BALKAN TENDER WATCH

COMPARATIVE REPORT ON PUBLIC PROCUREMENT IN THE WESTERN BALKANS 2024



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Balkan Tender Watch is a regional coalition of civil society organizations dedicated to combating corruption in public procurement in the Western Balkans

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OVERVIEW

This is the eighth annual comparative report on public procurement in the Western Balkans developed by the Balkan Tender Watch, a regional coalition of civil society organizations working on fight against corruption in public procurement.

Public procurement in the Western Balkans accounts for over €13 billion annually. The previous report, published in December 2023, revealed that 33% of this spending—approximately €4.5 billion—occurs under high corruption risk. The potential impact of spending this money honestly and efficiently speaks for itself.

This year's report has undergone some changes. The first section remains consistent with previous comparative reports, offering an overview of the state and trends in public procurement across Western Balkan countries for 2023, along with comparisons to prior years. This provides a comprehensive view of the volume and structure of public procurement, both for individual countries and the region as a whole. The comparison highlights shifts and trends in procurement practices.

In 2023, the share of public procurement in the region's GDP increased to 9.2%, up from 8.8% in 2022. Additionally, public procurement's share of budget expenditures also rose, averaging 26.8% in 2023, compared to 25.7% in 2022, with Serbia reaching a record 41%.

Competition in public procurement declined across most Western Balkan countries in 2023, except for Albania. The average number of bids per tender dropped from 2.92 to 2.81, and 38% of tenders regionally received only one bid.

There has been notable progress in reducing the use of negotiation procedures, but concerns persist in Albania, Bosnia and Herzegovina, and Kosovo. In 2023, an average of 21.2% of public procurement procedures were canceled across the Western Balkans.

An average of 9.1% of procedures were subject to complaints. However, only about one-third of these complaints were upheld (31.4%), a significant decrease from the previous year's 41.4% acceptance rate.

The second section of the report focuses on current public procurement challenges identified by civil society organizations within the Balkan Tender Watch coalition. It highlights the most pressing issues in each country and briefly discusses them. As in previous reports, particular attention is given to corruption risks, serving as a renewed call for action from authorities and stakeholders.

Alongside the steady rise in the value of public procurement in the Western Balkans, competition in tenders has been deteriorating. This issue is particularly pronounced in Bosnia and Herzegovina, Serbia, and North Macedonia, where the number of bids per tender has been steadily declining over recent years. In all three countries, there are now fewer than three bids per tender on average. Consequently, the annual thematic reports for these countries highlight the issue of low competition in public tenders as a significant concern.

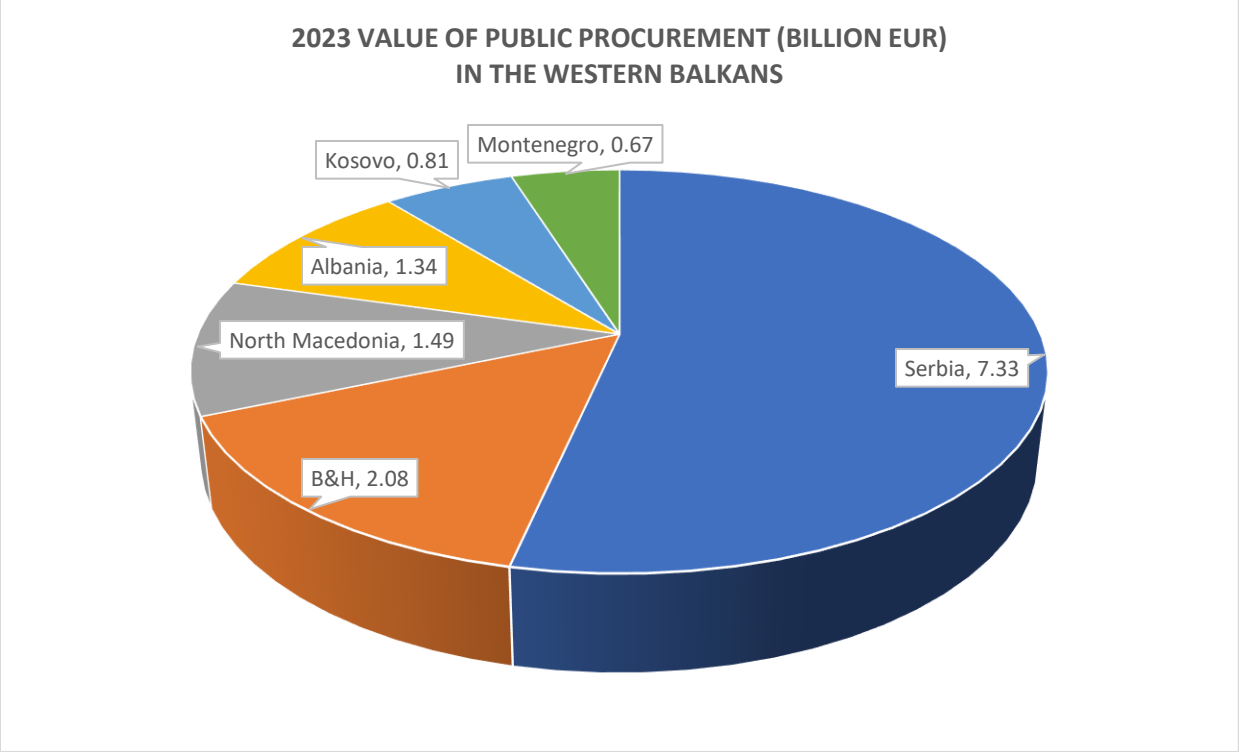
For Kosovo, the thematic report points to the risks associated with framework contracts based on unit prices, which create numerous opportunities for abuse. In Montenegro, the report emphasizes the limited capacity of relevant institutions to detect and address corruption and conflicts of interest in public procurement. Similarly, for Albania, the report addresses concerns surrounding…

PUBLIC PROCUREMENT IN THE WESTERN BALKANS AT A GLANCE

ANNUAL VALUE OF PUBLIC PROCUREMENT

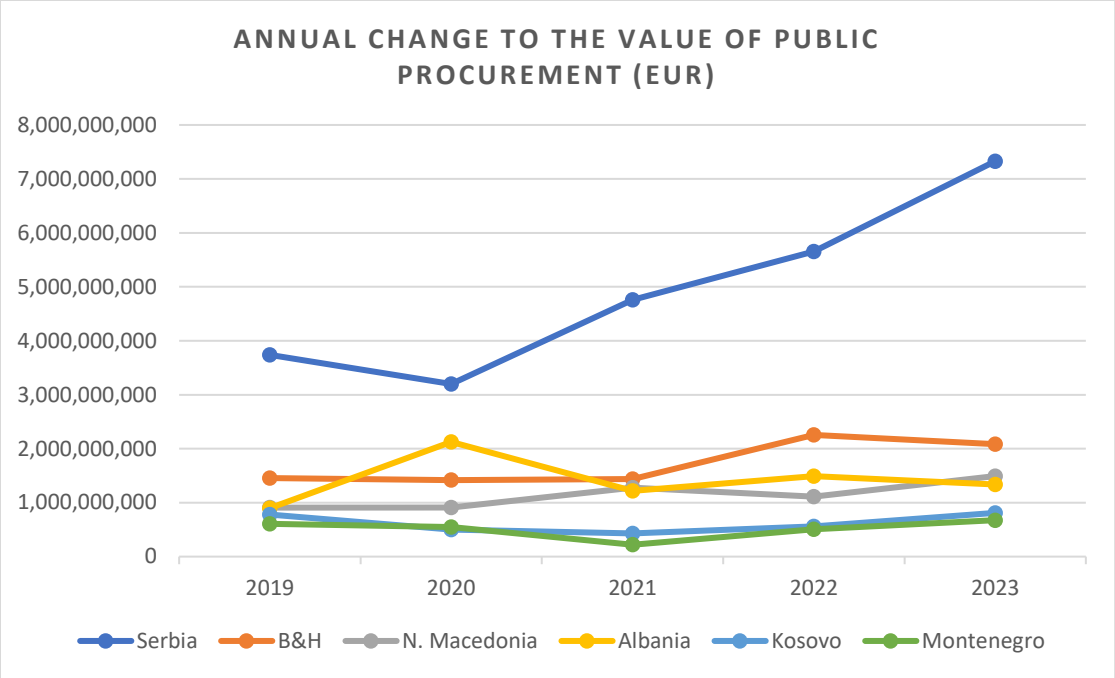
In 2023, the total value of public procurement across the six Western Balkan countries reached a record €13.7 billion, marking an 18.6% increase from 2022, when the total first surpassed €10 billion, reaching €11.6 billion.

Serbia led with the highest procurement value at €7.33 billion, followed by Bosnia and Herzegovina with €2.08 billion. North Macedonia ranked third with a record €1.49 billion, while Albania followed with €1.34 billion. Kosovo and Montenegro recorded values below one billion, at €810 million and €675 million, respectively.

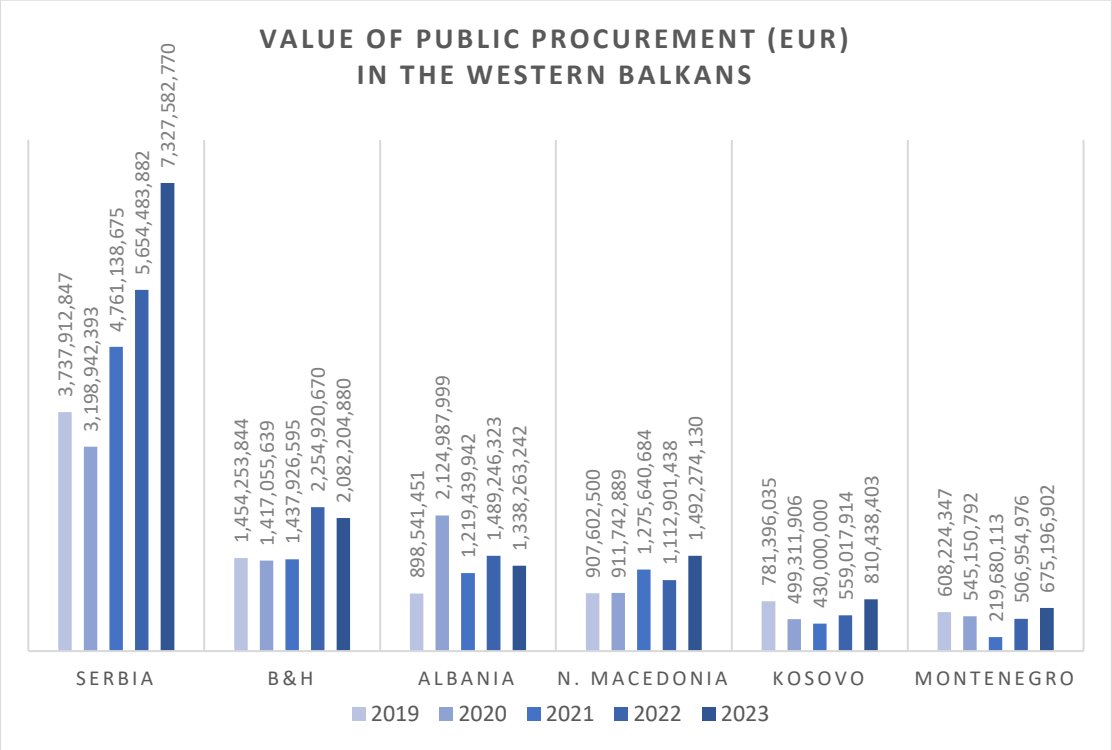


Despite the overall 18.6% regional growth, Albania and Bosnia and Herzegovina saw declines in procurement value, with decreases of 10% and 8%, respectively. In contrast, the other four countries experienced significant increases, with Kosovo seeing the largest jump of 45%. North Macedonia, Montenegro, and Serbia also saw substantial growth, at 34%, 33%, and 30%, respectively.

