

SHADOW REPORT

ON PUBLIC PROCUREMENT
IN NORTH MACEDONIA 2023





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Balkan Tender Watch is a regional coalition of CSOs working on fight against corruption in public procurement in the Western Balkans.



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INTRODUCTION

Starting from 2018, Balkan Tender Watch - a regional coalition of civil society organizations working on fight against corruption in public procurement - assesses the state-of-affairs in public procurement in the Western Balkans.

Based on the unique monitoring methodology comprised of 68 indicators, the average score for all six WB countries related to public procurement performance in terms of application of legislative, institutional, systemic and practical anticorruption measures is calculated at 67%, which means that 33% of all public procurements are still implemented under serious threat of corruption.

In 2022, the total value of public procurement in all WB countries amounted to 11.6 billion EUR. The average share of public procurement in the gross domestic product (GDP) of WB countries stands at 8.78%, while its share in total budget expenditure averages at 25.7%. When this amount is correlated to the calculated score of 67%, it could be inferred that, annually, 3.8 billion EUR are under direct threat of corruption.

As regards the general preparedness of WB countries in the area of public procurement, the European Commission has assessed Montenegro as the best prepared and Bosnia and Herzegovina as the least prepared country. Montenegro has moderate-to-good and Bosnia and Herzegovina has some level of preparedness. Kosovo is assessed as some-to-moderately prepared, with the remaining WB countries (Albania, North Macedonia and Serbia) falling within the range of moderate preparedness. All WB countries are recommended to improve integrity, fight against corruption and conflict of interests in public procurement, and to ensure consistent implementation of public procurement rules.

Public procurement in the Western Balkans is characterized by absence of/insufficient competition, incomplete transparency, lack of efficient control across the entire public procurement cycle, especially in respect to contract performance, and lack of integrity.

Almost all WB countries suffer some form of non-alignment of their respective legislative and institutional framework which creates problems in implementation of public procurements.

Impunity for violations, abuses and criminal offences committed as part of tender procedures remains the biggest problem in the fight against corruption in public procurement and hinders all and any efforts towards more efficient public spending.

WB countries are recommended to further improve transparency, accountability and liability in public procurement, take specific measures aimed at detecting and preventing conflict of interests, promote integrity in public procurement, as well as process and monitor cases of malpractice and abuse.

WB countries should take urgent and enhanced efforts to ensure and promote competition, equal treatment and non-discrimination in public procurement, as well as to provide further professional and continuous training for persons involved in public procurement.

In addition to the Comparative Evaluation Report, the state-of-affair in the field of public procurement at the level of individual WB countries is covered under annual shadow reports aimed to offer country-specific and evidence-based insight into and “local” view of public procurements: how effective is the public procurement system; is the legislative and institutional setup appropriate; and do practical measures taken safeguard against corruption.

HIGHLIGHTS

KEY PUBLIC PROCUREMENT FIGURES, 2022	
Annual value of public procurement:	1.113 billion EUR
Annual change under the value of public procurement:	-12.8%
Public procurement as share of GDP:	8.63%
Public procurement as share of state budget expenditure:	23.6%
Average number of bids per tender procedure:	3.03
Share of tender procedures with one bid:	30%
Value share of open procedures:	89%
Value share of public procurements for goods:	61%

- 94% of all public procurements, valued at 988 million EUR, use 'lowest price' as selection criterion.
- Competition in public procurement has declined to the lowest level recorded in the last five years.
- The top 10 companies with high-value procurement contracts account for 26% of the total value of all public procurements.
- Every third tender procedure was annulled.
- The value of directly-awarded contracts has decreased; however, 6.6.% of all contracts have been awarded under this type of procedure.
- The number of appeals has decreased by high 34%.
- Only 40% of all appeals were approved, which is the lowest approval rate recorded in the last six years.
- Direct contract was signed with the American-Turkish Consortium *Bechtel & Enka* without application of the Law on Public Procurement and concerns construction of 110 kilometres of highways in total value of 1.3 billion EUR.
- The European Commission has assessed the country as moderately prepared in the area of public procurement, with limited progress achieved in the last year.
- Adjustment of eligibility criteria for tender participation or adjustment of technical specifications to favour particular bidders is a growing problem.
- There are serious suspicions about prior arrangements between companies for tender rigging.
- The bid-evaluation stage has resulted in rejection of high 13% of all bids (around 65,000 bids in total).
- Performance of public procurement contracts is rarely subject of internal audits, and this stage of public procurement is difficult to be controlled by means of external audit.
- Detection of corruption is the most successful aspect in the fight against corruption, mainly credited to civil society organizations and the media, but also some independent public bodies.
- The Parliament, under fast-tracked procedure, adopted amendments to the Criminal Code that revoke sanctions for public officials who have committed abuse of official duty and authorization when implementing public procurements.

