

Ministry of Finance

PUBLIC PROCUREMENT BUREAU



REPORT

ON ACTIVITIES OF
THE PUBLIC PROCUREMENT BUREAU
IN THE FUNCTIONING OF
THE PUBLIC PROCUREMENT SYSTEM IN 2012



REPORT^{*}

on Activities of Public Procurement Bureau in Functioning of Public Procurement System in 2012

Skopje, April 2013

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Introduction

It is my pleasure to present you the Annual Report on Activities of Public Procurement Bureau in Functioning of Public Procurement System in 2012. The Bureau prepares this Report seventh year in a row already, thus additionally strengthening transparency and accountability before citizens of the Republic of Macedonia on how public funds are spend in the country. Existence of quality data is a precondition for defining proper policies and strategic commitments for development of the public procurement system, at the same time being a strong instrument for stimulating transparency as main concept for legal management of public funds.

2012 was important year for the development of public procurement system due to several reasons. Several key novelties were enforced through modifications and amendments to the Law on Public Procurement by the end of 2011. Project of the Government of the Republic of Macedonia “Portal for Low-Value Public Procurement” was implemented, significantly increasing the level of transparency by announcing contract notices for public procurement up to EUR 5,000. In addition, notices on concessions and public-private partnership started to be announced on the Electronic System for Public Procurement, which is first, but significant step for their integration in the public procurement system, as is actually envisaged in the EU Directives on public procurement.

Mandatory certification of public procurement officers, which entered into force in September, is also worth mentioning. The Bureau put significant efforts in implementing this key strategic measure to the end of improving the implementation of regulations and strengthening the capacities at the contracting authorities. It is sufficient just to have a look at the data on trainings realised within the Public Procurement Education Programme.

Internationally, in addition to regular activities and cooperation with the European Commission, the World Bank and peer agencies at regional level and wider, number of activities, realised within the Twinning Project, are to be singled out. The Project was successfully completed, and the results were presented at the closing conference, which took place in December 2012.

Engagement and dedication of all employees within the Bureau are a key precondition for all activities realised in the past period and, at the same time, for overcoming all challenges and implementing all planned future activities, and I would like to use this opportunity to express my sincere gratitude to them.

Director
Mare Bogeva Micovska Ph.D.

1. Normative Activities

1.1 *Law on Public Procurement*

Law on Public Procurement of the Republic of Macedonia is almost fully harmonised with EU Directives on public procurement, while activities to be undertaken in future include just slight improvements. The above-mentioned conclusion stems from the Republic of Macedonia Progress Reports, where it is continuously underlined that this field is, to a large extent, harmonised with the EU *Acquis Communautaire*, as well as from the analyses carried out by the experts from the Twinning Project “Support to the Public Procurement System”, which was implemented in 2011 and 2012.

Despite EU positive comments on the Law and the bylaws, the Law was modified and amended in December 2011. These modifications and amendments were comprehensive and, in addition to technical adjustment of certain provisions, they also introduced new mechanisms that will contribute to modernisation of public procurement system, to the end of enhancing its efficiency and functionality.

These modifications and amendments, as well as the ones previously introduced on several occasions, have pointed out the need to prepare a cleared version of the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 24/12 - cleared version). Hence, on the basis of Article 71 of the Law on Modifications and Amendments to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 185/11), Legislative and Legal Committee of the Parliament of the Republic of Macedonia is authorised to set clear version of the Law on Public Procurement.

Cleared version of the Law on Public Procurement is a sublimated text of all previous modifications and amendments to the Law on Public Procurement and it presents an overall normative framework in the field of public procurement. In cooperation with USAID Human and Institutional Development Programme, the Bureau published the cleared version in a special publication, which was included in the training materials, and certain number of copies was distributed to many institutions that perform activities directly linked to public procurement.

1.2 *Bylaws*

Bylaws, as part of the legal framework regulating contract award procedures, i.e. as instruments facilitating the implementation of



the Law on Public Procurement, are continuously improved, at the same time being harmonised with the possible modifications and amendments to the Law.

In March, Minister of Finance adopted the Code of Ethics when Carrying Out Public Procurement Procedures ("Official Gazette of the Republic of Macedonia", no. 39/12), which envisages certain rules of conduct by the entities carrying out public procurement procedures.

In March, Minister also adopted the Tariff Book on Fee for Using Electronic System for Public Procurement ("Official Gazette of the Republic of Macedonia", no. 44/12), which sets the amount of fees contracting authorities and economic operators pay for using the Electronic System for Public Procurement, all to the end of ensuring self-sustainability of the system itself.

Rulebook on the Form and Contents of Notification to Candidates, i.e. Tenderers, on Decisions on Pre-Qualification, Contract Award, Conclusion of Framework Agreement or Cancellation of Contract Award Procedure was adopted in July ("Official Gazette of the Republic of Macedonia", no. 86/12). This Rulebook prescribes, more closely, the form and the contents of the notification delivered to the candidates, i.e. the tenderers, who took part in the procedure, in order to be informed on the decisions the contracting authorities adopted. Hence, transparency will be significantly increased, as well as accountability of contracting authorities to notify the candidates, i.e. the tenderers as regards the outcome of procedures for awarding public contracts in which they participated.

During the same period last year, Rulebook on Public Procurement Education Programme, Train-The-Trainers Programme, the Form and Contents of the Certificate for Passed Exam for Public Procurement Officer and Public Procurement Trainer, as well as the Amount of the Fee paid by the Participants in the Education were adopted ("Official Gazette of the Republic of Macedonia", no. 90/12), pursuant to the amendments to the Law on Public Procurement, which envisage compulsory certification of public procurement officers.

In addition, Rulebook on the Form and the Contents of the Form of Notice for Setting Up Qualification System ("Official Gazette of the Republic of Macedonia", no. 91/2012) was adopted, which introduces qualification system as a special manner of awarding utilities contracts, thus increasing efficiency of utilities.

All bylaws envisaged by the Law on Public Procurement were adopted within the set deadline, thus rounding-up the legal framework.

2. Public Procurement Bureau

2.1 Competences

Public Procurement Bureau takes care for the proper functioning of the public procurement system, as well as for its further modernisation and improvement, to the end of enhancing its efficiency and functionality.

The Bureau also takes care for the principles of competition among economic operators, equal treatment and non-discrimination of economic operators, transparency and integrity in the process of contract award procedures, as well as rational and efficient utilisation of public funds, to be respected when contract award procedures are conducted.

It implements the above mentioned by performing the competences prescribed in Article 14 of the Law. By carrying out its competences, in the past years, the Bureau has



established good communication with both the public and the private sector. Thereby, use of new advanced communication means is promoted on continuous basis, to the end of facilitating the access to information the Bureau has available by the entities and the public in general.

In 2012, the Bureau performed its competences with total of 20 employees, as follows:

- 7 Bachelors of Law,
- 7 Bachelors of Economics,
- 1 BA in Political Science,
- 1 Bachelor of Philology,
- 2 IT Engineers, and
- 2 administrative officers.

In the past period, employees within the Bureau continued education and upgrading their knowledge, so Public Procurement Bureau employees four MAs and five MA students.

In the course of last year, Financial Affairs Unit was separated from the Department for Monitoring the Public Procurement System and ESPP Management. In fact, by separating the said Unit and its transformation into an independent unit, modifications and amendments to the Decree on Principles of Internal Organisational Setup of State Administration Bodies ("Official Gazette of the Republic of Macedonia", no. 149/11) was

adhered to, i.e. Article 5-a was applied, pursuant to which financial affairs department or unit is envisaged to be established as separate organisational unit for financial affairs in state administration bodies, in which its head is responsible directly to the official managing such body.

Although the Bureau, thanks to its employees' professionalism and enthusiasm, successfully performs its competences, we are at the opinion that it is necessary to additionally staff it, as well as to promote the current employees, all to the end of ensuring further timely and expert performance of competences, which have increased with the last modifications and amendments to the Law, as well as ensuring performance of working tasks and duties in line with the European standards. It is necessary so as to motivate the current employees and encourage their creativity and initiative, as well as to increase their interest in the job. Strengthening the administrative capacity of the Bureau will remain top priority in future as well.

In 2012, the Bureau acquired ISO 9001:2008 Quality Management Systems Certificate, confirming the quality organisational setup of working processes and modern methods of operations of the Bureau.

Within 2008 IPA Regional Training Project, in which all public procurement authorities in Western Balkans and Turkey took part, Bureau's library was enriched with 25 books in the field of public procurement from European and world renowned authors.

2.2 Prepared Opinions

One of the most significant competences, through which the Bureau helps both the contracting authorities and the economic operators in carrying out contract award procedure, is the delivery of official opinions on provisions and application of the Law on Public Procurement. The Bureau performs this advisory function by giving opinions to letters the contracting authorities and the economic operators submit through the archive office, Bureau's web contact form, as well as by supplying answers to questions the contracting authorities and the economic operators pose through the user support center.

In 2012, there were 499 letters submitted to the Bureau through the archive office and 791 requests for opinion submitted through the web contact form. Reason for the increased number of requests for opinion is the substantial amendments to the Law in December 2011, and subsequently most of the questions were related to the said amendments.



The Bureau replied to all submitted requests for opinion within the shortest period of time, depending on the complexity of the question.

Analysis made on the requests for opinion submitted to the Department for Normative Affairs, Training and International Relations shows that requests pertained to all sections of the Law, in particular the ones modified and amended at the end of 2011. Hence, contracting authorities and economic operators most often requested opinions on specific situations that occurred when carrying out the procedure, being related to negative references, the manner of their publication, requirements when a negative reference can be published, the effect of a published negative reference, technical dialogue and the manner when it is implemented, mandatory implementation of electronic auctions in public procurement which is particularly specific, but is not excluded from implementing e-auction, cancellation of contract award procedures, as well as questions related to remedies.

Most of the requests were submitted by smaller contracting authorities, which in the past period, i.e. until 1st July 2012, mainly carried out simplified competitive procedure without publication of a contract notice and implemented almost no e-auction. In addition, certain questions pertained to call-up of tender guarantee and performance guarantee, i.e. activating the statement on steadiness of the tender.

Qualification criteria, especially the technical support provided by another entity, are still in the focus of interest of both contracting authorities and economic operators, questions were also submitted about tender evaluation, manner of concluding framework agreements and awarding individual contracts, as well as possibilities for annexing the contracts. Manner of acting in cases when submitted tenders exceed the estimated value was yet another question frequently posed in the course of 2012. Requests for opinion were also submitted about questions which are not regulated by the Law, however good international practices were indicated as a resolution thereto.

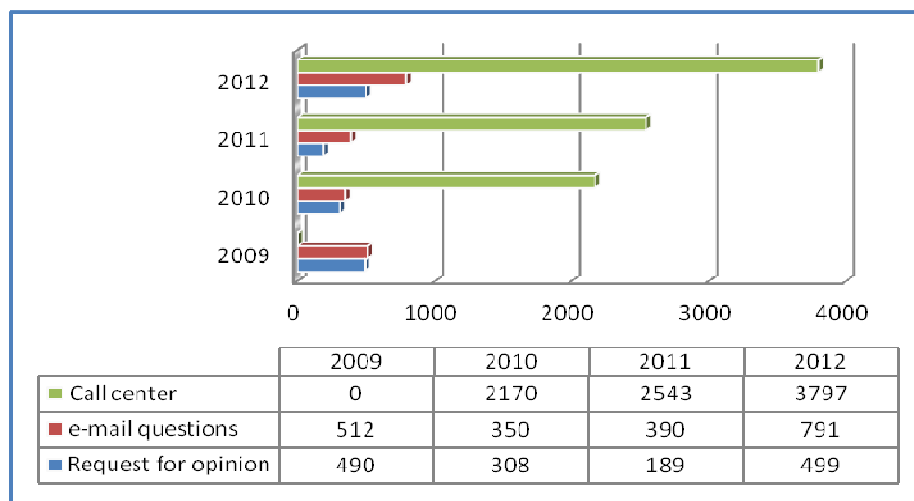
In the course of 2012 as well, the Bureau provided timely and swift advices on public procurement procedures, at the same time extending expert assistance to both contracting authorities and economic operators through the user support center.



Hence, in the period from 1st January 2012 to 31st December 2012, the center received total of 3,797 calls, 2,523 calls out of which were addressed to the Department for Monitoring the Public Procurement System and ESPP Management and 1,274 calls were addressed to the Department for Normative Affairs, Training and International Relations.

At the same time, Bureau employees replied to questions the contracting authorities and the economic operators posed by dialing the phones published on PPB website, “About Us” section.

Chart 1



The chart above shows that number of official requests for opinion submitted by mail, i.e. through the archive office, as well as through the user support center, increased compared to the previous years, and it was a result of several factors. One of the reasons was certainly the entry into force of the amendment to the Law, which was adopted at the end of 2011, according to which application of certain sections was postponed, i.e. they entered into force in the course of 2012. At the same time, one should take into account the increased obligations for the contracting authorities as regards implementation of electronic auctions and publication of all procedures on www.e-nabavki.gov.mk. Additionally, increased number of requests for opinion was a result of Bureau's reputation, as well as consistency of its advices, opinions and recommendations provided to the contracting authorities and the business community.

2.3 Updating Tender Document Models and Manuals

In the past period, the Bureau prepared numerous manuals, guidelines and tender document models, all to the end of facilitating the application of the Law on Public Procurement and other regulations arising therefrom. All these documents are available to the public on its website.

Substantive modifications and amendments to the Law, which commenced in 2012, also imposed the need to update these documents. Hence, all tender document models were updated, as well as manuals on the use of the Electronic System for Public Procurement for the contracting authorities and the economic operators.

At the end of 2012, the Bureau, in cooperation with the Agency for Electronic Communications and the economic operators rendering fixed-line telephone services,

commenced preparing tender documentation model for procurement of fixed-line telephone services, following the successful example of preparing a tender documentation model for mobile telephony service, which was prepared the previous year and yielded excellent results in overcoming the problems in this sector. In addition, in cooperation with the Insurance Supervision Agency, activities were undertaken for preparation of tender document model for procurement of services for certain types of insurance. The Bureau will continue preparing specialised tender documentation models.

2.4 Negative References

Negative references started to apply from 1st July 2012. Even prior to their application, the Bureau included negative references in the trainings carried out within the public procurement education, and significant steps were undertaken so as to prepare all actors in the public procurement system to properly apply such references after they come into force. Negative references are an instrument that is to ensure adherence to the requirements under which the tenderers submit their tenders, as well as consistent realisation of contractual obligations by the contractors. List of negative references is publicly available on ESPP, and the requirements for publishing a negative reference are clearly prescribed in the Law.

Statement on steadiness of the tender, as a new instrument for securing the tender and as an alternative to the existing two – bank guarantee and deposited funds, was introduced together with the negative references. Statement on steadiness of the tender is expected to help the tenderers to easily participate in the contract award procedures, since it is published by the tenderer itself, without having to pay bank commissions or to reserve funds in the amount of the guarantee.

So-far experience has shown that introduction of negative references contributes to strengthening the discipline on the side of the economic operators, however, in certain cases, the balance of obligations between economic operators and contracting authorities is deteriorated. Business community has pointed out, on several occasions, that negative references are used for imposing inadequate requirements in the contracts, as well as for pressuring them to change the already agreed obligations at the detriment of the tenderers. In addition, the business community underlines that in certain cases the contracting authorities fail to observe their undertaken obligations, at the same time insisting for the contractor to continue delivering the contract under the threat that they will be published a negative reference. In the course of the contract award procedure, most frequent problems are encountered when defining the final requirements in the contract prior to its signing, whereby some contracting authorities use the negative reference to impose requirements that have not been previously contained in the tender documentation. As of 31st December 2012, 19 negative references were published against 13 economic operators.

In order to provide help for proper implementation of the Law as regards negative references, the Bureau issued Guidelines on Negative References, which is freely accessible on the Bureau's website, containing answers and guidelines for many questions that appeared when implementing the respective legal provisions.

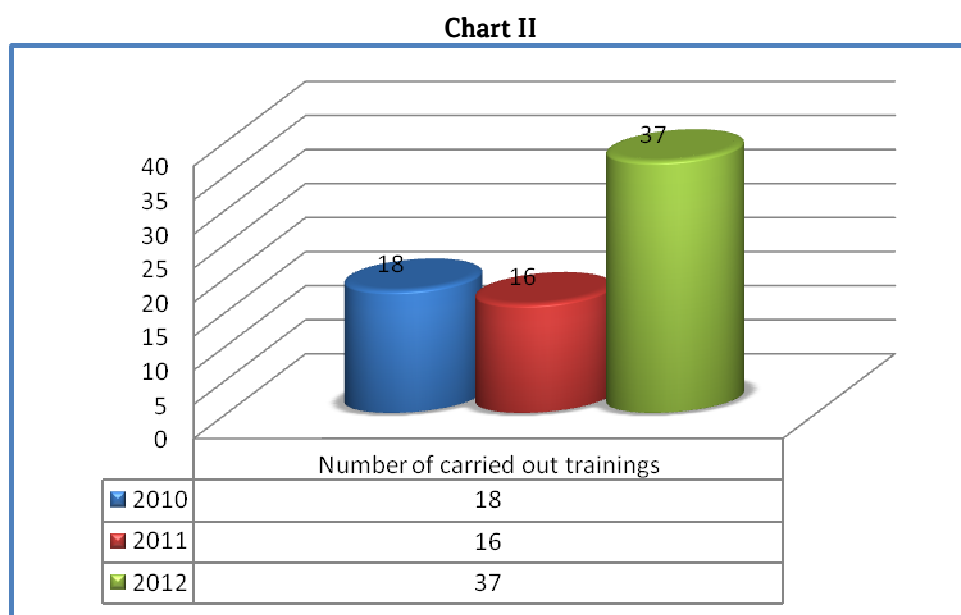
In addition, it seems that practice of publishing negative references should be improved so as to avoid their improper application. It is also necessary to additionally develop the mechanism itself for publishing negative references at a subsequent modification or amendment to the Law.

3. Carrying Out 2012 Public Procurement Education Programme

3.1 Data on Trainings Carried Out in 2012

In the course of 2012, the Bureau continued carrying out public procurement education for both contracting authorities and economic operators. Modifications and amendments to the Law in December 2012 reflected on education as well, i.e. education underwent certain changes. First of all, following were adopted: new Rulebook on Public Procurement Education Programme, Train-The-Trainers Programme, the Form and Contents of the Certificate for Passed Exam for Public Procurement Officer and Public Procurement Trainer, as well as the Amount of the Fee paid by the Participants in the Education (“Official Gazette of the Republic of Macedonia”, no. 90/12), followed by new Manual on organizing the lecturing of the contexts stipulated in the Public Procurement Education Programme by the trainers, as well as Train-the-Trainer Programme. Pursuant to the amendments to the Programme, the Bureau focused its training activities on the contracting authorities as a result of the legal requirement for each contracting authority to have a person or an organisational form to perform the activities in the field of public procurement, thereby that person or organisational form to have acquired certificate for public procurement officer.