Between 2022 and 2023, the region's cumulative procurement value rose by 63% compared to the 2020 crisis year, when the total was €8.7 billion. Serbia was the only country where procurement values consistently increased from 2020 onward.

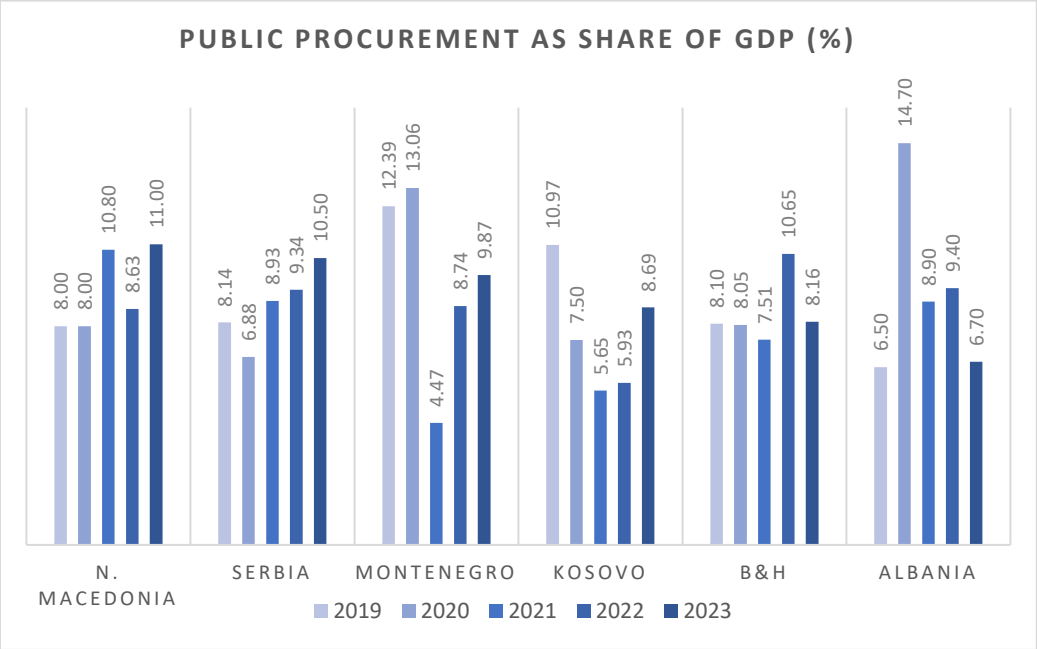


In 2023, Serbia, North Macedonia, Kosovo, and Montenegro all recorded their highest-ever procurement values. Albania's peak occurred in 2020, while Bosnia and Herzegovina's was in 2022.

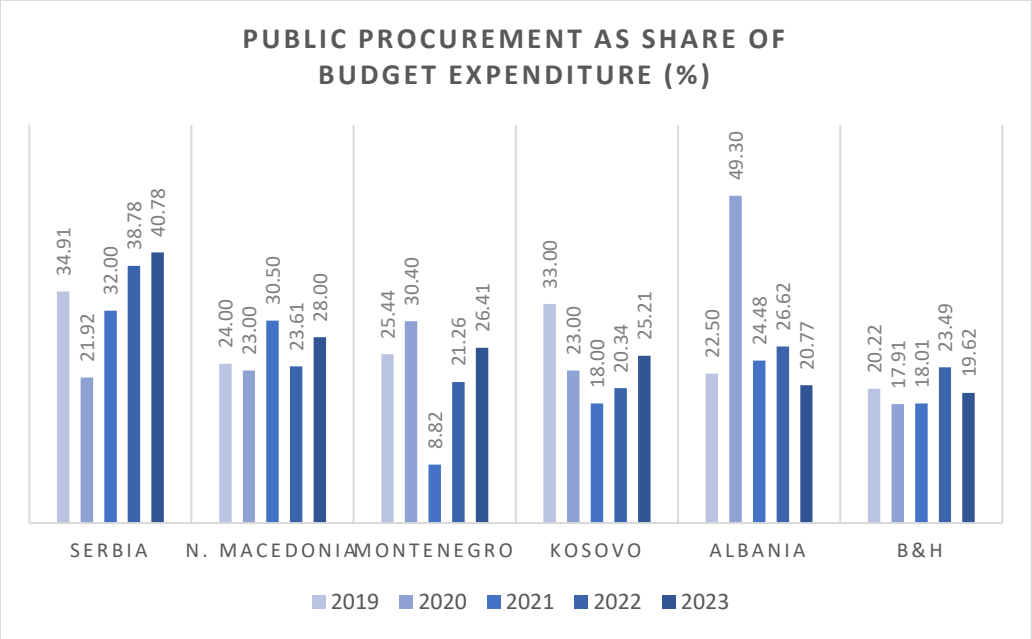


The share of public procurement in the region’s GDP also grew, averaging 9.2% in 2023, up from 8.8% in 2022. North Macedonia led with 11% of GDP, followed by Serbia at 10.5%. These two countries set new records for procurement's share of GDP.

In contrast, other countries saw lower shares, with past years holding their record highs. Montenegro's share was 9.87%, with its 2020 peak, while Kosovo reached 8.69%, with 2019 as its record year. Bosnia and Herzegovina's share fell to 8.16%, with 2022 being the peak, and Albania's share dropped to 6.7%, with 2020 as the high point.

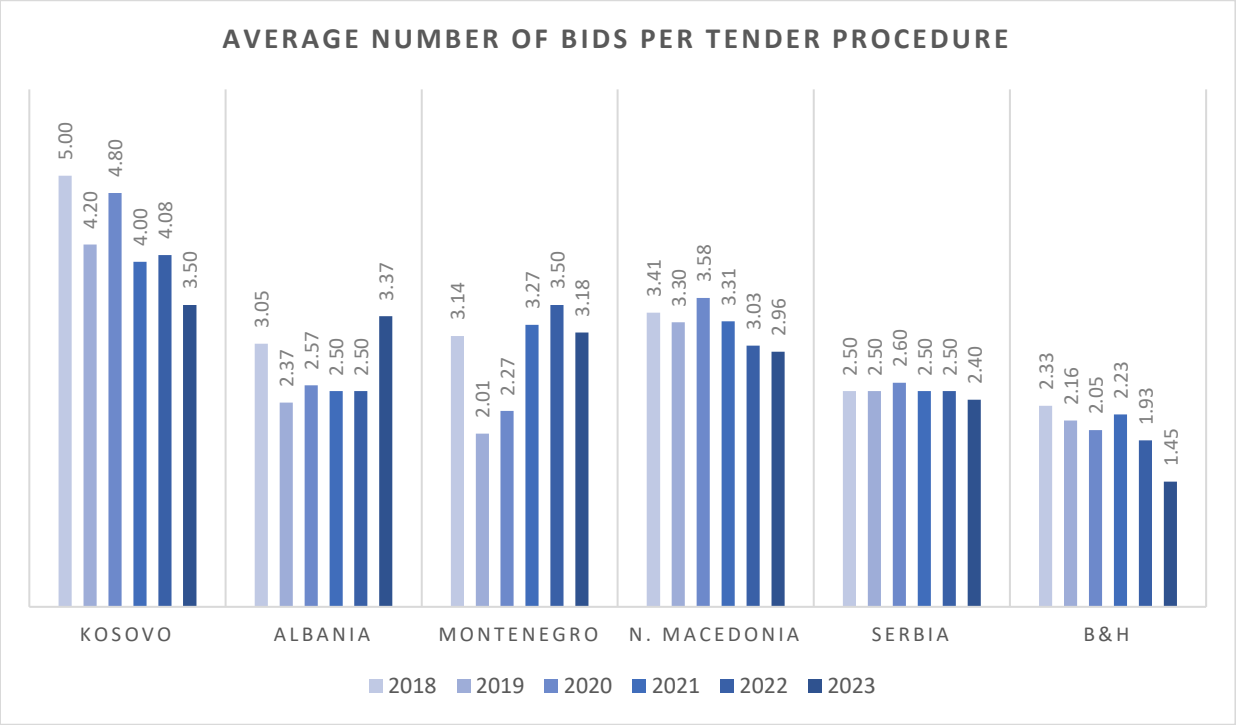


The share of public procurement in the country's budget expenditure also grew in 2023, averaging 26.8%, compared to 25.7% in 2022. Serbia led with a record 41%, followed by North Macedonia at 28% and Montenegro at 26%. Albania and Bosnia and Herzegovina saw shares of 21% and 20%, respectively. Serbia was the only country to set a new record in 2023, with other countries reaching their peaks in previous years.



INTENSITY OF COMPETITION IN PUBLIC PROCUREMENT

In 2023, competition in public procurement declined across most Western Balkan countries, with the exception of Albania, as measured by the average number of bids per tender. Regionally, the average number of bids dropped from 2.92 last year to 2.81 this year.



Despite this decline, Kosovo maintained its lead with an average of 3.5 bids per tender.