STATE OF AFFAIRS

FOR SEVERAL YEARS, IMPLEMENTATION OF PUBLIC PROCUREMENT IN NORTH MACEDONIA IS 'TRAPPED' INTO PERPETUATION OF OLD PRACTICES. WHILE THE NEW LAW ON PUBLIC PROCUREMENT, LARGELY ALIGNED WITH THE EU ACQUIS, IS IN FORCE FOR MORE THAN THREE YEARS NOW, **PUBLIC PROCUREMENTS ARE STILL IMPLEMENTED IN THE SO-CALLED 'OLD FASHION', NOT UTILIZING THE POSSIBILITIES OFFERED BY THE NEW LEGAL FRAMEWORK.** INDEPENDENT PUBLIC AUTHORITIES, CIVIL SOCIETY ORGANIZATIONS AND THE MEDIA CONTINUOUSLY DISCLOSE CASES OF POSSIBLE IRREGULARITIES AND CORRUPTION IN PUBLIC PROCUREMENT.

By inertia and not as naively as it might seem, selection of the most favourable bid is **dominantly made by using the criterion defined as 'lowest price'**, in spite of the fact that the law stipulates use of the criterion defined as 'most economically advantageous tender'. High 94% of procurement procedures still use 'lowest price' as criterion for selection of the most favourable bid, thereby preventing cost-effective procurement of what is needed and attainment of the best value for the money spent. In 2022, this selection criterion was used to award public procurement contracts in total value of 988 million EUR.

HIGH 94% OF PROCUREMENT PROCEDURES STILL USE 'LOWEST PRICE' AS CRITERION FOR SELECTION OF THE MOST FAVOURABLE BID, THEREBY PREVENTING COST-EFFECTIVE PROCUREMENT OF WHAT IS NEEDED AND ATTAINMENT OF THE BEST VALUE FOR THE MONEY SPENT. IN 2022, THIS SELECTION CRITERION WAS USED TO AWARD PUBLIC PROCUREMENT CONTRACTS IN TOTAL

Apart from lowest price, contracting authorities did not discontinue **frequent organization of electronic actions to reduce initially bided prices.** In 2022, e-auctions were organized for 73% of all public procurements, in spite of the fact that adverse effects of inadequate use of e-auctions have been repeatedly indicated by the civil society sector and, in the last several years, by the institution competent to monitor and analyse implementation of the Law on Public Procurement, i.e. the Bureau of Public Procurement (BPP). In this regard, BPP recommended the contracting authorities to limit use of e-auctions, irrespective of the criterion applied for selection of the most favourable bid.

2022 was marked by **declined competition in public procurement** to barely 3 bids per tender procedure, which is the lowest competition level recorded in the last five years. Negative trends in public procurement competition are evident from other datasets as well. Most worrying is the fact that more than 35% of tender procedures are not presented with any bids or are presented with only one bid. More specifically, 5% of tender procedures are not presented with any bids, while 30% are presented with only one bid. Another concern-raising trend is the deteriorated structure of tender procedures in the sense that the share of tender procedure with no bids, with one and with two bids is increasing, while the share of those with three and more bids is decreasing.

Low competition is also reflected in concentration of companies participating in tender procedures, i.e. **absolute domination of several companies in distribution of public procurement funds**. Notably, the top 10 companies with high-value procurement contracts account for 26% of the total value of all public procurements, while the cumulative value of contracts won by the top 20 companies with highest number of procurement contracts accounts for 35% of the total value of all public procurements. On the other hand, only 0.3% of public procurement contracts are awarded to foreign companies (100 contracts), accounting for 3.3% (37 million EUR) of the total value of all procurement contracts. Among them, EU companies account for 55% of these contracts and 83% of their cumulative value, with 45% of contracts accounting for 17% of the total value are awarded to companies from non-EU countries.

