

# MONITORING OF PUBLIC PROCUREMENTS

(January - December 2022)

Skopje, April 2023

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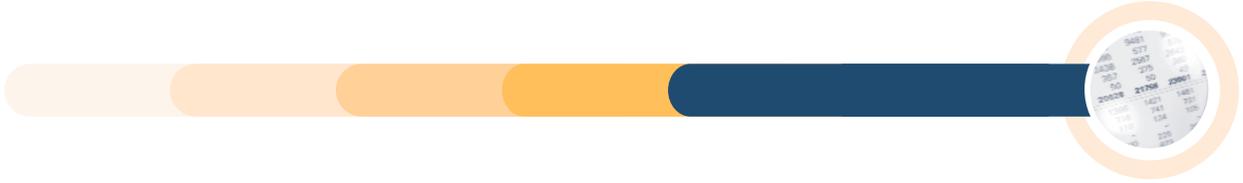
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**2022**

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# Key findings

- » Deadlines for initiation of tender procedures given in public procurement plans are almost always not complied with. High 90% of monitored tender procedures are implemented late, in the range from 1 to 8 months. This brings under question efficiency in operation of the institutions, as well as the role of public procurement plans in terms of encouraging competition.
- » Every third public procurement contract in 2022 was awarded in procedure marked by participation of only one company. It is a matter of 9,305 contracts, in total value of 26 billion MKD (427 million EUR). Absence of competition leads to increased risk for tender procedures not to obtain the best value for the money spent. The average number of bids for all public procurement procedures in 2022 accounted for 3 bids per tender procedure, which is indicative of decreased competition compared to the situation in 2021.
- » The exceptionally high share of annulled tender procedures casts a shadow of doubt on objectivity and lawfulness of such decisions. In 2022, as many as 31% of tender procedures were annulled.
- » In 2022, a total of 270 tender procedures were subject of administrative control performed by the Bureau of Public Procurements, which is indicative of a mild increase compared to 2021 and small coverage of controls accounting for only 1.18 %. For the first ever, in 2022 the Bureau of Public Procurements presented the State Commission for Prevention of Corruption (SCPC) with two cases on possible abuse of legal provisions governing public procurements.
- » In 2022, the value of contracts awarded under non-transparent negotiating procedures without previously announced call for bids amounts to 31 million EUR and represents a decrease by 30% compared to the previous year. At the level of individual institutions, JSC Power Plants accounts for two thirds of the total value of contracts awarded without call for bids.
- » Lowest price was used as criterion for selection of the most favourable bid in high 94% of tender procedures implemented in 2022, just as the previous year. On the contrary, use of electronic auctions is marked by decline, as downward bidding was organized in 73% of tender procedures compared to 89% in 2021.



- » The monitoring effort notes decreased number of appeals lodged before the State Commission on Public Procurement Appeals. In 2022, companies have lodged a total of 751 appeals, which represents a decrease by 34% compared to the previous year.

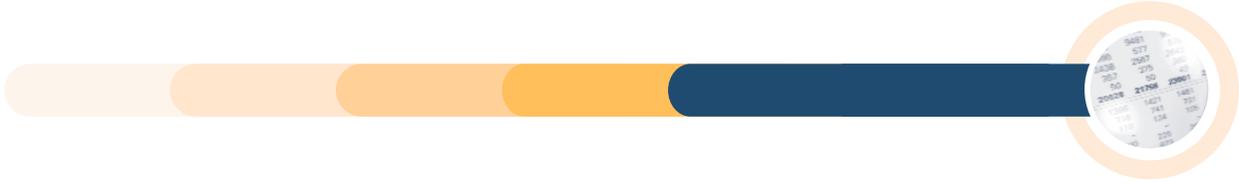
#### Findings from the survey among companies:

- » In the opinion of 63% of companies, “lowest price” used as selection criterion is the most frequent problem they are facing in public procurements.
- » 93% of companies believe that e-auctions result in attainment of unrealistic prices and undermine the quality.
- » 54% of companies acknowledge the existence of mutual arrangements for participation in tender procedures.
- » 46% of companies believe that corruption is present in public procurements. Among them, 64% indicated connections are the most frequent form of corruption, while 18% reported they have personally faced corruption in tender procedures.



# Recommendations

- » The institutions should adherently implement their public procurement plans. Due to gross lack of discipline in terms of compliance with deadlines anticipated in these plans, an obligation should be introduced to amend the public procurement plan even in cases where deadlines for implementation of public procurement procedures are changed.
- » The institutions must work on stimulating competition because it is the only guarantee for cost-effective spending of public funds. This necessitates a more thorough market research for the purpose of setting adequate eligibility criteria for bidding companies and for the purpose of defining requirements in technical specifications.
- » In order to reduce tender annulments, the institutions need to more frequently conduct market checks through the so-called technical dialogue with companies. At the same time, every institution that faces high number of annulled tender procedures should take adequate action to identify reasons thereof and to introduce relevant measures aimed at addressing problems observed.
- » To ensure the proper effect of administrative controls in terms of reducing abuses and corruption, the Bureau of Public Procurements – in compliance with the Law on Public Procurements – should significantly expand the scope of such controls to also cover tender procedures on the basis of risk assessment and random sampling, and should invest greater efforts to strengthen human resources and technical capacity of its department on administrative control.
- » Having in mind non-transparency of negotiating procedures without previously announced call for bids, the institutions need to use this type of procurement procedures only in exceptional situations. At the same time, in order to increase insight into these contracts, tender documents should be published together with the notifications on contract award, while the notifications on contract award should include the names of all companies that have participated in the negotiations, not only the company awarded the contract.

- 
- » Organization of e-auctions should be an exception instead of a rule in implementation of public procurement procedures. E-auctions should be organized only for goods of known and standard quality for which there is market competition. The Bureau of Public Procurements should take measures to enhance pressure on contracting authorities with a view to reduce use of e-auctions, whose negative consequences are more than evident. At the same time, contracting authorities should demonstrate responsible public spending and should ensure that public funds are spent in compliance with the principles of cost-effectiveness, efficiency and effectiveness.



# Goals and methodology

The Center for Civil Communications (CCC) regularly monitors and analyses implementation of public procurements in the country, starting from 2008 when the first national legislation on public procurements drafted in compliance with the European Commission's Directives entered into effect. The overall goal of this endeavour is to assess whether and to what extent state institutions comply with underlying principles in public spending, as stipulated under the law: competition among companies, equal treatment and non-discrimination of companies, transparency and integrity in implementation of public procurements, cost-effective and efficient public spending.

Subject of monitoring are public procurements implemented by all state institutions in the country, both at central and local level of government. Selection of the monitoring sample is made at the time when procurement notices are published in the Electronic Public Procurement System (EPPS).

Monitoring activities include collection of primary and secondary data by means of CCC monitors attending public opening of bids, discussions with bidding companies, browsing and researching data available in EPPS, browsing information on appeals lodged before and decisions taken by the State Commission on Public Procurement Appeals (SCPPA) available on its official website and submitting requests under the instrument for free access to public information inquiring about data which is otherwise unavailable. Questionnaires and other template used for monitoring purposes are structured in a manner that facilitates the most effective method to monitor implementation of public procurements in terms of their compliance with relevant legislation in effect and the fundamental principles that govern public procurements.

Implementation of public procurements is analysed on the basis of all information and data obtained, previously structured and inputted into a specially-designed matrix, in terms of compliance with above enlisted principles and efforts to obtain the most favourable bid, including accountability for public funds spent.



Data analyses serve as baseline for development of reports that outline key findings from monitoring and analysis of public procurements, recommendations to address problems and weaknesses identified in the system of public procurements, and detailed elaboration of the observed state-of-affairs.

This report is developed on the basis of monitoring and analysis of a selected sample comprised of 120 public procurement procedures implemented by central and local institutions in the period from 1 January to 31 December 2022.

\* \* \*

The Center for Civil Communications (CCC) was established in April 2005 as non-governmental, non-profit and non-partisan association of citizens.

CCC monitors, analyses and strengthens societal processes in the country and the region, in the field of anticorruption and good governance, media and economic development.

Thus far, CCC has focused its work on two groups of interrelated activities: (1) monitoring the performance of state institutions and recommending measures and policies aimed to advance their track record and narrow the space for corruption; and (2) capacity-building for journalists and promotion of the special role played by the media and non-governmental organizations in the fight against corruption.

In that regard, the Center for Civil Communications has developed and promoted several hundred specific recommendations for measures aimed to promote legislation and practices in order to ensure more transparent, accountable and responsible operation on the part of central and local authorities; has trained more than five hundred journalists from national and local media outlets and civil society representatives; and has published more than hundred analyses, research studies and manuals.



# Analysis from monitoring of public procurements

- » ***Deadlines for initiation of tender procedures given in public procurement plans are almost always not complied with. High 90% of monitored tender procedures are implemented late, in the range from 1 to 8 months. This brings under question efficiency in operation of the institutions, as well as the role of public procurement plans in terms of encouraging competition and allowing companies to properly prepare for tender participation.***

The institutions do not respect expected dates for initiation of public procurement procedures given in their public procurement plans. This negative practice is observed among institutions at central level, as well as those at local level.