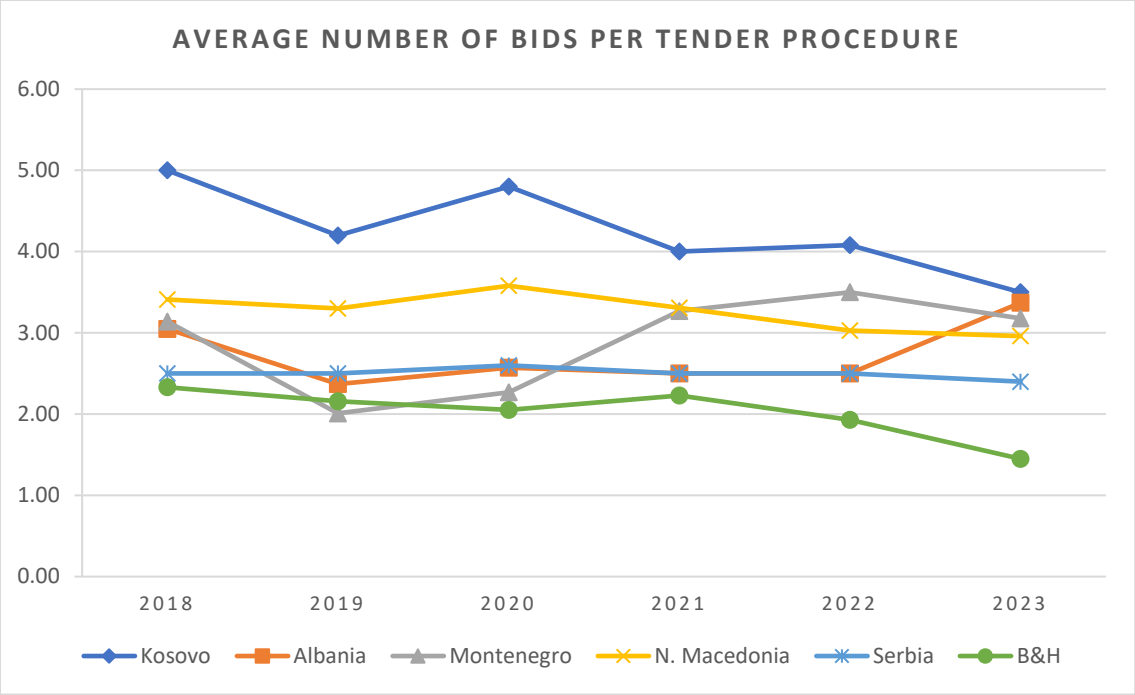
Albania, after years of stagnation, was the only country to see an improvement in competition.

In contrast, Montenegro saw its first drop in competition in five years.

North Macedonia experienced a continuous decline for the fourth consecutive year, with the average falling below three bids per tender.

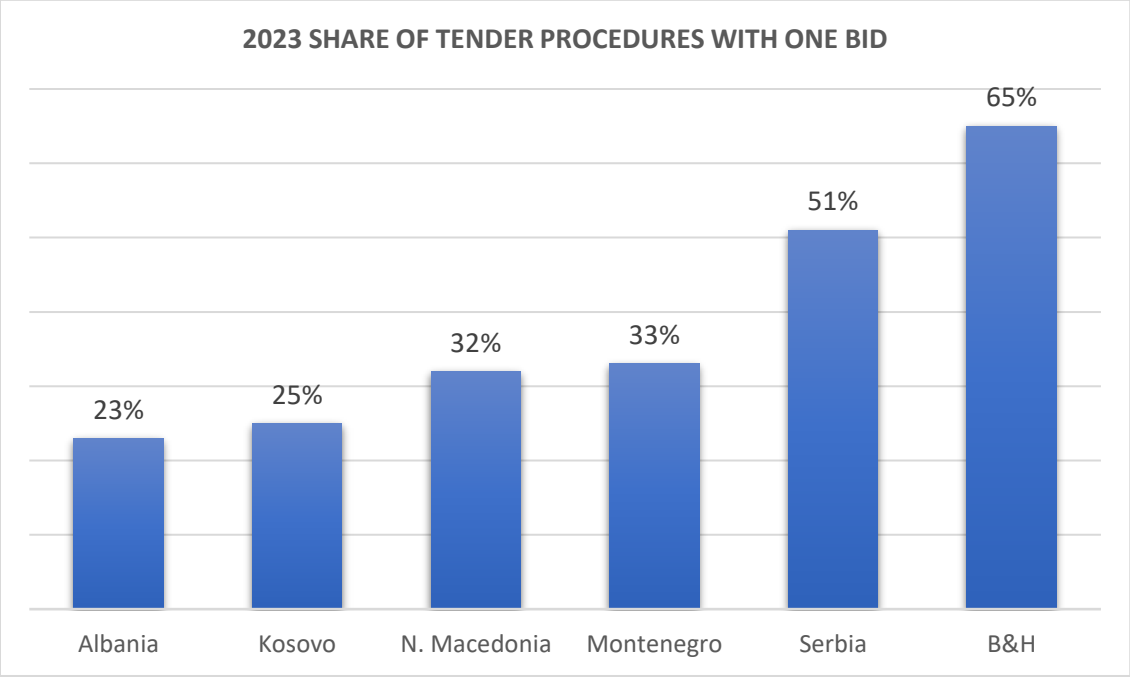
Similarly, Serbia has had consistently low competition, averaging between 2.4 and 2.6 bids per tender over the past six years.

Bosnia and Herzegovina remains in the worst position, with its average staying below two bids for the second year in a row, reaching just 1.45.



Regarding the next competition indicator—the share of tenders with only one bid—there has been no significant improvement compared to last year. On average, 38% of tenders at the regional level received just one bid. In 2022, 39% of tenders were presented with only one bid.

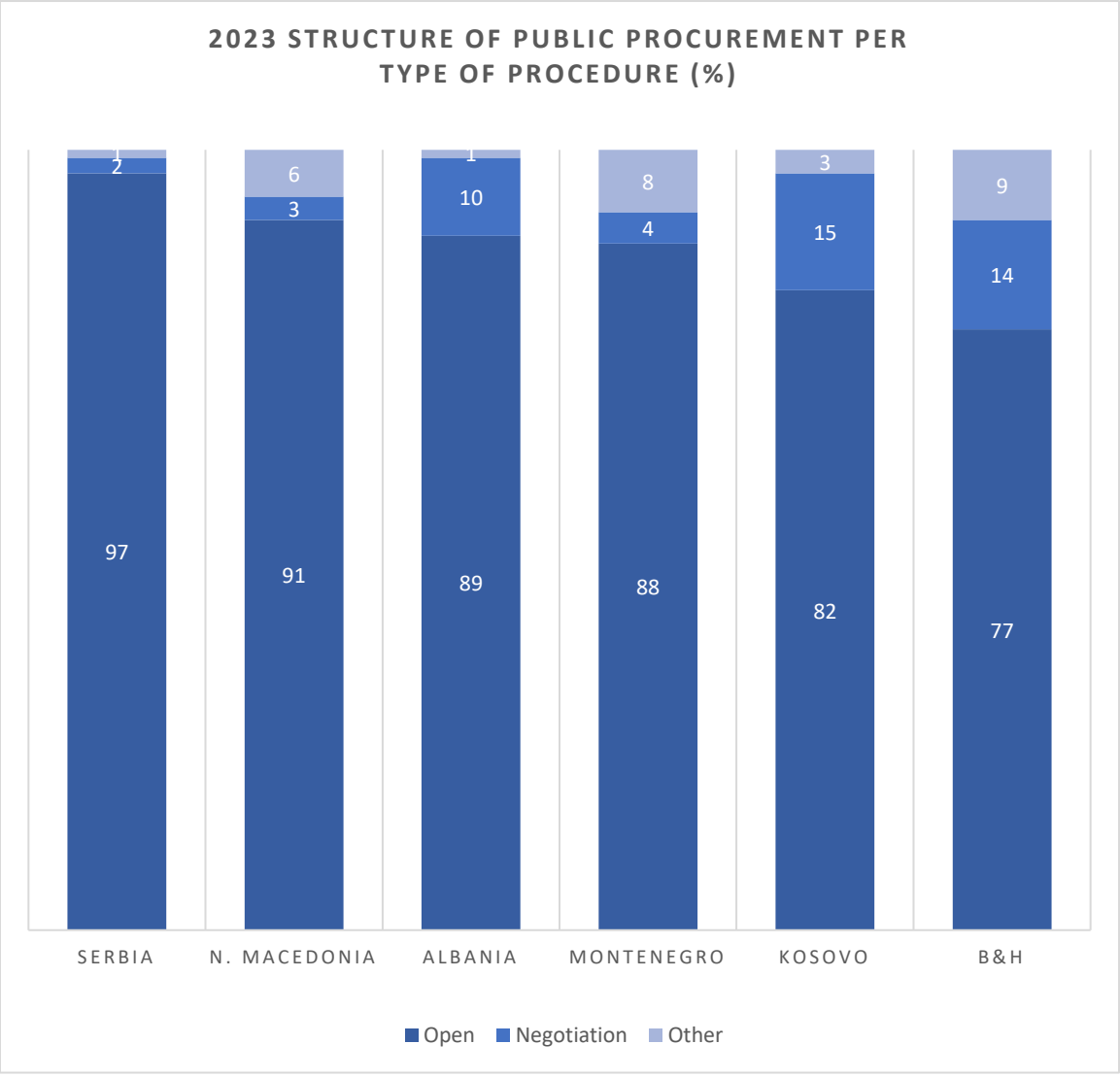
Albania has the lowest share, with 23% of tenders having one bid, while Bosnia and Herzegovina has the highest, at 65%, similar to last year. In Serbia, the situation remains concerning, with half of all tenders receiving just one bid.