THE CUMULATIVE VALUE OF CONTRACTS WON BY THE TOP 20 COMPANIES WITH HIGHEST NUMBER OF PROCUREMENT CONTRACTS ACCOUNTS FOR 35% OF THE TOTAL VALUE OF ALL PUBLIC PROCUREMENTS.

Frequency and ease of tender annulment has not subsided. **In 2022, every third tender procedure was annulled.** In that, the dominant reason for tender annulment concerns the fact that there were no bid submitted or there were no acceptable bids among those submitted, i.e. all bids had been eliminated in the evaluation phase. There are institutions that have annulled more than 50% of their tender procedures, meaning they have annulled every second tender and had to organize the procurement procedure anew. A lot has been said about problems created by tender annulment which primarily threatens efficiency and effectiveness in operation of the institutions, as well as uncertainty and distrust among businesses. The high share of tender annulments is one of the oldest problems in the area of public procurement in the country, but has not been resolved even with the several measures taken in the last years. This raises concerns that, in addition to objective reasons, frequent annulment of tender procedures is also related to tender rigging and corruption.

The single positive development is noted in respect to negotiating procedures without previously published procurement notice, also known as direct contracts, which are the least transparent procurement procedures. While the number of such contracts in 2022 has increased compared to the previous year (334 in 2022 compared to 300 in 2021), **the value of directly-awarded contracts has decreased.** In 2021, the value of these contracts accounted for 105 million EUR, while in 2022 their value dropped to 74 million EUR. In spite of the decreased value of direct contracts, 6.6.% of all contracts have been awarded under this type of procedure. However, the biggest problem with these contracts is the fact that high 82% of negotiating procedures without previously announced procurement notice were presented with only one bid, i.e. they implied negotiations with only one company. As regards reasons for use of this non-transparent

procedure, as many as 35% of direct contracts were signed on the grounds of urgent needs, while 55% were awarded due to two previously failed procurement procedures, meaning that the tender procedure was not presented with any bids or there were no acceptable bids after the evaluation phase.

In 2022, a negative trend is observed in respect to appeals lodged by companies before the State Commission on Public Procurement Appeals. Namely, while the number of tender procedures organized in 2022 is slightly higher compared to the previous year (by 0.4%), the number of appeals has decreased by high 34%. At the same time, the share of appeals in the total number of announced procurement notices has dropped to 3.3% and is the lowest share observed in the last four years. The share of appeals approved by the State Commission has decreased in parallel to the decreased number of appeals lodged. Only 40% of all appeals were approved, which is the lowest approval rate in the last six years.

In addition to above-elaborated general issues, **each public procurement stage is affected by other problems, some of which are old, while others are new**, and are summarized below:

- market research is still not conducted;
- procurement needs are not elaborated and justified;
- public procurement plans are not complied with;
- little effort is invested to ensure a more precise calculation of the procurement's estimated value;
- frequent use of discriminatory provisions in tender documents and technical specifications;
- frequent occurrence of bids that fully match the procurement's estimated value, which had not been published in advance;
- too many bids rejected in the evaluation phase;
- rare appointment of persons responsible to monitor contract performance, etc.

At national level, 2022 was marked by the government's decision to continue implementation of the 2019 special Law on Strategic Partnership for Construction of Corridors VIII and X-d in spite of concerns expressed by the EU about the fact that this law exempts application of the Law on Public Procurement.

In March 2023, a contract was signed with the American-Turkish consortium *Bechtel & Enka*, selected in direct and non-competitive manner and without application of the Law on Public Procurement and concerns construction of 110 kilometres along these two corridors, in total value of 1.3 billion EUR. This means that **not only was the strategic**

IN MARCH 2023, A CONTRACT WAS SIGNED WITH THE AMERICAN-TURKISH CONSORTIUM BECHTEL & ENKA, SELECTED IN DIRECT AND NON-COMPETITIVE MANNER AND WITHOUT APPLICATION OF THE LAW ON PUBLIC PROCUREMENT, FOR CONSTRUCTION OF 110 KILOMETRES ALONG THESE TWO CORRIDORS, IN TOTAL VALUE OF 1.3 BILLION EUR.

partner selected directly, by means of *lex specialis* and without competitive procedure, but the Law on Public Procurement would not be applied to projects anticipated for construction of these two corridors, i.e., in the next six years, at least 200 million EUR of budget funds annually will be spent without application of this law.