Such delays in start of public procurements have resulted in the majority of procurement notices in the Electronic Public Procurement System (EPPS) being published in the last quarter of the year when the number of announced tender procedures accounted for 6,349, representing 28% of all tender procedures in the analysed year. Worrying is the fact that the dynamics of public procurements is the lowest in the first month of the year and, on the contrary, does not subside during summer months, i.e. July and August, which can most certainly have negative effect on competition in tender procedures. The opportunity for disrespecting deadlines for initiation of tender procedures arises from the fact that the Law on Public Procurements does not anticipate amendments to public procurement plans in cases where the timeframe for tender procedures has changed.



## Monthly dynamics on publication of procurement notices in 2022



Delayed publication of procurement notices in some monitored tender procedures is in direct conflict with the principle of competition among companies whereby, instead of being announced in March or April, as initially planned, they are published in the first days of August when significant portion of the private sector operates with reduced human resources due to summer holidays.

At the same time, once the logic that tender procedures are planned in order to meet a particular need for goods, services or works, is taken away, it could be rightfully questioned how this delay is reflected on operation of these institutions. More specifically, if a procurement of toner planned for January is actually organized in the second half of the year, how has the institution managed to print its materials in the meantime and had the lack of toner affected the institution's timely and efficient operation.

How the institutions plan their procurements in practice is best represented by several examples from the monitoring sample elaborated here. One central government institution planned a procurement of 100 pairs of shoes as work equipment for its employees. The public procurement plan anticipated announcement of this procurement notice in February, but was actually published as late as 29 September 2022. Hence, the tender procedure was not presented with any acceptable bids and was annulled, followed by new tender procedure for which the procurement notice was published on 23 November 2022. The contract for this procurement was signed on 14 December 2022. It could be concluded that, in the practice, this procurement - which was part of the 2022 public procurement plan - will be performed in 2023.



Another monitored procedure organized by a state-owned enterprise concerned procurement of banking services for a period of three years and was planned to be announced in April. The procurement notice was published on 8 November 2022, while the contract was signed the next year, i.e. on 16 January 2023.

Furthermore, procurement of services for areal spaying of protection against mosquitos was planned to be announced in March, but the procurement notice was published on 1 July, followed by unsuccessful selection process and re-announcement of the procurement notice on the same day of tender annulment, i.e. 8 July, which is indicative of time constrains which the municipality in question had faced in terms of securing this type of services.

Weaknesses in planning public procurements also lead to situations where amendments to public procurement plans are made on the same day in order to introduce new tender procedure and immediately publish the procurement notice. This practice fully undermines the purpose of transparency in respect to public procurement plans as official document, i.e. to serve companies as basis for timely preparations for tender participation.

### **Recommendation:**

*The contracting authorities must adherently comply with their public procurement plans. Due to gross lack of discipline by the institutions in terms of compliance with deadlines anticipated in public procurement plans, an obligation should be introduced to amend the public procurement plan also in cases where deadlines for implementation of public procurement procedures are changed.*

- » **Every third public procurement contract in 2022 was awarded in procedure marked by participation of only one company. It is a matter of 9,305 contracts in total value of 26 billion MKD (427 million EUR). Absence of competition leads to increased risk for tender procedures not to obtain the best value for the money spent. The average number of bids for all public procurements in 2022 accounted for 3 bids per tender procedure, which is indicative of decreased competition compared to the situation observed in 2021 when the average number of bids per tender procedure was calculated at 3.3 bids.**

A total of 28,313 public procurement contracts were awarded in 2022, accounting for cumulative value of 68 billion MKD, i.e. 1.1. billion EUR. The value of public procurements in 2022 is reduced by 14%, i.e. by 11 billion MKD (179 million EUR) compared to the previous year.



An analysis of contracts signed in 2022 according to the number of bids received in the tender procedure shows that the majority of contracts were awarded without any serious competition, i.e. among one or two bids received.

### **Overview of public procurement contracts awarded in 2022 according to the number of bids received**

<b>Competition</b>	<b>Total number of contracts awarded</b>	<b>Value of all contracts (in MKD)</b>	<b>Value of all contracts (in EUR)</b>
Tender procedure presented with 1 bid	9,305	26 billion	427 million
Tender procedure presented with 2 bids	6,546	12 billion	202 million
Tender procedure presented with 3 or more bids	12,462	30 billion	481 million

The share of contracts awarded in absence of competition is exceptionally high and raises justifiable concerns that the amount in which they are signed could be significantly higher than actual market prices.

Given that significant share of tender procedures in the country are annulled or are not completed with contract award, addressing the problem with competition in public procurements necessitates establishment of the competition level in all tender procedures, i.e. those completed with contract award and tenders annulled. At annual level, the competition in tender procedures organized in 2022 has significantly deteriorated. In that, based on the monitoring sample, 7% of tender procedures were not presented with any bids, and this problem is more pronounced at local than national level. Furthermore, as many as 32% of tender procedures were presented with only one bid, while high 25% of tender procedures received 2 bids each, which certainly makes the process of arrangements between bidders much easier.



### Competition in tender procedures on annual level\*

Year	No bids	1 bid	2 bids	3 and more bids
2019	5%	24%	22%	49%
2020	5%	19%	18%	58%
2021	1%	22%	17%	55%
<b>2022</b>	<b>5%</b>	<b>32%</b>	<b>25%</b>	<b>37%</b>

\* Calculations are based on data for the monitoring samples

Negative developments in 2022 related to competition in public procurements are further confirmed by the drop of the average number of bids per tender procedure compared to the previous years. In particular, according to data available in EPPS, the average number of bids in all tender procedures organized in 2022 accounted for 3.03 bids per tender procedure, unlike the situation observed in 2021 when this number was 3.3 bids.

### Average number of bidders per tender procedure



Reasons for deteriorated competition could be grouped into three main categories. The first category includes reasons arising from discriminatory eligibility criteria defined in tender documents; the second category concerns discriminatory behaviour on the part of



the institutions that leads to increased distrust of the business sector and discourages the companies from future participation in public procurements; and the third category is comprised of reasons related to favouring technical specifications that describe desired products instead of being conducive to competition among bidders.

The monitoring sample included several types of discrimination identified in requirements from tender documents, some of which are elaborated here. It is a matter of defining discriminatory eligibility criteria for tender participation in terms of company ability and capacity, as well as conscious avoidance to enlist the quantity of goods and to provide description of the procurement subject in the technical specifications, all for the purpose of favouring certain product or company.

Discriminatory definition of eligibility criteria which the companies should fulfil in order to demonstrate capacity for tender participation is best depicted by the monitored tender procedure for procurement of consumer goods (deserts, water, meat, alcohol, bread, canned goods, dairy products). This tender procedure was comprised of 22 lots, whereby 6 lots were not presented with any bids, 11 lots received one bid each, 1 lot received 2 bids and 4 lots received 3 bids each. Reasons behind the low interest of companies to participate in this tender procedure with estimated value of 363 million MKD, i.e. around 6 million EUR, could be located in the fact that, in order to qualify for contract performance in terms of technical or professional capacity, companies have to dispose with at least 1 vehicle (with or without freezer unit, depending on the type of products offered) for delivery of the procurement subject for each lot for which they are submitting bids. Tender documents featured a straightforward clarification that if the economic operator submits bids for 2 procurement lots, it should dispose with at least 2 vehicles, and if it submits bids for 3 procurement lots - 3 vehicles, etc. This, most certainly, is not economically logical and justifiable and has led to favouring large foodstuff traders. Hence, it does not come as surprise that among 14 procurement lots for which contracts were awarded, 8 were signed with one and the same company, and all of them are procurement lots of the highest value. The tender documents contained another contentious formulation used for all procurement lots, which reads: When delivering the goods, the relevant procurement item should be within the margin of at least 60% before the declared date of expiration. As an exception therefrom, the contracting authority may accept goods below the indicated margin of the expiration date when that is approved by the manager of the catering facility where the delivery is made. This formulation opens an opportunity for subjective action on the part of the managers and creates fertile ground for malpractices.



A second example for discriminatory definition of eligibility criteria for tender participation concerns the monitored procurement procedure for computer equipment. This tender procedure required bidders to possess a manufacturer's authorization (MAF) for the procurement in question, as well as certificate for quality management standards ISO 9001:2015 or equivalent issued by an accredited body, and environmental protection systems ISO 14001:2015 or equivalent issued by an accredited body. Given that, for procurement of computer equipment, all other institutions require MAF and, in exceptional circumstances, quality management standards, requiring additional standards such as environmental protection systems, amounts to mechanism for discreditation and for favouring the handful of companies that possess such certificates. Care for the environment and, consequently, the requirement for companies to have implemented adequate management systems, must be accepted by most of them in order to be used as eligibility criterion.

Definition of inadequately high eligibility criteria for companies is also seen in the monitored tender procedure for organization of expatriate folklore festival and accommodation and organization of excursions for festival participants, which required the bidders to demonstrate: uninterrupted experience in organization of folklore festivals for more than 10 years, which could be demonstrated with a list of services performed, for at least 10 past years, and references from at least 30 ensembles and choreographers from different countries. At the same time, companies had to demonstrate an average number of at least 5 employees at the service provider in the last three years.