SUBJECT AND PROCEDURE STRUCTURE OF PUBLIC PROCUREMENT

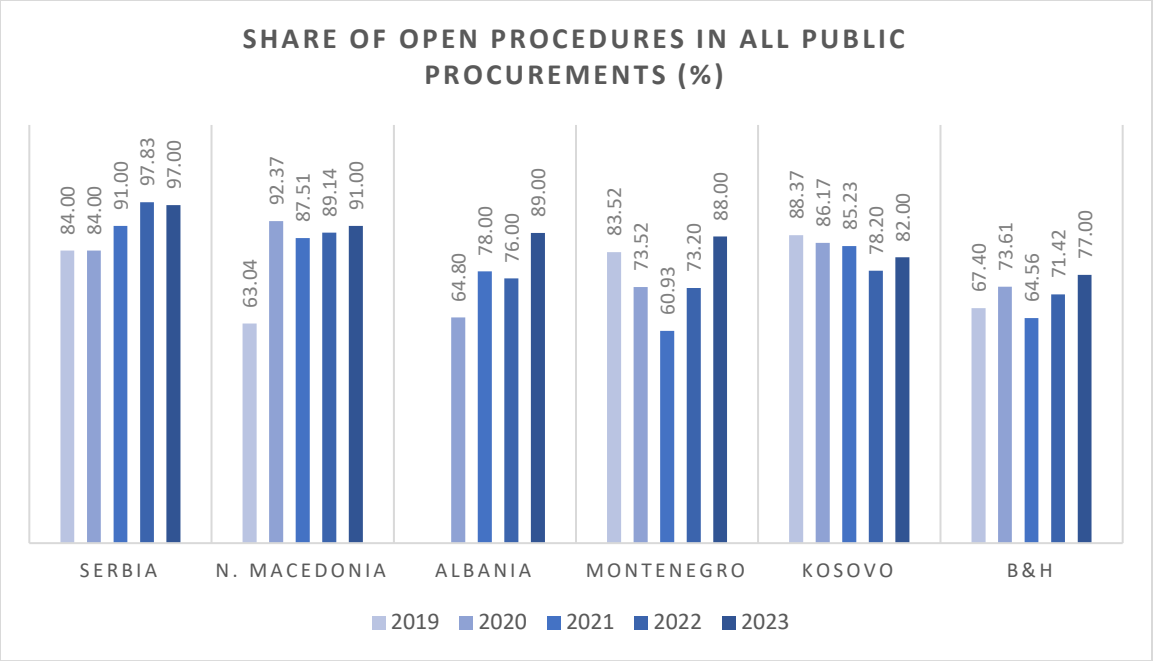
On average, 87% of public procurements in Western Balkan countries are conducted through open procedures, up from 81% the previous year. In 2023, Bosnia and Herzegovina had the lowest share at 77%, while Serbia had the highest at 97%.

Other countries fall between, with Kosovo at 82% and North Macedonia at 91%.



All countries, except Serbia, saw improvements in the value of open procedures, a significant rise from a few years ago when four of the six countries had rates between 61% and 64%.

There has been notable progress in reducing the use of negotiation procedures. In 2023, these procedures accounted for 4.8% of the total procurement value, down from 7.6% in 2022. However, concerns remain in Albania, Bosnia and Herzegovina, and Kosovo, where the use of negotiated procedures still exceeds 10%, indicating persistent challenges in aligning with more competitive practices.

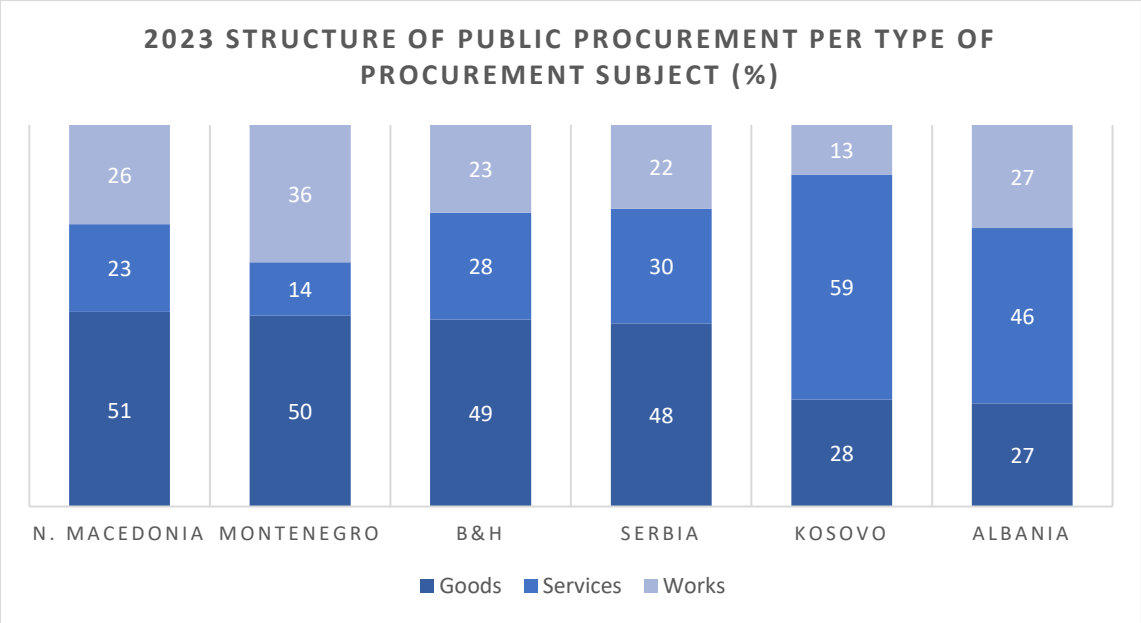


Excluding Kosovo and Albania, most procurement funds in the Western Balkans are spent on goods.

On average, 45% of procurement funds go to goods, down from 51% last year. North Macedonia leads with 51%, while Albania is lowest at 27%.

Services account for 31% of procurement, with Kosovo leading at 59% and Montenegro at 14%.

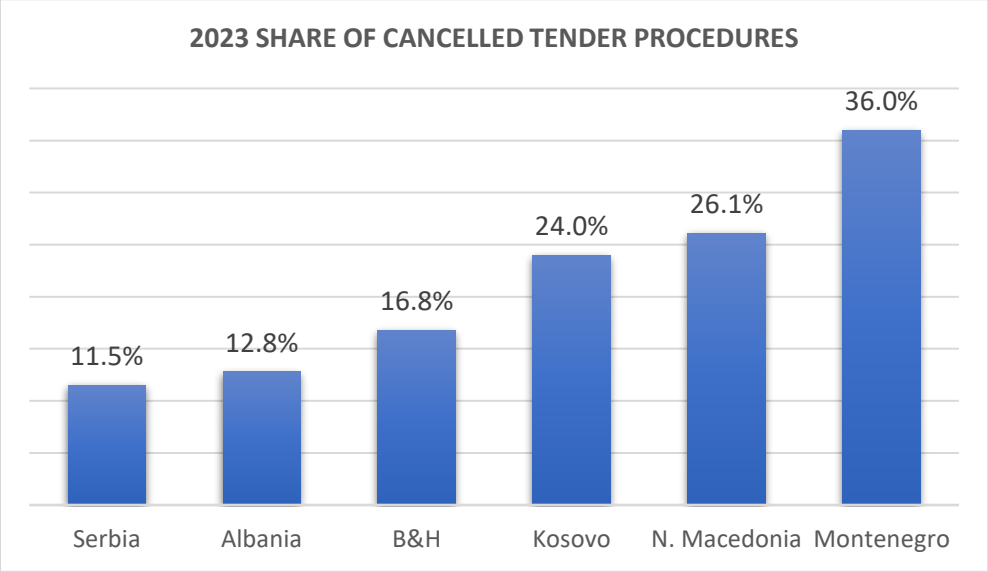
Works represent 24% of spending, with Montenegro at 36% and Kosovo at 13%.



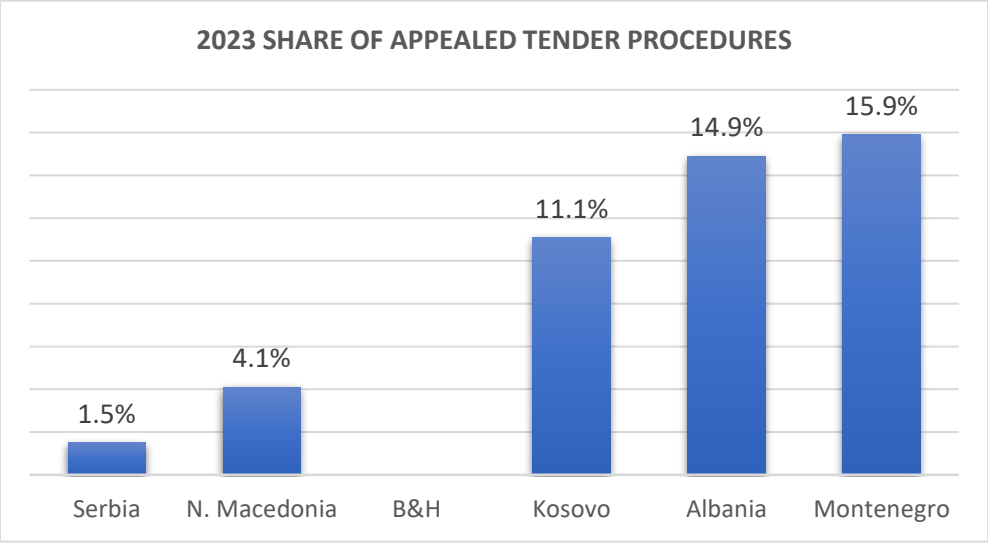
OTHER CONSIDERATIONS IN PUBLIC PROCUREMENT PRACTICES

In 2023, an average of 21.2% of public procurement procedures in the Western Balkans were cancelled.

This rate is notably high in Montenegro, where 36% of tenders were cancelled, surpassing North Macedonia, which had previously held the top spot for cancellations. Serbia recorded the lowest cancellation rate at 11.5%. While Albania significantly reduced its cancellation rate in 2023, Montenegro's cancellations doubled compared to the previous year, and Bosnia and Herzegovina saw a substantial increase.

