



R E P O R T^{*}

on Activities of the Public Procurement Bureau
in the Functioning of the Public Procurement System in 2011

Skopje, May 2012

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Introduction

I present to you the Annual report on activities of the Public Procurement Bureau in the functioning of the Public Procurement System in 2011, in a year when we were devoted to two key activities of the Public Procurement Bureau: hardware and software upgrade, and Electronic System for Public Procurement with an aim to increase the use of e-auctions and strengthen the capacities of contracting authorities and economic operators by implementing the public procurement education programme.

It is my pleasure that every year we improve the quality and comprehensiveness of data we present in our annual reports. I may freely conclude that this sixth report gives a complete and objective image of the scope of public procurement in the Republic of Macedonia in 2011, taking into account our commitment to develop an electronic system following the principle: “everything about public procurement in one place”. Such approach of integrating all functionalities related to public procurement in one place ensures facilitated collection of necessary data and easier control on the fulfillment of legal obligations by contracting authorities and their submission of the aforementioned data to the Bureau. The existence of high quality data is a precondition for defining proper policies and strategic commitments for the development of the public procurement system, but is also a strong instrument of stimulation of transparency as a fundamental concept of legally managing public funds.

In the field of international cooperation, apart from the regular communication established with DG Internal Market and Competition of the European Commission, the World Bank and the agencies of the region, 2011 was also marked by the start of the Twinning Project - Support to the Public Procurement System in the Republic of Macedonia financed by the EU.

The commitment and dedication of all employees of the Bureau are a key prerequisite for everything that has been achieved in the previous period, and at the same time, for overcoming challenges and fulfilling all the activities we plan, for which I am sincerely grateful.

Director,
Mare Bogeve Micovska, PhD

1. Normative Affairs

1.1 *Law on Public Procurement*

The Law on Public Procurement („Official Gazette of the Republic of Macedonia“ No. 136/2007) which entered into force on 1 January 2008, and was adopted by the Assembly of the Republic of Macedonia on 6 November 2007, together with the bylaws, established a comprehensive legal framework that influenced the creation of a strong, efficient and transparent public procurement system in the Republic of Macedonia.

Monitoring the application of the law indicated that a sound legal framework had been established on the basis of which contract award procedures are carried out and the most advantageous tender is selected, but at the same time it indicated the need of certain corrections to some provisions which aim was to provide an optimal level of respect for the principles of competition among economic operators, transparency and integrity in the contract award process, as well as rational and efficient use of public funds.

As a result of the aforementioned, the Law on Public Procurement was amended and modified twice in the previous years, more precisely in October 2008 („Official Gazette of the Republic of Macedonia“ 130/2008) and in July 2010 („Official Gazette of the Republic of Macedonia“ No. 97/2010). These amendments and modifications are of smaller size and their aim is to regulate and make certain provisions of the Law more precise which contribute to further increase in transparency of the public procurement system in the Republic of Macedonia.

Four years since the application of the Law it may be concluded that the Law is already well-known to the entities (contracting authorities and economic operators) applying it, that it functions in practice and ensures conducting contract award procedures in a transparent and competitive manner, as well as in a manner ensuring rational and efficient use of public funds.

Still, as a result of continuously monitoring the functioning of the public procurement system and the application of public procurement regulations, as well as conducting needs analyses for its amendment and improvement, in April and December 2011 there were certain amendments and modifications made to the Law on Public Procurement.

1.2 *Law on Amendments and Modifications to the Law on Public Procurement*

The amendments and modifications to the Law on Public Procurement from April 2011 were made with the purpose of harmonization with the Law on General Administrative Procedure and introduction of the principle “silence means consent” in the part of legal protection. Namely, the goal that was to be reached by the amendments and modifications to the Law is timely resolution of appeals by the State Appeals Commission, i.e. provision of efficient protection mechanism of the rights of appellants in appeal procedures.

The amendments and modifications from December 2011 are of larger size and thereby, apart from making further technical corrections to certain provisions, new mechanisms are also introduced which should influence the modernization and improvement of the public procurement system with a view to increasing its efficiency and functionality.

These amendments and modifications introduced a series of novelties, so mandatory publication and e-auctions are foreseen for procurements up to EUR 5.000, i.e. for simplified competitive procedures without publication of a contract notice. In this way, the discretionary activity of contracting authorities when conducting this procedure will be avoided, as well as the selection of at least three tenderers to whom an invitation is sent to submit tenders, and at the same time the transparency and competition among economic operators will increase.

In addition, negative references were introduced for tenderers, i.e. economic operators who execute public contracts in an untimely fashion or with low quality, or renounce from concluding the public contract. Their introduction is a protective mechanism which will protect contracting authorities from those tenderers who will fail in the realization of their contractual obligations, as well as from those economic operators who will withdraw from the procedure. This measure will contribute to increasing the discipline among tenderers, as well as to reducing the possibilities for errors and abuse.

A more liberal manner of awarding public contracts was foreseen for the needs of diplomatic and consular offices of the Republic of Macedonia abroad as a result of their specific features. Hereby, simplification is directed at awarding public contracts up to a certain amount. But, even in this case it is necessary to respect the basic principles of public procurement, the obligation to prepare technical specifications, as well as to submit contract award notices in the half-yearly records on ESPP.

Novelty is the obligation to conduct technical dialogue when awarding contracts where the subject of procurement is specific. In this way contracting authorities will have the chance to prepare technical specifications in consultation with economic operators in a transparent and non-discriminatory manner.