Conscious avoidance to indicate the quantity of goods being procured in the technical specifications is another problem that opens space for manipulations and has deferring effect on companies. In that vein, the procurement procedure organized for chicken meat, which was not divided into lots, concerned six different types of meat: fresh, frozen, chicken legs, whole chicken, etc. However, the technical specifications did not include an indicative quantity for all types of chicken meat being procured. Hence, the companies with insider information were enabled to offer higher prices for products that are procured in higher quantities and vice versa. Only one bid was submitted to the tender procedure worth 5,250,000 MKD (85 thousand EUR) and the contract was signed with the single bidder. In that, as evidenced by the bid submitted by the company that was awarded the contract, the prices for different types of chicken meat are significantly higher than retail prices.

The same approach was used in the procurement procedure for print colours in the value of 354,000 MKD (5,700 EUR). The description given in the technical specifications for this tender procedure referred to 4 types of toners, but these were not accompanied by indicative quantities. Again, the epilogue of this tender procedure included one bid received and contract award to the single bidder.



One of the most prominent examples on use of favouring technical specifications that describe desired products instead of facilitating competition among companies is found in the procurement procedure for computer equipment (computers, printers, laptops and scanners). According to the appeal lodged before the State Commission on Public Procurement Appeals by one bidding company interested to participate in the tender procedure, before lodging the appeal the bidder has resorted to the opportunity for questions and answers to communicate with the contracting authority and indicated that technical specifications for desktop computers, monitors and laptops fully correspond to specific models of the brand DELL and thereby prevent competition. The institution did not take action upon these indications from the economic operator, prompting the latter to lodge an appeal. In this stage, the institution did not wait for SCPPA to take decision and, in its own capacity, assessed that appeal allegations are founded and moved to take decision on tender annulment. This epilogue undoubtedly shows that the contracting authority had consciously intended to violate the Law on Public Procurements, i.e. Article 8 paragraph (8) thereof, where it is clearly stipulated that contracting authorities shall not define technical specifications that refer to specific manufacture, production process, process or trade mark, patent, type or specific origin of goods, in order to favour or eliminate certain economic operators or goods.

As regards competition in tender procedures, another unfavourable information concerns the fact that 8,922 contracts among the total of 28,270 public procurement contracts (31.56%) were awarded in procedures presented with only one bid each, i.e. in non-competitive process.

Low level of competition leads to high concentration of the value of tender procedures with small number of companies. A total of 16,500 economic operators are registered in EPPS, of which only 6,400 are active. However, examination of 2022 data by CCC's team shows high concentration of the value of tender procedures with small number of companies. Notably, as high as 20% of the total value of public procurement contracts in 2022 accounting for 1.1 billion EUR belongs to only 10 economic operators. In that, these companies were awarded a total of 1,987 contracts in cumulative value calculated at 13.7 billion MKD, i.e. 223 million EUR.

At the top of this list is Energy Delivery Solutions JSC Skopje (electricity sales company), with 241 contracts signed in 2022 with institutions at central and local level, in total value of 50.3 million EUR. Next is Pucko Petrol LLC v. Plasnica (company trading in oil derivatives), with 413 contracts in total value of about 50 million EUR. Third place is held by Markovski Company Borche LLC Bitola, with all contracts signed with JSC Power Plants for lease of machinery and workers in total amount of 25 million EUR.



### Top ten companies with highest value of public procurements in 2022

Company	Number of contracts	Total value of contracts (in MKD)	Total value of contracts (in EUR)	Share in all public procurements in the country
Energy Delivery Solutions JSC Skopje	241	3,092,693,795	50,287,704	4.53%
Pucko Petrol LLC v. Plasnica	413	3,059,373,132	49,745,905	4.48%
Markovski Company Borche LLC Bitola	11	1,518,715,374	24,694,559	2.22%
Makpetrol JSC Skopje	326	1,490,357,032	24,233,448	2.18%
Alkaloid Kons LLC Skopje	271	1,055,175,485	17,157,325	1.55%
JSC D-r Panovski Skopje	271	815,184,076	13,255,026	1.19%
RUD-KOP LLC Bitola	2	725,700,000	11,800,000	1.06%
A1 Makedonija LLC Skopje	266	666,534,682	10,837,962	0.98%
Makedonski Telecom JSC Skopje	184	657,990,823	10,699,038	0.96%
Zobek Mining Group LLC Skopje	2	638,810,376	10,387,161	0.94%
<b>TOTAL</b>	<b>1,987</b>	<b>13,720,534,775</b>	<b>223,098,126</b>	<b>20.10%</b>

#### Recommendation:

The institutions must work on stimulating competition because it is the only guarantee for cost-effective public spending. This necessitates a more thorough market research for the purpose of setting adequate eligibility criteria for bidding companies and for the purpose of defining requirements in technical specifications. On the contrary, public procurement procedures would be void of any meaning and reduced to mere publication of procurement notices, instead of actual quest for more bidders.

- » **The exceptionally high share of annulled tender procedures casts a shadow of doubt on objectivity and lawfulness of such decisions. In 2022, as many as 31% of tender procedures were annulled.**



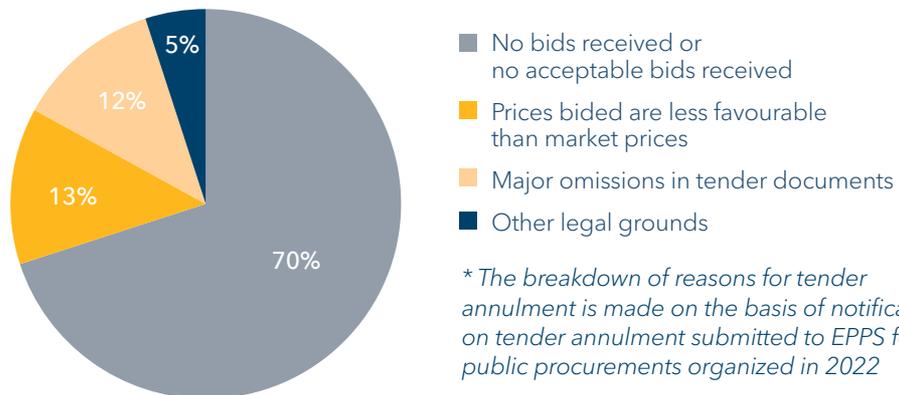
One of key indicators for problems in public procurements is the high number of annulled tender procedures. Instead of decreasing, in 2022 the number of annulled tender procedures has increased by 2 percentile points compared to 2021 and stands at 7,048 tender procedures.

### Annulment of tender procedures at annual level

Year	Number of announced procurement notices	Number of decisions on tender annulment	Share of annulled tender procedures
2019	22,538	5,985	27%
2020	20,159	6,727	33%
2021	22,816	6,571	29%
<b>2022</b>	<b>22,901</b>	<b>7,048</b>	<b>31%</b>

As shown in the diagram below, the reason indicated in 70% of decisions on tender annulment concerned no bids received or no acceptable bids received. This situation refers to the absence of desired competition, but also to the fact that large share of tender procedures received bids that are not in compliance with requirements laid down in tender documents. Second most frequently indicated reason for tender annulment implies that bids offered are less favourable than market prices, accounting for annulment of 13% of procurement procedures. Third reason indicated for tender annulments concerns major omissions in tender documents and accounts for 12% of annulled tender procedures.

### Breakdown of reasons for tender annulment in 2022 \*





At the level of individual institutions, the highest number of annulled tender procedures in absolute amount is observed with JSC Power Plants, which has annulled 230 from the total of 582 tender procedures organized. Moreover, some of these decisions concerned annulment of the full tender procedure, while others concerned annulment of some procurement lots. Second-ranked is the Ministry of Interior, with 180 decisions on tender annulment among the total of 186 tender procedures implemented, which indicates to frequent annulment of one or more procurement lots.

### ***Institutions with the highest number of tender annulments in 2022***

<b>Contracting authority</b>	<b>Annulled tender procedures (fully or partially)</b>	<b>Total tender procedures announced</b>	<b>Share</b>
JSC Power Plants	230	582	39%
Ministry of Interior	180	186	97%
Ministry of Defence - Sector for Logistics	174	279	62%
Municipality of Bitola	112	225	50%
PTE Skopje	78	141	55%
PHI Clinical Hospital Tetovo	72	112	64%
Macedonian Academy of Arts and Sciences	66	111	59%
PE Water Supply and Sewage - Skopje	62	165	37%
FOD LLC - Novaci, JSC Power Plants of North Macedonia Skopje	61	93	65%
Municipality of Kriva Palanka	57	115	50%

While tender annulments are on the rise, it could be concluded that institutions do not take adequate measures to reduce their occurrence, inter alia, by conducting previous market checks through the so-called technical dialogue with companies, in compliance with Article 76 of the Law on Public Procurements. This means that prior to publishing the procurement notice, tender documents should be given for insight to potential bidders through EPPS in order to obtain relevant comments and remarks. As shown in the table below, the number of technical dialogues organized in 2022 is significantly decreased compared to their number in 2021.