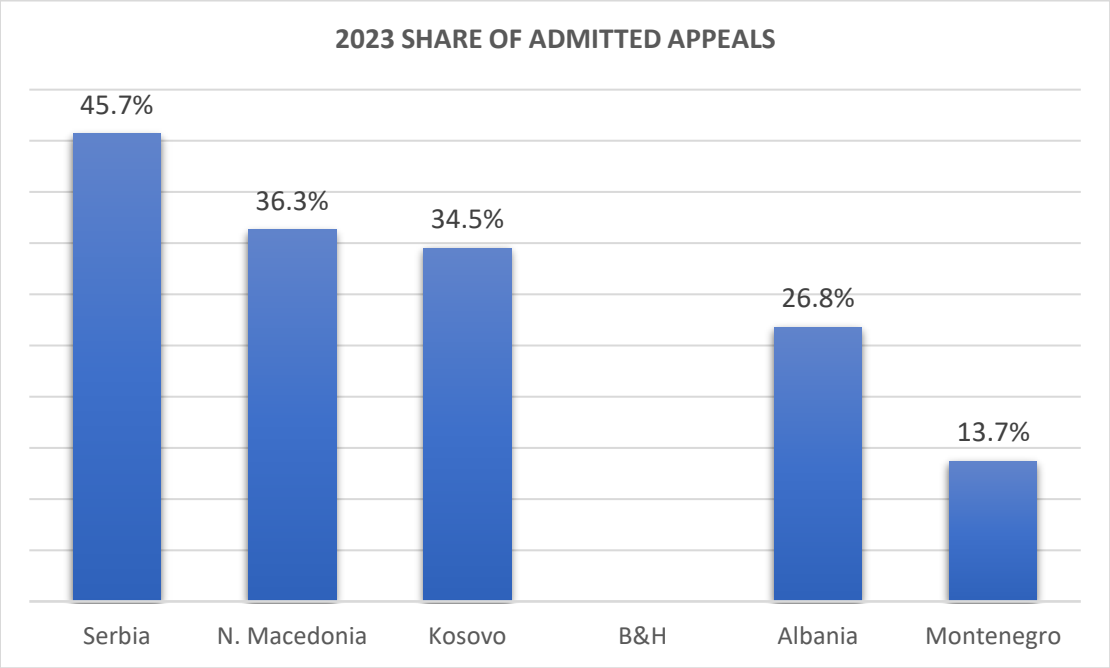


Regarding the use of complaints as a mechanism for safeguarding bidders' rights and combating corruption, an average of 9.1% of public procurement procedures were subject to complaints. Montenegro leads in the use of this tool, with 16% of tenders receiving appeals, while Serbia has the lowest rate, with only 1.5% of tenders facing complaints.



On average, only about one-third of complaints filed by economic operators are admitted (31.4%), marking a significant decline from the 41.4% admission rate observed the previous year. This decrease is evident across all countries in the region.

Serbia has the highest admission rate, with 45.7% of complaints being upheld, while Montenegro has the lowest at just 13.7%. In Montenegro, the admission rate has halved from 2022 to 2023. Albania also experienced a notable decline, with the admission rate falling from 43.2% in 2022 to 26.8% in 2023.



COUNTRY THEMATIC REPORTS

ALBANIA

BOSNIA AND HERZEGOVINA: OVERCOMING LOW COMPETITION IN BIH'S PUBLIC PROCUREMENT

The public procurement system in Bosnia and Herzegovina (BiH)) could be a cornerstone of the nation's economic framework, facilitating the acquisition of essential goods, services, and works for public services and infrastructure development. Several key indicators highlight the state of BiH's public procurement system in 2023. The total value of public procurement for the year was €2,082,204,880 while the average share of public procurement in GDP was 8.16%. Additionally, the share of public procurement in budgetary expenditures is 19.62%.

Despite its importance, the system faces a significant challenge: low competition. This issue has profound implications for efficiency, transparency, and value for money in public spending. This policy brief delves into the problem of competition, examining key indicators and proposing strategic measures to enhance competitive dynamics in the public procurement system in BiH.

Indicators of Competition

Competition indicators are crucial metrics that provide insights into the health and effectiveness of the public procurement system. In BiH, several key indicators highlight the challenges of competition within the public procurement market. The average number of bids per tender is a direct measure of competition. A higher number of bids typically indicates a more competitive environment, leading to better pricing and quality. Unfortunately, this number has been on a steady decline, from an average of 2.54 bids per tender in 2016 to 1.66 in 2023. This downward trend suggests a reduction in supplier interest and engagement in public procurement processes.

Another significant indicator is the proportion of single-bid tenders. A high proportion of tenders receiving only one bid points to limited competition, which can lead to higher prices and potentially lower quality outcomes. In 2023, 65.35% of all tenders received only one bid, up from 41.66% in 2016. This increase underscores the growing challenge of attracting multiple bidders to public tenders.

The participation of foreign bidders is also a critical indicator, as their involvement can significantly enhance competition by introducing new players and driving innovation. However, foreign bidder participation in BiH's public procurement has decreased, with their share dropping from 7.47% in 2016 to just 2.96% in 2022. This decline reflects both market barriers and possibly the perception of an unfavorable procurement environment.

The lack of competition is a corruption risk indicating that there is something wrong with the tender itself. The disinterest of bidders in submitting bids for often very lucrative government procurements speaks to the very low level of trust that bidders have in the public procurement system. Also, the small number of bids leads to higher prices or lower quality of the procured goods or services. According to previous legal provisions (up to 2014), most procedures required at least three valid bids to be collected for the process to be completed. This led to many canceled procurement procedures because a sufficient number of valid bids were not collected. The current legal provision allows contracting authorities to complete the procedure, i.e., award the contract, even if only one valid bid is received. It is alarming that in BiH, during the period from 2015 to 2023, the average number of bids in procurement procedures for goods (where there is the highest number of bidders) was 2 or less. Although this has been noted in a large number of processed cases, because it does not constitute a violation of the Law, audit institutions in the most recently audited periods have not particularly highlighted this risk.

Analyzing the Decline in Competition

The decline in competition in BiH's public procurement system can be attributed to several interrelated factors. One major factor is the complex regulatory environment. The public procurement framework in BiH is highly complex, comprising one primary law (PPL) and 20 subordinate regulations. This intricate legal structure is challenging for suppliers, especially small and medium-sized enterprises (SMEs), to navigate. The extensive documentation and procedural requirements deter many potential bidders from participating.

Economic constraints also play a significant role. BiH's economy is relatively small, with a limited number of suppliers capable of meeting the requirements of public tenders. This inherent limitation reduces the pool of potential bidders, thereby affecting competition. Concerns about corruption and collusion among bidders further undermine fair competition. Such practices lead to an uneven playing field, discouraging genuine competition and driving away potential suppliers. Additionally, market barriers to entry for foreign suppliers and SMEs exacerbate the competition problem. High entry costs, stringent qualification criteria, and a lack of support for smaller enterprises make it difficult for these groups to compete effectively.

A significant concern in Bosnia and Herzegovina's public procurement system is the pervasive presence of corruption and favoritism. Findings from the 2020 survey conducted under the project "***Da javne nabavke budu javne***[1]" reveal alarming perceptions among stakeholders. According to the survey, 88% of respondents believe that corruption is highly prevalent in public procurement. An identical percentage of respondents also think that favoritism towards certain bidders is a well-established practice in BiH. The survey participants often cited the analysis of tender documentation as the primary method for identifying favoritism. These findings underscore the urgent need for measures to enhance fairness in the procurement process, as widespread corruption and favoritism significantly undermine the integrity and efficiency of public procurement.

Implications of Low Competition

Low competition in public procurement has several adverse implications.

Limited competition often leads to higher prices for goods, services, and works, as there is less pressure on suppliers to offer competitive bids. When there are fewer bidders, suppliers may not feel compelled to lower their prices, knowing they face minimal competition. This lack of competitive bidding can result in public authorities paying more than necessary for procurements, directly impacting the budget and reducing the funds available for other essential public services.

Moreover, with fewer bidders, there is a risk that the quality of the procured goods and services may not meet the required standards. The competitive pressure to deliver superior quality is reduced in a market with limited players, which can lead to complacency among suppliers. Without the threat of losing a contract to a competitor, suppliers might not invest in improving their offerings, resulting in subpar products or services being delivered. This can have a detrimental effect on the public sector’s ability to provide high-quality services to its citizens.

A less competitive environment is also more susceptible to corrupt practices. With fewer participants, there is less oversight and scrutiny, creating opportunities for collusion and corruption. Suppliers and procurement officials may engage in unethical practices, such as bid rigging or favoritism, knowing that

[1] Funded by Open Society Fund Bosnia and Hercegovina

there is a lower risk of being caught due to the limited number of competitors. This undermines the integrity of the procurement process and erodes public trust in government institutions.

Combined, these factors result in the inefficient use of public funds. Higher costs, lower quality, and increased risk of corruption all contribute to a system where public money is not spent effectively. This inefficiency undermines the overall effectiveness of public procurement, as the intended benefits of competitive bidding – such as cost savings, improved quality, and transparency – are not fully realized. In the long term, this can hinder economic development, as resources are not allocated optimally, and the public sector's ability to drive growth and innovation is compromised.

Strategic Measures for Improvement

To address the challenges of low competition, several strategic measures are recommended. Simplifying the regulatory framework is a key step. Streamlining legal and administrative requirements can make the procurement process more accessible, particularly for SMEs. This includes simplifying procedures and reducing documentation requirements, as well as standardizing forms and processes to minimize complexity. These actions are intended to encourage broader participation by reducing bureaucratic hurdles and costs associated with compliance.

Enhancing transparency and digitalization is another crucial strategy. Fully implementing and upgrading the e-procurement system can significantly improve transparency and reduce opportunities for corruption. This involves real-time tracking of procurement processes, enabling electronic submission of bids, and adopting digital evaluation processes. These measures aim to make procurement more efficient and attractive to suppliers by increasing visibility and accountability.

The Public Procurement Agency worked on upgrading the information system with modules for electronic submission of bids by bidders, electronic bid opening, electronic bid evaluation, and electronic generation and publication of procurement procedure completion decisions. However, due to technical and legal issues related to electronic signatures, no subsidiary regulation was issued to enable the deployment of the aforementioned modules into production, and as a result, they have not been launched into production. Additionally, there is no capability for electronic verification of personal qualifications (e-Dossier module) from other institutional databases (e.g., data on paid direct and indirect taxes, absence of a final conviction for a criminal offense, etc.). An analysis has already shown that most authorities have some form of electronic records, which is the first prerequisite for interoperability. However, there is a lack of computerization of all registers used in public procurement.

Promoting market engagement is essential for improving competition. Regular market analyses and targeted outreach activities can help identify potential suppliers and encourage their participation. This includes conducting regular market analyses to understand supply capabilities and organizing outreach activities to connect with potential suppliers. Engaging with business associations and conducting supplier training can further help overcome market barriers and enhance supplier capabilities. Collaborating with business associations to reach more suppliers and offering training programs to help suppliers understand procurement processes can build capacity among suppliers, particularly SMEs, making them more competitive.

Supporting SMEs and foreign bidders through financial incentives, technical assistance, and training programs is another key measure. Reducing entry barriers for foreign bidders can also increase competition. Providing these forms of support can enhance the ability of SMEs and foreign bidders to compete effectively in the procurement process.