At the same time, deadlines for submission of tenders and requests to participate in procedures are shortened because of the established practice of electronic publication of contract notices.

With an aim to influence the improvement of planning and use of funds by the contracting authorities, the conditions for procedure cancellation are elaborated precisely.

So as to increase the capacities for implementation of public procurement regulations, i.e. the expertise and competences of persons in charge of conducting contract award procedures, a system was introduced for their obligatory certification. In this way, not only the expertise and competences of persons in charge of conducting contract award procedures will increase, but also their responsibility.

The qualification system was introduced as a special means of awarding public contracts with utilities contracting authorities, thereby increasing their efficiency.

At the same time, the amendments and modifications allocated new competences to the State Appeals Commission with respect to deciding upon appeals in contract award procedures for concessions and public private partnerships, thus regulating legal protection in this area as well. Moreover, taking into consideration the fact that legal protection realized through the State Appeals Commission is the main controlling mechanism in contract award procedures, certain competences were allocated in the function of strengthening the whole review system, as well as increased control in procedures.

1.3 Bylaws

Bylaws as part of the legal framework regulating contract award procedures, that is to say, as instruments facilitating the implementation of the Law on Public Procurement, are continuously enhanced, and at the same time harmonized with the possible amendments and modifications to the law.

In the course of 2011, a new Rulebook on the programme, manner of conducting the examination, the amount of the fee, as well as the form and contents of the certificate was adopted. This Rulebook introduced the obligation for trainers and trainees to observe changes to public procurement legislation by help of the module for upgrading the present knowledge. At the same time, a new module was introduced on conflict of interests and prevention of corruption in public procurement.

The Rulebook on the form and contents of the notice for indecision upon a lodged appeal, adopted in May 2011, operationalizes the possibility for the appellant to notify the State Administrative Inspectorate should the State Commission fail to reach a decision within the stipulated deadline as of the day of completing the case.

2. Public Procurement Bureau

2.1 Competences

The Public Procurement Bureau takes care of the proper functioning of the public procurement system, as well as of its further modernization and enhancement with a view to increasing its efficiency and functionality.

Namely, the Bureau takes care that when contract award procedures are conducted, the following principles are respected: competition among economic operators, equal treatment and non-discrimination of economic operators, transparency and integrity in the contract award process and rational and efficient use of public funds.

The Bureau achieves the aforementioned by acting in line with the competences stipulated in Article 14 of the Law.

By acting in line with its competences, the Bureau has established sound communication in the past years both with the public and with the private sector. Thereby, the use of new advanced means of communication is continuously promoted so as to facilitate access for entities to information that the Bureau has at its disposal.

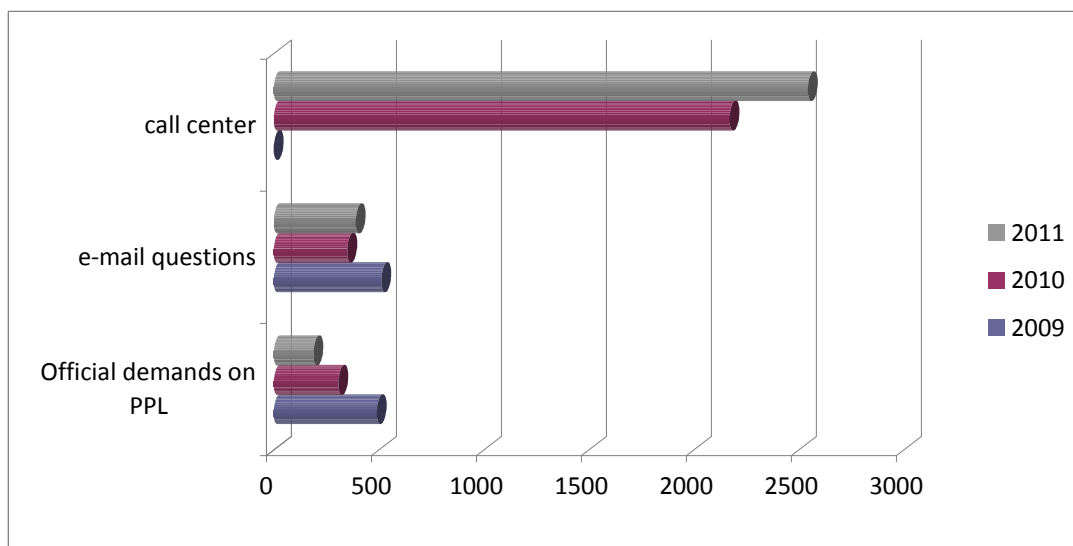
2.2 Prepared opinions

Acting in line with one of its most significant competences - giving opinions with respect to provisions and application of the Law and the bylaws, the Public Procurement Bureau received in the course of 2011 a total of 579 requests for opinion. Part of these requests was officially submitted through the Bureau's archive, whereas the remaining requests were submitted through the contact form on the Bureau's website.

More precisely, approximately 390 requests for opinion were received through the contact form, submitted both by contracting authorities and by economic operators. Depending on the complexity of the request, the average reply time is one to three working days.

A comparative overview of submitted requests for opinion is given below for the period of the year of 2009 to the year of 2011.