During 2012, Training Unit within the Department for Normative Affairs, Training and International Relations organised and, according to the adopted 2012 Public Procurement Education Plan, carried out 29 planned education trainings, while, upon request by the contracting authorities, 8 additional trainings were carried out the time schedule of which was agreed with the contracting authorities. Total of 772 persons attended the training. Compared to the previous years, number of education trainings was as follows:

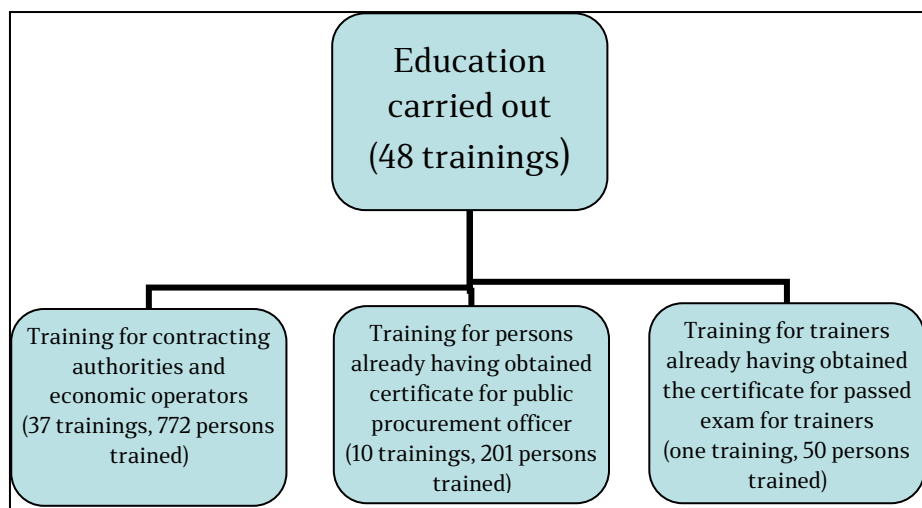


In the course of 2010, 18 trainings were carried out attended by 354 persons, 16 trainings were carried out in 2011 attended by 281 persons, and 37 trainings were carried out in 2012 attended by total of 772 persons.

Pursuant to the amendments to the Law in December 2011, certificates for public procurement officer issued in line with the Law on Public Procurement ("Official Gazette of the Republic of Macedonia", nos. 136/07, 130/08, 97/10 and 53/11) continue to be valid for the period for which they were issued, but no longer than by the end of 2012. Hence, need has arisen for all persons having obtained certificates for public procurement officer in the course of 2010 and 2011 to extend the validity of the already obtained certificates. Therefore, in the second half of 2012, PPB carried out trainings on the module on training of contracting authorities, parts 14 and 15 on re-certification of public procurement officers, which included 7 lectures and which, in line with the Rulebook, covered persons who had already acquired the certificate for public procurement officer, the focus being placed on the amendments to the Law. Total of 201 persons attended this training.

Modifications and amendments to the Law also brought about the need to extend the certificates for trainers issued in 2009 and the Bureau engaged the persons who had already obtained this certificate to be trainers at the trainings the Bureau organised and carried out. Therefore, the Bureau organised train-the-trainer training. The training was carried out in cooperation with Justinian the First Faculty of Law – Skopje, as well as USAID – IDEAS Project. They not only helped in organizing and carrying out the concerned training, but their representatives were also appointed as members of the commission in charge of carrying out the trainers re-certification exam. This training was attended by 50 persons. The chart below shows the three types of trainings carried out in the course of 2012.

Chart III



During 2012, total of 1,023 persons were trained, i.e. attended the trainings (this figure refers to all three types of trainings as follows: Training of contracting authorities

and economic operators, training for re-certification of public procurement officers, as well as training for re-certification of trainers). Mandatory certification and large number of training that will continue to be organised in the coming years point out to the need to strengthen Bureau's organisational setup as regards trainings and to establish a new organisational unit to replace the existing Training Unit.

3.2 Evaluation of Trainings

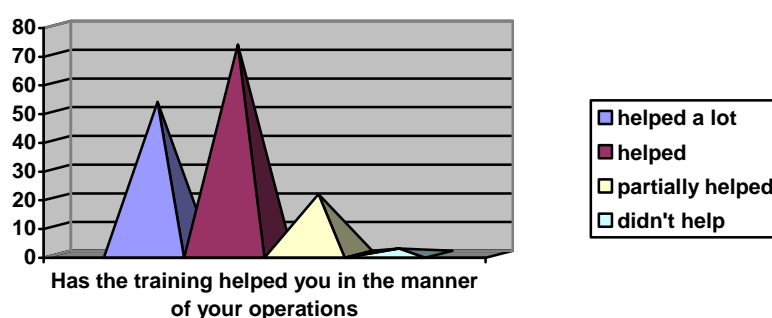
To the end of adjusting the trainings to the demands and the needs of the participants in the education programme, the Bureau prepared and sent a questionnaire to larger number of participants in the trainings in the last three years.

The questionnaire comprised questions pertaining to the manner of carrying out the trainings and the effect therefrom on their job. 150 participants in the trainings provided answers to the questionnaire. Training Unit will use these questionnaires so as to check the success of the so-far education trainings, as well as to improve the trainings to be carried out in future.

As for the question "How satisfied are you with the training quality", 47 trainees replied they were very satisfied, 85 trainees replied that they were satisfied, 12 trainees replied that they were partially satisfied and 4 trainees replied that they were not satisfied.

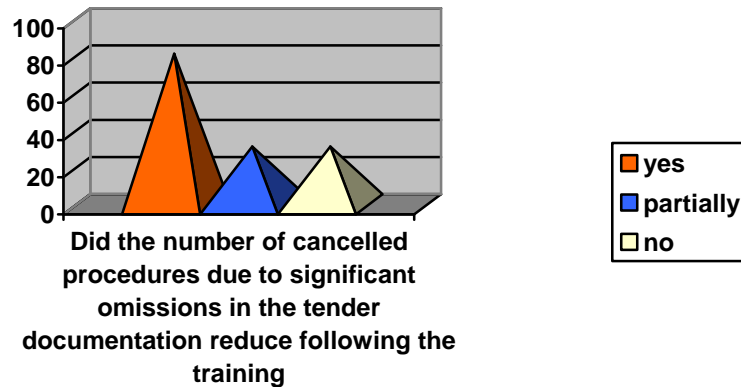
As for the question "Has the training helped you in the manner of your operations", 53 trainees replied that it helped them a lot, 73 trainees replied that it helped them, 21 trainees replied that it partially helped them and 2 trainees replied that it did not helped them.

Chart IV



As for the question "Did the number of cancelled procedures due to significant omissions in the tender documentation reduce following the training", 81 trainees gave a positive reply, 31 trainees said the number of cancelled procedures was partially reduced and 31 trainees said that number of cancelled procedures did not reduce.

Chart V



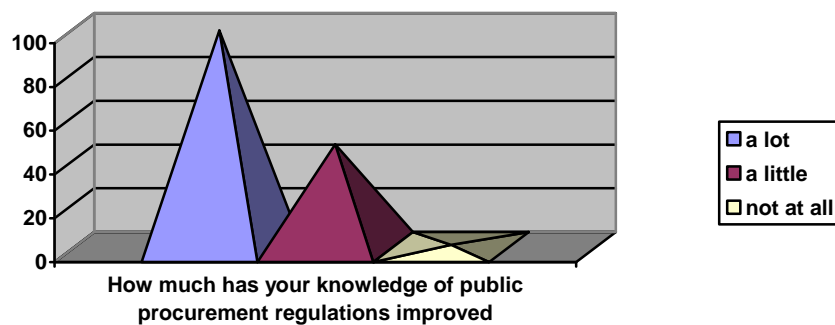
As for the question “Have you made any changes in the manner of your operations following the training”, 91 trainees replied they did, 39 trainees said they made partial changes, while 9 trainees said they made no changes in the manner of their operations.

Chart VI



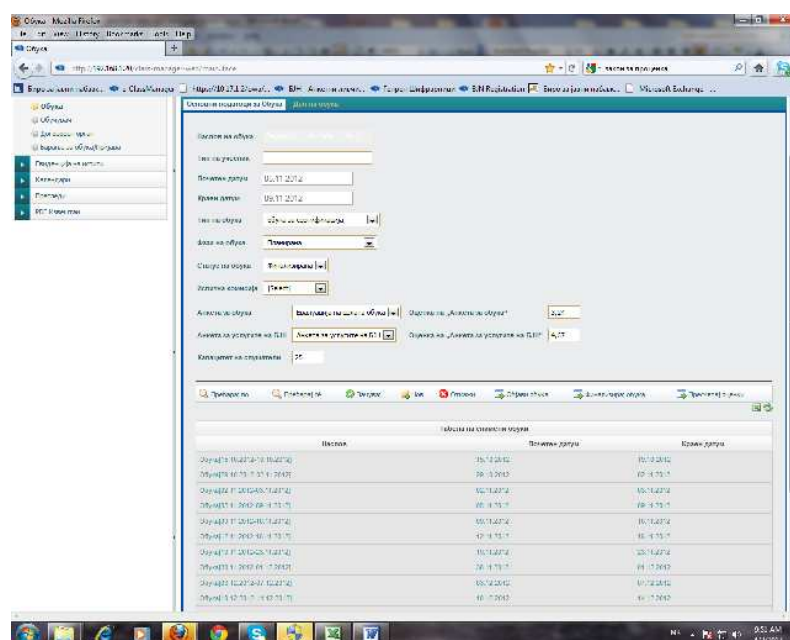
As for the question “How much has your knowledge of public procurement regulations improved”, 99 trainees said their knowledge improved following the training, 49 trainees said it improved a little, and 1 trainee replied it did not improve at all.

Chart VII



On the basis of the analysis made on the replies received, it can be concluded that it is particularly positive that 56% of the persons answering the questionnaire said that number of cancelled procedures due to significant omissions in the tender documentation reduced following the training was reduced, as well as that 67.35% of them increased their knowledge on public procurement following the training. What is especially positive is that 66.67% of the persons answering the questionnaire made changes in the manner of their operations following the training. In addition, results from the questionnaire show that the Bureau will have to organise and carry out specific-topic trainings. In fact, 66.67% of the persons answering the questionnaire said they needed to attend the training again, however just for certain topics.

To the end of improving the quality of trainings, the Bureau developed, in cooperation with USAID Human and Institutional Development Programme, the Bureau



developed electronic training system. Activities for developing the system started at the beginning of 2012 and it is envisaged to be used for log in of the participants at the trainings, evaluation of the trainers, keeping records on attendance, filling in evaluation tests, uploading presentations and exercises of the trainers, as well as for passing the written exam. Since October, following several trial trainings, the system started functioning in all segments, except for

passing the written exam. Savings were made as regards printing the presentations and exercises of the trainers, the questionnaires, employees in the Training Unit saved time with respect to analysing the evaluations of the participants, there was anonymity during evaluation by the participants, etc. Participants in the training also positively accepted this manner of operations.

Taking into account the efficiency and cost-effectiveness of such manner of carrying out trainings, as well as the possibilities it offers, the Bureau will work on improving and upgrading the electronic training system in future, in particular carrying out the exam itself.

As in the previous years, public procurement education was held in the premises of the Public Procurement Bureau, in a specially equipped classroom, which is used solely for

education needs. Average grade of the education carried out in 2012, according to the evaluation by the participants, was 3.56 out of the highest possible grade of 4. This grade will be an impetus for the Bureau to improve and modernise public procurement education in future. Taking into account the number of carried out trainings, as well as the fact that intensity of trainings is not expected to drop in the coming years, it should be considered to increase the capacity for carrying out trainings, i.e. to equip a second classroom.

4. Remedies in Contract Award Procedures

4.1 State Appeals Commission

State Appeals Commission, pursuant to the Law on Public Procurement, is competent to resolve appeals in the contract award procedures, as well as appeals in the procedures for awarding contracts for concessions and public private partnership. Taking into account such competence of the State Appeals Commission, the Bureau addressed it with a letter, requesting data within Commission's competence, which are related to carrying out contract award procedures. In particular, State Appeals Commission is competent to decide on the legality of the actions and the omissions to undertake actions, as well as the legality of the decisions which are adopted as individual legal acts in the procedures. In addition, it also decides upon requests for continuation of the contract award procedure, requests for cancellation of the procedure if the contracting authority fails to act pursuant to Article 215 of the Law, as well as the procedural costs.

The Table below shows data received from the State Appeals Commission.

Table I

	Number of cases received	Resolved cases	Unresolved cases
2009	1044	996	48
%	100%	95.40%	4.60%
2010	868	820	48
%	100%	94.47%	5.53%
2011	690	666	24
%	100%	96.52%	3.48%
2012	658	633	25
%	100%	96.2%	3.8%

By comparing the data on the number of cases received in 2009, 2010 and 2011, as well as the number of cases received in 2012, downward trend of the number of appeals lodged to the State Appeals Commission can be registered. Main reason for the drop in the total number of appeals in 2012 is the increased capacity and professionalism of the persons working in the field of public procurement at both the contracting authorities and the economic operators. In fact, public procurement education carried out third year in a row clearly points out to its effects. In addition, one should also take into account the practice established by the State Appeals Commission in resolving the cases, as well as the fact of increased percentage of procedures applying the lowest price criterion, which reduces the possibilities for occurrence of appeals in the course of the procedure.

In the course of 2012, there were seven requests for continuation of the procedure, six of which were refused and one was rejected as unallowed.

Table II

	2009		2010		2011		2012	
Accepted appeals	249	25.94%	212	27.60%	272	31.81%	212	33.49%
Refused appeals	429	44.67%	327	42.58%	363	42.46%	237	37.44%
Rejected appeals	151	15.74%	131	17.06%	121	14.15%	119	18.79%
Appeals accepted by the contracting authority	26	2.71%	48	6.25%	29	3.39%	34	5.37%
Withdrawn appeals	105	10.94%	50	6.51%	70	8.19%	31	4.89%
Total appeal cases	960	100%	768	100%	855	100%	633	100%

Table above shows a review of the percentage of accepted, refused, rejected appeals, as well as review of appeals accepted by the contracting authorities and withdrawn appeals.

Table III

	Total cases which State Appeals Commission acted upon	Total number of lawsuits filed	%
2009	960	105	10.94%
2010	820	94	11.46%
2011	666	94	14.11%
2012	633	64	10.11%

Taking into account the data from the past years pertaining to the percentage of lawsuits filed before the Administrative Court of the Republic of Macedonia against the decisions adopted by the State Appeals Commission, it can be seen that number of filed lawsuits significantly decreased in 2012.

4.2 Administrative Court of the Republic of Macedonia

Significance of the Administrative Court of the Republic of Macedonia, from the point of view of functioning of the public procurement system, i.e. remedies system in

contract award procedures, stems from its competence to resolve lawsuits filed by parties that are not satisfied with the decisions of the State Appeals Commission.

In order to perceive efficiency and effectiveness of review procedures in the field of public procurement, the Bureau provides statistical data on the number of cases initiated against the decision of the State Appeals Commission, as well as the number and the manner in which such cases are resolved. Table below shows the trends in 2012¹:

Table IV

	Cases received	Resolved cases in 2012			
		Accepted lawsuits	Refused lawsuits	Rejected lawsuits	Stopped procedures
Trends in 2012	64	7	16	6	6
Total	64	35			

Out of the total lawsuits lodged, 2 lawsuits were lodged by contracting authorities, while 62 lawsuits were lodged by economic operators.

Compared to the data from the previous two years, consistency of the trend of resolving the lawsuits by the Administrative Court can be observed. It is also worth mentioning the increased number of accepted appeals compared to the previous years.

Table V

	Accepted	Refused	Rejected	Stopped procedures
2010	5	6	2	2
2011	4	17	5	4
2012	7	16	6	6

4.3 High Administrative Court

Within its legal competences, High Administrative Court, deciding upon appeals lodged against the decisions of the Administrative Court adopted in first instance, pertaining to annulment of the decisions reached by the State Appeals Commission *in the course of 2012*, resolved 38 cases, all which were received in 2012. With respect to 32 cases,

¹ Data are obtained from the Administrative Court of the Republic of Macedonia, letter Su. no. 03-115/13 dated 5th February 2013.

decisions were reached to refuse the appeals and the decision of the Administrative Court was confirmed, in 2 cases the appeal was rejected, in 3 cases the appeal was accepted and the decision of the Administrative Court was revoked, in 1 case the appeal was accepted and the decision of the Administrative Court was reversed², as shown in the Table below:

Table VI

	Cases received	Resolved cases in 2012		
		Accepted appeals	Refused appeals	Rejected appeals
Trends in 2012	38	4	32	2
Total resolved cases in 2012	38			

² Data are obtained from the High Administrative Court of the Republic of Macedonia, letter 0709 UPP no. 16-2/13 dated 18th February 2012.

5. Cooperation with Other Institutions Included in the Public Procurement System

5.1 Irregularities in contract award procedures detected by the State Audit Office

In order to perceive irregularities the contracting authorities make when carrying out contract award procedures, as well as when planning annual needs for public procurement and realizing public procurement contracts, the Bureau addressed the State Audit Office, which, among other things, is in charge of auditing the use and the spending of funds for public procurement by the contracting authorities subject to audit performed by the State Audit Office. Data received from the State Audit Office is of especial importance to the Bureau which, on the basis of such data plans the undertaking of respective measures, aimed at eliminating the detected irregularities.

State Audit Office³ informed us that realisation of 2012 Annual Programme was in progress and the processed data were not final. We were also informed that “pursuant to paragraphs 1 and 2, Article 33 of the State Audit Law, State Audit Office prepares Annual Report on Audits Carried Out and submits the results therefrom to the Parliament of the Republic of Macedonia for consideration by 30th June in the current year at the latest for the previous year. We can use the data to be published in the Annual Report for our purposes”.

Taking the above mentioned into account, the Bureau is not in a position to present the irregularities detected by the State Audit Office.

5.2 Irregularities in contract award procedures detected by the State Anti-Corruption Commission

In the course of 2012, State Anti-Corruption Commission acted upon total of 611 charges, 29 out of which referred to possible corruption in the field of public procurement, i.e. in the contract award procedures carried out by the contracting authorities.

With respect to 6 of the concerned cases, State Anti-Corruption Commission considered for there to be grounded suspicion for criminal deed committed in performing office and office authority by the responsible persons at the contracting authorities, for which an initiative was raised for initiating a procedure for criminal prosecution of these persons before the Public Prosecutor's Office of the Republic of Macedonia.

With respect to a case established on the basis of charges for possible corruption in public procurement in which irregularities were detected in the contract award procedures committed by the responsible persons, State Anti-Corruption Commission raised an initiative for initiating a procedure before the competent authorities for dismissal of public officials (directors of public institutions and other institutions).

³ Letter no. 36-315/2 dated 6th March 2013.