In that, poor experience from a similar endeavour back in 2013 when the Law on Public Procurement was exempted from application in selection of the Chinese company *SINOHYDRO* to construct the motorway to Ohrid in the value of 0.5 billion EUR did not serve as lesson learned, especially knowing that construction deadlines were breached several times and the motorway is still not completed, almost twice the amount of initially planned funds was spent and corruption trial is led before the criminal court.

Amendments to the Law on Medicines and Medical Aids from March 2023 also derogate the Law on Public Procurement. In particular, they allow award of managed entry agreements between the Republic of North Macedonia and manufacturers of innovative medicines at high prices, without market competition. According to these changes and contrary to provisions under the Law on Public Procurement, managed entry agreements will not be made publicly available and persons involved in the procedure will be bound by non-disclosure statements..

STATE OF AFFAIRS FROM THE EU PERSPECTIVE

THE FACT THAT, FOR SEVERAL YEARS IN A ROW, THE EUROPEAN COMMISSION REITERATES THE SAME REMARKS IN THE AREA OF PUBLIC PROCUREMENT (CHAPTER 5) SPEAKS VOLUMES ABOUT **THE COUNTRY'S STATUS QUO IN THIS FIELD. HENCE, WHILE THE COUNTRY IS ASSESSED AS MODERATELY PREPARED IN THE AREA OF PUBLIC PROCUREMENT, THE EUROPEAN COMMISSION NOTES THAT ONLY LIMITED PROGRESS HAS BEEN ACHIEVED IN THE LAST YEAR.** IDENTICAL GENERAL ASSESSMENTS ON 'MODERATELY PREPARED' AND 'LIMITED PROGRESS' ARE MADE FOR THE THIRD CONSECUTIVE YEAR.

In its last Country Report, the EC refers to three general remarks on public procurement in North Macedonia:

- (1) need for continuous training of all parties involved in public procurement, i.e. key institutions, entities implementing public procurement (contracting authorities) and entities participating in public procurement (economic operators);
- (2) the authorities should introduce more effective anticorruption measures across the public procurement cycle; and
- (3) concerns are raised with direct award of contract for construction of the Corridors VIII and X-d, which exempts application of the Law on Public Procurement.

In the short term, the country is recommended **to adopt new law on concessions and public-private partnerships** to further align the national framework in these areas with the EU acquis. This is an old recommendation, repeated for many years, and it remains unclear why this law has not been aligned with the EU acquis so far and why its adoption was prolonged for such long period. While public procurement regulations fall within the realm of the Ministry of Finance, concessions and public-private partnerships are regulated by the Ministry of Economy. In this regard, the EC notes that the capacity of this ministry to deal with concessions and public-private partnerships remains limited. Also, it reiterates the remark that registers for these two types of contracts remain to be established.

The next short-term recommendation which the EC requires the country to implement in the next year is **to improve coordination among key stakeholders and strengthen their capacity** to implement the principles of transparency, free competition, equal treatment and non-discrimination. This is another recommendation featured in EC Reports for several years in a row. This apparently short and clear recommendation is possibly the most difficult to implement as it concerns adequate and adherent enforcement of the Law on Public Procurement, which has persisted as problem since the adoption of the new law in 2019.

THE EUROPEAN COMMISSION REQUIRES THE COUNTRY TO IMPROVE COORDINATION AMONG KEY STAKEHOLDERS AND STRENGTHEN THEIR CAPACITY TO IMPLEMENT THE PRINCIPLES OF TRANSPARENCY, FREE COMPETITION, EQUAL TREATMENT AND NON-DISCRIMINATION..