Chart I



From the chart above it may be concluded that the number of official requests for opinion, compared to previous years, has decreased. The reason for the reduced number of submitted requests for opinion is the result of several factors. Of course, the most significant one is the implementation of the education programme. Namely, as a result of the implementation of the education programme until now, over 650 persons have been trained. By introducing the possibility to submit requests for opinion through the contact form, the communication between the Bureau and the users of its services (contracting authorities and economic operators) has been facilitated and accelerated. We believe that the operation of the User Support Centre also contributed to the decrease in the number of official requests, which operated every working day in the course of 2011 from 9 am to 4 pm, but additional factor in this regard was also the broadened experience of contracting authorities and economic operators in the implementation of public procurement regulations.

Based on the analysis of the requests for opinion submitted to the Department for Normative Affairs, Training and International Relations, it may be concluded that requests tackle all parts of the Law, as well as parts of the Law that were amended and modified in the course of 2011. Thus, requests most often concerned precise situations that had arisen during the implementation of the procedure, part of the requests concerned planning, that is, preparing the annual plan and changes to the plan, payment of tender guarantees and guarantees for execution of the contract in a quality manner, criteria for determining qualification and technical support from another entity, i.e. what may be precisely supported by another entity, evaluation of tenders, manner of concluding framework agreements and awarding individual contracts, possibilities to annex the contracts, about how to act in case of surpassing the estimated value, as well as about other technical questions related to the implementation of the contract award procedure.

Acting in line with its competence to provide advice and give support to contracting authorities and economic operators, in the period from 01.01.2011 to

31.12.2011, a total of 7996 calls were received through the User Support Centre. Thereby, 5454 calls were directed to the Department for Monitoring the Public Procurement System and ESPP Management, whereas 2543 calls to the Department for Normative Affairs, Training and International Relations. Contracting authorities and economic operators were provided with expert assistance through this Centre in a fast and simple manner. We believe that the main reason for this great difference between the number of received calls in both departments lies in the increased use of electronic auctions in 2011 and, generally, in the increased use of the Electronic System for Public Procurement.

Taking into consideration the significance of model tender documents enabling proper and unified application of public procurement regulations, thereby acting in line with its competence to prepare these model documents, in the course of 2011 the Bureau prepared and published a model tender documentation for procurement of services in the area of mobile telephony. This documentation was prepared in cooperation with the Agency for Electronic Communications and mobile operators offering these services on the territory of the Republic of Macedonia. In addition, in the course of last year a model public service contract was prepared and published for software application development.

In 2011, the Bureau made use of its competences with a total of 22 employees, of whom:

- 7 Bachelors of Law,
- 8 Bachelors of Economics,
- 1 Bachelor of Arts in Political Science,
- 1 Bachelor of Philology,
- 1 Bachelor of Civil Engineering,
- 2 IT Engineers and
- 2 administrative employees.

Even though the Bureau, thanks to the professionalism and enthusiasm of employees, successfully fulfilled its assignments, we believe that it is necessary to have an increase in the number of staff and promotion of present staff with a view to providing further on timely and expert work in acting upon its competences, which were extended by the latest amendments and modifications to the Law, as well as providing execution of tasks and assignments on the level of European standards.

Strengthening the administrative capacity of the Bureau should remain a top priority in future as well.

3. Implementation of the Education Programme in 2011

The Public Procurement Bureau continued in the year of 2011 as well with the implementation of the public procurement education programme for contracting authorities and economic operators.



After the completion of the Education Programme in 2010, a research was conducted about its effects, and recommendations given by participants were analysed directed towards improving the training modules and the training concept comprised with the programme, after which it was concluded that there was space to improve the education programme. As a result, a new Rulebook on the programme, manner of conducting the examination, the amount of the fee, as well as the form and contents of the certificate was adopted (Official Gazette of the Republic of Macedonia No. 18/11). Hence, most of the public procurement trainings held in 2011 were implemented in line with this Rulebook. A part of the changes was also the introduction of three training modules, as follows:

- Train-the-trainers module in public procurement,
- Training module for contracting authorities and economic operators and
- Module for upgrading the present knowledge.

In accordance with the amended Rulebook, the Bureau adopted Guidelines on preparing and implementing public procurement education and Guidelines on teaching contents stipulated by the Public Procurement Education Programme by the trainers. The following modules were taught by the trainers:

- Introduction to public procurement - basic principles, legal and institutional framework, Conflict of interest and corruption in public procurement - 1 day
- Activities prior to the implementation of the contract award procedure - 2 days
- Electronic public procurement and e-auctions - 2 days

From the account of the modules it may be noticed that the main goal of the new programme was to emphasise the use of the Electronic System for Public Procurement and conducting e-auctions, especially if taking into account the fact that in 2012 the obligation to use e-auctions rises to 100%.

The analysis of the implementation of the education programme in 2010 showed that there was a need of introducing groups of trainers for each thematic part, thus there was an increase in specialization of trainers on the topics they teach.