Compared to 2011, number of charges for existence of a suspicion for corruption in public procurement dropped. In fact, in 2011, there were 45 charges, while in 2012, 29 charges for possible corruption were filed, which could be a result of maximum transparency in carrying out contract award procedures, i.e. publication of all contract notices and all contract award notices and records. In addition, carrying out public procurement education for the contracting authorities, which includes topics covering corruption in public procurement, as well as conflict of interests, also contributed to reduction of the cases of corruption in public procurement.⁴

5.3 More severe or lesser offences as regards competition at contract award procedures in 2012 detected by the Commission for Protection of Competition

Free competition is of special importance for all states, the economies of which are based on the free-market principle, where distribution of funds is a result of the relation between the supply and the demand on the market. Right to competition is aimed at preventing certain practices and business activities on the market, which can place certain companies in an unjustifiably more favourable position in relation to other companies, thus jeopardizing free competition among companies.

Having in mind that legal implementation of contract award procedures, especially adherence to the principle of competition among economic operators and equal treatment and non-discrimination of economic operators, is a subject of interest to the Commission for Protection of Competition, in the course of 2012, two decisions were reached pertaining to existence of a collusive agreement between companies when submitting the tenders in public procurement procedures as a more severe offence and such perpetrators were pronounced a fine.

5.4 Cooperation with Other Institutions

During 2012, the Bureau also cooperated with other institutions, activities of which, although having no direct effect on the public procurement system, still influence it indirectly, in particular from the point of view of strengthening professionalism, expertise and accountability of persons engaged in public procurement operations.

One of the institutions the Bureau cooperated in the course of last year was the Academy for Training of Judges and Public Prosecutors. In fact, the Academy, according to the Programme on Training Court Officers and Public Prosecution Officers, organised and carried out, in cooperation with the Bureau, four trainings on the application of the Law on Public Procurement. Total of 192 participants attended these trainings, as follows: judges, public prosecutors and expert associates.

In addition, in the course of 2012, the Bureau also cooperated with the Ministry of Information Society and Administration. The Ministry, in line with the activities

⁴ Data are obtained from the State Anti-Corruption Commission, letter no. 03-824/3 dated 12th March 2013.

envisaged in the 2012 Annual Programme on Generic Training of Civil Servants in the Republic of Macedonia, organised and carried out, in cooperation with the Bureau, four workshops “Consistent Application of the Law on Public Procurement”. Total of 60 civil servants took part in these workshops, as follows: 60 civil servants from the central government and 38 civil servants from the local government.

As mentioned above, these activities were undertaken to the end of improving the capacities of the contracting authorities, i.e. strengthening professionalism, expertise and accountability of the persons engaged in the field of public procurement, which is actually a recommendation by the European Commission, presented in the Republic of Macedonia Progress Report.

The Bureau also actively participated in the work of the Working Group 23 – Judiciary and Fundamental Rights, whereby within the 2012 National Programme for Adoption of the Acquis, it realised all envisaged activities aimed at preventing corruption in public procurement.

During 2012, the Bureau also took part in the work of the Inter-Ministerial Body for Coordination of Activities against Corruption, with other relevant institutions in the Republic of Macedonia, the scope of work of which covers this area.

Following the recent trends in the EU, as regards corporate social responsibility (CSR), the Bureau actively participated in the preparation and realisation of measures and activities arising from the 2008 - 2012 National Agenda on Corporate Social Responsibility in the Republic of Macedonia.

CSR in the EU is founded in the employment policies and social issues, enterprise policies, environmental protection policy, consumer policy, public procurement policy and foreign affairs policy. Accession of the Republic of Macedonia to the EU means acceptance of EU norms and principals, including CSR recognition and promotion and its contribution to social cohesion and sustainable competitiveness and development.

In addition, the Bureau also took active part in the realisation of activities arising from the 2012 - 2020 Innovation Strategy of the Republic of Macedonia and 2013 – 2015 Action Plan on Innovation Strategy of the Republic of Macedonia. To the end of timely realizing the activities, the Bureau, in cooperation with the Cabinet of the Vice Prime Minister in charge of Economic Affairs, prepared Action Plan on Encouraging Innovative Solutions by determining functional requirements in public procurement. Activities envisaged in the Action Plan will provide for adaptation of public procurement practices, so as to encourage innovative solutions.

All above-mentioned activities will be a step forward in creating a modern public procurement system, which will provide conditions for creation and management of a sustainable development in all spheres of the social life.

6. International Cooperation

Within its competences as regards cooperation with international institutions and other foreign entities on matters related to the development of public procurement system, Bureau representatives, upon invitation by certain international institutions, in the course of 2012, participated in many conferences and forums where they had the possibility to exchange experience with representatives of these institutions, as well as representatives of other participating countries.

Within the Regional IPA Project on train-the-trainer in public procurement in IPA countries and Turkey, organised by the European Commission and realised by the International Training Center of the International Labour Organisation (ITC/ILO)⁵, many activities were implemented, in which representatives from the Republic of Macedonia also took active participation. In 2012, in the period April – May, second stage of the Project was carried out in the Republic of Macedonia, whereby 20 additional representatives were trained. All participants successfully mastered the envisaged programme.

In the course of 2012, the Bureau commenced the cooperation with USAID Public Procurement Market for Microenterprises Project. Objective of the Project is to facilitate access for small and micro enterprises to public procurement market, thus contributing to their sustainable development and better usage of their potential for job creation, growth and innovations. In the period 9th – 11th November 2012, a representative from the Bureau visited Brussels, the Kingdom of Belgium, for a study visit of institutions working in this field.

6.1 TWINNING Project

In the course of 2012, Public Procurement Bureau, in cooperation with the German Federal Ministry of Economics and Technology, fully implemented 2008 IPA Twinning Project “Support to Public Procurement System”, funded by the EU. This Project was realised in a period of 16 months through eight components aimed at strengthening different segments of the public procurement system, for the purpose of ensuring efficient public procurement by promoting transparent and accountable spending of state budget and quality delivery of public services to the citizens. Both twinning administrations – EU Member State and beneficiary country – commenced the Project in September 2011. Focus of the Project was placed on exchange of practical experience and further capacity building of the Bureau in terms of its control and advisory function.

Following mandatory twinning results were achieved with the Project:

⁵The Bureau participates with its representative in the Project Steering Committee.

- assessment of the existing legislation on public procurement from the point of view of its harmonisation with the European legislation, including proposals for its further harmonisation, as well as proposals for adoption of new legal acts;
- assessment of difficulties economic operators face;
- preparation of National Strategy on Public Procurement System;
- upgrading the existing tender documentation models, with guidelines on corruption prevention;
- strengthening the use of e-procurement platform;
- trainings for Bureau employees, and
- specialised training for employees in institutions the functioning of which reflects on the public procurement system as follows: State Appeals Commission, State Anti-Corruption Commission, Commission for Protection of Competition, State Audit Office, as well as for persons engaged in public procurement at utilities.

Key benefit from the Twinning Project is certainly the preparation of a Draft Strategy on Development of Public Procurement System in the Republic of Macedonia.



When preparing the text of the Draft Strategy, in addition to the Public Procurement Bureau, all other institutions having certain authorisation in this field, i.e. whose acting has effects on the proper functioning of the public procurement system, took part. Ministry of Finance; State Appeals Commission; Ministry of Economy; Ministry of Justice; State Audit Office; State Anti-Corruption Commission; Ministry of Information Society and Administration, Commission

for Protection of Competition, Administrative Court and High Administrative Court. Taking into account that overall arrangement of the public procurement system requires amendments to some regulations or realisation of certain measures within the competence of other institutions, a coordinated realisation of the envisaged measures will be of key importance for its successful implementation. Republic of Macedonia will constantly improve the national public procurement system with solutions that do not arise only from the EU Acquis on public procurement, but also from good national and international practice.

On 18th December 2012, Public Procurement Bureau, together with the twinning partner from the Federal Republic of Germany, organised closing conference, marking the end of the activities under the Twinning Project "Support to Public Procurement System".



Second part of the conference covered a panel discussion on future activities the Bureau plans to undertake and are aimed at further development of the public procurement system, while the public was presented the Draft Strategy on Public Procurement System, activities of which will be realised in the period 2013-2017.

6.2 SIGMA

As for European Union and OECD joint initiative - SIGMA, public procurement is one of its priority field of interest. At the same time, SIGMA, apart from the European Commission, also cooperates with all EU Member States, as well as candidate countries, such as the Republic of Macedonia. In the past period, SIGMA continuously organised international events (conferences, forums, etc.) in which Bureau representative took active participation. However, taking into account that 2008 IPA Twinning Project “Support to Public Procurement System” was implemented in the course of 2012, there were no significant activities the Bureau implemented in cooperation with SIGMA. During 2012, SIGMA more intensively cooperated with the State Appeals Commission and the Ministry of Economy with respect to Law on Concessions and Public-Private Partnership.

Hence, on 18th May 2012, Ministry of Economy, in cooperation with SIGMA, organised a training on the topic “Presentation of the Law on Concessions and Public-Private Partnership” – Review of Concessions and Practice, which, in addition to other institutions (State Appeals Commission, Ministry of Economy and representatives from the Delegation of the European Union to the Republic of Macedonia), was also attended by representatives from the Public Procurement Bureau.

Still, as part of pre-accession activities, and upon request by the European Commission, SIGMA carried out Peer Review Mission on the trends in public procurement, which was submitted to the European Commission for the purpose of preparation of 2012 Republic of Macedonia Progress Report.

In the coming period, the Bureau will continue to more intensively cooperate with SIGMA representatives to the end of realizing certain activities envisaged in the Draft Strategy on Public Procurement System.

6.3 EC Advisory Committee on Public Contracts

Advisory Committee on Public Contracts is an advisory body of the European Commission, at which various problems encountered by the Member Countries, pertaining

to public procurement, are discussed. In addition, this Committee discusses about modernisation of the public procurement system, as well as new solutions to be introduced in the EU Acquis. After being granted candidate country status, Republic of Macedonia participates in this Committee as an observer. Usually, representatives of the Republic of Macedonia in the Statistical Working Group and the e-procurement working group are Public Procurement Bureau employees. In the course of 2012 as well, within its possibilities, representatives of the Public Procurement Bureau participated in the working groups.

In the coming period, Public Procurement Bureau will continue its already established cooperation with the institutions in charge of monitoring public procurement systems in southwest Balkan countries, thus providing for exchange of experience in the EU integration process.

7. Use of the Electronic System for Public Procurement

As a result of introduction of the provision in the Law for mandatory use of electronic auctions as regards the Electronic System for Public Procurement, it can be said that it was the most used in 2012. In fact, pursuant to the Law on Public Procurement, contracting authorities are obliged to apply electronic auction in 100% of the number of published contract notices for open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice (as one of the legal requirements for its use), as well as simplified competitive procedure with publication of a contract notice, as of 1st January 2012. Increased use of ESPP also stems from the ever frequent carrying out of the procedures electronically (data will be presented below in the text), as well as it is a result of the upgrading of ESPP with new functionalities and modules in line with the recent amendments to the legislation.

These novelties include the following:

- introduction of mandatory publication of contract notice and carrying out auctions for simplified competitive procedures with value threshold of up to EUR 5.000, as well as a possibility for they to be carried out electronically;
- publication of announcement for technical dialogue on ESPP;
- publication of announcement for establishment of qualification systems and announcement for establishment of public-private partnership;
- introduction of a module for publishing negative reference to companies.

In 2012, ESPP also underwent certain improvements as regards services rendered to economic operators, i.e. the system was upgraded with a module for obtaining information on newly published contract notices, as well as improvements as regards tenderers' profile. As a result of the above mentioned, as well as due to ESPP achieving financial sustainability, fees for the economic operators for using the system were introduced.

As for using the system, and as a result of all so-far implemented activities, following was achieved in 2012:

- over 1,397 contracting authorities (7,383 users within the contracting authorities) and over 6,566 economic operators (9,188 users within the economic operators) registered;
- over 2,250 answered questions through the Q&A link on ESPP posed by the contracting authorities and the economic operators pertaining to the manner of functioning and using ESPP in 2012;
- total of 2,523 calls received through the user support center, pertaining to the functioning of the Electronic System for Public Procurement and e-auctions;
- over 3,000 visitors of the electronic system on working days, reaching the peak from 11 a.m. to 1 p.m.;
- over 416,409 e-messages sent to various users;

- 11,993 contract notices of different type and 16,155 contract award notices of different type published;
- total number of published tender documentations – 6,134 (more than half of the contract notices);
- 17,857 auctions carried out, i.e. more than 70 auctions daily in average (only working days).

Above-mentioned data lead to the conclusion that use of ESPP by contracting authorities and economic operators is constantly increasing, proving to be the proper strategy of the Bureau to gradually increase the percentage of mandatory electronic auctions in the procedures. This has provided for sufficient time for contracting authorities and economic operators to prepare.

8. Analysis of Public Procurement Market in 2012

This Chapter presents data on the trends on the public procurement market in the Republic of Macedonia in 2012. Data are categorized by different parameters and types, so as to better observe the developments in the field of public procurement, the financial trends and the implications on public consumption through the carried out procedures.

As in all previously published Reports of the Bureau, subject to analysis are data pertaining to contract notices, design contests, annexes, cancellations and all public contracts concluded in the respective period. Published contract notices and contract award notices are instruments to provide data on the developments, trends and parameters in the field of public procurement, they are gathered and processed through the module for monitoring and statistical review of ESPP, and are kept in ESPP database, which is one of a kind in the Republic of Macedonia. ESPP setup and obligation of contracting authorities to use it provide for a comparative analysis of data, which covers all contracting authorities and carried out public procurement procedures.

In the past three years, ESPP contains a tool for timely and mandatory submission of information on contract award procedures. This tool provides for greater promptness of contracting authorities as regards their legal obligation to submit contract award notices/cancellations and records on simplified competitive procedures, thus increasing accuracy and relevance of data in 2012. It can be said that contracts were 100% covered with contract award notices and records in 2012. Hence, it can be concluded that presented 2012 data, with insignificant deviations, are a complete and real picture of the volume of public procurement in the Republic of Macedonia. However, responsibility for accuracy of data lies with the contracting authorities that fill in the contract notices and the contract award notices.

8.1 General and Comparative Data on Concluded Public Contracts

ESPP database shows that total of 22,732 public contracts were concluded in 2012, in the total amount of Denar 56,363,279,435 (including VAT). Value of public procurement in the country in 2012 accounted for 12% of GDP of the Republic of Macedonia.

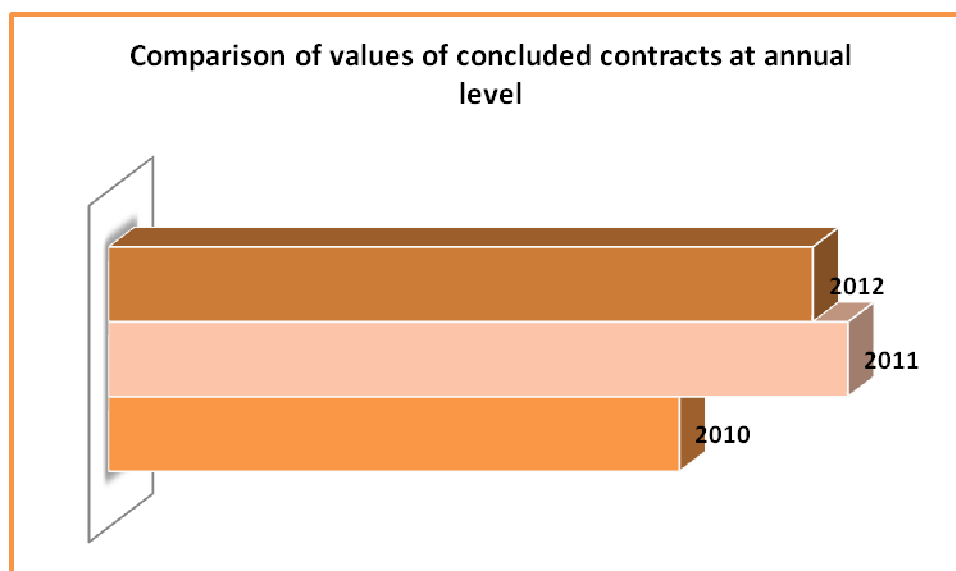
According to data available to the Bureau, value of concluded contracts in 2012, compared to the previous year, dropped by around 5%, i.e. it was approximately at the same level. Number of concluded contracts remained almost unchanged, i.e. slight reduction was observed (As for the number of concluded contracts, it remained unchanged (23,862 contracts concluded last year). Having in mind the above mentioned, it can be observed that share of public procurement as percentage of GDP also dropped.

Table 1 and Chart 1 show comparative review for the last 3 years: Budget of the Republic of Macedonia, GDP, value of concluded public contracts and percentage of GDP which accounts for public procurement.⁶

Table 1

Year	Budget of the Republic of Macedonia (Denar million)	GDP (Denar million)	Value of concluded contracts	Value of public procurement as % of GDP
2010	132,146	425,628	Denar 45,704,361,510	11%
2011	132,146	439,891	Denar 59,182,907,793	13%
2012	161,667	460,342	Denar 56,363,279,435	12%

Chart 1



8.2 Data from Contract Notices

In 2012, 11,726 contract notices were published, 3,100 out of which were notices for simplified competitive procedures with an estimated value up to EUR 5,000 in Denar equivalent, 4,107 were notices for simplified competitive procedures with an estimated value of up to EUR 20,000 in Denar equivalent for supplies and services and up to EUR 50,000 in Denar equivalent for works, 4,455 were notices for open procedure, 9 were notices for restricted procedure, 18 were notices for negotiated procedure with prior publication of a contract notice, 5 were announcements for establishment of a qualification system and

⁶ Data on economic indicators are taken from the website of the National Bank of the Republic of Macedonia and the State Statistics Office.

32 were notices for design contest. Table 2 and Chart 2 show the number of published contract notices according to the type of the procedure.