Strengthening institutional capacity is also vital for effective procurement management. Ensuring that key institutions like Public Procurement Agency and Procurement Review Body have adequate resources and trained personnel to oversee and manage the procurement process effectively is crucial. The professionalization of procurement officials can further enhance their capability to handle complex procurement procedures.

Finally, establishing a robust monitoring and evaluation system to track the progress and impact of implemented measures on competition in public procurement is essential. Regular reporting can ensure transparency and accountability, fostering a more competitive environment.

KOSOVO: FRAMEWORK CONTRACTS WITH UNIT PRICES

Framework contracts with unit prices are awarded using a price-scoring procedure. Price scoring is used in public procurement cases where the contracting authority (CA) "does not know" the quantity of items to be ordered, and for this reason, the quantity of each item in the price list is set at "1". This allows the contracting authority to conduct a procurement procedure without knowing the quantities to be ordered.

According to A01 Regulation No.001/2022 on Public Procurement, the Public Procurement Regulatory Commission (PPRC) has defined the framework contract with unit prices as:
54.15 Whenever the Contracting Authority does not know the indicative quantities, or unit price contracts, the CA must determine the weights based on the importance of each "service category" or each "item" in order for the Contracting Authority to determine what is the lowest bid. In these cases, the threshold or ceiling plus/minus thirty per cent (30%) is not applicable, such as car maintenance, generator maintenance, etc. In these cases, the public opening of bids reads the total weighted price which serves only for the purpose of evaluating the bids while the contract relates to unit prices and can be realized up to the estimated value.

Another Article 27.14[2] states:
27.14 The only function of the weighted total price is to determine the lowest-priced contract, but the payment is always based on the offered prices. The total weighted price is indicated during the bid opening process.

As we can see, the keyword in the definition is "when the Contracting Authority does not know the indicative quantities". In this case, the CA itself decides it does not know the quantities, even where it is possible to know them. This opens the possibility of misusing this procedure, as described in this report.

PPRC does not report in its annual reports on how many contracts have been signed using this type of procedure. However, using publicly available data, FOL Movement has calculated the number of contracts signed in 2023 using this procedure compared to total contracts in 2023. In 2023 there have been 10183 signed contracts. Out of them, at least 352 contracts have been signed using the unit prices procedure. The numbers can be higher because the data was obtained by downloading all awarded contracts to an Excel format and then using formulas to calculate them. As we can see, 3.46% of contracts have been signed using this procedure. However, comparing the value of contracts, that stands at 83 million EUR, or 10.24% of the value of all contracts (810 million EUR). This means that the CAs are using this procedure for higher-value contracts. The average value of the contracts with unit prices is 236,000 EUR, compared to 79,587 EUR for all contracts.

During the contract execution phase, orders are made contingent on the needs that arise. Some items are not ordered at all. The price list is divided into several categories and each of them is given a certain weight in the total of 100%. Price scoring only serves to evaluate bids, while the contract is implemented according to price per unit. Since in scored price tenders the quantities of items are set at "1", this allows companies to bid low prices in positions they deem unlikely to be ordered and higher prices in positions they deem likely to be ordered. The lowest weighted price therefore does not necessarily mean that it will be the cheapest price bid. In contrast to common, unscored tenders, where the quantities are set for each item, the economic operator must bid comparable to market prices, as each position must be ordered.

[2] A01 Regulation No.001_2022 on Public Procurement.pdf (rks-gov.net)

Since some items have extremely low prices, this brings us to a situation where almost all framework contracts with unit prices have abnormally low prices as defined by the Public Procurement Law.

Whenever prices are abnormally low, suspicions of abuse arise. It is not expected that a profit-oriented company will bid abnormally low prices and consequently operate at a loss. In weighted price tenders, institutions could not order a product at all. This is exactly the point where economic operators think they can cash in. They bid extremely low prices in positions that they think are less likely to be ordered and higher prices in those positions they think are more likely to be ordered. Certainly, this is a risk for companies as their forecast may turn out to be wrong and the contracting authority will order products that have abnormally low prices. However, companies tend to have inside information knowing which positions will be ordered. Whether the economic operators have colluded with the CAs will become known only during contract implementation and the attention it has from third parties (NGOs, media, competing firms, etc.).

Case Study

On January 28, 2021, through the price scoring procedure, the Municipality of Prizren entered into a contract with the consortium *Eurovia & Daut Gashi B.I.* for the tender *Gravel Supply for Unpaved Roads in the Municipality of Prizren*. The total price per unit was tied to EUR 16.48. The contract is a framework contract with unit prices for 36 months. The estimated value of this tender was EUR 1.5 million. The distinctive feature of this procedure is that the limit of plus/minus 30% of the contract value cannot be applied, but the contract is implemented if there are funds projected for this tender. The rules for the framework contract do not specify the minimum number of orders, which means that all the projected funds will not necessarily be spent.

In this contract, the scored price is EUR 2.96, while the unscored price is EUR 16.48. The incredibly low value of the scored and unscored price in a EUR 1.5 million tender is quite telling about this procurement activity. Where there is a significant difference between the scored and unscored price, the prices per unit are exceptionally low.

The awardee consortium, from 30 items in the Bill of Quantities, in 19 of them bid a price of EUR 0.04. Items bid at this price include:

- Supply with concrete pipes (10 items)
- Transportation of machinery necessary for the performance of works (excavator, bulldozer)
- Opening and cleaning of drainage canals and transportation of soil to the landfill
- Supply with concrete C25/30.

There are also items with extremely low prices compared to market prices:

- Supply with broken stone (or gravel) (five positions) – EUR 0.24 per m3.
- Excavation and road planning – EUR 0.24 per m3.

Out of 30 items, only three of them have a price higher than EUR 1. The municipality has not required any clarifications from the company on how it is possible to implement the contract with such prices.

From the signing of the contract until July 8, 2021, the Municipality of Prizren has paid two invoices in the amount of EUR 99,998.45 (EUR 50,868.45 and EUR 49,130.00, respectively). Regarding the first invoice, the municipality placed an order to perform work on four different roads. Orders were made for several types of gravel (EUR 0.24 per m3), transportation thereof (EUR 8.02 per m3), and laying, planning, and compacting broken stone (EUR 1.18 per m3). Usually, these three items in contracts of other institutions appear merged into a single item. The approach to compiling the Bill of Quantities by the municipality, means that for any order of gravel from items A1 to A5, transportation (C4) and paving and compacting

(C6) must be ordered too. However, the language "Supply with broken stone" in positions A1-A5 in business terms implies that transportation is included as well. The breakdown into separate items has produced the effect that the tender is deemed to have abnormally low prices. However, when you add the prices of the three items above, it turns out that the municipality has paid a remarkably high price for this service:

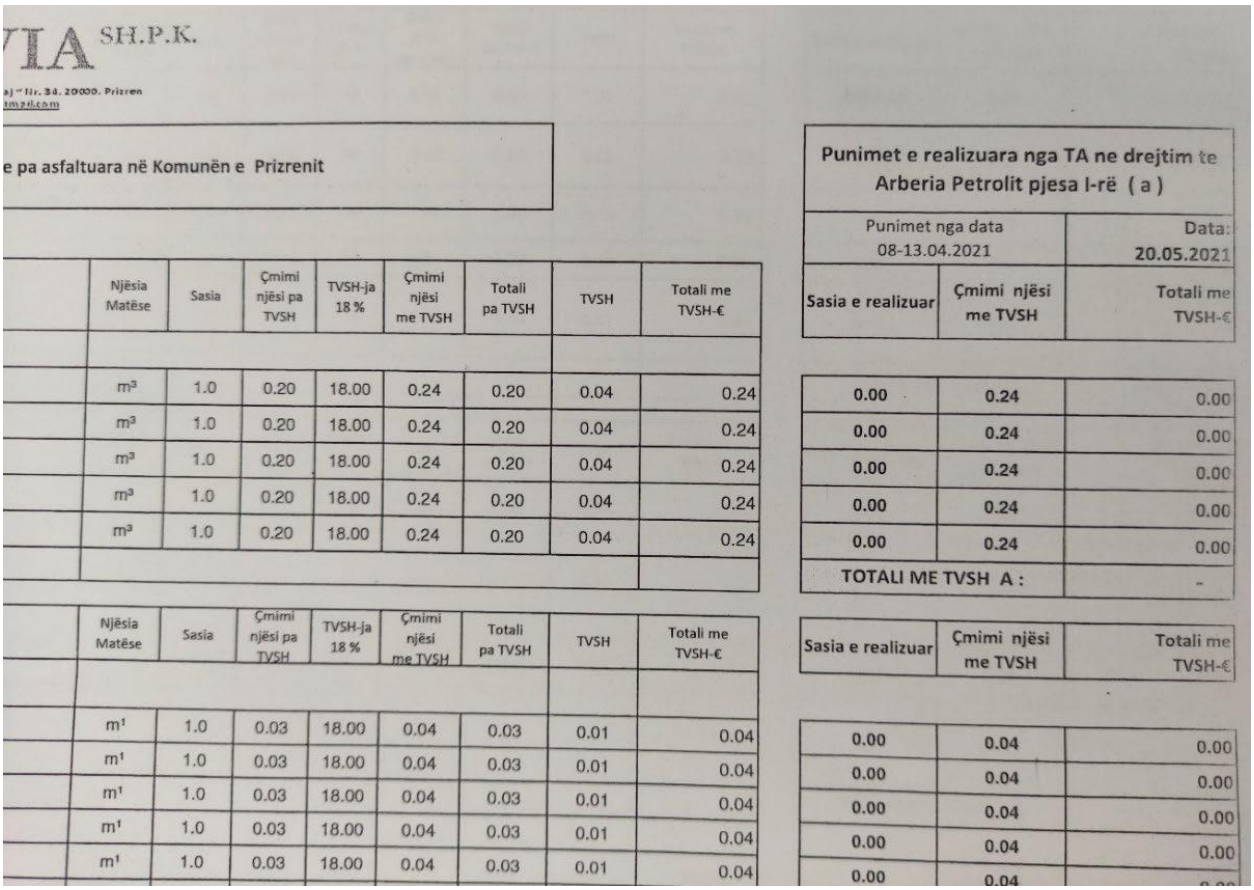
- A3 – Supply with broken stone Fr. 0-31.5 mm – EUR 0.24 per m3
- C4 – Transportation of materials to the designated site – EUR 8.02 per m3
- C6 – Laying, planning, and compacting broken stone to required compaction – EUR 1.18 per m3