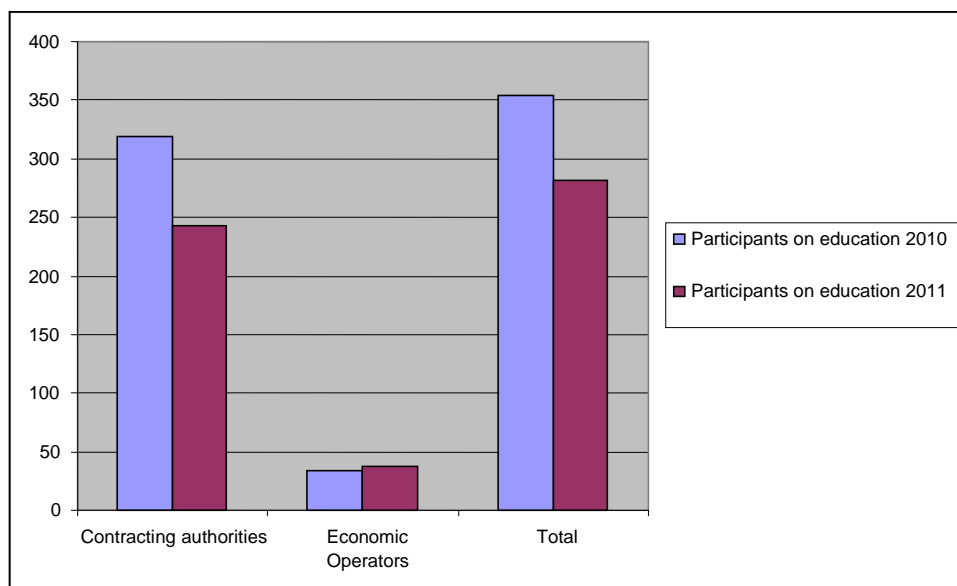
The number of trainers was also reduced out of several reasons, but above all because of the lower grades awarded by the training participants with respect to the minimum grades determined by the internal acts of the Bureau.



Public procurement education, just as last year, was held at the Public Procurement Bureau's premises, in an especially equipped schoolroom, which is exclusively used for the purpose of education. In the schoolroom there are 24 desks, 24 PCs, a desk for the trainers and a projector. The schoolroom meets the requirements for continuous implementation of the education.

The dates for public procurement education were published on the website of the Public Procurement Bureau in accordance with the adopted 2011 Annual Education Plan. Those who wanted to participate in the education filled in an electronic application choosing the date they wanted to attend the training. Everyone had the opportunity to apply, i.e. employees in contracting authorities, in economic operators, but also all other persons who wanted to participate in the education. The Bureau organized an additional training upon request of JSC ELEM Macedonian Power Plants, for their employees working in the field of public procurement.

Chart II



In 2011, trainings were held on 16 different dates in accordance with the public procurement education programme. The total number of persons who participated was 281. On average, each of the education was attended by 20 persons. Compared to 2010, it may be noticed that the number of participants was lower, mainly because of the early parliamentary elections that were held in the middle of 2011, which also resulted in postponing several planned training dates due to various obligations of the civil servants related to election activities as members of electoral boards.

Of the aforementioned figure, 243 were participants coming from contracting authorities, 38 from economic operators. The reason for the difference in participation between contracting authorities and economic operators is mainly due to the fact that the largest part of the education programme is directed towards contracting authorities. In 2012, the possibility should be also deliberated upon to elaborate a special module for economic operators which will be shorter and directed only towards their needs. The table below gives the number of participants per training date, and the number of contracting authorities, i.e. economic operators.

Table I

Number of education	Date	Number of participants	Contracting authorities	Economic operators	Participants with passed written exams
1	21-26 february	17	16	1	16
2	07-12 march	23	17	6	22

3	21-26 march	19	19	0	19
4	04-08 april	13	10	3	13
5	18-22 april	18	18	0	18
6	02-06 may	17	13	4	16
7	20-24 june	15	13	2	15
8	27 june-01 july	13	13	0	10
9	12-16 september	15	11	4	14
10	19-23 september	20	15	5	19
11	26-30 september	15	15	0	15
12	03-07 october	19	16	3	15
13	24-28 october	17	13	4	16
14	14-18 november	16	13	3	16
15	05-09 december	23	20	3	22
16	12-16 december	21	21	0	18

Such intensive implementation of the Education Programme should definitely strengthen the internal administrative capacity of contracting authorities and economic operators necessary for proper application of the provisions of the law and bylaws in the field of public procurement.

Professionalization and strengthening of expert staff in contracting authorities and economic operators with knowledge in the field of public procurement plays an important role with respect to enhancing transparency and efficiency of the public procurement system, as well as rational use of funds.

4. Review procedures in contract award procedures

4.1 *State Appeals Commission*

The State Appeals Commission is competent for protection of the rights of economic operators and the public interest, i.e. for resolving appeals in contract award procedures. The State Appeals Commission fulfills its competence by deciding upon the legality of actions and omissions to undertake actions, as well as on the legality of decisions reached in procedures as individual legal acts. In addition, the State Appeals Commission decides upon requests for contract award procedure continuation, on requests for procedure cancellation if the contracting authority fails to act in accordance with Article 215 of the Law, as well as on procedural costs.

The tables below give data taken from the 2011 Annual Report on the Work of the State Appeals Commission.

Table II

	Total cases received	Cases resolved	Unresolved cases
2009 year	1044	996	48
%	100%	95,40%	4,60%
2010 year	868	820	48
%	100%	94,47%	5,53%
2011 year	690	666	24
%	100%	96,52%	3,48%

By comparing the data regarding the number of received cases in 2009 and 2010 and the number of cases received in 2011, a decrease in the number of appeal cases lodged before the State Appeals Commission is determined. Main reason for the decrease in the total number of cases in 2011 is the increased capacity and raised legal awareness of contracting authorities and economic operators, as a result of the fact that the public procurement education is conducted for second year in a row in which participants in the contract award process take active participation. It seems that the early parliamentary elections held in 2011 had no influence on the number of conducted procedures, since there are more contract notices published in 2011 compared to 2010 and 2009.