Table 2


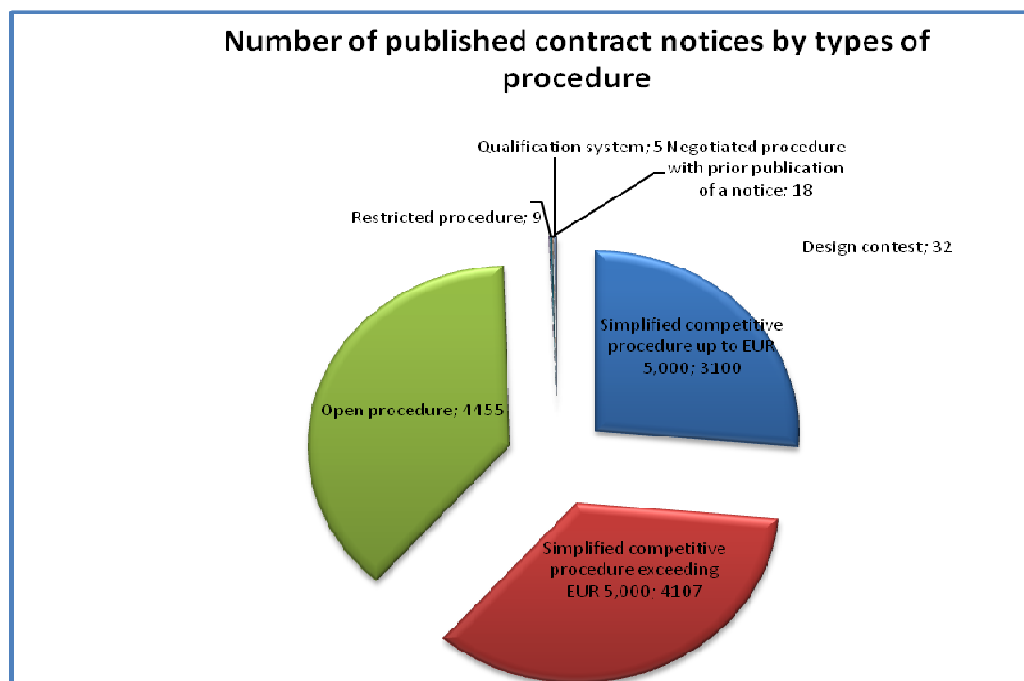

Type of procedure	Number of contract notices
Simplified competitive procedure  ⁷	3100
Simplified competitive procedure	4107
Open procedure	4455
Restricted procedure	9
Negotiated procedure with prior publication of a contract notice	18
Qualification system	5
Design contest	32
Total	11726

Chart 2



Above-listed data lead to the conclusion that most contract notices were published by applying the simplified competitive procedures, total of 7,207 contract notices, and

⁷  - simplified competitive procedure of up to EUR 5,000 in Denar equivalent.

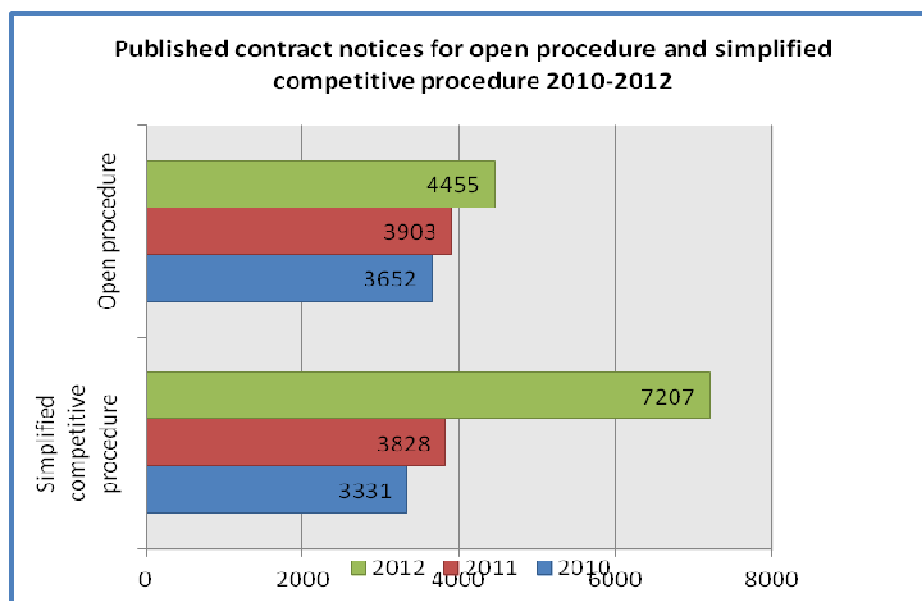
open procedure – 4,455 contract notices. Out of the total of 7,207 contract notices for simplified competitive procedures, 3,100 were contract notices published for procedures with an estimated value of up to EUR 5,000 in Denar equivalent, in line with the new legal amendments on mandatory publication of this type of procedures as well starting 1st July 2012.

Total of 11,726 contract notices were published in 2012, and it can be concluded that number of published contract notices increased by 50%, mostly due to the legal obligation to publish contract notices with an estimated value of up to EUR 5,000 in Denar equivalent. Compared to the previous year, increase of number of contract notices for open procedure and simplified competitive procedure can be registered. Compared to the other procedures, downward trend of the number of published contract notices for restricted procedure (52 procedures in 2010, 14 procedures in 2011, 9 procedures in 2012) continues.

Possibility to publish an announcement for establishment of a qualification system was introduced in 2012 and total of 5 announcements for qualification systems were published. Such manner of awarding contracts is used exclusively by the utilities. In addition, in line with the amendments, announcements for establishment of public-private partnership, awarded as public contract, are also published on the system. Out of the total number of published contract notices in 2012, 10 were announcements of this type.

If one analyses data since 2010 onwards on continuous basis, identical trend is observed, increased use of the open procedure and the simplified competitive procedure.. Chart 3 shows the ratio between published contract notices for the most used procedures – open procedure and simplified competitive procedure – in the last three years. As already mentioned, significant increase of the number of published contract notices for simplified competitive procedure is due to the publication of contract notices for procedures with a value threshold exceeding EUR 5,000 in Denar equivalent.

Chart 3



In 2012, contracting authorities published total of 254 contract notices on the system in the category *Other Contract Notices*. Compared to 2010, when only 133 contract notices were published, and 2011, when 145 contract notices were published, it is our pleasure to conclude that contracting authorities more frequently use the opportunity to publish other contract notices for the needs of public procurement of services for which no explicit obligation for publishing a contract notice is envisaged.

In fact, it is a matter of contract notices for procurement of so-called “non-priority” services pursuant to indent 2, paragraph 1, Article 17 of the Law, such as services related to temporary employment, hotel, catering, recreational, cultural, educational, legal and other services. Upon request by some contracting authorities, it has been provided for contract notices for procurement of services falling under category 17 to category 27, to be published, in addition to *Other Contract Notices*, on the Electronic System for Public Procurement as standard contract notices.

Pursuant to Article 19 of the Law on Concessions and Public-Private Partnership, announcements for establishment of public-private partnership as a public works concession or as a public service concession are published on the Electronic System for Public Procurement in a special module for public works concessions and public service concessions. Total of 16 such announcements were published in 2012.

As for the type of the subject-matter of the public contract, most contract notices were published for procurement of supplies – 6,336, 3,699 contract notices were published for services and 1,691 contract notices were published for works. Number of published contract notices according to the type of public contract is shown in Table 3 and Chart 4. Trend of publishing contract notices for all three types of subject-matter of public contract was the same, i.e. proportional increase was observed at all three, corresponding to the

increase of the total number of published contract notices. Comparative data for the last 3 years are presented in Chart 5.

Table 3

Type of public contract	Number of contract notices
Supplies	6336
Services	3699
Works	1691
Total	11726

Chart 4

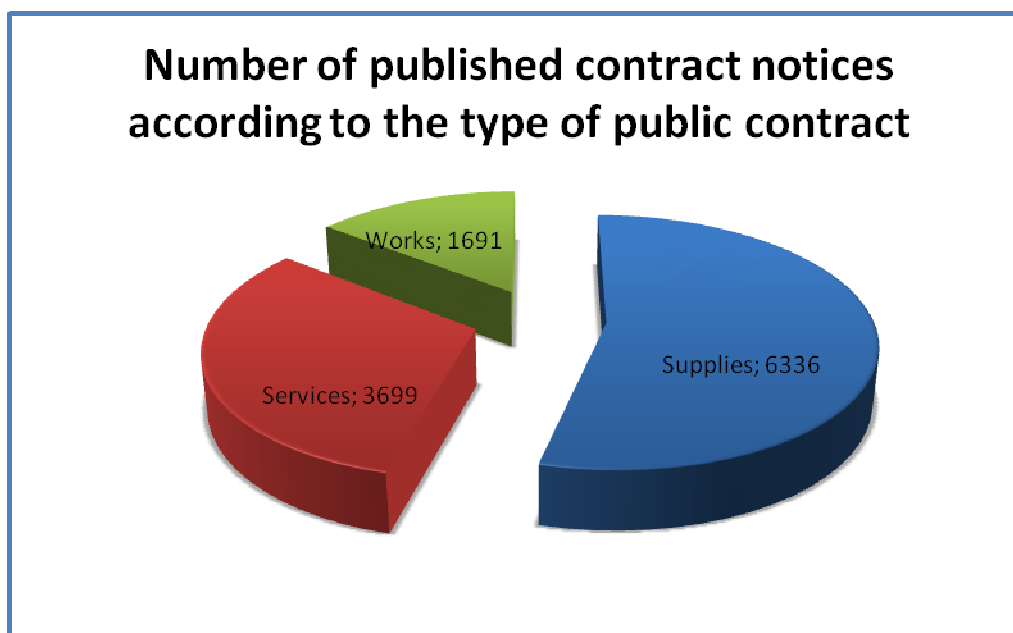
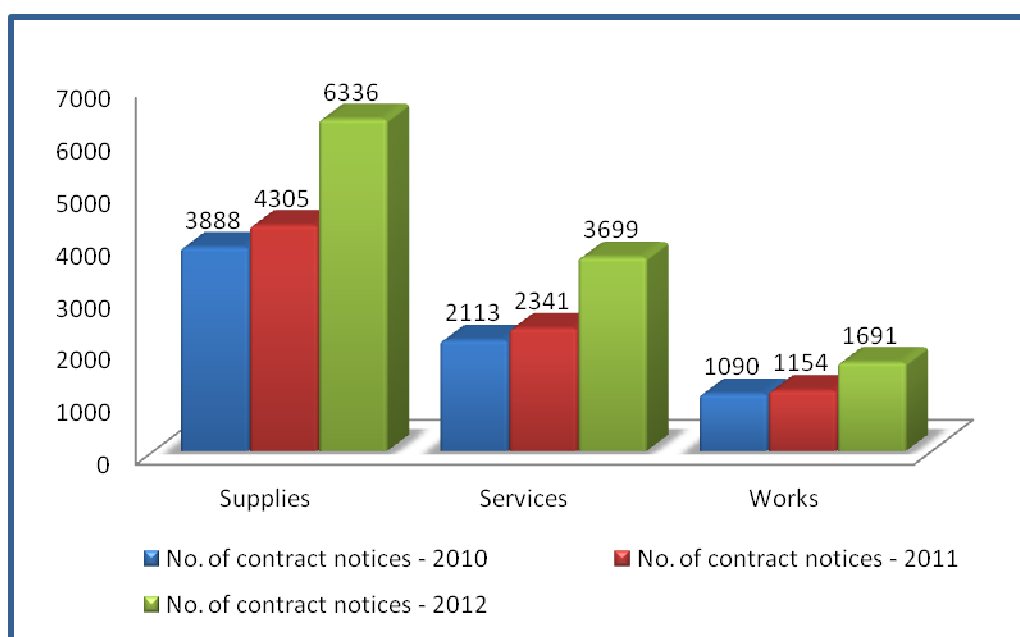


Chart 5



Next few tables show detailed data on published contract notices according to the type of contract and the way of its execution.

Table 4

Type of public contract- supplies	Number of contract notices
Purchasing	2993
Hire purchase	3305
Lease, with an option to purchase supplies	7
Lease, without an option to purchase supplies	18
Combination of the above-mentioned types	13
Total	6336

Table 5

Type of public contract – services	Number of contract notices
Architectural and engineering services	628
Auxiliary transport services	30
Other services	192
Health and social services	74
Publishing and printing services	135

IT and related services	171
Investigative and security services	73
Education and vocational education services	31
Legal services	12
Advertising services	63
Recreational, cultural and sporting services	23
Accounting, auditing and bookkeeping services	49
Management consulting services	38
Telecommunication services	284
Air transport services of passengers and freight	62
Market research and public opinion polling services	5
Land and air transport services of mail	12
Land transport services	244
Maintenance and repair services	1079
Sewage and refuse disposal services	67
Temporary employment services	48
Development and research services	37
Building cleaning services and property management services	39
Financial services	252
Hotel and catering services	51
Total	3699

Table 6

Type of public contract – works	Number of contract notices
Execution	1532
Design and execution	25
Realisation, by any means	134
Total	1691

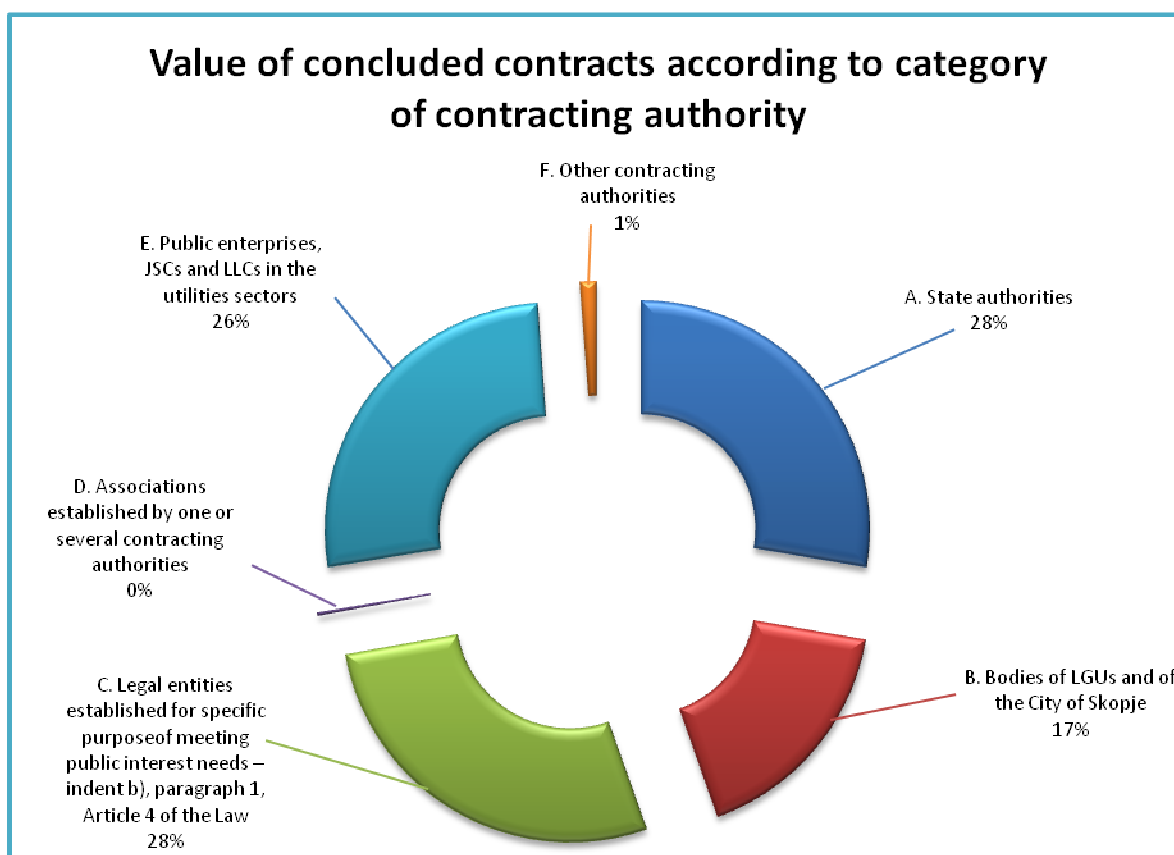
Total number of published contract notices according to category of contracting authorities, pursuant to Article 4 of the Law on Public Procurement and the Decision on Determining the Indicative List (“Official Gazette of the Republic of Macedonia”, nos. 159/07 and 74/09) is shown in Table 7 and Chart 6.

Table 7

Category of contracting authority	Number of contract notices
State authorities	1943
Bodies of local government units and of the city of Skopje	2740

Legal entities established for specific purpose of meeting public interest needs –indent b), paragraph 1, Article 4 of the Law	5209
Associations established by one or several contracting authorities	93
Public enterprises, joint stock companies and limited liability companies in the utilities sectors	1679
Other contracting authorities	62
Total	11726

Chart 6



When analysing the data on the published contract notices according to the category of contracting authority, it can be seen that most contract notices (5,209) were published by contracting authorities in the category legal entities established for specific purpose of meeting public interest needs - indent b), paragraph 1, Article 4 of the Law and by contracting authorities in the category bodies of local government units and of the city of Skopje (2,740).

When data from contract notices are analysed, as regards the type of contract award criteria the contracting authorities applied in the carried out procedures, it can be

determined that the lowest price criterion was far more used compared to the criterion for economically most advantageous tender.

Table 8 shows data on the number of published contract notices according to the contract award criterion applied in the procedure. It is necessary to point out that data do not include some of the contract notices for restricted procedure and negotiate procedure with prior publication of a contract notice, since in some of them, the contracting authority publishing the contract notice did not publish the criterion in the contract notice, but rather included it in the tender documentation for the next stage of the procedure.

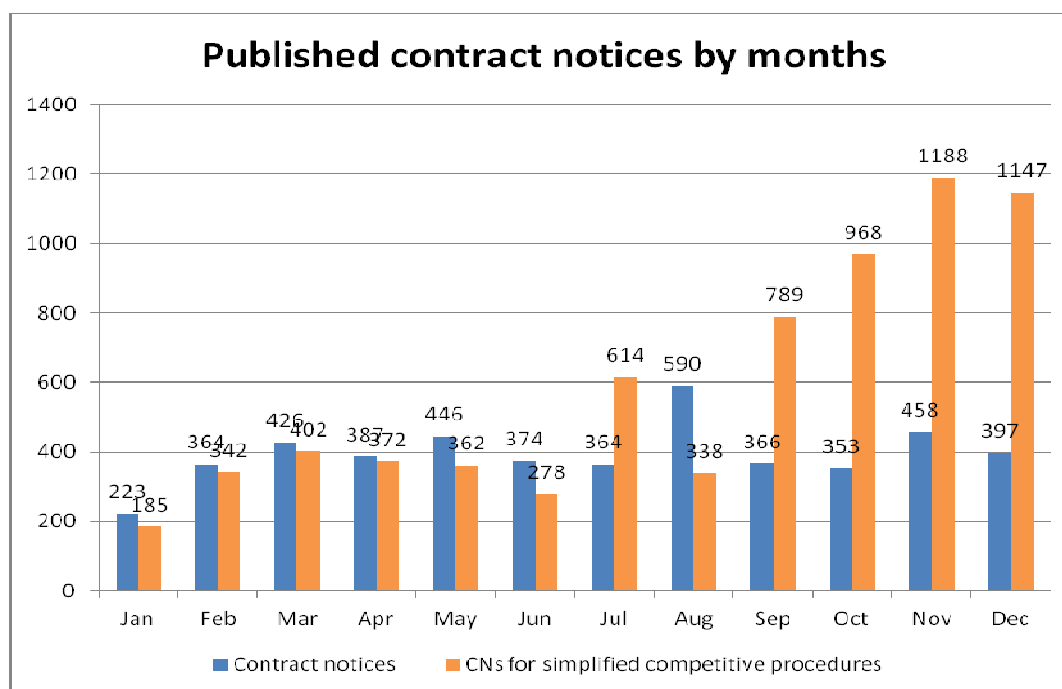
Table 8

Contract award criterion	Number of contract notices
Lowest price	9466
Economically most advantageous tender	2217

It can be concluded that in 81% of the published contract notices, the contracting authorities applied the criterion - lowest price. Compared to 2011 (when such percentage was 64%), increased use of the criterion – lowest price was evident. In the last five years, increase of the use of the lowest price criterion was observed in the public procurement procedures from around 16% in 2008 up to 81% in 2012.