### Overview of conducted market checks (technical dialogues)

Year	Number of announced public procurements	Number of technical dialogues conducted	Share of technical dialogues
2020	20,159	257	1.27%
2021	22.816	410	1.80%
<b>2022</b>	<b>22,901</b>	<b>165</b>	<b>0.71%</b>

#### Recommendation:

*In order to reduce tender annulments, the institutions need to more frequently conduct market checks through so-called technical dialogue with companies, in compliance with Article 76 of the Law on Public Procurements. At the same time, every institution that faces high number of annulled tender procedures should take adequate action to identify reasons thereof and to introduce relevant measures aimed at addressing problems observed.*

- » ***In 2022, a total of 270 tender procedures were subject of administrative control performed by the Bureau of Public Procurements, which is indicative of a mild increase compared to 2021 and small coverage of such controls accounting for only 1.18% of all tender procedures. For the first time ever, in 2022 the Bureau of Public Procurements presented the State Commission for Prevention of Corruption (SCPC) with two cases on possible abuse of legal provisions governing public procurements. Instead of increasing human resources at the department on administrative control, in 2022 their number was reduced from 5 to 4 employees.***

Among total of 23 thousand public procurements organized in 2022, 270 tender procedures were subject of administrative control performed by the Bureau of Public Procurements.

As was the case before, administrative controls of the Bureau of Public Procurements in 2022 were mainly performed in compliance with Article 172, paragraph (3) of LPP, i.e. they cover public procurement procedures whose estimated value exceeds 500,000 EUR for goods or services and those whose estimated value exceed 2 million EUR for works. More specifically, 268 tender procedures were controlled according to Article 172, paragraph (3) of LPP, and only 2 tender procedures were controlled according to Article 172, paragraph (4) of LPP, i.e. on the basis of risk assessment for violation of law provisions or random selection.



Among all administrative controls (270) performed in 2022, the Bureau has established irregularities in 52 tender procedures, accounting for a share of 19%.

### **Administrative controls performed by the Bureau of Public Procurements**

<b>Period</b>	<b>Number of tender procedures subjected to control</b>	<b>Number of controlled tender procedures in which irregularities are established</b>	<b>Share of controlled tender procedures in all public procurements implemented in the country</b>
2019	141	23	0.66%
2020	205	46	1.01%
2021	247	50	1.08%
<b>2022</b>	<b>270</b>	<b>52</b>	<b>1.18%</b>

It should be noted that, unlike the previous two years, for the first time in 2022 the Bureau of Public Procurements presented SCPC with two cases on possible abuse of legal provisions governing public procedures. The Bureau took action upon previously received information about these tender procedures. Worrying is the fact that, in 2022, the number of employees at the department on administrative control was reduced from 5 to 4, which is contrary to the need for enhancing the performance of this institution and its capacity for performing administrative controls.

An examination of the content of these decisions provides the conclusion that the majority of problems established in the course of administrative controls performed by the Bureau of Public Procurements concern omissions made in the bid-evaluation stage, i.e. unfounded rejection of bids or acceptance of bids that should have been disqualified from bid-evaluation. In all these cases, the Bureau has found that, when evaluating bids, the public procurement committees have not ensured adherent application of the principle of equal treatment and non-discrimination of economic operators.

#### **Recommendation:**

*To ensure the proper effect of administrative controls in terms of reducing abuses and corruption, the Bureau of Public Procurements – in compliance with the Law on Public Procurements – should significantly expand the scope of such controls to also cover tender procedures on the basis of risk assessment and random sampling. At the same time, greater efforts are needed*



to strengthen human resources and technical capacity of the Bureau's department on administrative control.

- » **In 2022, the value of contracts awarded under non-transparent negotiating procedures without previously announced call for bids amounts to 31 million EUR and represents a decrease by 30% compared to the previous year. At the level of individual institutions, JSC Power Plants accounts for two thirds of the total value of contracts awarded without call for bids.**

In 2022, a total of 333 contracts were awarded under negotiating procedures, in total value of 32 million EUR, which is by 14 million EUR less (30%) compared to 2021. The total value of these contracts does not include contracts signed for procurement of natural gas signed under this type of procedure between Balkan Energy and RKM LLC Skopje (company for production, trade and services) in the value of 2.4 billion MKD (39 million EUR).

### **Overview of the value of contracts awarded under negotiating procedure without previously announced call for bids\***

<b>Year</b>	<b>Number of contracts signed</b>	<b>Value of contracts (in million EUR)</b>	<b>Annual change in the value</b>
2019	367	16	-52%
2020	378	30	+87%
2021	300	46	+53%
<b>2022</b>	<b>333</b>	<b>32</b>	<b>-30%</b>

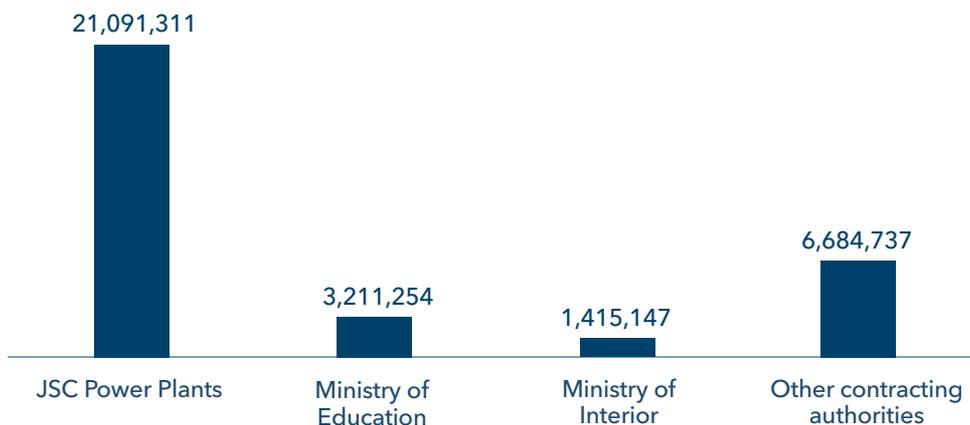
\* The total value of these contracts does not include contracts signed by Balkan Energy

Analysis of data on contracts signed under this type of procedure allows the conclusion that in 83% of cases the negotiations have taken place only with one company.

At the level of individual institutions, the highest cumulative value of contracts awarded without previously announced call for bids in 2022 by state institutions belongs to JSC Power Plants, as was the case last year, with 23 contracts in total value of 21 million EUR. Second-ranked is the Ministry of Education and Science, with 16 contracts in total value of 3.2 million EUR, and third-ranked is the Ministry of Interior, with 10 contracts awarded under negotiating procedures without previously announced call for bids, in cumulative value of 1.4 million EUR. All other institutions together have spent 6.7 million EUR and account for a share of 21%.



### Contracting authorities with the highest value of contracts awarded without call for bids in 2022 (in EUR)



As many as 8 of the 10 highest value contracts were awarded by JSC Power Plants, with the highest one (in the value of 6.4 million EUR) being signed with the company Actael N Ltd from Sophia, Bulgaria, for procurement of block power substation for the needs of GU (generation unit) Thermal Power Plants, MEC Bitola.

### Top 10 highest value contracts signed under negotiating procedure without call for bids in 2022

Contracting authority	Economic operator	Procurement subject	Contract value (in EUR)
JSC Power Plants	Actael N Ltd	Block power substation at 425/15.75 kV capacity for GU Thermal Power Plants, MEC Bitola	6,450,240
JSC Power Plants	MARKOVSKI COMPANY Borche LLC import-export Bitola	Engagement of auxiliary machinery for mining operations at GU Mines (MEC Bitola)	2,302,439
JSC Power Plants	NOVOMATRIX LLC Bitola	Technological cleaning for MEC Bitola (MEC Bitola)	2,256,390