Table III

	% of appealed procedures
Open procedure	10,1
Restricted procedure	100
Simplified competitive procedure by publishing a notice	4,28
Negotiated procedure with prior publication of a contract notice	13,04
Competitive dialogue	/
TOTAL	8,6

After the analysis of data received from the Public Procurement Bureau about the number of published notices and from the State Appeals Commission about the number of appealed procedures in 2011, it may be noticed that the largest percent of appealed procedures regarding published notices is marked with the restricted procedure, followed by the negotiated procedure with prior publication of a notice, whereas with regard to the competitive dialogue procedure, 2 procedures were conducted, but no appeals were lodged for these procedures.

Table IV

	2009 year		2010 year		2011 year	
Accepted appeals	249	25,94%	272	31,81 %	212	27,60 %
Rejected appeals	429	44,67%	363	42,46 %	327	42,58 %
Unpaid, delayed and unallowed appeals	151	15,74%	121	14,15 %	131	17,06 %
Appeals accepted by a contracting authority	26	2,71%	29	3,39%	48	6,25 %
Withdrawn appeals	105	10,94%	70	8,19%	50	6,51 %
TOTAL appeal resolved in 2011	960	100%	855	100%	768	100%

By comparing the data relating to the percentage of accepted appeals by the State Appeals Commission in the designated three year period, even though there is an increase in 2010 of the number of accepted appeals (by 5,78%), still in 2011 a decrease in the percentage of accepted appeals is marked (decrease by 4,21%) compared to 2010. At the same time, there is significant data which give information about a

significant increase in the percentage of accepted appeals by contracting authorities in this period, more precisely from 2,71% in 2009, through 3,39% in 2010 to 6,25% in 2011.

Table V

	Total cases for witch the State Appeals Commission acted	Total number of lawsuits filed	%
2009	960	105	10,94%
2010	820	94	11,46%
2011	666	94	14,11%

Taking into consideration data from the years of 2009 and 2010 relating to the percentage of filed lawsuits before the Administrative Court of the Republic of Macedonia against decisions reached by the State Appeals Commission, in 2011 we may mark a minimal increase in the number of filed lawsuits.

4.2 Administrative Court of the Republic of Macedonia

The Administrative Court of the Republic of Macedonia, as part of the review system in contract award procedures, decides upon lawsuits filed by unsatisfied parties from the decisions of the State Appeals Commission.

In the course of 2011, 82 cases were registered in the Administrative Court against the decisions of the State Appeals Commission. Of these cases, 31 were resolved, of which 4 lawsuits were accepted, 17 lawsuits were rejected, 5 lawsuits were dismissed, 4 procedures were stopped and one was resolved in another way. The table below shows the situation¹:

Table II

	Registered cases	Resolved cases in 2011				
		Accepted lawsuits	Rejected lawsuits	Dismissed lawsuits	Stopped procedures	Resolved in other way (merged cases)
Condition in 2011	82	4	17	5	4	1
Total	82	31				

¹ The data were obtained from the Administrative Court of the Republic of Macedonia with doc. No. 03-333/12 from 02.05.2012.

In addition, of the total number of filed lawsuits, 5 lawsuits were filed by contracting authorities, whereas 77 lawsuits were filed by economic operators.

5. Cooperation with other institutions involved in the Public Procurement System

5.1 Detected irregularities in contract award procedures by the State Audit Office

In the course of 2011, the State Audit Office, in accordance with the Annual Operation Programme, audited public procurement carried out by entities subject to audit which conducted/ realized contract award procedures in the course of 2010.

These data arise from processed final reports of entities subject to audit of the Annual Programme of SAO for 2011. In the inspection of the manner of planning, conducting and realizing public procurements, the following findings were detected:

- Of the total number of detected irregularities, **14,84%** relate to **carried out procurements without conducting a contract award procedure**, procurements carried out prior to concluding the contracts or procurements carried out in line with old contracts from previous years.
- A part of the irregularities (**10%**) concern the **phase of opening the tenders**, evaluation of documentation and preparation of reports. Irregularities were detected (**4,84%**) in the **evaluation of tenders**, application of the point methodology, preparation of evaluation reports, rankings, proposal for the selection of the most advantageous tenderers.
- In the **phase of concluding contracts** with selected tenderers there are irregularities of **8,71%** of the total amount of detected irregularities, i.e. contracts are not concluded with selected tenderers or contracts are concluded with price, terms and other elements different from the ones offered.
- A part of the irregularities (**7,10%**) concern weaknesses in the phase of **preparing the tender documentation** (it is not prepared at all or does not contain the necessary elements stipulated by law), whereas **7,42%** relate to the **realization of concluded contracts** (guarantees, price, quantities, payment terms and other conditions, different from the ones defined in contracts).
- Weaknesses in the application of the Law on Public Procurement, per **5,81%**, are detected in the **public procurement planning phase** (type of procurement, selection of appropriate procedure, planned quantities, dynamics, planned financial resources, submission of the plan to PPB, etc.), and in the **PP decision making** which most often do not contain all the elements foreseen (type of procurement, quantity, size and source of financial resources, contract award procedure and manner).

- Per **5,48%** of detected irregularities relate to irregularities when **determining contract award criteria**, as well as to **dividing procurements**, i.e. circumventing public procurement procedures stipulated by law.
- 4,19% of the total number of public procurement findings relate to irregularities in the **notification phase after the selection was made**, as well as to **weaknesses of technical nature** when preparing documentation/ dossiers for the conducted procedure.
- In the irregularities remaining, omissions were detected in procurements of smaller size and significance.

Irregularities detected by the State Audit Office are given in the table below with a comparison with previous years.