Chart 7 shows the dynamics of publishing contract notices by month. This chart shows that most contract notices were published at the beginning and at the end of the year. Such dynamics pertained to contract notices, while number of published contract notices for simplified competitive procedure significantly increase from July up to December 2012. This was a result of the legal obligation to publish contract notices for low-value public procurement, starting 1st July 2012.

Chart 7



8.3 Concluded Public Contracts

This Chapter of the Report presents data, and analysis is made of the public contracts concluded in 2012 on the basis of different parameters. For the purpose of greater clarity of data, this Chapter is divided in several sections on the basis of the parameters considered. Data mainly refer to the total number of concluded public contracts and their value, however, with respect to some parameters, due to ESPP setup (depending on whether data are received from contract award notices or from the records on simplified competitive procedures), data are grouped and refer only to the procedures - open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice, competitive dialogue and awarding of public services contract pursuant to indent 2, Article 17, exceeding EUR 20,000 in Denar equivalent, excluding VAT. These tables and charts are indicated below. All data regarding concluded public contracts are published on ESPP <https://e-nabavki.gov.mk> and are fully available to the public. Contracting authorities are responsible for the reliability and accuracy of entered data, since they publish their contract notices, contract award notices/cancellation notices, records on simplified competitive procedures through ESPP by means of their usernames and passwords.

Table 9 and Chart 8 show the number and the value of concluded public contracts in 2012 according to the type of contract award procedure. Total value of concluded public contracts in 2012 was Denar 56,363,279,435. According to the value of concluded public contracts, most applied was the open procedure, on the basis of which 7,258 contracts were concluded in the amount of Denar 38,050,698,774 – 67% of the total value of public procurement in the Republic of Macedonia. As regards value of concluded public contracts,

negotiated procedure with prior publication of a contract notice was the second most applied procedure, on the basis of which 99 contracts were concluded in the amount of Denar 5,842,354,016 - 10% of the total value.

Chart 8

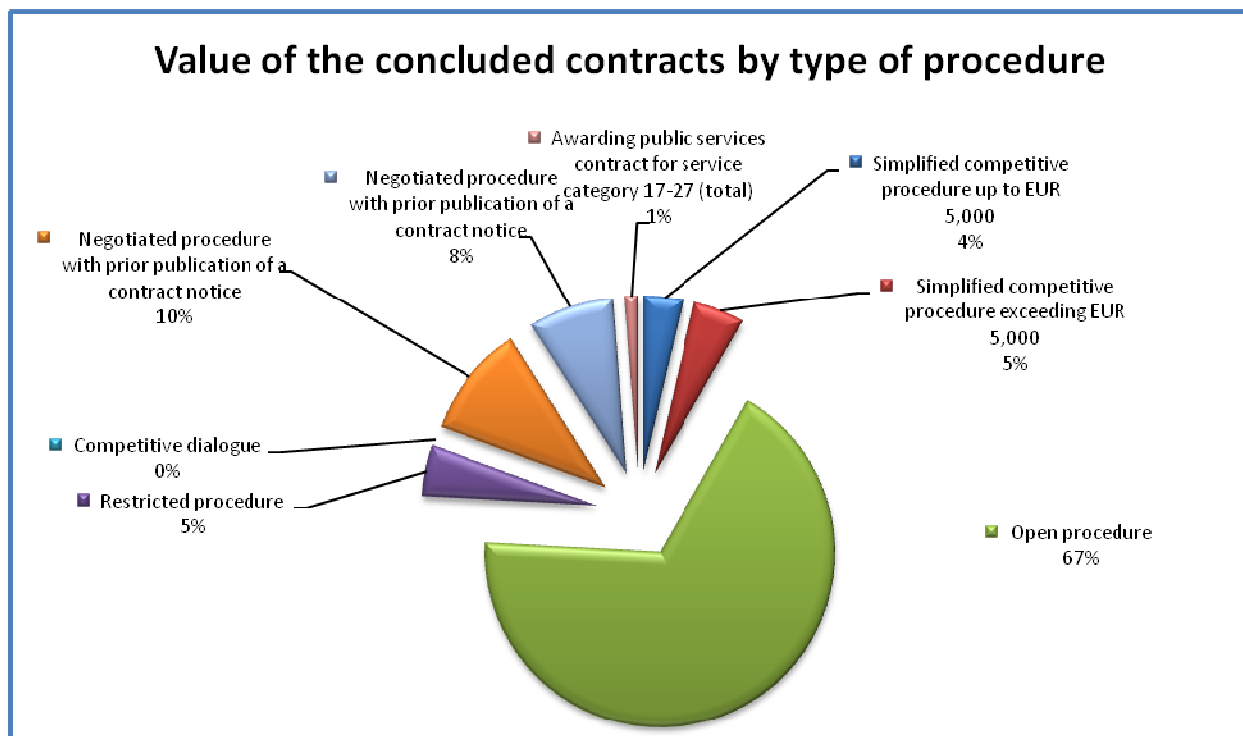


Table 9

Type of contract award procedure	Number of concluded contracts	Value of concluded contracts
Simplified competitive procedure	10049	Denar 2,043,030,609.00
Simplified competitive procedure	3966	Denar 2,662,608,453.00
Open procedure	7258	Denar 38,050,698,774.00
Restricted procedure	19	Denar 2,668,633,989.00
Competitive dialogue	1	Denar 9,310,000.00
Negotiated procedure with prior publication of a contract notice	99	Denar 5,842,354,016.00
Negotiated procedure without prior publication of a contract notice	1162	Denar 4,410,568,311.00
Awarding public services contract for service category 17-	1178	Denar 676,075,283.00

27 (total)		
Total	23732	Denar 56,363,279,435.00

Compared to the previous year, as regards use of different types of procedures, no significant changes were observed. In fact, in the past three years, with respect to value of concluded contracts, most of them were concluded by applying the open procedure (76% in 2010, 64% in 2011, 67% in 2012). An important difference compared to the previous year is the significant decline of the share of restricted procedure (8% in 2011, 5% in 2012), as well as the decline of the share of the negotiated procedure with prior publication of a contract notice from 14% in 2011 to 10% in 2012. In addition, in 2012, share of the negotiated procedure without prior publication of a contract notice increased (4% in 2011, 8% in 2012). This increase was partly due to the possibility to use this type of procedure pursuant to the recent amendments to the Law on Public Procurement in case when the contracting authority cannot schedule electronic auction since there is not enough competition. More detailed data on the negotiated procedures will be presented in the text below. Volume of the other procurement procedures is approximately the same in terms of value of the concluded contracts. Comparative data are presented in Charts 9 and 10.

Chart 9

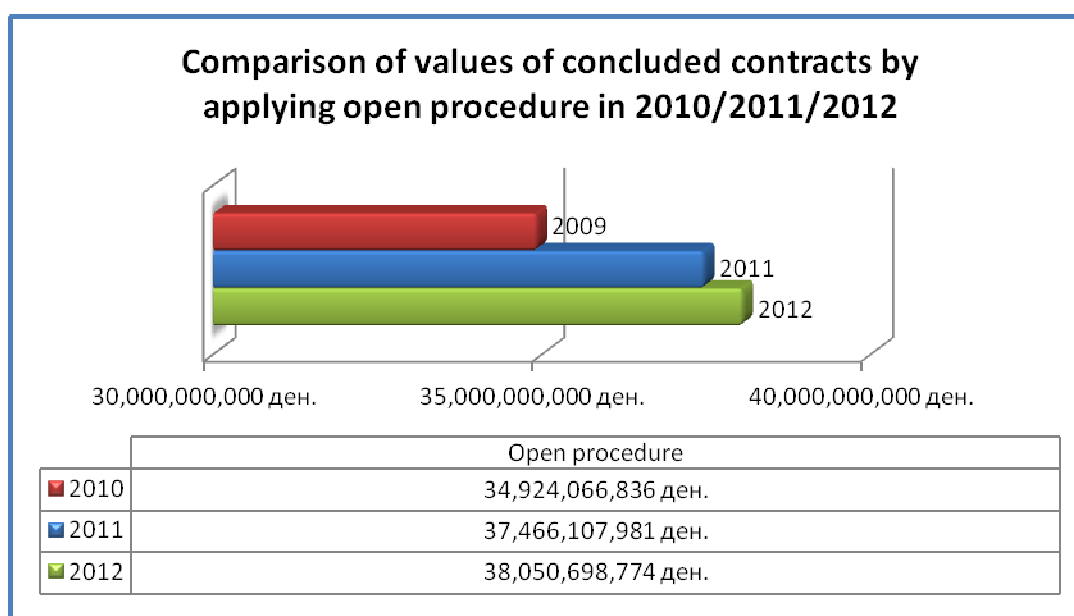
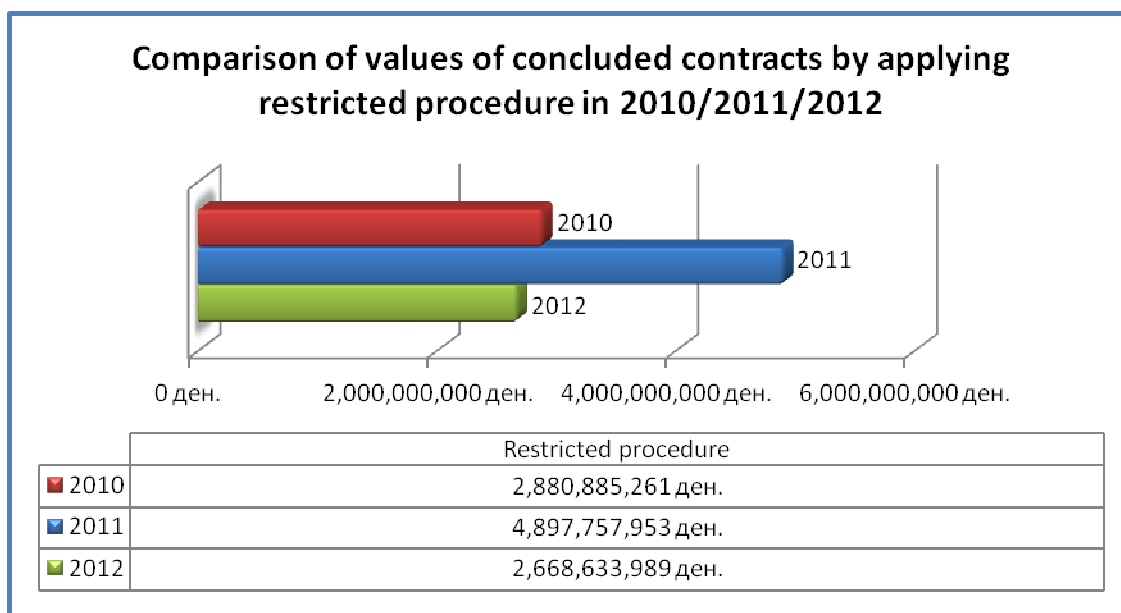


Chart 10



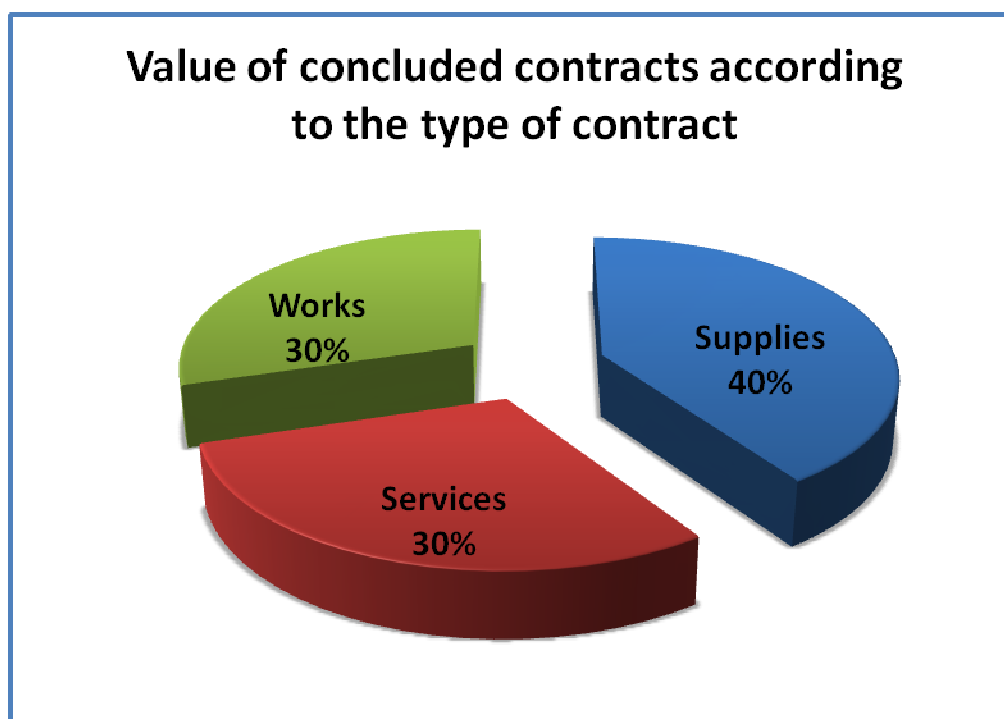
8.4 Data on Public Contracts Concluded according to the Type of Public Contract

According to the subject-matter of the public contract, 12,940 supply contracts in the amount of Denar 22,811,847,808, 8,633 services contracts in the amount of Denar 16,799,469,363 and 2,159 works contracts in the amount of Denar 16,751,962,264 were concluded in 2012. Chart 11 and Table 10 present more detailed data on the number and value of concluded public contracts according to the type of the subject-matter of the contracts.

Table 10

Type of public contract	Number of concluded contracts	Value of concluded contracts
Supplies	12940	Denar 22,811,847,808.00
Services	8633	Denar 16,799,469,363.00
Works	2159	Denar 16,751,962,264.00
Total	23732	Denar 56,363,279,435.00

Chart 11



The Table shows that most (40%) of the value of public contracts accounted for procurement of supplies. Public work contracts accounted for 30% of the total value of contracts (most often execution of works). These data show that there were no significant changes as regards the structure of the value of contracts concluded according to the type of contract compared to 2011. In fact, in 2012 share of procurement of supplies increased by 3%, and the most often used manner of realisation of the public supplies contract was again hire purchase. Public services contracts participated with 30% in the total value of public procurement in 2012 (they accounted for 30% in 2011). Their structure shows different percentage of categories of services pursuant to the Decree on services subject-matter of public services contracts (“Official Gazette of the Republic of Macedonia”, no. 157/07). However, most of the value of public services contracts accounted for public contracts for architectural and engineering services (category No. 12) and maintenance and repair services (category No. 1), same as the previous year.

8.5 Data on Public Contracts Concluded according to the Category of Contracting Authority

Number and value of contracts concluded according to the category of contracting authority and its main business activity are shown in Table 11 and Chart 12. Due to ESPP setup and the manner of gathering data, and according to the category of contracting authority, information given below were obtained from the contract award notices and

refer exclusively to contracts concluded by applying open procedure, restricted procedures, negotiated procedure with and without prior publication of a contract notice and competitive dialogue. These data do not include data on the simplified competitive procedures due to the fact that contract award notice is not filed for these procedures, but rather summary records on semi-annual basis.

Chart 12

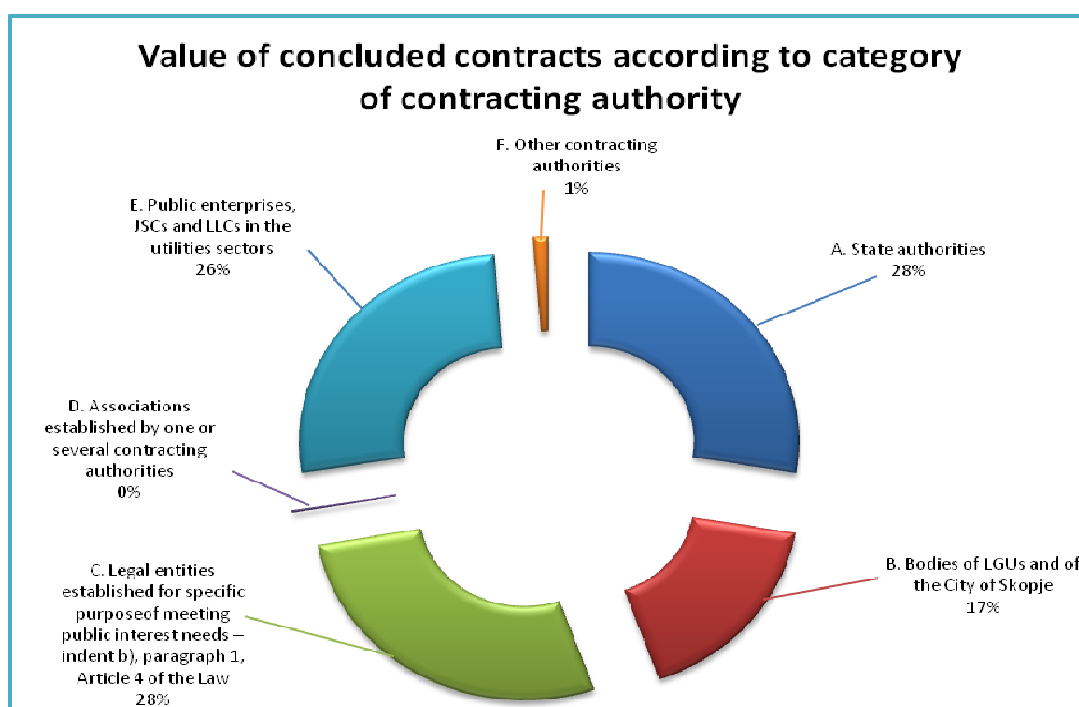


Table 11

Category of contracting authority	Main business activity	Number of contracts	Value of concluded contracts
A. State authorities	General public services	444	Denar 7,072,579,461
	Defence	148	Denar 459,957,419
	Public order and security	86	Denar 1,296,356,989
	Environment	4	Denar 102,412,137
	Health	352	Denar 4,403,556,406
	Economy and finance	25	Denar 110,265,371
	Social protection	35	Denar 118,938,993
	Sports and culture	65	Denar 474,558,656
	Education	51	Denar 243,468,678
	Housing, construction and	5	Denar 621,008

	transport		
	Other	3	Denar 3,145,002
	Total A.	1218	Denar 14,285,860,120
B. Bodies of local government units and of the city of Skopje	General public services	1203	Denar 8,617,612,940
	Sports and culture	21	Denar 43,290,099
	Environment	1	Denar 8,151,711
	Education	1	Denar 14,700,000
	Total B.	1226	Denar 8,683,754,750
C. Legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law	General public services	1146	Denar 5,758,873,803
	Public order and security	26	Denar 64,686,997
	Environment	56	Denar 158,599,455
	Health	2488	Denar 5,304,718,913
	Housing, construction and transport	33	Denar 652,712,810
	Social protection	347	Denar 478,727,699
	Sports and culture	116	Denar 126,781,440
	Education	683	Denar 1,456,462,445
	Other	66	Denar 231,326,282
	Total C.	4961	Denar 14,232,889,844
D. Associations established by one or several contracting authorities	General public services	14	Denar 21,718,594
	Education	42	Denar 98,696,044
	Social protection	2	Denar 1,720,560
	Total D.	58	Denar 122,135,198
E. Public enterprises, joint stock companies and limited liability companies in the utilities sectors	General public services	411	Denar 1,839,794,880
	Housing, construction and transport	23	Denar 51,855,889
	Economy and finance	2	Denar 2,975,216
	Sports and culture	2	Denar 5,414,570
	Other	756	Denar 11,739,569,903
	Total E.	1194	Denar 13,639,610,458
F. Other contracting authorities	Health	1	Denar 1,406,523
	Sports and culture	29	Denar 19,064,808
	Other	30	Denar 569,183,777
	Total F.	60	Denar 589,655,108
Total⁸	Total A + B + C + D + E + F	8717	Denar 51,553,905,478

⁸ Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, and public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

The Table shows detailed review of realised public procurements according to category and main business activity of the contracting authorities.