The three items together have a price of EUR 9.44 per m3. D+ looked at contracts in other institutions, where prices are significantly lower:

- Municipality of Shtime in its "Laying Gravel on Agricultural Roads" tender for the "Supply and processing of buffer layer (60MN/m²) of crushed limestone 0-63mm with thickness of t=15cm" position paid **EUR 2 per m3**.
- Municipality of Vushtrri in its "Construction of 4th Tier Gravel Road" tender for the "Supply, transportation, laying, and compacting of crushed limestone buffer layer 0-60mm with thickness t=15cm" position paid **EUR 3 per m3**.
- Municipality of Lipjan in its "Asphalting of Alleys in Konjuh and Graveling of Road in Branesh" tender for the "Supply, transportation, laying, and compacting of broken limestone buffer layer 0-31.5mm" position paid **EUR 4 per m3.**
- Municipality of Lipjan in its "Graveling of 4th Tier Roads in the Municipality of Lipjan" tender for the "Supply, planning, and compacting of stone-based material with diameter 0-31.5 mm" position paid **EUR 3.67 per m3.**
- Municipality of Fushë Kosovë in its "Supply of Gravel for Road Pavement" tender for the "Supply of gravel with diameter 0.31, laying with grader and compacting with 10–12-ton roller" position paid **EUR 3.75 per m3.**

All the above examples in four different municipalities show that they paid between EUR 2 and EUR 4 for the same service that the Municipality of Prizren paid EUR 9.24. In the above five cases, the description of works is the same: "to supply, plan, transport and compact broken stone." Through this contract, Municipality of Prizren will pay about three times more compared to other municipalities, especially when the value of the contract is about fifteen times higher than in the other four municipalities. In cases where the tender value is higher, the price per unit should also be lower due to the large quantity to be ordered.

On the second invoice, the Municipality of Prizren paid EUR 49,131.50. Notably, for works conducted on the road designated *TA in the direction of Arbëria Petrol – Part I,* the economic operator billed the municipality EUR 21,450.12. However, the economic operator billed this amount only for the transportation of materials (C4) and site clearing (C5). So, while the municipality paid for transportation, it has not received the gravel supply. The transportation position is in category C of the Bill of Quantities under the description *Gravel Services*. This means that transportation is valid only for gravel.



TA SH.P.K.

e pa asfaltuara në Komunën e Prizrenit

	Njësia Matëse	Sasia	Çmimi njësi pa TVSH	TVSH-ja 18 %	Çmimi njësi me TVSH	Totali pa TVSH	TVSH	Totali me TVSH-€
	m³	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m³	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m³	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m³	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m³	1.0	0.20	18.00	0.24	0.20	0.04	0.24

	Njësia Matëse	Sasia	Çmimi njësi pa TVSH	TVSH-ja 18 %	Çmimi njësi me TVSH	Totali pa TVSH	TVSH	Totali me TVSH-€
	m¹	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m¹	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m¹	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m¹	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m¹	1.0	0.03	18.00	0.04	0.03	0.01	0.04

Punimet e realizuara nga TA ne drejtim te Arberia Petrolit pjesa I-rë (a)

Punimet nga data 08-13.04.2021		Data: 20.05.2021
Sasia e realizuar	Çmimi njësi me TVSH	Totali me TVSH-€
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
TOTALI ME TVSH A :		-

Sasia e realizuar	Çmimi njësi me TVSH	Totali me TVSH-€
0.00	0.04	0.00
0.00	0.04	0.00
0.00	0.04	0.00
0.00	0.04	0.00
0.00	0.04	0.00

Figure 1: Invoice of items ordered for works designated as *TA in the direction of Arbëria Petrol*. The quantity ordered for gravel supply is 0.00

In another part of the invoice, for works performed in Krusha e Vogël, Vlashne, and culverts on Muradem Street, the municipality paid EUR 3,984.20. The municipality ordered 88 m3 supply of gravel, while on the other hand for transportation the economic operator billed the municipality for 446 m3 of gravel. In this situation, there is no other product ordered that needs transportation. This is further evidenced by position C6, which is for paving and compacting of gravel quantity of 88 m3. Exactly the most expensive position in the Bill of Quantities was paid more than the real quantity. The municipality paid EUR 3,576.92, while it should have paid EUR 705.76 (88 * 8.02) and incurred municipal budget losses to the tune of EUR 2,871.16.

These two invoices corroborate the suspicion that the application of the price scoring procedure provides greater potential for misuse. In two parts of the invoice, there was no order for the supply of gravel at all, and this could have happened because of the exceptionally low price (EUR 0.24), while in another part, the quantity for the highest-priced position was increased. The Municipality of Prizren, at only about 6.7% contract implementation rate, has caused harm to its budget in the amount of EUR 24,321.28.

Seeking to avoid the possibility of misuse, the Municipality of Prizren should not use the price scoring procedure in the future. Where possible, it should forecast the quantity of products needed to perform the works. Exactly in this tender, it was possible to give an indicative quantity of products and then the municipality could have used the limit of plus 30% in case it would have needed additional supplies. This would make it impossible for an expensive position to be billed to the municipality by the economic operator all the time and the contract would be automatically terminated if the plus 30% limit was exceeded.

The framework contract with unit prices can be used to abuse the budget of the CA more than any other procedure. The lack of defined quantities is not a valid reason to use this type of contract. Contracting Authorities can use the data from previous contracts, historical prices, and prices collected from the Kosovo Statistics Agency to determine the indicative quantities. Then it is possible to use the framework contract with the limit of plus/minus 30% of the contract value. This means that if indicative quantities are provided the CA can order up to 30% more per item (or 30% less). This allows the CA to have some flexibility if the quantities are not calculated correctly.

MONTENEGRO

Through the monitoring of Public Procurement of Montenegro, which we have been conducting for many years, certain types of problems are constantly repeated despite public advocacy campaigns and constant efforts for improvement.

Planning

The frequency of changes when it comes to the PP implementation plan several times during the year has become the rule rather than exception. A large number of state-owned companies, local self-governments and institutions have not even submitted a plan for the implementation of public procurement for the year 2023, although they were required by law to do so.[3]

As regards recommendations related to the public procurement cycle, the first thing that needs to be improved is adequate and proper planning on the part of contracting authorities which is is prescribed by law as a possibility but not an obligation, as well as introducing an obligation for market research before development of procurement plans.

Corruption and conflict of interest

In this year's report on the implementation of public procurement in Montenegro, it is pointed out that in 2023, the Directorate for Public Procurement Policy did not receive any reports about possible corrupt practices and the existence of conflicts of interest.[4] Even more worrying is that competent institutions do not submit ex-officio initiatives and do not work to strengthen authority through ex-officio control in all phases of the Public Procurement cycle. Their inspection supervision is mainly focused on offenses of a formally administrative sense.

It is necessary to strengthen the capacity of institutions to detect and process corruption in this area, and specific technical knowledge is needed to deal with this complex topic to motivate people from the system to report suspicions of corruption.[5]

Case study: Director of APC illegally appropriated the official BMW

This case study which analyzes the procurement of an official vehicle for the needs of the Agency for the Prevention of Corruption (APC), which was obtained suspiciously and later illegally used by the director of this institution, illustrates how the law is violated even by those who should lead by example.

- Official vehicle for the needs of APC was acquired through a tender procedure that favored the purchase of a specific BMW.
- Director of APC made a shady decision by which she assigned a new BMW to herself for 24-hour use.
- Official license plates PG CGL48 were replaced by civilian ones PG KT033, thus, the use of the BMW became less conspicuous outside of working hours.

[3] Article 84 PUBLIC PROCUREMENT LAW: https://ujn.gov.me/zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019-003-23-od-10-01-2023-011-23-od-27-01-2023-preciscen-tekst/

[4] Report on PP for 2023 Montenegro, available on: https://www.gov.me/dokumenta/1243d93c-493e-42c2-ad4e-ab8dc461e93e

[5] https://www.mans.co.me/en/?p=8442
https://www.mans.co.me/en/?p=9100

APC bought this vehicle in March 2022 at a price of 35,000 euros, after a public procurement procedure in which the company "Voli-Motors", the official importer of the BMW brand for Montenegro, was the only bidder.

The data from the tender documentation point to the suspicion that even before the end of the procurement procedure, APC knew which car their director wanted to drive. Thus, the bid submitted by "Voli-Motors" was identical in technical details to the requirements of APC in the tender documentation, which most often happens when the car model is selected before the tender. After the vehicle was thus purchased, the Director of APC assigned it to herself for permanent use (24 hours), although according to the Government Regulation on the use of vehicles owned by Montenegro, she did not have the right to do so.[6] The Prosecution is investigating the case, based on a criminal complaint filed by NGO MANS.[7]

Prosecution

By introducing an Abuse related to Public Procurement in the Criminal Code of Montenegro as a criminal offense, we must say that some progress was made this year.[8] So far in Montenegro criminal liability for corruption in PP hasn't been addressed and properly tackled by the prosecution. We still don't have a verdict related to abuse in connection with PP. Over the years, a negligible number of investigations have been launched and most of them have been dismissed, while some are still pending.[9]

Institutional capacity

The Anti-Corruption Agency, Public Procurement Inspectorate, Commission for Public Procurement Control and the Ministry of Justice, as well as the Revenue and Customs Administration, should be networked with the Electronic Public Procurement System in order to allow better control and introduce monitoring of public procurement processes in ex-officio capacity.

Individual integrity should be strengthened, and stricter penal provisions should be introduced for authorized persons conducting actions related to the public procurement procedure on behalf of the contracting authority. In addition to misdemeanor provisions, sanctions in the form of a ban for the performance of work in the field of PP as a type of sanction would certainly have an effect in this respect, as well as an obligation to sanction bidding companies in cases of poor contract performance.