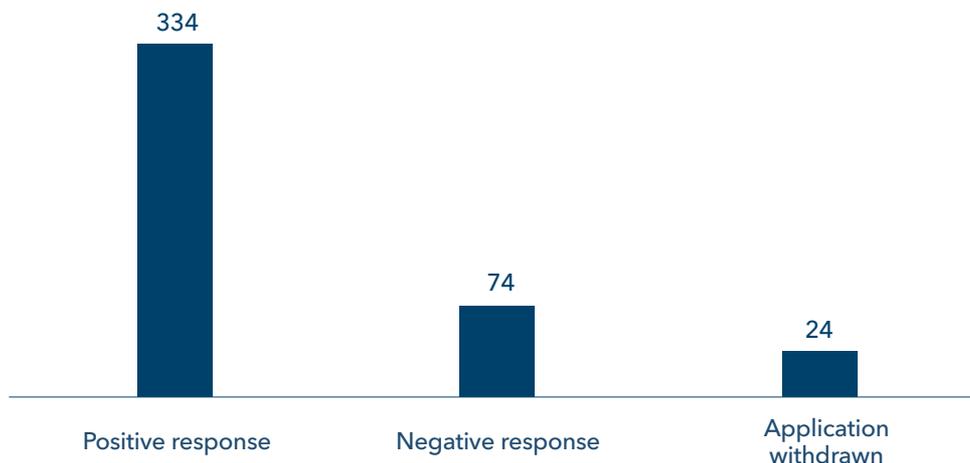
JSC Power Plants	PD Comel LLP	Reparation of power substation (250 MVA, 15,75/420kV) at MEC Bitola (framework agreement with one economic operator)	2,187,317
JSC Power Plants	MIS-COMMERCE Mitko LLC export-import Skopje	Engagement of auxiliary machinery for mining operations at GU Mines (MEC Bitola)	1,592,520
JSC Power Plants	Kauchuk JSC	Rubber conveyor belts (MEC Bitola)	1,592,520
Ministry of Education and Science	ARS LAMINA LLP Skopje	Bulk purchase and distribution of textbooks and accompanying didactic and work materials for primary education for the school year 2022/2023	1,537,415
JSC Power Plants	FLEX POWER LLP import-export Skopje	Servicing and regular periodic checks of gas-fuelled engines (Energetika)	1,521,528
Ministry of Health	MAKPETROL PROM-GAS LLC Skopje	Natural gas for the needs of PHIs within the complex of clinics "Mother Theresa" - Skopje	1,463,414
JSC Power Plants	Kauchuk JSC	Rubber conveyor belts (MEC Bitola)	1,439,024

According to the Law on Public Procurements, the Bureau of Public Procurements issues an opinion on fulfilment of requirements for organization of negotiating procedure without previously announced call for bids in cases of urgency caused by events which contracting authorities could not have anticipated and which cannot be attributed to them as omission, for protection of exclusive rights and when, due to artistic or technical reasons, the contract could be signed only with certain economic operator.

The number of applications submitted to the Bureau of Public Procurements for issuance of opinion for organization of negotiating procedure without call for bids is continuously rising. In the period January - December 2022, the Bureau of Public Procurements was presented with 432 such applications, unlike 358 applications submitted in 2021 and 199 applications submitted in 2020.



### Responses obtained from BPP to applications for opinion on organization of negotiating procedure (January - December 2022)



#### Recommendation:

*Having in mind non-transparency of negotiating procedures without previously announced call for bids, the institutions need to use this type of procurement procedure only in exceptional situations. At the same time, in order to increase insight into these contracts, tender documents should be published together with the notifications on contract award, while notifications on contract award should include the names of all companies that have participated in the negotiations, not only the company awarded the contract.*

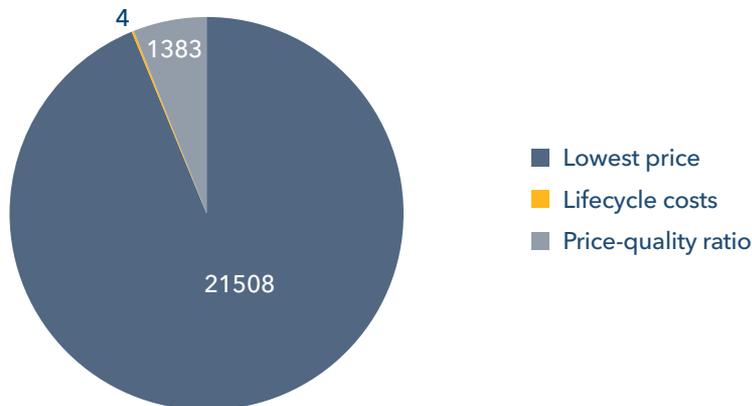
- » ***Lowest price was used as criterion for selection of the most favourable bid in high 94% of tender procedures implemented in 2022, just as the previous year. On the contrary, use of electronic auctions is marked by decline, as downward bidding was organized in 73% of tender procedures compared to 89% in 2021.***

In 2022, among the total of 22,901 procurement notices published, as many as 21,508 tender procedures used a criterion for selection of the most favourable bid that is exclusively based on lowest price, representing 94% of all tender procedures. Selection criterion for



the most favourable bid based on “best price-quality ratio” was used in 1,383 tender procedures, accounting for a share of 6%, while 4 tender procedures used the criterion defined as “lifecycle costs”.

### Criteria used for selection of the most favourable bid in 2022

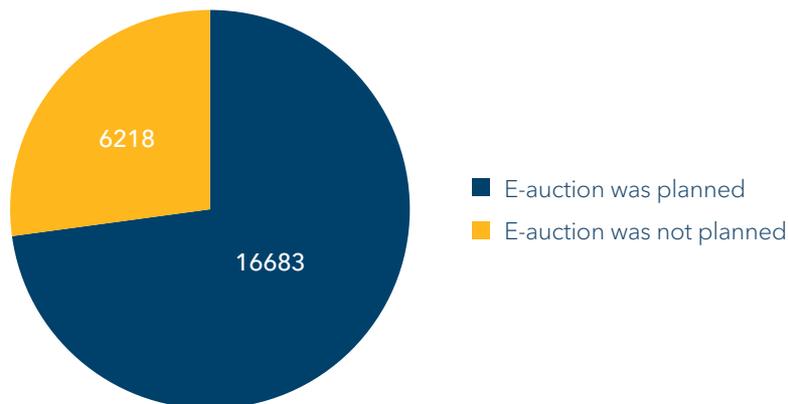


Such practice on the part of the institution is not in compliance with the principles of cost-effectiveness, efficiency and effectiveness in use of public funds, as defined in Article 4, paragraph (2) of LPP, which reads “the contracting authority shall implement public procurements in a manner that ensures adequate quality of the procurement subject relative to its purpose and value”.

As regards electronic auction (e-auction), the monitoring observed drop in use of downward bidding by 16 percentile points. Namely, among all public procurements implemented in 2022, e-auction was organized in 16,683 tender procedures (73%) unlike the situation observed in 2021 when this share accounted for 89%. This refers to increased, but still insufficient compliance with recommendations made by competent institutions and the civil society to reduce use of e-auctions in order to avoid negative effects and malpractices encouraged by this instrument.



## Organization of e-auctions in 2022



Monitoring data show that e-auctions were not organized in 48% of tender procedures that have anticipated them, which is identical to the situation observed last year, when this share stood at 47%. Moreover, in the case of 13% of tender procedures, no new bids were received during the e-auction. Having in mind that, at the public opening of bid, economic operators obtain information about tender participants and prices offered by competitors, various processes of arrangements and influence take place in the period leading to the e-auction. In turn, these arrangements and influence rightfully raise doubts that, in large portion of tender procedures, prices at which contracts are signed are not a realistic reflection of state-of-affairs on the market, but rather a result of what has been agreed beyond the realm of official proceedings.

### **Recommendation:**

*Organization of e-auctions should be an exemption instead of a rule in implementation of public procurement procedures. Contracting authorities need to follow the logic whereby e-auction is organized only for goods of known and standard quality and those covered by market competition. The Bureau of Public Procurements should take measures to enhance pressure on contracting authorities with a view to reduce use of e-auctions whose negative consequences are more than evident. At the same time, contracting authorities should demonstrate responsible public spending and should ensure that public funds are spent in compliance with the principles of cost-effectiveness, efficiency and effectiveness. Insistence on use of "lowest price" as the criterion for selection of the most favourable bid might make the job of public procurement teams at the institution much easier, but it certainly undermines the quality of goods and services which, in the end, harms the institution's budget.*



# Survey among companies about their experience from participation in public procurements

- » ***In the opinion of 63% of companies, “lowest price” used as selection criterion is the most frequent problem they are facing in public procurements.***
- » ***93% of companies believe that e-auctions result in attainment of unrealistic prices and undermine the quality.***
- » ***54% of companies acknowledge the existence of mutual arrangements for participation in tender procedures.***
- » ***46% of companies believe that corruption is present in public procurements. Among them, 64% indicated connections are the most frequent form of corruption, while 18% reported they have personally faced corruption in tender procedures.***
- » ***Companies assigned an average score of 2.8 (on the scale from 1 to 5) to the process of public procurements in the country, which is identical to the last year’s score.***



## **Introduction**

This survey is performed as regular annual research among companies, which the Center for Civil Communications has organized as part of its monitoring of public procurements since 2009.

This year's survey was conducted in March 2023 and covered 331 companies from all major towns across the country. It is based on previously designed and structured questionnaire comprised of 20 questions.

The questions are structured into several groups and inquire about the companies' views and opinions about the most frequent problems they have encountered when participating in public procurements, as well as their thoughts on e-auctions, appeal procedure, corruption and other challenges in public procurements. The questionnaire is structured in such manner that allows interviewed company representatives to individually indicate problems they are facing and to propose measures aimed to improve the system of public procurements.

This analysis shows the results from the last survey conducted among companies, as well as comparisons with results obtained under previous rounds of surveys in order to obtain an image about the current state-of-affairs and about underlying trends in public procurements.

As was the case before, the survey first inquired about public procurement experience of companies. On average, surveyed companies participate in around 10 public procurements on annual level.