It can be concluded that the largest percentage of the value of concluded contracts accounts for the following categories: legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law and state authorities, which accounted for 28% of the value of public procurement.

Second, according to realised public procurements, was the category of contracting authorities - public enterprises, joint stock companies and limited liability companies in the utilities sectors, accounting for 26% of the value of public procurement.

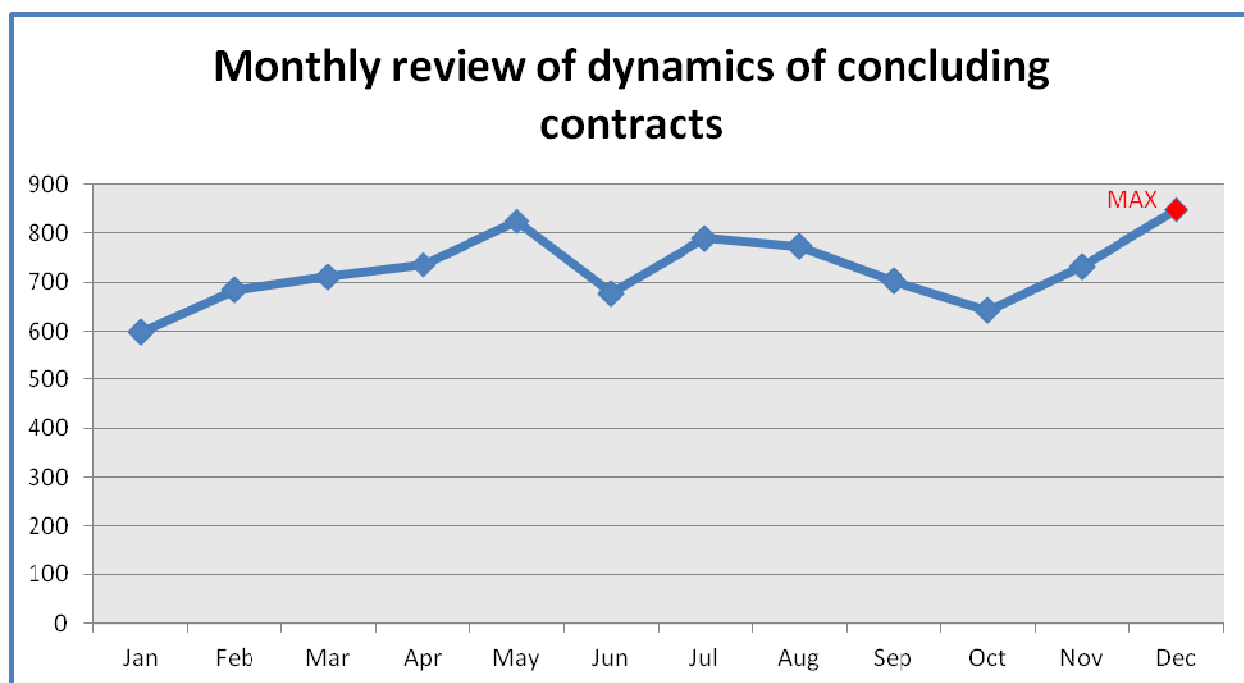
Other contracting authorities participated with around 18% all together in the total value of public contracts.

Compared to 2011, decrease of the share of public enterprises, joint stock companies and limited liability companies in the utilities sectors was registered (34% in 2011, 28% in 2012) while share of concluded contracts of state authorities in the total value of concluded contracts increased (20% in 2011, 28% in 2012).

8.6 Data on Public Contracts Concluded according to Other Parameters

When analysing the dynamics of awarding contracts by months in 2012 (Chart 13), it can be seen that most of the contracts were concluded in December.

Chart 13

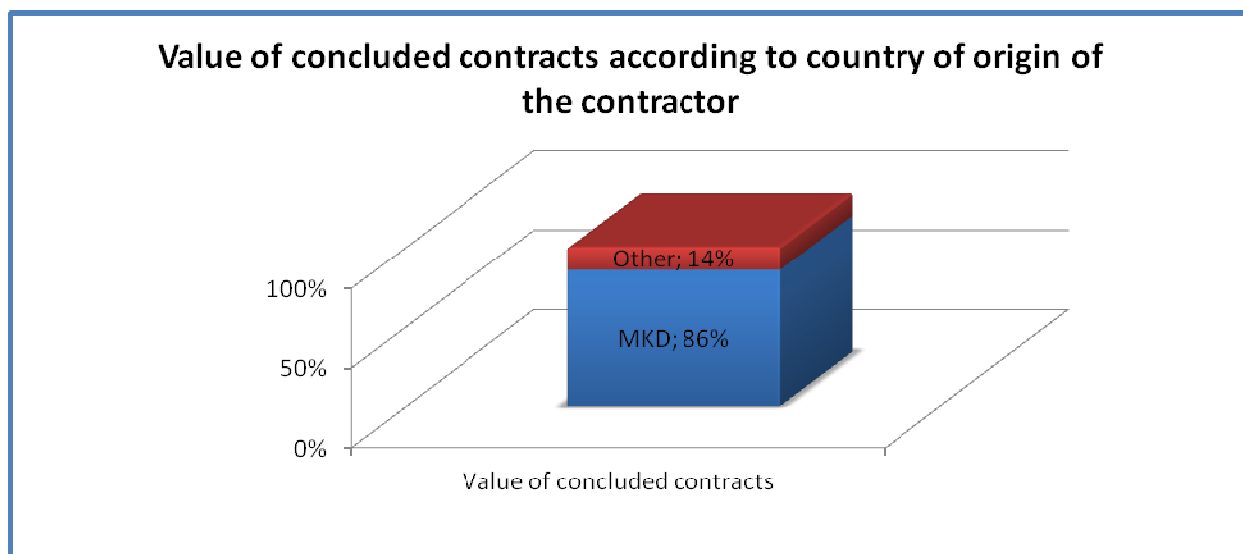


There was international publication of the contract notice for 633 of the public contracts (Denar 21,466,209,489). Analysed by country of origin of the contractor, data are presented in Table 12 and Chart 14.

Table 12

Country of origin of the contractor	Number of concluded contracts	Value of concluded contracts ⁹
Macedonia	7955	Denar 44,120,686,165
EU	55	Denar 1,186,150,921
Other	707	Denar 6,236,977,803

Chart 14



Above-stated data lead to the conclusion that national companies accounted for 86% of the value of awarded public contracts on the public procurement market in the Republic of Macedonia. Share of foreign companies as contractors in public contracts in 2012 accounted for 14%, which speaks of the fact that the existing legislation provides for continuous presence of foreign companies on the public procurement market and their continuous participation in contract award procedures. Value and percentage of awarded contracts to companies outside Macedonia is at the identical level as in 2011.

In addition, it is worth mentioning that 831 framework agreements and 282 agreements for conducting joint procurement were concluded in 2012.

At the beginning of this Chapter we presented the number and the value of contracts concluded according to the type of procedure, whereby negotiated procedure

⁹ Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, and public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

with and without prior publication of a contract notice participated with 10% and 8% respectively in the total amount of funds. Table 13 and Chart 15 show the number and the value of concluded public contracts by applying these procedures on the basis of the reason for applying/legal basis for applying these procedures. We have already mentioned that, compared to 2011, use of negotiated procedure without prior publication of a contract notice increased. This was mostly due to the possibility to carry out negotiated procedure if the contracting authority cannot schedule electronic auction since there is not enough competition. Public contracts in the amount of Denar 986,547,060 were awarded on the basis of this reason/legal justification. In addition, one should also have in mind the fact that scope of the basis for use of the negotiated procedure referred to in paragraph 3, Article 99 of the Law, starting 1st July 2012, includes the simplified competitive procedure of up to EUR 5,000.

Data on negotiated procedure can lead to a conclusion that most often (30% of the value of awarded contracts under negotiated procedure without prior publication of a contract notice) reason/legal justification to apply the negotiated procedure without prior publication of a contract notice is due to reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission, 302 contracts being concluded in the amount of Denar 1,300,131,547. Another reason for applying the negotiated procedure without prior publication of a contract notice (28%) was indent 6, point 2), paragraph (1), Article 99 of the Law, when due to technical or artistic reasons, i.e. reasons connected to protection of exclusive rights (patents, etc.), the contract can be executed only by a particular economic operator.

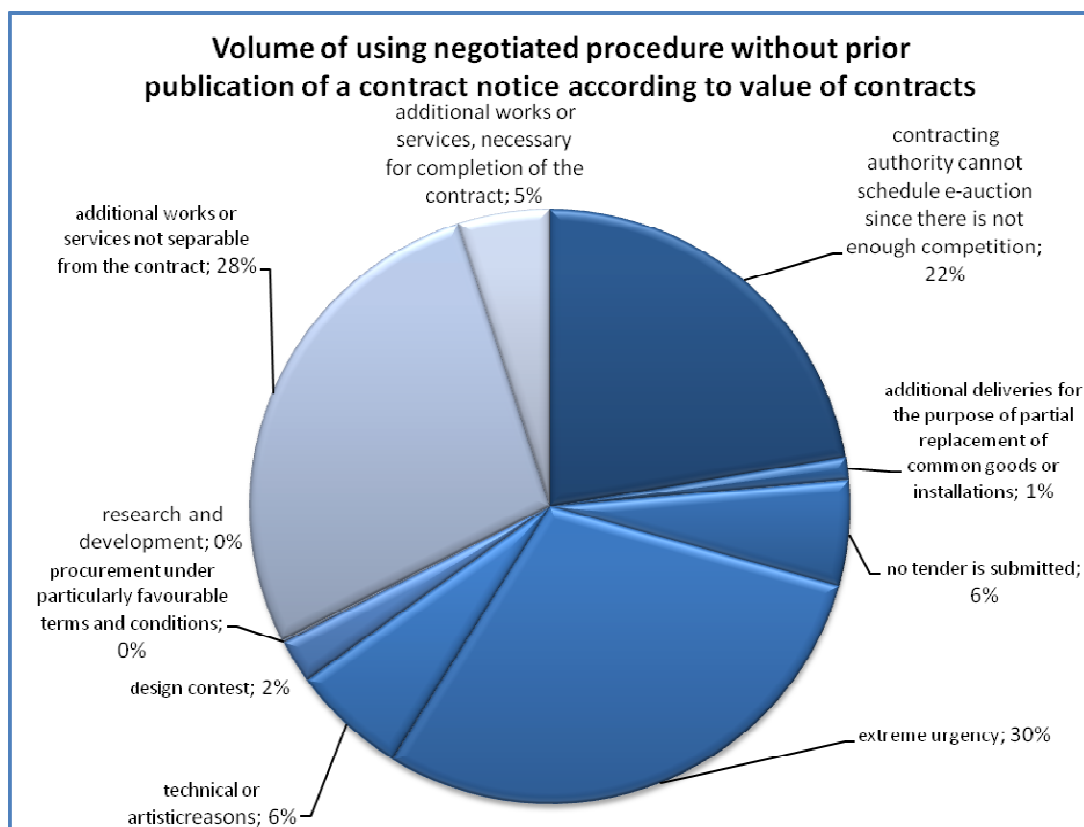
Table 13

Type of procedure	Justification for selection of a procedure	Number of concluded contracts	Value of concluded contracts
A. Negotiated procedure with prior publication of a contract notice	when no acceptable tender was received in an open procedure, restricted procedure or competitive dialogue, and the previous procedure was cancelled without substantially modifying the initial requirements in the tender documentation;	2	Denar 1,226,856,825
	in exceptional cases, when the nature of the works, supplies or services, or the risks arising therefrom, did not allow a prior overall pricing of the contract;	4	Denar 115,282,680
	contracting authority invited to negotiations the economic operators which, in the open procedure, restricted procedure or the competitive dialogue procedure proved their qualifications and submitted tenders in line with the requirements of the respective procedure;	92	Denar 4,243,390,511

	for services, if the service was of such nature, that the technical specifications could not be determined with sufficient precision so as to enable the awarding of the contract on the basis of the most favourable tender in accordance with the rules governing open or restricted procedure;	1	Denar 256,824,000
	Total A.	99	Denar 5,842,354,016
B. Negotiated procedure without prior publication of a contract notice	when in an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and simplified competitive procedure, the contracting authority could not schedule electronic auction since there was not enough competition;	138	Denar 986,547,060
	when the contracting authority had to procure additional deliveries from the original contractor for the purpose of partial replacement of common goods or installations or extension of the existing goods or installations;	38	Denar 53,102,981
	when no tender in an open procedure or no request to participate in the first phase of a restricted procedure was submitted, provided that the initial requirements of the contract were not altered;	163	Denar 253,902,723
	In case of reasons of extreme urgency caused by events the contracting authority could not foresee, nor they could be attributed to it as an omission;	302	Denar 1,300,131,547
	when due to technical or artistic reasons, i.e. reasons connected to protection of exclusive rights (patents, etc.), the contract could be executed only by a particular economic operator;	283	Denar 274,979,387
	when the contract concerned followed a design contest and was awarded to the best ranked participant or to one of the best ranked participants;	16	Denar 104,270,041
	In case of procurement under particularly favorable terms, from a tenderer which winded-up its business activities (liquidation or bankruptcy), from a bankruptcy trustee or liquidator upon a prior agreement with the creditors;	2	Denar 4,932,400
	manufactured purely for the purpose of research, experimentation, study or development, but not for goods in mass production by which gain or recovery of research and development costs might be realised;	3	Denar 1,112,080

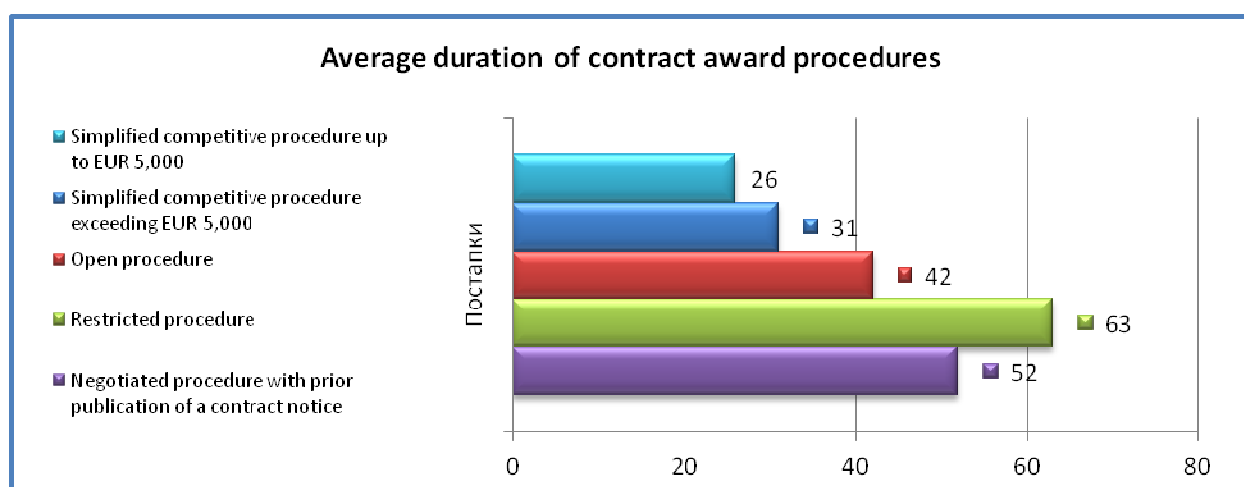
	such additional works or services could not be technically or economically separated from the original contract without major inconvenience for the contracting authority;	175	Denar 1,213,167,626
	such works or services, although separable from the performance of the original contract, were strictly necessary for its completion.	42	Denar 218,422,466
	Total B.	1162	Denar 4,410,568,311

Chart 15



Data that can also serve to present efficiency of contract award procedures are average duration of the procedures from the public tender opening to concluding the contract. Gathered data lead to the conclusion that average duration of the evaluation phase in simplified competitive procedure with an estimated value of up to EUR 5,000 in Denar equivalent was 26 days, simplified competitive procedures with an estimated value of up to EUR 20,000 in Denar equivalent for supplies and services and up to EUR 50,000 in Denar equivalent for works was 31 days, open procedure – 42 days, restricted procedure – 63 days, and negotiated procedure with prior publication of a contract notice – 52 days.

Chart 16



Above-stated data show that, compared to 2011, there was a significant decrease in all procedures in the number of days necessary to evaluate tenders, to reach a decision selecting the winning tenderer and to conclude the contract. On average, the time period was shortened from 6 to 37 days. Compared to 2011, duration of the procedures was as follows: simplified competitive procedure exceeding EUR 5,000 - 32 days, open procedure - 48 days, restricted procedure - 92 days and negotiated procedure with prior publication of a contract notice - 89 days. Hence, we can conclude that there was a significant decrease in the number of days necessary to evaluate tenders compared to the previous year, i.e. there was an increase in the efficiency in carrying out procedures. This is due to the efforts of the Bureau to strengthen the capacities of contracting authority through the education programme, as well as to the introduction of the obligation for contracting authorities to reach decision for selection or cancellation of the procedure within a time limit not longer than the one for submission of tenders, i.e. requests to participate in the specific procedure, from the day determined as final time limit for submission of tenders, i.e. requests to participate. Comparison on the duration of procedures in 2011-2011 is given in Table 14. However, efforts to reduce duration of the procedures should be continued, since there are procedures that still last longer than the envisaged time limits.