The third short-term recommendation also concerns one of key segments in enforcement of the new law, i.e. **further increase use of 'most economically-advantageous tender' (MEAT) as contract award criterion**. While 'most economically-advantageous tender' is the only criterion for selection of the best bid in tender procedures, institutions still use the criterion defined as 'lowest price', albeit with rare exceptions therefrom. At the time when use of 'lowest price' was mandatory under the old law, in force by 2019, both contracting authorities and economic operators complained that public procurements are poorly implemented due to the fact that they are mandated to use this criterion for contract award. Nowadays, when use of 'lowest price' is not mandatory, contracting authorities continue to exclusively use this criterion for contract award, while economic operators continue to complain that 'lowest price' is the biggest problem they are facing in public procurement. The problem is additionally worsened when, in addition to use of 'lowest price' as selection criterion, tender documents do not include sufficient details to describe the procurement subject, combined with organization of electronic auctions to further reduce initially bided prices. Having in mind above elaborated issues, it is difficult to say that public procurement ensures the best value for the money spent. Moreover, this practice allows arrangements among participants in public procurements. The EU notes the need for continuous training on use of the contract award criterion defined as 'most economically advantageous tender'.

Together with the recommendation for greater use of 'most economically advantageous tender', the EC's third recommendation involves a demand **to improve monitoring of public procurement procedures through reporting and efficient follow-up on irregularities, conflict of interests and fraudulent practices**. This demand, together with the second one, does not target only those directly implementing tender procedures, but all entities involved in public procurement. The recommendation requires improvements to monitoring of public procurement, procedures for reporting irregularities, conflict of interests and malpractices, as well as efficient follow-up and processing of such reports.

In that context, the EC recommends the country **to enhance capacity of the Bureau of Public Procurement and its competences** in respect to monitoring and control of public procurement.

As regards institutional capacity, the EC notes **insufficient capacity of the State Commission on Public Procurement Appeals** to deal with the number of appeals lodged.

Conflict of interests and prevention of corruption in public

THE EUROPEAN COMMISSION'S RECOMMENDATIONS INVOLVE A DEMAND TO COUNTRY TO IMPROVE MONITORING OF PUBLIC PROCUREMENT PROCEDURES THROUGH REPORTING AND EFFICIENT FOLLOW-UP ON IRREGULARITIES, CONFLICT OF INTERESTS AND FRAUDULENT PRACTICES.

REGULATORY AND INSTITUTIONAL MECHANISMS ON INTEGRITY AND CONFLICT OF INTERESTS ARE STILL INSUFFICIENT.

procurement are addressed separately, whereby it is noted that regulatory and institutional mechanisms on integrity and conflict of interests are still insufficient.

For many years, the EC has advised the country that **implementation and prevention of irregularities in public procurement need to be viewed through the prism of the overall public procurement cycle**. The EC's 2023 Report reiterates that there is no risk assessment system embedded in the procurement cycle to ensure timely information on possible corrupt practices or flag irregularities.

While institutions more often develop risk assessments and strategies to mitigate such risks, these documents almost never include corruption risks in all stages of public procurement and more broadly, across the overall procurement cycle. Individual institutions barely use data to alert about possible corruptive practices and ensure protection against corruption.

The Bureau of Public Procurement introduced the so-called red flags and develops reports on the basis of these indicators, but significant follow-up on these reports is missing. In that regard, the EC requires improved cooperation and coordination among all institutions involved.

Finally, it should be noted that on 7th June 2023, the WTO Government Procurement Agreement (GPA) members decided **to accept North Macedonia to the GPA**. The instrument for ratification of the Decision on Accession of the Republic of North Macedonia to the WTO Government Procurement Agreement entered in effect on 20th October 2023, whereby the country became the 49th member of the GPA.

THE BUREAU OF PUBLIC PROCUREMENT INTRODUCED THE SO-CALLED RED FLAGS AND DEVELOPS REPORTS ON THE BASIS OF THESE INDICATORS, BUT SIGNIFICANT FOLLOW-UP ON THESE REPORTS IS MISSING.

IDENTIFIED CORRUPTION RISKS

BASED ON MONITORING OF PUBLIC PROCUREMENT PROCEDURES, IT COULD BE CONCLUDED THAT EACH STAGE OF THE PUBLIC PROCUREMENT CYCLE IS PLAGUED WITH CORRUPTION RISKS.

It all starts with selection of what should be procured, of what quality and in what scope. **Almost no contracting authority complies with the legal obligation for detailed elaboration of the procurement need.** Why is that product, service or work needed? Why it is needed in that quality and scope? And why it is needed now? Due diligence is not made whether something is truly needed and in that quality, scope and delivery deadline, which creates broad space for abuse and malpractice knowing that corruption is agreed exactly in this stage of public procurement, which can be addressed with good planning as anticorruption mechanism.