## **Problems in public procurements**

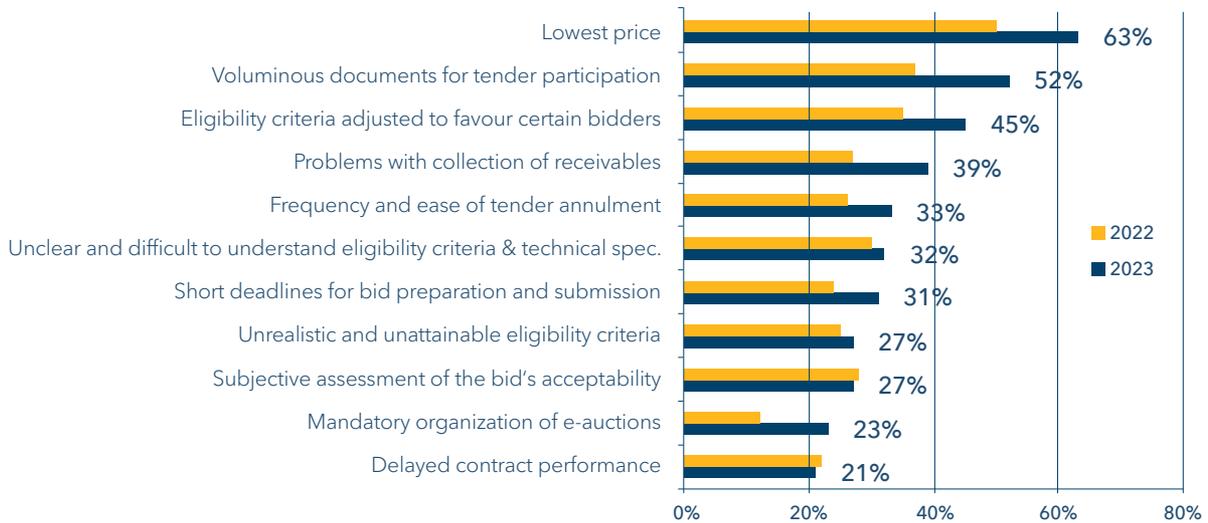
There are no changes in terms of the top three problems faced by the companies. As is the case for several years in a row, this year's survey shows that the number one problem in public procurements concerns use of "lowest price" as criterion for selection of the most favourable bid. Moreover, the share of companies that have indicated frequent encounter of this problem is rising. Unlike last year, when 50% of surveyed companies indicated this problem, their share this year is increased to 63%. In spite of companies' view on this matter and the fact that "lowest price" is no longer a criterion for selection of the most favourable bids, i.e. it was replaced by "economically most favourable bid", the state institutions still use "lowest price" as the single selection criterion in high 94% of tender procedures.

For the third consecutive year, the second most frequently indicated problem concerns voluminous documents for tender participation. Again, compared to last year's share of 37% of companies that have faced this problem, this year's survey shows a significantly increased share of 52%.



The third-ranked problem is an old and long-standing issue of content among companies and concerns adjustment of criteria for tender participation to favour certain bidders, as indicated by 45% of companies and representing an increase from last year, when this share stood at 35%.

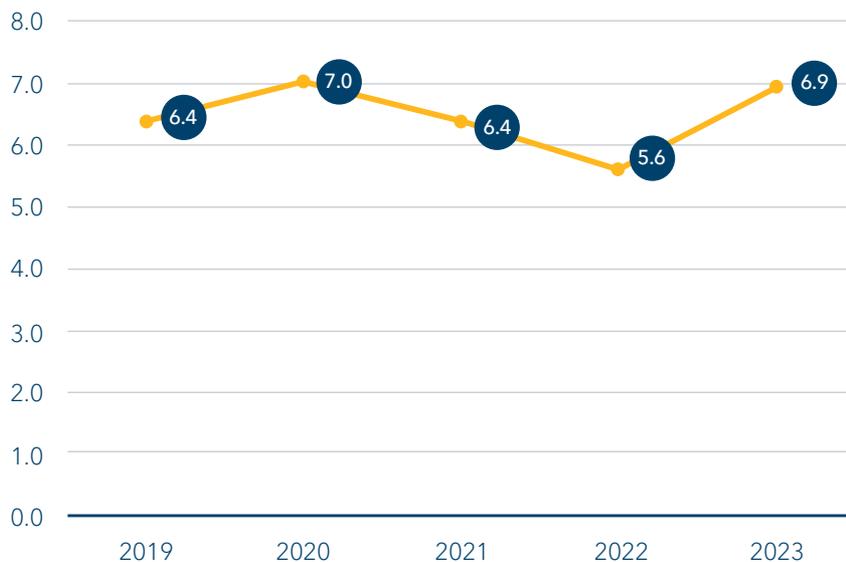
### Main problems faced by companies in public procurements (multiple answers are allowed)



**Late payment for contract performance has risen to the level of acute problem.** After being six-ranked for two consecutive years, this problem is now fourth-ranked and indicated by 39% of companies. In the period up to the 2019 survey, this problem was featured among the top three main problems faced by companies. According to their responses, companies receive payments after six months and 27 days after contract performance, while last year the average waiting time for payment accounted for five months and 18 days.



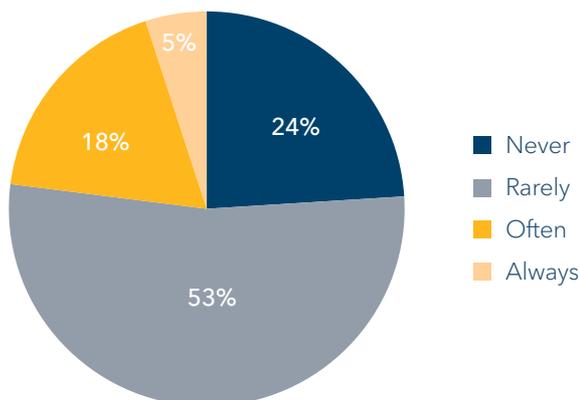
### Average waiting time for collection of receivables from contract performance (in months)



**Technical specifications defined for tender procedures do not guarantee the quality of the procurement subject.** Dominant share of companies (71% this year, 86% last year) believe that technical specifications rarely (53%) or never (24%) include details that allow precise definition of the procurement's quality. Hence, technical specifications cannot serve as guarantee for obtaining certain quality of the procurement subject, given the current circumstances whereby lowest price is the condition for winning the procurement contract in almost all tender procedures.



### **Do you think that technical specifications provide sufficient details to guarantee the quality of public procurements?**



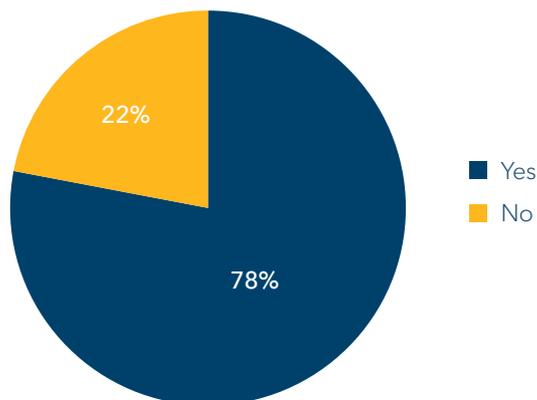
Small share of companies (23%) believe that contracting authorities often (18%) or always (5%) provide sufficient details that determine the quality of what they are purchasing, whereby the use of “lowest price” would make sense and would not lead to purchase of poor-quality goods, services and works.

#### **Companies continue to be “in favour” of estimated values being published in advance.**

78% of surveyed companies (last year their share was 82%) believe that contracting authorities should publish the estimated value of their public procurements. Notably, the new Law on Public Procurements allows contracting authorities to choose whether they will publish the procurement’s estimated value or not, but in the practice this has become one of the main issues of content. Many tender procedures that have not published the estimated value in advance are still presented with bids in identical amount to the estimated value. On the contrary, in order to be published, the estimated value needs to be well calculated, which is not often the case and leads to other problems in the further course of tender procedures.

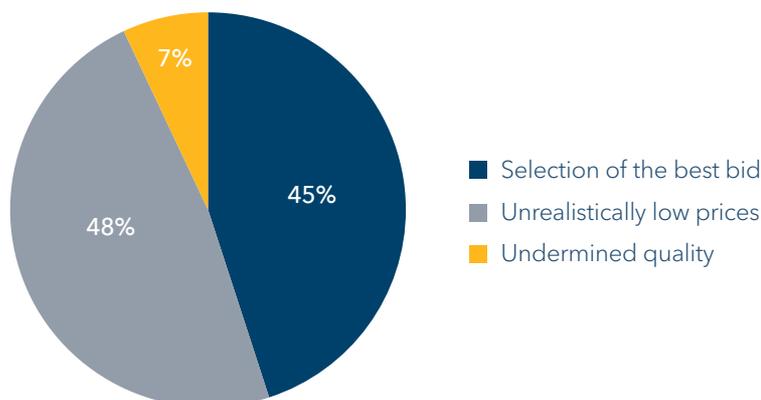


### *Do you think that the procurement's estimated value should be published in advance?*



**E-auctions do not facilitate selection of the best bid.** Only 7% of surveyed companies believe that e-auctions result in selection of the best bid. The remaining 93% of companies, in almost equally distributed shares, believe that e-auctions result in attainment of unrealistically low prices (45%) and that e-auctions undermine the quality to the benefit of the price (48%). In this respect, survey results show a minor deterioration compared to the last year's survey.