Table III

Number	Type of irregularity	Participance in detected ireegularities		
		2009	2010	2011
1	carried out procurements without conducting a contract award procedure, procurements carried out prior to concluding the contracts or procurements carried out in line with old contracts from previous years	25,7	18,9	14,84
2	weaknesses in the phase of evaluation of documentation, proposal for the selection of the most advantageous tenderers and awarding the contract	14,3	17,8	4,84
3	weaknesses In the phase of concluding contracts with selected tenderers there are irregularities (contracts are not concluded with selected tenderers or contracts are concluded with price, terms and other elements different from the ones offered)	9,3	9,3	8,71
4	Weaknesses in the phase of PP decision making	5,0	8,1	5,81
5	Weaknesses in the phase of notification, contract award notice and records of the simplyfied competitive procedures	3,6	7,7	Н/П
6	Weaknesses in the procedures of realization of the contract complitely, quantitatively or quantificatively	5,0	7,3	Н/П
7	Weaknesses in the application of the Law on Public Procurement, are detected in the public procurement planning phase (type of procurement, selection of appropriate procedure, planned quantities, dynamics, planned financial resources, submission of the plan to	12,1	7,3	5,81

	PPB, etc.)			
8	Realization of concluded PP contracts above the contract value (exceeding the contract value/planned finance)	6,4	6,2	H/Π
9	weaknesses in the phase of realization of concluded contracts (guarantees, price, quantities, payment terms and other conditions, different from the ones defined in contracts).	5,0	2,9	7,42
10	Weaknesses of technical nature when preparing documentation / dossiers for the conducted procedure (outstanding and not complete records of the simplified competitive procedures / dossier of the contract award procedure/ no completely signed minutes of the public opening of tenders/ procedure outcome report/overview/ statements, incorrect archive procedure, arithmetical errors and stc.	2,9	3,5	4,19
11	weaknesses in the phase of irregularities in the notification phase after the selection was made	1,4	2,7	4,19
12	weaknesses concerning to dividing procurements, i.e. circumventing public procurement procedures stipulated by law.	2,9	2,3	5,48
13	weaknesses in the phase of preparing the tender documentation (it is not prepared at all or does not contain the necessary elements stipulated by law),	6,4	1,9	7,10
14	Advance payment in bigger sum than stipulated by law	1,4	1,5	H/Π
15	Weaknesses in the phase of review procedures/ appeals procedure	0,7	0,4	H/Π
16	Weaknesses concerning the phase of opening the tenders, evaluation of documentation and preparing reports according PPL	H/Π	H/Π	10
17	irregularities when determining contract award criteria which are not according the PPL	H/Π	H/Π	5,48
18	In the irregularities remaining, omissions were detected in procurements of smaller size and significance.	H/Π	H/Π	16,13
	Total:	100	100	100

It may be noticed that there is a decrease regarding more significant irregularities detected by the State Audit Office in 2011, compared to previous years. In fact, compared to previous years, the percentage of irregularities is lowered in almost all regards. It should be emphasized that for fields marked with N/D there is no data available due to certain changes made to the list of irregularities detected by SAO, compared to 2009 and 2010.

5.2 Detected irregularities in contract award procedures by the State Commission for Prevention of Corruption

In the period January - December 2011, the State Commission for Prevention of Corruption acted upon a total of 45 charges filed for suspicion of corruption in the public procurement system.

Acting upon 7 cases, the State Commission for Prevention of Corruption decided to raise an initiative to the Public Prosecutor's Office of the Republic of Macedonia for initiation of a procedure for criminal prosecution of elected or appointed officials, official or responsible persons in public enterprises, public institutions or other legal entities having state capital at their disposal due to the existence of founded suspicion for committed criminal act "misuse of official powers and authorization" of Article 353 paragraph 5 of the Criminal Code of the Republic of Macedonia, because they did not provide for proper, purposeful and legal use and protection of the financial resources of the institutions in the implementation of contract award procedures where the respective contract award procedures were conducted.

The procedures upon all these initiatives are ongoing.

Compared to 2010, the number of charges filed for suspicion of corruption in the public procurement system increased. In 2010 there were 31 such cases filed, whereas in 2011 45 cases. We believe that this increase is the result of raised awareness among economic operators regarding the instruments at their disposal to protect their legal rights from illicit actions related to suspicion of corruption and conflict of interests. In addition, the education of contracting authorities and economic operators implemented by the Public Procurement Bureau has an influence, especially as a result of extending the Module for education of economic operators and contracting authorities with topics in duration of three classes on each education related to corruption and conflict of interests in public procurement, where special attention was paid to identifying possibilities of corruption and ways of filing such cases to the State Commission for Prevention of Corruption.

6. International cooperation

Within its competence of cooperation with international institutions and other foreign entities for matters related to the public procurement system, representatives of the Bureau, upon invitation of certain international institutions, participated in the course of 2011 in various conferences and forums where they had the opportunity to share experiences with representatives of those institutions, as well as with representatives of other participatory countries. This exchange of experiences was realized in the following conferences and forums, in particular:

- From 24-26 June in Brussels, Belgium, a representative of the Public Procurement Bureau participated in the first Steering Committee meeting of the IPA Multi-Beneficiary Project “Training in Public Procurement in the Western Balkans and Turkey” organized by the European Commission, and related to the activities for realization of this project;
- Furthermore, on 31 March, representatives of the Bureau participated in the second Steering Committee meeting of the IPA Project “Training in Public Procurement in the Western Balkans and Turkey” held in Istanbul, Republic of Turkey;
- Representatives of the Public Procurement Bureau participated in the period from 16 to 19 May 2011 in the Seventh Regional Public Procurement Forum held in Tbilisi, Georgia, for the countries of the region of Europe and Central Asia, organized by the World Bank, the Islamic Development Bank and the European Bank of Reconstruction and Development. Main topic of the forum was the use of e-procurement, whereby the representatives of the Bureau presented the experience with the Electronic System for Public Procurement in the Republic of Macedonia;
- Representatives of the Public Procurement Bureau visited Tirana, Republic of Albania, from 09.11-11.11.2011, upon invitation of the Albanian Public Procurement Agency. During the visit to the Agency, the representatives of the Public Procurement Bureau presented the Electronic System for Public Procurement, with all its functionalities, and experiences were shared as regards e-procurement and e-auctions, and
- Representatives of the Public Procurement Bureau are included in the Regional IPA Project Train-the-trainers in public procurement in the IPA region countries and Turkey, realized by the International Training Center and the International Labour Organization (ITC/ILO).² The second training phase in all the countries participating in the realization of the project, in the Republic of Macedonia began in the month of December 2011.

6.1 *TWINNING Project*

In cooperation with the German Federal Ministry of Economy and Technology, the Public Procurement Bureau, on the day 25.10.2011 officially commenced the implementation of the IPA 2008 Twinning Project “Support to the Public Procurement System”. The overall goal of this project is to ensure support to the Public Procurement Bureau in achieving its competences, goals and mission.

²The Bureau participates with its representative in the Project’s Steering Committee.



In the course of 16 months, the European Union will support the further strengthening of the Public Procurement Bureau with the project, consisted of eight components:

- Component 1 - Assistance to legislative work on harmonisation of the public procurement legal framework with the acquis - identification of laws and regulations in the area of public procurement that still need harmonization, prioritization and subsequent assistance to preparation of new set of legislation fully harmonized with the acquis.
- Component 2 - Impact assessment analysis - assessment of difficulties encountered by economic operators while participating in public procurement procedures, development of an action plan to address these difficulties as well as subsequent assistance to the implementation of the action plan.
- Component 3 - Assistance to development of a national strategy for development of the public procurement system – ensure the necessary assistance to develop a national strategy for development of the Public Procurement System that will enable the Public Procurement Bureau to finalize successfully the pre-accession negotiations with the EU.
- Component 4 - Development of operational tools – analysis of existing model documents, guidelines and manuals, update, wherever necessary, and identification of areas where additional publications are needed, as well as, elaboration of additional operational tools, including specific guidelines on integrity in public procurement (anti-corruption guidelines).
- Component 5 - Assistance to development of the e-procurement platform (including support for e-catalogues and Dynamic Purchasing Systems) - analysis of the existing content of the e-procurement platform as regards Public

Procurement procedures (including e-catalogues, e-auctions, DPS, help-desk) in terms of being comprehensible and reader-friendly.

- Component 6 - Capacity building of the Public Procurement Bureau - training needs assessment, development of a training plan and subsequent implementation of the training plan to upgrade knowledge of Public Procurement Bureau employees as well as providing opportunities to familiarise with the experiences of similar institutions from EU Member States.
- Component 7 - Strengthening of the professional capacity of procurement officers in contracting authorities (training for procurement officers) - analysis of the training needs, creation and implementation of a demand-oriented Training Plan of procurement officers in contracting authorities.

In 2011, the first two components started being implemented relating to the harmonization of the public procurement legal framework with the *acquis* and assessment of difficulties encountered by economic operators while participating in public procurement procedures, with development of an action plan.

6.2 SIGMA

In cooperation with SIGMA's representatives, the Bureau held several working meetings and several events for representatives of institutions involved in the public procurement system in the Republic of Macedonia. In February and March 2011, upon request of the European Commission, SIGMA prepared a Peer Review Report of the public procurement system in Macedonia, as regards public contracts, concessions and public private partnership in Macedonia in 2011. On 27.10.2011 a "Round Table" was held in the Congress Centre of the Skopje Fair, where this Peer Review Report was presented. In this Conference, active participation took approximately 70 representatives of several ministries and contracting authorities, representatives of chambers of commerce and non-governmental organizations.



SIGMA also organized various international events and forums, in which representatives of the Public Procurement Bureau took active participation. Representatives of the Public Procurement Bureau participated in the Fifth Regional Conference organized by SIGMA on 29th and 30th of March in Istanbul, Turkey.

In the course of 2011, the Public Procurement Bureau actively participated in the preparation of a new draft text of the Law on Concessions and Public Private Partnership, which the Ministry of Economy prepared in cooperation with SIGMA.