Table 14

Average duration of contract award procedures		
	2011	2012
Simplified competitive procedure (up to EUR 5,000)	-	26 days
Simplified competitive procedure (exceeding EUR 5,000)	32 days	31 days
Open procedure	48 days	42 days
Restricted procedure	92 days	63 days

Negotiated procedure with prior publication of a contract notice	89 days	52 days
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Below are presented data on the value of concluded contracts by contracting authority (a list of 10 largest public consumers in 2012), and by contract (list of 10 highest-value public contracts in 2012). Tables 15 and 16.

Table 15

List of contracting authorities – 10 largest consumers in 2012	
<i>Name of contracting authority</i>	<i>Total value of contracts</i>
Macedonian Power Plants joint stock company - Skopje	9,285,465,062
Common Service Agency within the Government of the Republic of Macedonia	4,110,784,933
Ministry of Health	3,943,270,616
City of Skopje	1,712,870,335
Ministry of Internal Affairs of the Republic of Macedonia	1,292,910,426
Centar Municipality	1,103,881,615
Macedonian Forests public enterprise - Skopje	1,052,010,924
AD MEPSO	863,625,763
Agency for State Roads	832,888,980
Agency for Electronic Communications	800,923,512

Table 16

List of 10 highest-value contracts concluded in 2012			
Subject-matter of procurement	Name of contracting authority	Contractor	Value of concluded contracts
Excavation of coal and tailing in Brod–Gneotino coal excavation site, REK Bitola, with discontinued technology and approximate quantity of 11,000,000 m ³ , all in line with the Technical Specification	Macedonian Power Plants joint stock company - Skopje	PELISTER Bitola DOO Construction and Services Company	3,280,400,000

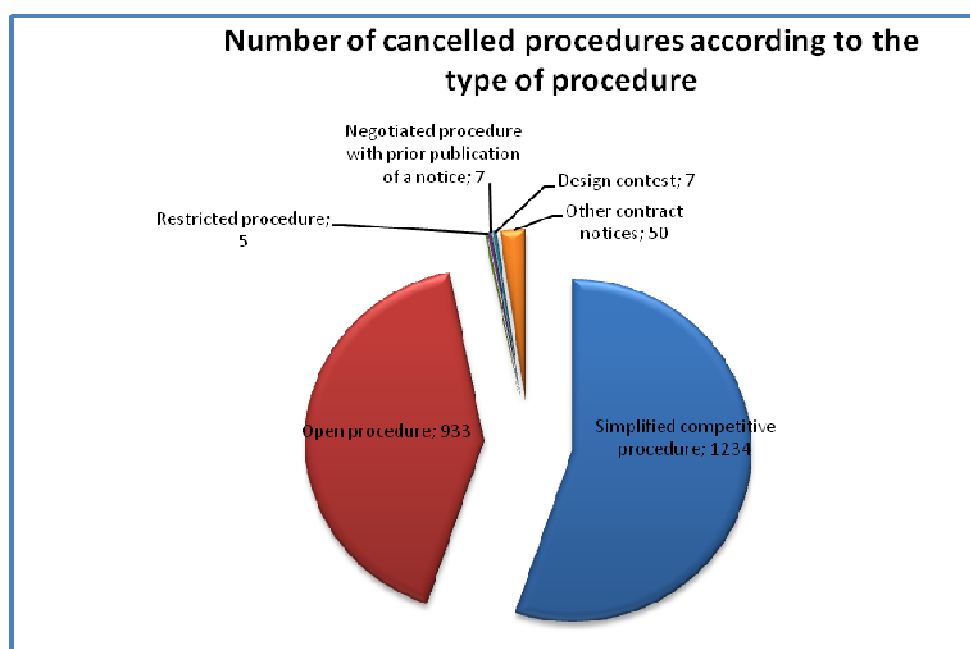
Execution of construction and craftsmanship works for construction of an administrative building; State institutions, public administration and Faculty of Dramatic Art	Common Service Agency within the Government of the Republic of Macedonia	GRANIT AD Skopje Construction Company	1,214,198,092
Excavation of tailing and coal from landslide on Micro location – 3 in Subodol mine – REK Bitola, with coal supply to TP Bitola, with discontinued technology according to the Supplementary Mine Project	Macedonian Power Plants joint stock company - Skopje	TRANS MET DOO	1,180,000,000
Insulin, glucagons, insulin needles and blood glucose test stripes and insulin pumps with consumable supplies for the period August 2012 – August 2014 for the needs of the population in the Republic of Macedonia	Ministry of Health	REPLEK AD	901,058,835
Execution of construction and craftsmanship works for construction of a facility State institutions – Public administration	Common Service Agency within the Government of the Republic of Macedonia	BETON AD Skopje Construction Company	834,555,000
Construction of multistory parking lot at Dame Gruev Street	City of Skopje	BETON AD Skopje Construction Company	781,112,251
Procurement of light fuels (euro diesel D-E V and euro super 99 BS)	Macedonian Power Plants joint stock company - Skopje	LUKOIL MAKEDONIJA DOOEL Skopje Oil Derivatives and Services Trading Company	767,357,304
Maintenance of hygiene in working premises and courtyard areas; current maintenance of buildings; security and fire prevention of facilities; typing services	Common Service Agency within the Government of the Republic of Macedonia	SECURICOM MULTISERVICE INTERNATIONAL DOO	625,102,450

and operating a TT switchboard in state administration bodies			
Sophisticated measurement electronic equipment (integrated system for monitoring radio frequencies) and operational support, assistance and maintenance	Agency for Electronic Communications	TCI INTERNATIONAL	593,091,047
Execution of construction and craftsmanship works for construction of underground parking lot at Mal Ring location in Skopje	Common Service Agency within the Government of the Republic of Macedonia	BETON AD Skopje Construction Company	572,017,215

8.7 Data from Cancellation Notices

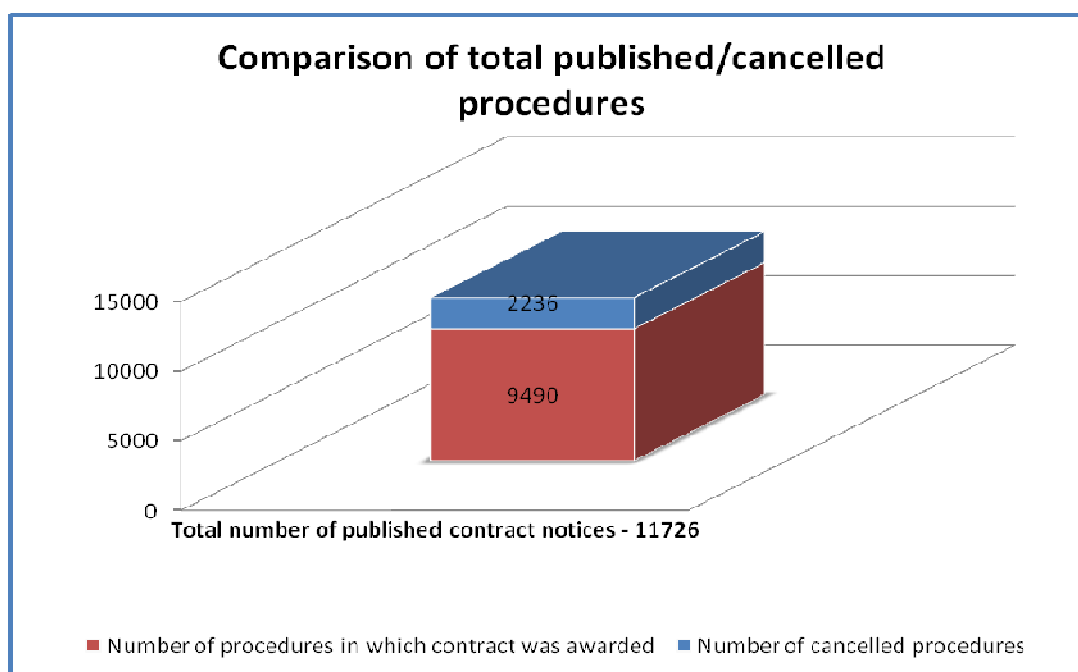
In the course of 2012, a total of 2,840 cancellation notices for entire procedure or parts thereof were filled in through ESPP. It should be pointed out that these data include cancellation notices for entire procedure, as well as cancellation notices for parts thereof. When it comes to cancellation of the whole contract award procedure, following data apply - a total of 2,236 cancellations of contract award procedures. Chart 17 shows data on cancellation of procedures according to the type of procedure.

Chart 17



When analysing above-stated data, one can conclude that 19% of published contract notices was cancelled in the course of 2012.

Chart 18



The Table below presents the reasons for cancellation of procedures. It can be concluded that procedures in 2012 were most often cancelled due to the following reasons:

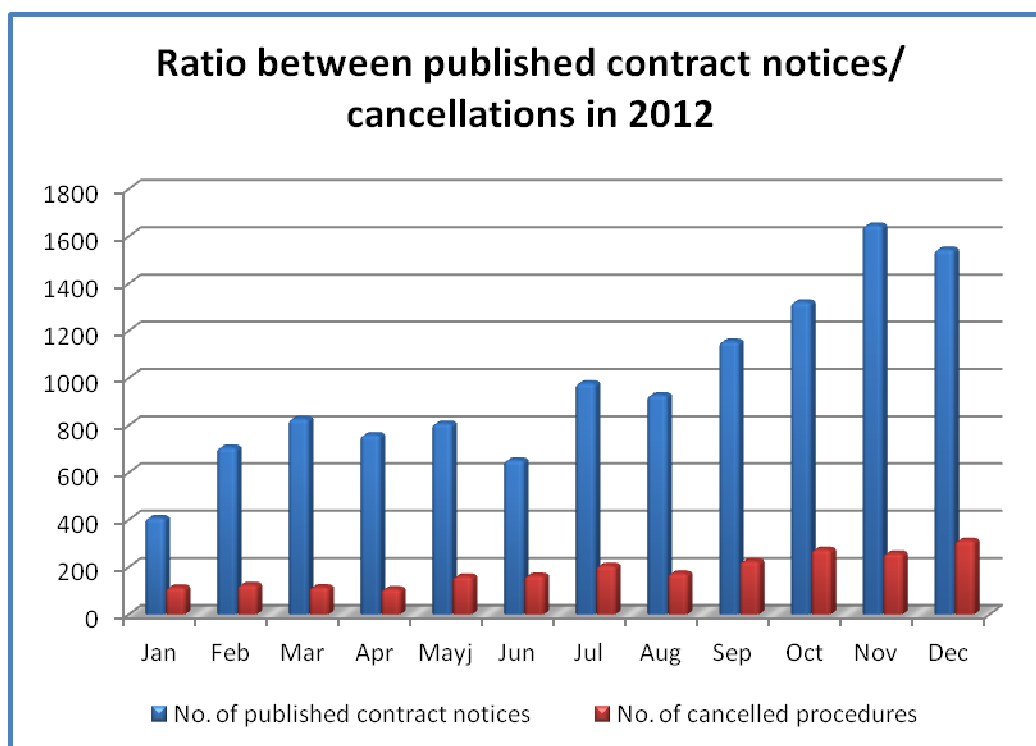
- no acceptable or no appropriate tender was submitted,
- no tender was submitted and
- tenderers offered prices and conditions for execution of the public contract which were less favourable than the real prices and conditions on the market.

Table 17

Information on the reasons for cancellation of the procedure or cancellation of parts thereof	Number of cancelled procedures	Number of cancelled parts thereof
number of candidates was less than the minimum number set for the contract award procedures pursuant to the Law	81	14
no acceptable or no appropriate tender was submitted	715	169
no tender was submitted	484	260
acceptable tenders were submitted, but they could not be compared due to different approaches in the financial or technical proposals	45	7
unforeseeable changes occurred in the budget of the contracting authority	94	12
tenderers offered prices and conditions for execution of the public contract which were less favourable than the real prices and conditions on the market	268	85
tender documents had major shortcomings or faults	245	10
needs of the contracting authority changed due to unpredictable and objective circumstances	75	6
contracting authority could not select the winning tender due to major infringements to the Law on Public Procurement pursuant to Article 210 of this Law	74	32
selected tenderer withdrew from signing the contract	39	9
State Appeals Commission cancelled the procedure	72	100
other reasons (other notices, design contest)	44	/
Total	2236	704

Chart 19 presents data on the ration between published contract notices and cancelled procedures on monthly basis in 2012. It can be noticed that most cancellations occurred in October, November and December.

Chart 19



8.8 Data from Forms for Amending and Supplementing the Contract Notice

In 2012, total of 1,852 forms for amending and supplementing the contents of the contract notice were published through ESPP. These data show that 16% of contract notices, after being published, underwent amendments or supplements to the contents of the contract notice and the tender documents.

8.9 Carried out E-Procurement Procedures

Contract award procedures being carried out fully electronically was at the same level as in 2011, i.e. around 20% of contracting authorities carried out at least one contract award procedure electronically. It has to be pointed out that use of the system as a tool to award contracts through e-procurement by the contracting authorities is still low, although benefits from e-procurement are evident. Still, it is encouraging that the contracting authorities that tried to realise public procurement procedure fully through the system, continue to use it and are mainly oriented towards transition from paper-

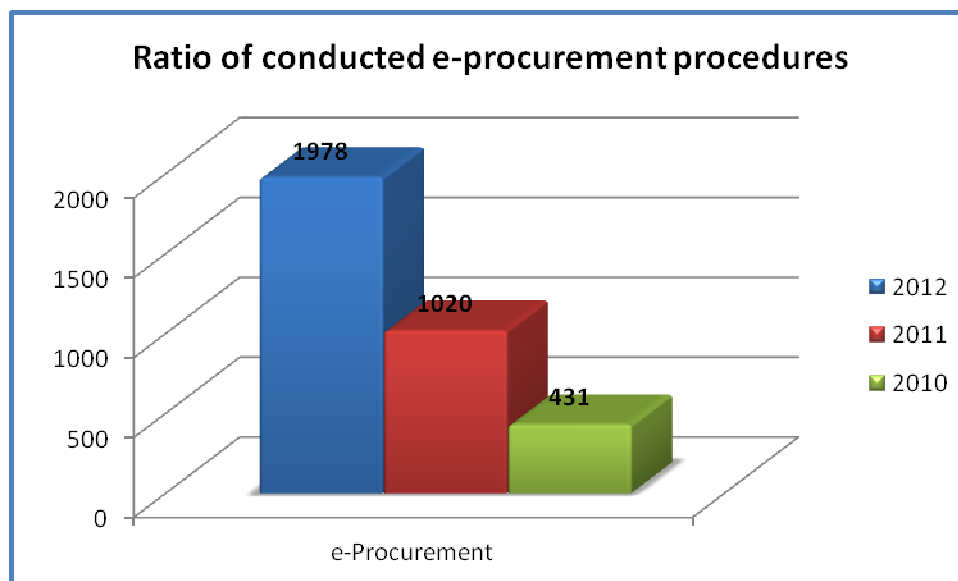
based procurement to e-procurement. There are even examples of contracting authorities that realised their procurement with electronic money (through ESPP).

Largest users of ESPP, in terms of publishing the procedures electronically by the contracting authorities, in 2012 were the following:

- Ministry of Education and Science,
- Macedonian Power Plants joint stock company – Skopje,
- Ministry of Transport and Communications,
- Water Supply and Sewerage – Skopje public enterprise,
- Real Estate Cadastre Agency,
- GOCE DELCEV – Stip State University
- “8th September” City General Hospital PHI – Skopje,
- Ministry of Internal Affairs of the Republic of Macedonia,
- Bitola Municipality,
- Kisela Voda Municipality,
- Customs Administration of the Republic of Macedonia.

There were 1,978 e-procurements carried out through the ESPP in 2012, increasing by approximately *twice* compared to the number of carried out e-procurements in 2011 (1,020 e-procurements). Chart 20 shows comparison between e-procurements carried out at annual level.

Chart 20



It shows that contracting authorities gradually accept e-procurement as more efficient compared to the traditional (paper-based) one. Published contract notices present that around 17% of contract award procedures in 2012 were carried out fully electronically.

8.10 Electronic Auctions

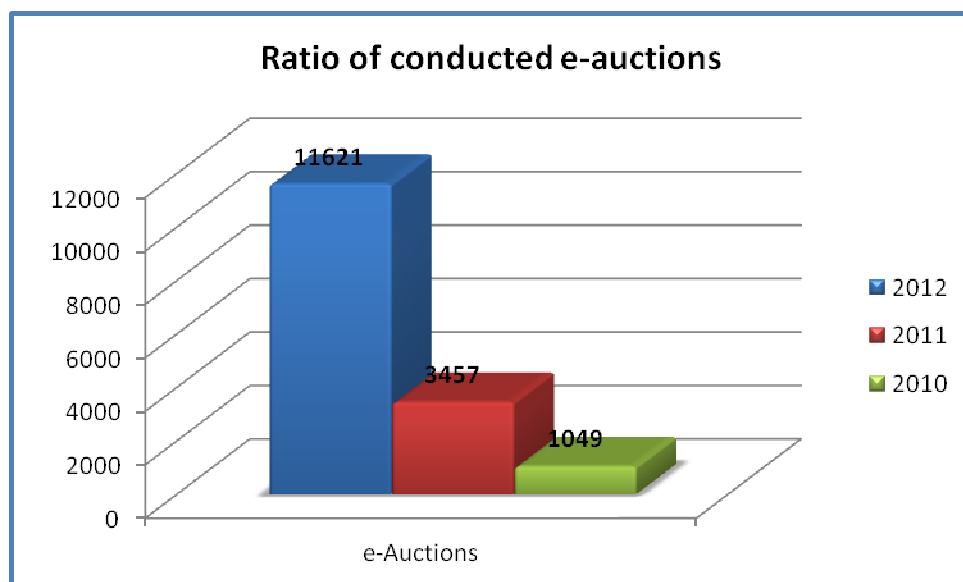
As mentioned above, provision on mandatory carrying out of e-auctions in 100% of published contract notices commenced to be applied in 2012. To the end of attaining the legally prescribed threshold for using e-auctions, the Bureau undertook measures, both legal and operational in the Electronic System for Public Procurement. Control mechanism for published contract notices was introduced, according to which it is mandatory for all contract notices to end with e-auction, and if the contracting authorities believe that, due to justified reasons, they cannot carry out auction for the specific subject of procurement (in line with the provisions in the Law), they provide an explanation therefore to the Bureau.

As a result of the control mechanism (described above) and the measures the Bureau undertook (training, education and consultations on daily basis), threshold of 100% carried out auctions at contract award procedures, although seemed to be unattainable, was realised in 2012. Public Procurement Bureau fully performed its legally prescribed competence to control the carrying out of e-auctions by the contracting authorities and implemented certain automated control processes in the Electronic System for Public Procurement, which prevents avoidance of application of e-auctions, except in cases prescribed by the Law. Taking these data into account, it can be concluded that percentage of mandatory e-auctions was achieved, the Bureau played key role in implementing such government policy.