### *What is the best characterization of e-auctions?*



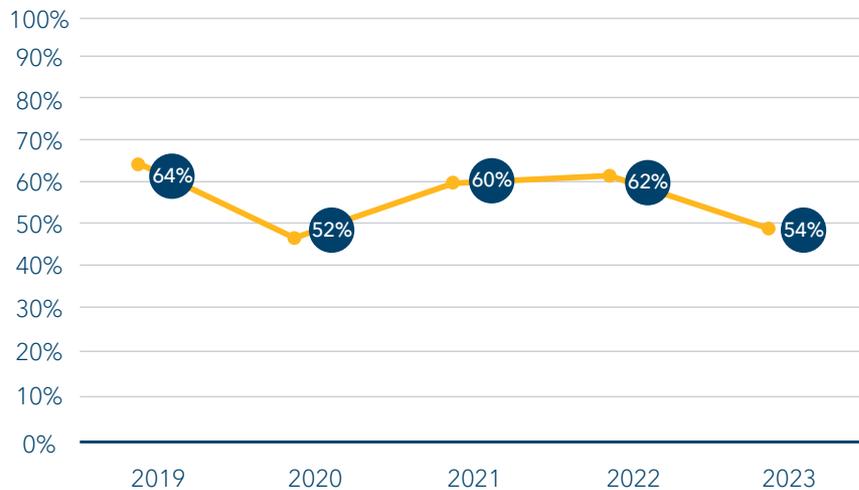
**18% of companies believe that their bid has been unjustifiably disqualified from bid-evaluation.** Last year, this share accounted for 15%. Unlike these companies (18%), 40% of them reported they have never and 43% reported they have rarely faced a situation where



their bid was unjustifiably disqualified from further evaluation in the tender procedures where they have participated.

**Most companies acknowledge existence of previous arrangements.** 54% of companies indicated that prior arrangements among companies happen before the start of e-auctions and concerns their behaviour during in the downward bidding. However, this share is slightly decreased from the last year's results when 62% of companies had indicated existence of previous arrangements.

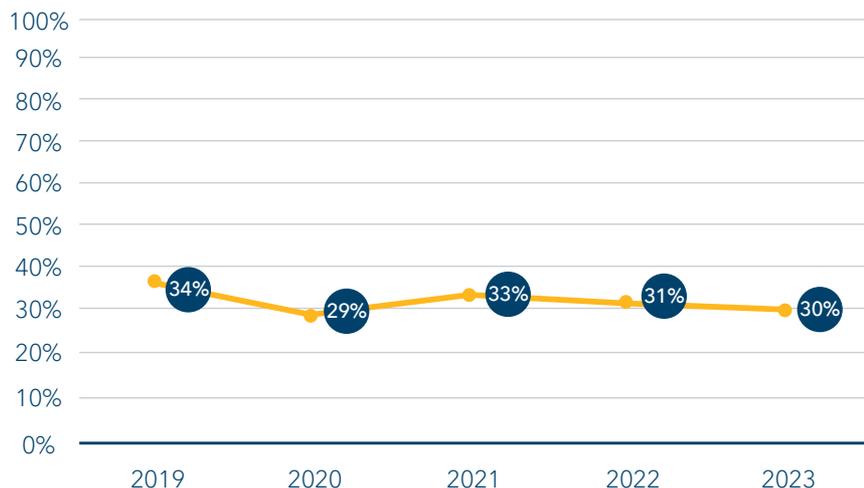
*Share of companies that believe there are previous arrangements among bidders before the start of e-auctions*



**Companies reported dissatisfaction from communication with the institutions about public procurements.** Only 30% of companies assessed the communication with representatives from contracting authorities in whose public procurements they participate as being timely and of good quality. The remaining companies assessed such communication as being of partial quality (58%) or late and of poor quality (12%). There are almost no changes in terms of the companies' satisfaction concerning communication with contracting authorities compared to the last year's survey.



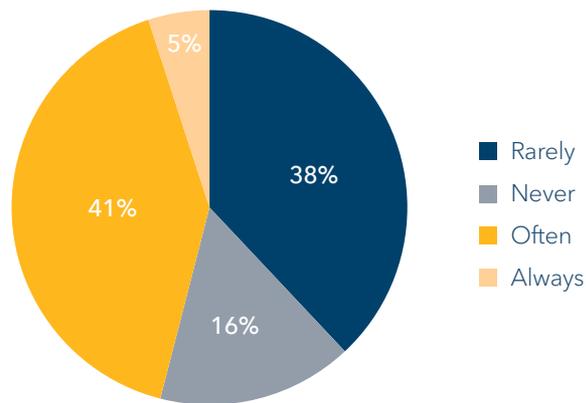
### Share of companies that reported satisfaction from communication with contracting authorities in public procurements where they have participated



### Almost half of companies believe that corruption is present in public procurements.

46% of surveyed companies believe that corruption is present in public procurements (last year this share was 51%). Among them, 41% believe that corruption is often and 5% believe that corruption is always present in public procurements.

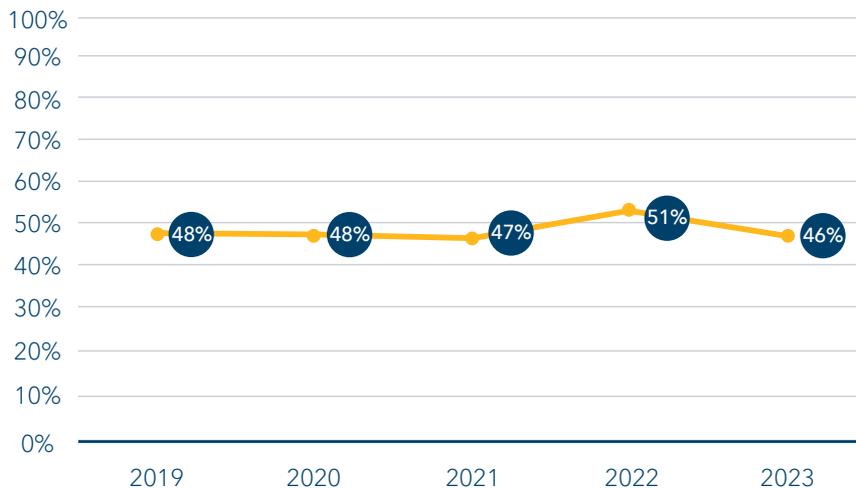
### Do you think that corruption is present in public procurements?





38% of surveyed companies assess that corruption is rarely present in public procurements, while 16% believe there is no corruption in this area. Last year, the share of companies that indicated no corruption in public procurements accounted for 14%.

### Share of companies that believe corruption is present in public procurements



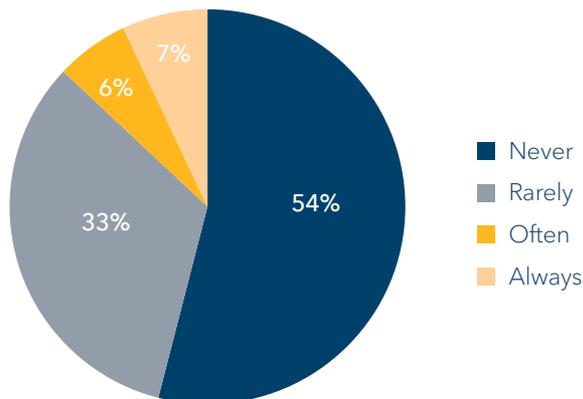
Among all companies surveyed, as many as 18% reported they have personally faced corruption when participating in public procurements. The remaining 82% of companies have not personally faced corruption in public procurements.

Asked to freely enlist the type of corruption they believe is most frequently present in public procurements, the highest share of companies mainly referred to political, partisan and family ties (64%), followed by kick-backs (23%).

**Dominant 87% of companies do not lodge appeals against tender procedures.** Only 13% of companies reported they always (7%) or often (6%) lodge appeals before the State Commission on Public Procurement Appeals in cases where they are not satisfied with the actions of contracting authorities in tender procedures in which they have participated. The remaining 87% of companies indicated they never (54%) or rarely (34%) lodge appeals before the State Commission.



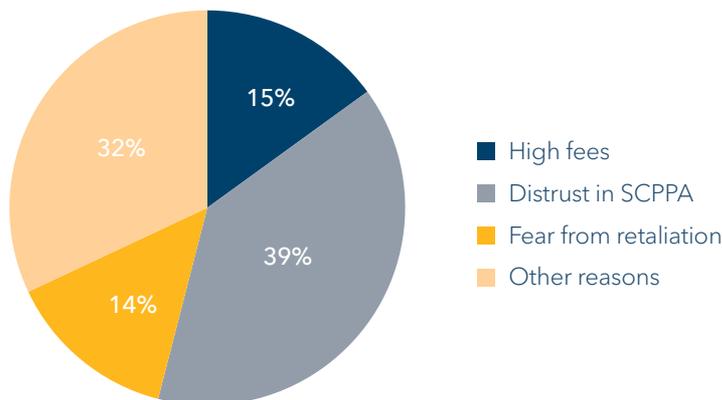
### **Have you lodged an appeal before SCPPA when dissatisfied with the manner in which public procurements are implemented?**



The most frequently indicated reason why companies rarely or never lodge appeals continues to be distrust in the State Commission on Public Procurement Appeals, although the share of companies that do not lodge appeals due to this reason is decreased from 46% last year to 39% this year.