There is a need for more transparency in the implementation of simple procurements, i.e. direct contracts, including an obligation for these procedures to be implemented through the electronic system and to define an annual threshold for contracting authorities in terms of the total amount of funds that could be spent under such procedures and the total number of such procedures that could be carried out. More than 64 million Euros has been spent on these procedures during 2023 in Montenegro.[10] A State Auditing Institution of Montenegro stated that implementation of simple procurements in the public sector is not carried out in accordance with legal and by-laws.[11]

[6] Available at: https://www.mans.co.me/en/?p=9348

[7] See more at: https://www.mans.co.me/en/?p=9342

[8] Abuse related to Public Procurement, Article 272c Criminal Code of Montenegro

[9] More at: https://institut-alternativa.org/izostaje-krivicna-odgovornost-za-korupciju-u-javnim-nabavkama-krivicno-djelo-zloupotreba-u-javnim-nabavkama-tesko-dokazivo/

[10] Precise number is 64.609.541,01€

[11] https://dri.co.me/actuality/dri-sprovodenje-jednostavnih-nabavki-u-javnom-sektoru-ne-vrsi-se-u-skladu-sa-zakonskim-i-podzakonskim-aktima

NORTH MACEDONIA

SERBIA: LOW LEVEL OF COMPETITION IN PUBLIC PROCUREMENT PROCEDURES

Among the numerous problems that exist in the public procurement (PP) system in Serbia (a large number of exceptions to the application of the Law on Public Procurement (PPL), the existence of special laws that suspend the application of PPL for the largest infrastructure projects, the absence of control over the execution of contracts, etc.), the low level of competition is certainly one of the most important.

If we keep in mind the essence of public procurement - best value for money - it is completely clear that this can only be achieved through the participation of as many economic entities as possible in the procurement of goods, services and works. Therefore, without competition, it is not possible to achieve the purpose of public procurement.

In Serbia, in the last 3 years (2021, 2022 and 2023), an average of 2.5 bids were submitted in the public procurement procedure (2.4 in 2023, and 2.5 in the remaining two years). This information speaks for itself of the fact that the competition in Serbia is below the European average of over 3 offers in the public procurement procedure.

But what is perhaps even more worrying is the number of proceedings in which only one bid has been submitted. Namely, in more than half of the total number of public procurement procedures in Serbia, only one offer is submitted!

In 2021, one offer was submitted in 51% of PP procedures, in 2022 in 51.62%, and in 2023 in 51.6% of public procurement procedures.

And just as median earning (earning received by more than half of the population of a country) gives a far more accurate picture of the purchasing power of the population than the average earning, so the data on how many procedures only one offer was submitted speaks much more clearly about the (non-) existence of competition in public procurement from the average number of bids per procedure.

In other words, competition in public procurement in Serbia is at such a low level that it is almost non-existent.

The absence of competition can be the result of many factors.

One of the causes of the low level of competition is certainly the low level of trust in the public procurement system, due to the fact that contracting authorities tend to favor certain bidders while business entities often rig the bids.

In recent years, market division has been one of the most common forms of bid rigging in Serbia. In addition to this, other forms of bid-fixing include fictitious bids, rotating bids or refraining from submitting bids. Different bid-fixing techniques are not mutually exclusive and often occur together.

Restriction of competition by contracting authorities can also be done in many different ways: from the determination of specific criteria for the qualitative selection of a business entity, through the "drawing" of technical specifications for precisely specified bidders, to the way in which the subject of procurement is created (whether the subject of procurement is formed by lots or not).

In further text, we will present two glaring examples of competition restrictions in public procurement procedures in Serbia, noting that there are many other similar examples.

Case study: Procurement of digital x-ray machines in 15 health institutions

In this case study, we analyzed the procurement of digital X-ray machines in 15 healthcare institutions in Serbia, which was carried out in the period 2018-2021. The total value of those purchases was over 1.6 million euros.

The same technical characteristics were requested in all analyzed procedures, which, more than obviously, favored a specific bidder.

All observed procedures had an identical outcome: only the offer of this favored bidder met all the client's requirements (it was the only acceptable bid), and the offered price was in most cases identical to the estimated value or was very close to it (in some procedures it was even slightly higher).

The key technical characteristics that the contracting authorities in all these procedures used to favor the mentioned bidder were, in fact, related to the specifications of an additional device that is not an integral part of the digital X-ray machine itself: a dry thermal medical printer, a device used for printing X-ray films (images). In all 15 procedures, different contracting authorities requested that particular printer with an X-ray machine, with identical characteristics which, obviously, favored this particular bidder.

Surprisingly (or not), the Republic Commission for the Protection of Rights in Public Procurement Procedures tolerated such practice of the mentioned contracting authorities, although several requests for the protection of the rights of various potential bidders were submitted, in an attempt to point out to an absolute restriction of competition in the specific case.

In several of its decisions, the Republic Commission stated the following: "The possibility of eventual market restrictions on certain goods in the manner indicated by the applicant in its claim, represents a real market environment in which the contracting authority has to conduct its public procurement procedures. Determining the responsibility for possible illegal restriction of competition on the market cannot be the subject of the procedure of protection of rights in an individual public procurement procedure. Also, challenging of individual public procurement procedures cannot help determine whether any of the market participants violates regulations that ensure equality and competitiveness in the market. The Republic Commission further points out that in this sense, other legal means are available to economic entities to exercise the protection of their rights as market participants."

Case study: Equipment for the Clinical Center of Serbia

In 2021, within the project "Reconstruction of four clinical centers in Serbia", the Ministry of Health conducted a public procurement procedure for equipment for the Clinical Center of Serbia (KCS), estimated at 12 billion dinars without VAT. The subject of this procedure was the procurement of as many as 602 items of various functions and purposes – from the most modern medical equipment (CT scanners, magnetic resonance devices, ultrasound devices…), through standard medical equipment (microscopes, wheelchairs, infusion stands…), to non-medical equipment (bar stools, bookcases, coffee grinders etc.).

The contracting authority, however, did not divide such a complex subject of procurement into several lots, but shaped it as one whole. Therefore, the contracting authority significantly limited the competition since the bidder had to offer all the required goods in order to be able to participate at all. As there is certainly no bidder who can offer all the required goods or a bidder who has a license to place on the market all medical devices that the client procured in this particular case, and since the vast majority of these items on the market are offered by different bidders, the only logical conclusion is that the procurement in question should have been divided into lots. That would have almost certainly led to a larger number of bids and, consequently, to much more favorable offers. The contracting authority's

argument was, however, that the decision on the single subject of procurement was guided by the principle of economies of scale and the expectation of a cheaper offer, and that market research revealed a large number of potential bidders able to meet the requests and fulfill contractual obligations. The fact that the contracting authority was wrong was certainly confirmed by the outcome of the procedure in question: only one bid was submitted (by a group of nine bidders), which was very slightly below the estimated value of the procurement (11,999,312,969.76 dinars without VAT).

Inappropriately short deadline for the bid submission in the procedure with such a complex subject of public procurement certainly contributed to the participation of only one bidder in the subject procedure. Namely, for submission of bids the contracting authority determined the minimum deadline determined by law – 35 days from the day of publishing the public invitation. In accordance with the Public Procurement Law, besides the fact that when determining the bids submission deadlines minimum deadlines must be respected, the contracting authority is obliged to make sure that these deadlines are appropriate for the preparation of an acceptable bid, depending on the complexity of the case. In this particular case, an acceptable offer could have been submitted only by bidders who had received information in advance about the procurement in question or who had already participated in similar procedures, so they were somewhat prepared. And the procedures with similarly shaped subject of public procurement, if there are any, are not very common. Therefore, the contracting authority further restricted the competition by setting an inappropriately short deadline.

In addition, while trying to justify the unique subject of procurement and the minimum deadline for bids submission, the contracting authority mostly referred to the need to equip KCS quickly and completely, with the best possible equipment that a tertiary health institution must have. We believe that after so many decades of waiting for the reconstruction of the KCS building and countless delays in the completion of works, several months of delay caused by the division of procurement subject into lots (taking into account the time to review and evaluate more bids, and to eventually complete initiated protection procedures), would certainly not be a problem, especially if we take into account that we would definitely get better quality equipment at a lower price.

Conclusion

The above examples perfectly illustrate why competition in Serbia is low or almost non-existent. If we add to that the problem of non-application of the PP law, i.e. the existence of laws that suspend the Law on public procurement for the most important and valuable (infrastructural) projects (the Law on Special Procedures for the Realization of the International Specialized Exhibition EXPO Belgrade 2027 and the provisions of the Law on the Use of Renewable Energy Sources), it is completely clear that the situation in the field of public procurement in Serbia is really worrying.

Finally, we should remember and reiterate the fact that the Republic of Serbia opened Chapter 5 - public procurement back in December 2016 as part of negotiations on accession to the European Union, but even eight years later it did not meet the criteria for its temporary closure. Despite the fact that the forecasts at the time regarding the closure of this chapter were very optimistic, unfortunately, it seems that today Serbia may be further from fulfilling the aforementioned criteria than it was eight years ago.

ABOUT THE 'BALKAN TENDER WATCH' COALITION

Balkan Tender Watch is a regional anticorruption coalition of civil society organizations established in 2012 around the idea of narrowing space for corruption in public procurement by means of:

- identifying spots in the public procurement cycle vulnerable to corruption;
- exposing corrupt practices in monitored public procurement cases;
- proposing and advocating policy solutions that would contribute to decreased corruption in public procurement in the Western Balkans.

Current members of the coalition are the Center for Civil Communications - CCC (North Macedonia), Network for Affirmation of NGO Sector - MANS (Montenegro), Center for Applied European Studies - CPES (Serbia), Enterprise Development Agency - EDA (Bosnia and Herzegovina), FOL Movement (Kosovo) and Respublica Centre (Albania).

From the very begging in 2012, the coalition increasing the Western Balkans civil society impact on anticorruption policies and practices across the public procurement cycle. The Balkan Tender Watch strongly believes that the EU integration process has to be used as strong transformative framework for the WB countries. Also, it believes that reforms should go beyond the minimum acquis requirements and lay down firm foundation for Europeanisation of all countries in the WB region.

Since 2012, the coalition has conducted numerous analyses of legal and institutional frameworks that regulate public procurement in WB countries. This endeavour implied monitoring of significant number of public procurement cases to actively control legality, efficiency and effectiveness of public spending.

Coalition members are particularly proud of the two unique tools developed, i.e. the benchmarking tool that enables detection of spots and areas within public procurement systems vulnerable to corruption and the Manual on Monitoring and Control of Public Procurement Purposefulness.

In the course of past years, in addition to producing many comparative analyses, shadow reports, policy and media briefs, the coalition provided training and mentorship to more than 50 civil society actors (NGOs and media) from the WB region in order to share knowledge, boost their capacity and empower them to actively engage in monitoring of public procurement and public finances in general. At the same time, active 'field' work with grassroots civil society actors enabled us to establish a broad and stable anticorruption network.

Visit our website: https://www.balkantenderwatch.eu/