The next risk also pertains to the first stage of public procurement and concerns non-compliance with and frequent changes to annual public procurement plans. **High 90% of public procurement procedures are implemented later than their initially planned timeline.** Moreover, public procurement plans are subject to frequent changes without adequate elaboration of reasons thereof. Except for corruption doubts, all this brings under question efficiency in implementation of public procurements, normal operation of institutions, as well as the role of public procurement plans.

Adjustment of eligibility criteria for tender participation or adjustment of technical specifications to favour particular bidders, products or services is another growing problem affecting public procurement, as indicated by 45% of surveyed companies. This, most often, implies requirements for specific equipment and number of employees disposed by bidding companies, certificates, standards, performance track records, number of previously performed contracts and the like. On the other hand, tender documents rarely indicate the quantity needed or even estimation thereof, do not include details that would closely describe the procurement subject or include detailed description of the procurement subject that provides direct reference to specific products.

As a result of all that, competition in tender procedures is continuously dropping and reached 3.03 bids per tender procedure in 2022, representing a backslide to the level observed six years ago (2016). Furthermore, the structure of tender procedures is also deteriorating, meaning that the share of tender procedures presented with no bids, with one or with two bids is increasing, while the share of tender procedures presented with three or more bids is

HIGH 90% OF PUBLIC PROCUREMENT PROCEDURES ARE IMPLEMENTED LATER THAN THEIR INITIALLY PLANNED TIMELINE. MOREOVER, PUBLIC PROCUREMENT PLANS ARE SUBJECT TO FREQUENT CHANGES WITHOUT ADEQUATE ELABORATION OF REASONS THEREOF.

ADJUSTMENT OF ELIGIBILITY CRITERIA FOR TENDER PARTICIPATION OR ADJUSTMENT OF TECHNICAL SPECIFICATIONS TO FAVOUR PARTICULAR BIDDERS, PRODUCTS OR SERVICES IS ANOTHER GROWING PROBLEM AFFECTING PUBLIC PROCUREMENT, AS INDICATED BY 45% OF SURVEYED COMPANIES.

decreasing. As many as 35 % of tender procedures were not presented with any bids or were presented with only one bid. **Contracting authorities do not use the mechanisms allowed by the law to stimulate competition**, primarily competitive dialogues, market research, division of tenders into procurement lots, etc.

In this regard, there are **numerous examples of audacious tender-rigging** when the bid presented by at least one bidder fully corresponds to the procurement's estimated value, which is not published in advance and was known only to people at the contracting authority organizing the procurement procedure in question. Another example concerns cases where two bids are very close in terms of prices, but only one bidder participates in the e-auction, while the other declines any further effort to win the contract. Also, there are cases where one bid overlaps with the procurement's estimate value, while the other bid is several times higher and expectedly does not even take part in downward bidding.

This leads to the next problem in this stage of public procurement, i.e. **previous arrangements among companies for participation in tender procedures**. High 54% of companies admit they have engaged in previous arrangements for tender participation, which is prohibited, but has never been sanctioned. This issue falls within the realm of the Commission for Protection of Competition which, for years now, has not issued sanctions against any company for illegal arrangements to participate in public procurement procedures. It seems that nobody is interested in reporting such arrangements given that the burden of proof for these suspicions falls on the party reporting them, which makes the entire procedure impossible to be completed. However, serious suspicions about prior arrangements between companies are almost an everyday occurrence, not only in monitoring reports on public procurement developed by civil society organizations, but also by contracting authorities that implement public procurements.

Although regulated in great details, the next stage of public procurement, i.e. bid evaluation and all steps leading to award of the procurement contract, is marked by many examples that raise corruption concerns. Only in 2022, the bid-evaluation stage has resulted in rejection of high 13% of all bids, which in absolute number is around 65,000 bids. **Corruption suspicions are also raised by the fact that all bids received have been rejected in almost 1,600 procurement procedures, while one bid remained acceptable in 7,130 procurement procedures**. Expressed in shares, bid-evaluation processes in 7.5% of all public procurement procedures resulted in rejection of all bids, while bid-

SERIOUS SUSPICIONS ABOUT PRIOR ARRANGEMENTS BETWEEN COMPANIES ARE ALMOST AN EVERYDAY OCCURRENCE, NOT ONLY IN MONITORING REPORTS ON PUBLIC PROCUREMENT DEVELOPED BY CIVIL SOCIETY ORGANIZATIONS, BUT ALSO BY CONTRACTING AUTHORITIES THAT IMPLEMENT PUBLIC PROCUREMENTS.