11,621 e-auctions were carried out in 2012, as a final phase in e-procurement procedures or procedures previously carried out in a paper form, being more than a three-fold increase compared to the number of e-auctions carried out in 2011 (3,505 e-auctions). This figure leads to the conclusion that 99.5% of the published contract notices in 2012 included e-auction as final phase of the procedure. Other contract notices fall within the exception from the application of e-auction referred to in Article 123 of the Law on Public Procurement and they are not taken into account when determining the percentage of procedures that are to include e-auction as final phase on mandatory basis. Even if they are taken into account, it can be seen that they are in an insignificant number – 68.

However, it should be concluded that, in 2012, contracting authorities used e-auctions in an incomparably larger number of procedures in relation to the previous years, in line with the policy of the Government of the Republic of Macedonia for mandatory use of e-auctions in public procurement.

Chart 21



8.11 Positive Effects from Carrying Out E-Auctions and E-Procurement

In the course of 2012, data on carried out auctions show that average savings of 13% were realised or Denar 2,680,501,017 (more than EUR 43,000,000) in absolute terms, calculated as difference between the initial price at the e-auction (the lowest price of all tenders previously evaluated and accepted for participation in the e-auction) and the final price at the e-auction, i.e. the value of the concluded contract - at auctions having the criterion - lowest price, whereas with respect to auctions having the criterion economically most advantageous tender, calculated as difference between their own initial price and the price after the auction of the tenderer with the most favourable tender. It should be hereby emphasised that, considered as aggregate value, savings are even higher, since the abovementioned value also included auctions which were carried out at unit price, thus when such value is presented as an aggregate value of the contract, savings have higher aggregate value. Compared to last year, increase in the savings percentage is observed (10% in 2011), as well as significant increase in the aggregate value of savings (last year's savings amounted to Denar 1,564,807,608). In addition, realised savings at the two concepts of auctions - lowest price or economically most advantageous tender can be mentioned here. As regards auctions having the criterion - lowest price, savings amounted to Denar 2,019,771,181 in absolute terms, whereas with respect to auctions having the criterion - economically most advantageous tender, they amounted to Denar 660,729,836. Chart below shows review of savings realised by using e-auction, while Table 18 gives a comparison of the total value of savings realised in 2011 and 2012.

Chart 22

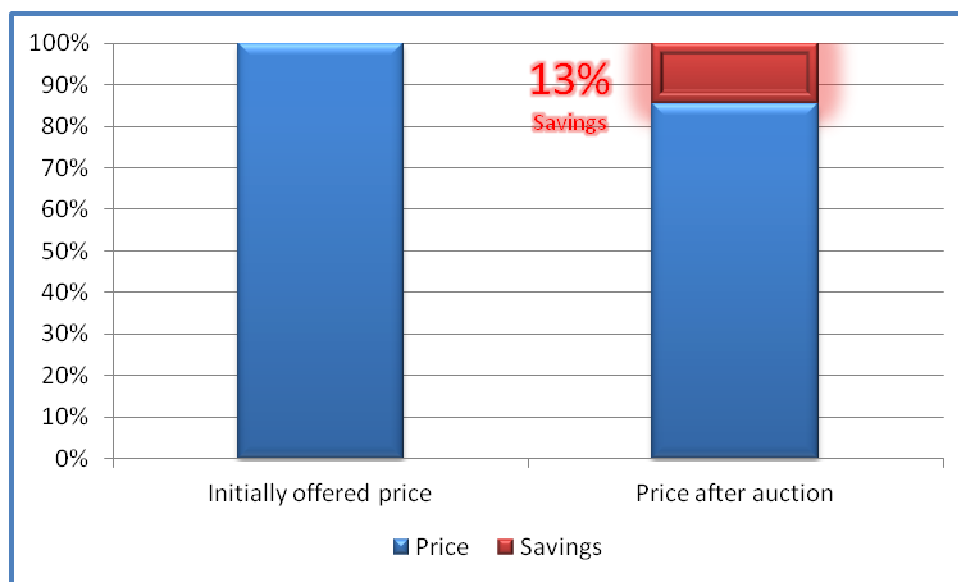






Table 18


Total value of savings realised through e-auction

2011	Denar 1,564,807,608
2012	Denar 2,680,501,017

As regards savings realised in relation to the different procedures, data is presented in the Table below:

Table 19

Type of procedure	Total value of savings		Percentage of savings
Simplified competitive procedure 	 ¹⁰ LP	Denar 37,263,047	21%
	EMAT	Denar 6,346,398	20%
Simplified competitive procedure	 LP	Denar 203,505,697	15%
	EMAT	Denar 51,095,094	17%
Open procedure	 LP	Denar 1,770,490,420	10%
	EMAT	Denar 603,032,367	12%

¹⁰  shows that the contract award criterion is the “lowest price”.

Data presented above show that highest savings, in absolute terms, were realised at procedures with higher value, i.e. with higher value threshold. In fact, although as regards carried out procedures, open procedure accounted for only one third of the total number of procedures, savings realised at the open procedure accounted for almost 90% of the total amount of savings. Higher percentage of savings was observed at the simplified competitive procedure, however, the values in the total amount were lower. Savings at restricted procedure and negotiated procedure with prior publication of contract notice were insignificant and are not included in this review.

Amount of the savings realised by type of procedure, i.e. type of supplies, service or works procured, is also worth mentioning. Table below gives a review of sectors/activities realizing the highest savings, on average as a percentage:

Table 20

Activity/sector	Percentage of savings
IT and telecommunication goods and services	24.8%
Consumable office supplies	18.3%
Fixed assets	16.7%
Construction works	16.6%

The Table leads to the conclusion that auctions had influenced the most the procurement market for supplies and service, which are standardised, i.e. can be technically well specified and where developed market relations on competition exist – high level of competitive tenderers. It also has to be mentioned that significant level of savings was realised at procurement of construction works.

Out of the published contract notices for procedures having an e-auction as final phase, not marked as being cancelled (9,385), at 68% of the procedures there were at least 2 acceptable tenders and auctions were carried out, while as regards the other contract notices, the procedure was completed with a concluded contract with the only acceptable tenderer (Chart 23). Average number of price reductions when carrying out auctions in 2012 was around 17 price reductions.

Chart 23

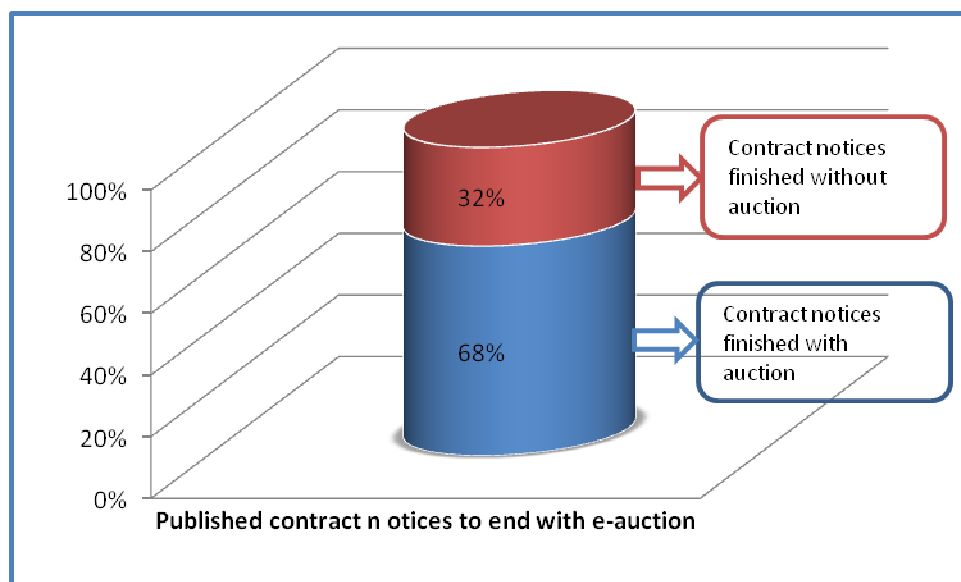
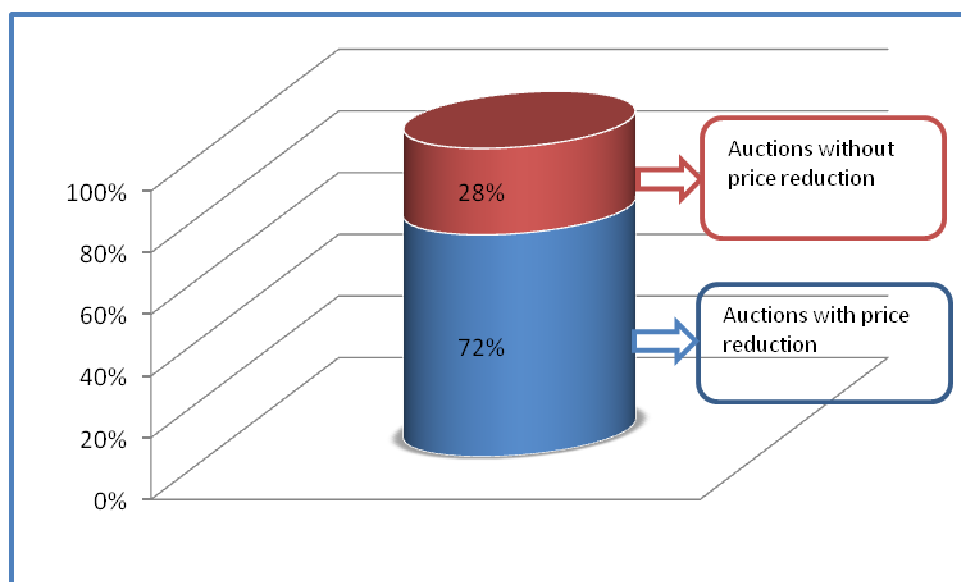


Chart 24

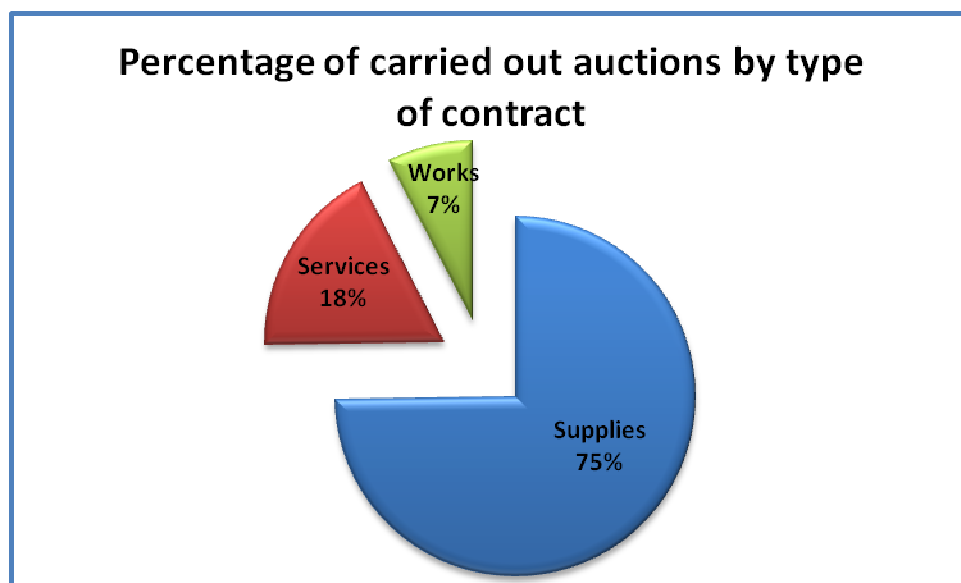


Average duration of an auction was approximately 40 minutes (including extensions). Most auctions on ESPP on a single day in 2012 were scheduled on 15th June, when 219 auctions were scheduled and carried out. Analyses made during the auctions show that tenderers most often started the negative bidding in the first fifteen minutes on average from the start of the auction.

Number of re-scheduled auctions:

- due to technical problems: 116
- upon decision by State Appeals Commission: 31

Chart 25



However, one should bear in mind the fact that there is no relevant methodology to determine the actual savings realised from carrying out e-auctions, since it requires data from same or similar carried out procurement during a longer period of time. Therefore, presented data in this Section should be taken with certain caution and they are just an indication of savings realised in real terms.

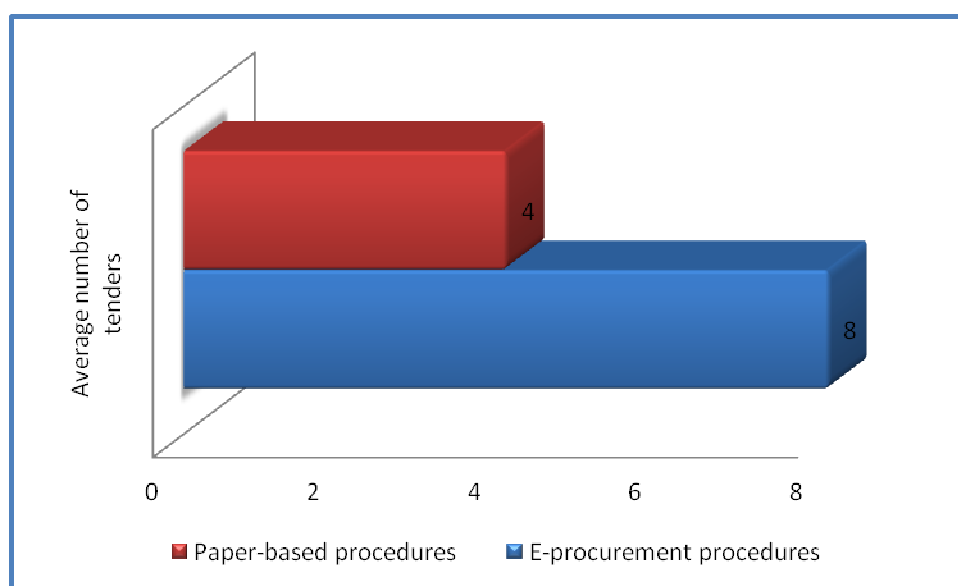
In addition, it should be mentioned that upward trend was noticed as regards initial prices, since tenderers usually leave room to reduce the price during the e-auction. It is a problem if, during the procedure itself, there is not enough competition.

There are also indications for ever more frequent collusive agreement among economic operators, which prevents real competition on the market.

8.12 Competitiveness at Contract Award Procedures

Average number of submitted tenders per contract can be seen as competitiveness indicator, one of the main principles when awarding public contracts. Use of electronic means when awarding public contracts gives positive results at this parameter as well. In fact, average number of submitted tenders in paper-based procedures in 2012 was 4 tenders per procedure. With respect to procedures conducted fully electronically, average number of submitted tenders was 8 tenders per procedure. This also points out to the preparedness of economic operators to follow the trends and the requirements to use information and communications technology.

Chart 26



Tables 21 and 22 give summary of submitted tenders per contract by type of procedure and by type of subject-matter of the contract.

Table 21


Type of procedure	Average number of tenders per contract
Simplified competitive procedure 	2
Simplified competitive procedure	3
Open procedure	4
Restricted procedure	2
Negotiated procedure with prior publication of a contract notice	4
Negotiated procedure without prior publication of a contract notice	1
Awarding public services contract for service category 17-27, with estimated value less than EUR 20,000 in Denar equivalent	1
Awarding public services contract for service category 17-27, with estimated value exceeding EUR 20,000 in Denar equivalent	1

Table 22

Subject-matter of the public contract	Average number of tenders per contract
Supplies	4
Services	2
Works	3

Data show that introduction of a contract notice at simplified competitive procedure of up to EUR 5,000 did not lead to increase in the average number of tenders at this procedure compared to the previous years. It seems that the positive effect of contract notices was neutralised by the obligation for carrying out e-auctions at this type of procedures, which did not exist previously. It led to decreased interest at the smallest economic operators, which do not have sufficient capacity to join the process of e-auctions.

Therefore, analysis of the benefits of carrying out mandatory e-auctions has to be made, in particular at this procedure, so as to propose possible measure for further promotion of competition and increase of the number of tenderers which will show interest in participating in these procedures. It will contribute to encouraging small- and medium-sized enterprises.

9. Proposals for Improvement of Public Procurement System

On the basis of the data from the Contact Center, web contact form and the website, trainings, analysis of statistical data and other information the Public Procurement Bureau receives on the functioning of the public procurement system, the difficulties contracting authorities and economic operators face when applying the contract award procedures in practice, as well as the detected irregularities when implementing them, the Bureau gives the following proposals for improvement of the public procurement system in the Republic of Macedonia:

- further integration of concessions and PPP in the public procurement system in line with EU approach;
- introduction of an obligation to upload tender documentation to ESPP when filling in the contract notice, in particular at simplified competitive procedure of up to EUR 5,000 due to the short time limits for submission of tenders;
- preparation of new specialised models on tender document for certain types of procurement;
- improvements in the practice of publishing negative references and of the mechanism for protection against illegal publishing of negative references;
- analysis of the effects of the fees for appeal procedure on the exercising of the right to remedies by the economic operators and possible introduction of a special fee for simplified competitive procedure of up to EUR 5,000 to be lower than the existing ones;
- further vocational training of judicial councils at the Administrative Court and the High Administrative Court, which work on public procurement cases;
- further shortening of the time period for evaluation and selection of the most favourable tender at contract award procedures, especially at simplified competitive procedure of up to EUR 5,000;
- streamlining the obligations for publishing contract notices by abolishing their mandatory publication in the “Official Gazette of the Republic of Macedonia”;
- further increase of human resources at PPB, to the end of keeping the level of timely and quality performance of its competences;
- continuous observation of new EU initiatives and regulations in the field of public procurement and harmonisation of the national legal framework;
- improvements in public contracts management;

- analysis of possibilities for introduction of innovations in public procurement;
- establishment of Public Procurement Education Academy for the purpose of further professionalisation of public procurement function;
- facilitating the manner of reporting corruptive practices to the State Anti-Corruption Commission as regards public procurement;
- raising awareness of contracting authorities on the practice of cartel organisation of economic operators in contract award procedures and undertaking measures and activities to reduce occurrence of cartels;
- more frequent use of the criterion economically most advantageous tender, so as to ensure the best value for the public funds;
- reduction of the number of cancelled procedures;
- use of proportional qualification criteria;
- harmonisation of contractual requirements with the regulations governing contracts and torts;
- analysis of the effects of the obligation to use e-auctions on the competition, prices and effects on certain market sectors, with recommendations on further measures;
- increase of the share of procedures carried out electronically through ESPP in the total number of contract award procedures;
- introduction of a new functionality of ESPP – economic operator profile, so as to facilitate the proving of the personal standing of the economic operators;
- more frequent use of joint procurement by the contracting authorities with weaker capacity, so as to be provided better conditions in the procedure and to overcome the problem of wear capacity at the small contracting authorities.