATIONS

Bldv. Koco Racin 26-1/2, 1000 Skopje

tel. (+389 2) 3213 513

e-mail: center@ccc.org.mk

website: www.ccc.org.mk, opendata.mk