ONLY IN 2022, THE BID-EVALUATION STAGE HAS RESULTED IN REJECTION OF HIGH 13% OF ALL BIDS, WHICH IN ABSOLUTE NUMBER ACCOUNTS FOR AROUND 65,000 BIDS.

evaluation processes in 34% of all tender procedures resulted in one acceptable bid remaining, followed by contract award.

Even the last stage of public procurement, i.e. **contract performance, is highly problematic in terms of corruption as it remains a 'grey' zone of which little is known, little attention is paid to and there are no efficient control mechanisms in place.** Contracting authorities rarely appoint persons responsible to monitor performance of public procurement contracts, whereby contract performance is generally understood in financial terms, and not in material and essential terms. In the pool of publicly available documents on public procurement, the least amount of documents is available for this stage of public procurement and these are the most difficult ones to obtain, even by using the instrument for free access to public information. Performance of public procurement contracts is rarely subject of internal audits, and this stage is difficult to be controlled by means of external audit.

After several years of *status quo*, **late payment for performance of public procurement contracts again emerges as one of the more significant problems.** In 2023, late payment was indicated as problem by 39% of companies surveyed, reporting an average period for payment in duration of 6 months and 27 days. Collection of receivables is yet another generator of corruption.

As part of the Center for Civil Communications' annual survey, **46% of companies that participate in public procurement believe that corruption is present in public procurements,** while 18% of them indicated they have personally faced this problem. In their opinion, the most present form of corruption are political and familial relations, followed by kick-backs.

Against this background, **it seems that fight against corruption in public procurement is far from being sufficient or adequate.** Institutions and mechanisms for prevention, detection and sanctioning of corruption in this area are in place, but significant results are evasive.

For the time being, it appears that detection of corruption is the most successful aspect, credited mainly to civil society organizations and the media, as well as some independent bodies such as the State Audit Office (SAO) and the State Commission for Prevention of Corruption (SCPC). As for the latter, among the 22 audit reports which SAO has submitted to the public prosecution for further processing based on the auditor's assessment that misdemeanour or criminal offence has been committed, 6 reports noted irregularities in public procurement procedures and contract performance. In 2022, SCPC was presented with 33 complaints concerning suspicion for abuse of public procurement, and it has formed

PERFORMANCE OF PUBLIC PROCUREMENT CONTRACTS IS RARELY SUBJECT OF INTERNAL AUDITS, AND THIS STAGE IS DIFFICULT TO BE CONTROLLED BY MEANS OF EXTERNAL AUDITS.

DETECTION OF CORRUPTION IS THE MOST SUCCESSFUL ASPECT, CREDITED MAINLY TO CIVIL SOCIETY ORGANIZATIONS AND THE MEDIA, AS WELL AS SOME INDEPENDENT BODIES SUCH AS THE STATE AUDIT OFFICE (SAO) AND THE STATE COMMISSION FOR PREVENTION OF CORRUPTION (SCPC).

2 cases in *ex-officio* capacity. Of these, the Commission motioned criminal charges in three cases. There are no information available about the prosecutorial outcome of these initiatives.

The prosecution service against organized crime and corruption at the Public Prosecution Office of the Republic of North Macedonia is responsible to take action in cases of abuse of public procurements and abuse of official duty and authorization in public procurement.

Although the prosecution service did not respond to FOI requests inquiring about the number of investigations and indictments raised against such criminal offences, in its 2022 Annual Report it underlined unwavering intensity of reports and proceedings taken pursuant to paragraph 5 of the article on abuse of official duty and authorization relating to public procurement abuse. Nevertheless, this impression is not shared by the public.