The next reason is the amount of fees for initiation of appeal procedure which companies have to pay in advance. Last year, this was a problem for 21% of companies, and this year it was indicated by only 15%. Third reason is fear from retribution from the contracting authorities against which the appeal is lodged, as reported by 15% of companies last year and 14% of companies this year.

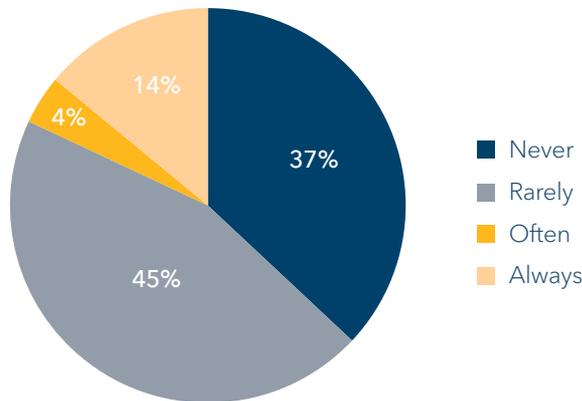
### **What is the reason for never or rarely lodging appeals against tender procedures before SCPPA?**





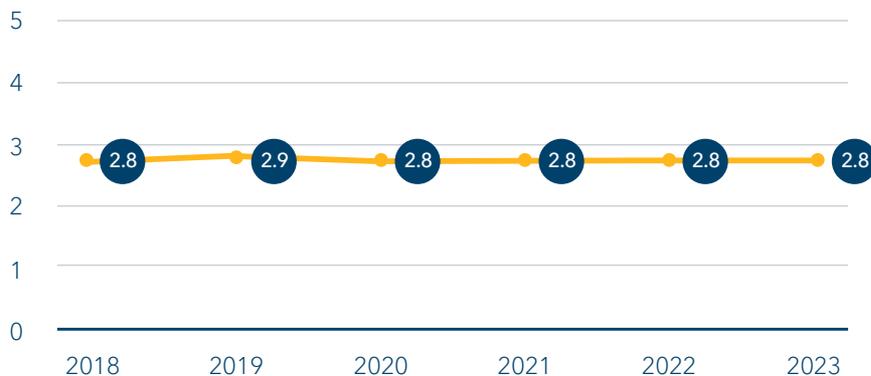
**Dissatisfaction with SCPPA decisions is still present.** Dominant 82% of companies indicated they are never or rarely satisfied with decisions taken by SCPPA. The remaining 18% reported they are often or always satisfied with decisions taken by SCPPA.

*In the cases where you have lodged appeals, were you satisfied with decisions taken by SCPPA?*



**The average score assigned by companies to public procurements remains unchanged.** Asked to assess the overall process of public procurements in the country on the scale from 1 (negative) to 5 (excellent), companies assigned an average score of 2.8, which is identical to the last year's score.

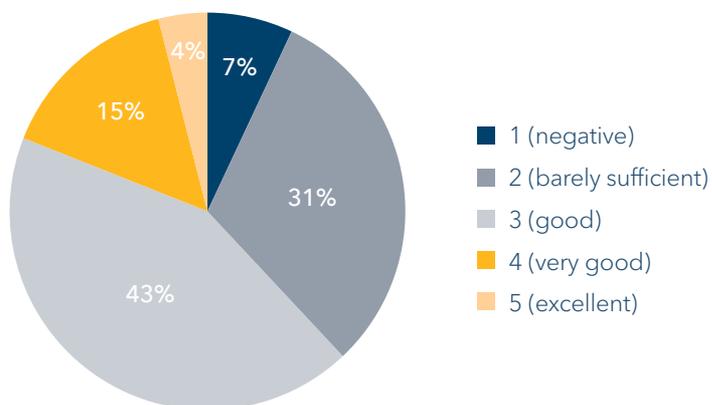
*Variations in the average score assigned by companies to the process of public procurements*





In line with the average score, the highest share of companies indicated a score of 3 (43%). Small share of them (7%) assessed the system of public procurements with a score of 1, while only 4% indicated the highest score of 5.

### ***How do you assess the overall process of public procurements in the country?***





# Analysis of procedures led before the State commission on public procurement appeals in 2022

- » **Unlike the trend from previous years, in 2022 the number of appeals lodged before the State Commission on Public Procurement Appeals is marked by a decrease. According to 2022 data available in the Electronic Public Procurement System, companies have lodged a total of 751 appeals, which represents a decrease by 34.2 % compared to the previous year. The Commission approved 40.3% of appeals, indicating a drop by 2.3 percentile points of approved appeals compared to the previous year.**

In 2022, among total of 22,901 tender procedures published in EPPS, the State Commission on Public Procurement Appeals (SCPPA) was presented with 751 appeals lodged by companies (3.27%). As shown in the table below, the number of tender procedures is almost identical to the one from last year, with a minimum increase (0.4%), but the number of appeals has dropped by one third (34.2%).



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

Year	Number of tender procedures	Change (%)	Number of appeals lodged before SCPPA	Change (%)
2016	18,444	-0.1%	557	+6.5%
2017	17,227	-6.6%	507	-9.0%
2018	21,406	+24.0%	695	+37.1%
2019	22,538	+5.3%	845	+21.6%
2020	20,159	-10.6%	983	+16.3%
2021	22,816	+13.2%	1,008	+2.5%
<b>2022</b>	<b>22,901</b>	<b>+0.4%</b>	<b>751</b>	<b>-34.2%</b>

\* Calculations are based on processing of data published in EPPS

In 2022, the State Commission took 751 appeal decisions. Examination of the structure of these decisions shows that 286 appeals were approved, and additional 17 tender procedures were annulled by SCPPA due to major violations to the Law on Public Procurements, whereby the total number of approved appeals accounts for 303, representing a share of 40.3% in all decisions taken. 292 appeals were rejected as ungrounded, accounting for 38.9% of all decisions taken. On the account of untimely or incomplete submission, failure to settle the fee for appeal procedure or absence of competences, SCPPA denied 61 appeals, which accounts for a share of 8.1%. On the other hand, the number of appeals withdrawn by the companies that have lodged them or appeals for which proceedings were terminated because the contracting authority has accepted appeal allegations before SCPPA issued its opinion stands at 95, accounting for a share of 12.7% in all appeal decisions.



### Structure of decisions taken by SCPPA in 2022\*

Structure of appeals according to SCPPA decision	Number of appeals	Share (%)
Approved appeals	303	40.3%
Rejected appeals	292	38.9%
Denied appeals	61	8.1%
Terminated/discontinued appeal proceedings	95	12.6%
<b>Total</b>	<b>751</b>	<b>100.0%</b>

\* Calculations are based on processing data published in EPPS

Analysed at annual level, the share of approved appeals is marked by a drop of 2.3 percentile points compared to the previous year, while the share of denied appeals is marked by increase of 1.2 percentile points.

### Comparison of data on the structure of decisions taken in appeal proceedings\*

Type of decision	2017	2018	2019	2020	2021	2022
Approved appeals	45.8%	47.6%	58.3%	53.3%	42.6%	40.3%
Rejected appeals	37.5%	31.5%	27.6%	31.9%	40.1%	38.9%
Denied appeals	10.2%	12.8%	9.2%	7.1%	7.7%	8.1%
Terminated/discontinued appeal proceedings	6.5%	8.1%	4.9%	7.7%	9.6%	12.7%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\* Calculations are based on processing data published in EPPS

As regards reasons for lodging appeals, based on the analysed sample, in 2022 as well dominant are appeals from economic operators that contest the decision on contract award (77%), among which 69% of cases concern decisions on contract award to another economic operator, while 31% of cases concern decisions on rejecting the bid of the company lodging the appeal as unacceptable. 12% of appeals were lodged against decisions on tender annulment, 7% of them contested the content of tender documents and 4% of appeals include other reasons.



At the level of individual institutions, the highest number of appeals (55) were lodged against JSC Power Plants, followed by the Ministry of Interior whose tender procedures were covered by 37 appeals, and third-ranked is the City of Skopje with 23 appeals.

Among economic operators, the highest number of appeals were lodged by RIKI-JUNIOR LLC import-export Kochani (19), which participated in tender procedures for procurement of hygiene maintenance products. Second-ranked, with 18 appeals lodged, is SIGURNOST-DP LLC Skopje, which participated in tender procedures for fire-fighting equipment, hydrants and installations for protection against lightning. Third on the list of companies, with 14 appeals lodged, is STERNA LLC import-export Skopje, which participated in tender procedures for procurement and lease of IT equipment.