In the meantime, under the pressure of continuous requests by the European Union, a coordination body on public procurement was formed among competent institutions. Just as efforts were made to find ways for key institutions fighting corruption in public procurement to cooperate and coordinate their work, primarily in respect to measures that should be taken upon reports of public procurement irregularities and abuse, **the fight against corruption in public procurement suffered a major blowback**, which further contributes to already present impunity for public procurement abuses. Notably, in September 2023, under fast-tracked procedure, the Parliament adopted amendments to the Criminal Code that revoked the above-referenced provision stipulating an imprisonment sanction in duration of at least five years for public officials who have committed abuse of their official duty and authorization when implementing public procurements. Accordingly, this change triggered lower statute of limitations for these criminal offences. The results of such action were made known immediately afterwards. In particular, in the period from adoption of these amendments to present, the media often report on court proceedings or investigations being terminated due to statute of limitation for criminal prosecution. It is believed that **changes made to the Criminal Code would affect two dozen court cases, majority of which concern public procurement abuse.**

IN SEPTEMBER 2023 AND UNDER FAST-TRACKED PROCEDURE, THE PARLIAMENT ADOPTED AMENDMENTS TO THE CRIMINAL CODE THAT REVOKED THE ABOVE-REFERENCED PROVISION STIPULATING AN IMPRISONMENT SANCTION IN DURATION OF AT LEAST FIVE YEARS FOR PUBLIC OFFICIALS WHO HAVE COMMITTED ABUSE OF THEIR OFFICIAL DUTY AND AUTHORIZATION WHEN IMPLEMENTING PUBLIC PROCUREMENTS.

RECOMMENDATIONS

BASED ON ASSESSMENT OF THE STATE-OF-AFFAIRS IN PUBLIC PROCUREMENT, AS WELL AS FINDINGS FROM MONITORING SPECIFIC PUBLIC PROCUREMENTS IN TERMS OF DETECTING CORRUPTION RISKS AND SUSPICIONS, BELOW ARE RECOMMENDATIONS AIMED TO IMPROVE THE STATE-OF-PLAY AND PREVENT CORRUPTION.

MORE DETAILED INTERNAL ACTS ON PUBLIC PROCUREMENT

Internal acts on implementation of public procurements which contracting authorities are more frequently developing should include more details, cover all stages of the public procurement cycle and define precise actions to be taken in cases that are insufficiently regulated by the law, i.e. allow discretionary decisions and open space for different practices, as well as in cases that necessitate conflict of interests management.

IMPROVED PLANNING PROCESS, PERCEIVED AS INTEGRAL PART OF THE PUBLIC PROCUREMENT CYCLE

The procurement planning process should be improved and perceived as integral part of the public procurement cycle, ensuring proper procurement planning, precise setting of estimated values, introduction of systems for monitoring implementation of public procurement plans and measures to stimulate competition (market research, division of tenders into procurement lots, non-discriminatory eligibility criteria and technical specifications, etc.).

INDIVIDUAL ASSESSMENT OF THE SELECTION CRITERION USED IN EACH PROCUREMENT PROCEDURE

Individual assessment should be made for each procurement procedure in respect to the selection criterion to be used that ensures the best value for the money spent.

IDENTIFIED REASONS OF SHORTCOMINGS

Institutions should conduct analyses on public procurement implementation to identify actual reasons for various phenomena that occur and find solutions for improvement, especially in respect to increasing competition, reducing tender annulments and direct negotiations, and decreasing use of e-auctions.

INCREASED CONTROL

The Bureau of Public Procurement should increase its administrative controls over public procurement procedures based on random selection and red flags for corruption risks.

**IMPROVED
TRANSPARENCY**

The current level of transparency and accountability in public procurement should be maintained and further improved by publishing public procurement information and documents on the contracting authorities' websites and by conducting analysis of additional documents and information that could be made publicly available in the Electronic Public Procurement System, such as procurement decisions, names of beneficial owners of companies awarded procurement contracts, etc.

**MONITORING
CONTRACT
PERFORMANCE**

Contracting authorities should appoint persons responsible to monitor performance of each public procurement contract with adequate checks and documentation on proper implementation of contractual obligations in terms of the procurement type, quality, quantity, deadline and other aspects from procurement contracts.

CAPACITY-BUILDING

Continuous efforts are needed to invest in capacity building of staff members working on public procurements, including timely certification and involvement of management staff and procurement commission members in such training.