6.3 EC Advisory Committee on Public Procurement

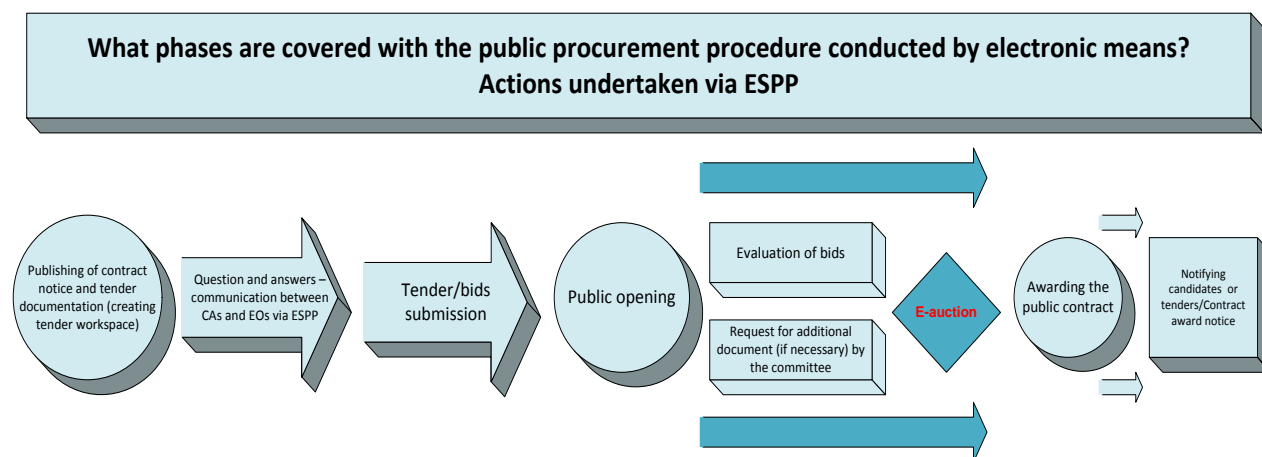
The Advisory Committee on Public Procurement is an advisory body of the European Commission, the objective of which is to open for discussion various issues encountered by the member countries in the public procurement system established by

the EU Directives on Public Procurement. In this Committee it is discussed about modernization and new solutions that should be introduced by the Union in its public procurement legislation and practice by member countries of the European Union. The Republic of Macedonia participates as an observer after it was granted the candidate country status. Usually, representatives of the Republic of Macedonia in the public procurement working group and the e-procurement working group are Public Procurement Bureau employees.

7. Use of the Electronic System for Public Procurement

ESPP is a unique computerized system available online (<https://www.e-nabavki.gov.mk>), which is used to provide higher efficiency and cost-effectiveness in the area of public procurement. The system is intensively used by the contracting authorities and the economic operators, and the benefits of its functioning, in terms of increase in transparency, competition and efficiency in contract award procedures, are evident.

Through ESPP the following contract award procedures are carried out: open procedure, restricted procedure and simplified competitive procedure with publication of a notice. When carrying out a contract award procedure through ESPP, all procedure-related activities (publication of contract notice and tender documentation, submission of tenders, public opening and evaluation, decision making, notifications on decisions made, communication with economic operators) are carried out electronically. At the same time, e-auction, as a last stage in an open procedure, restricted procedure, simplified competitive procedure and negotiated procedure with prior publication of a notice can be carried out through ESPP, as well as in case of repeated competitive procedure entailing collecting tenders by economic operators who are parties to a framework agreement.



Through ESPP, the Bureau monitors easier to what extent contracting authorities obey the obligation for gradual mandatory implementation of e-auctions. Namely, in accordance with the Law on Amendments and Modifications to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia” No. 130/08 and 97/10) contracting authorities are obliged to use e-auction, in particular:

- in at least 70% of the number of published notices for open procedure, restricted procedure, negotiated procedure with a prior publication of notice and for simplified competitive procedure with publication of a notice from 1 January

2011. In the course of 2011, a new concept of e-auction was introduced when a contract award criterion is the economically most advantageous tender and

- in 100% of the number of published notices for open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and for simplified competitive procedure with publication of a notice from 1 January 2012.

With an aim to implement the policy of the Government of the Republic of Macedonia in the direction of increased use of ESPP, an upgrade to the existing software and hardware infrastructure was made, with a view to enabling implementation of e-auction when as a contract award criterion is selected the economically most advantageous tender. Starting from 01.01.2011, e-auction can be conducted through the Electronic System for Public Procurement when a contract award criterion is the economically most advantageous tender unlike the concept until then which allowed for implementation of an e-auction solely when a contract award criterion was the lowest price. The upgraded electronic system preserved its functions and ensured more frequent use of e-auctions, with which larger savings were generated and the efficiency in contract award procedures was increased.

With regard to the use of the system, and as a result of all the implemented activities until now, the following results were achieved:

- registered over 1.300 contracting authorities (5.594 users within the contracting authorities³) and over 4.000 economic operators (6.650 users within the economic operators);
- over 1.000 answered questions through the ESPP questions and answers link, posed by contracting authorities and economic operators regarding the manner of functioning and use of ESPP for 2011;
- in 2011, a total of 5.454 calls were received through the User Support Centre, which relate to the functioning of the Electronic System for Public Procurement and e-auctions;
- the number of visits to the electronic system during working days amounts to over 2.800 visits a day, and it is the highest between 11 a.m. and 13 p.m.;
- over 150.000 e-messages to various users were sent on the system throughout the year of 2011
- in the course of 2011, 7.945 notices⁴ were published and 13.019 notifications of various types;
- total number of published tender documentations – 2.209.

³ Within one user profile of the contracting authority, the following roles in the system may appear: local administrator, public procurement unit, public procurement commission and responsible person.

⁴ The number of published notices includes the notices published in the part "other notices" for services from Article 17 paragraph 1 indent 2 of the Law on Public Procurement.

8. Analysis of the Public Procurement Market for 2011

In this part of the report, data are given about the public procurement market in the Republic of Macedonia for the period of the year of **2011**. The data are categorized by various parameters and types, so as to better observe the developments in the field of public procurement, financial trends and implications of public spending through conducted procurement procedures.

Subject to analysis of this report are all data relating to contract notices, design contests, enclosures, cancellation and all public contracts concluded in the respected period of time.

All gathered data are analysed by applying the module on monitoring and statistical review of public procurement trends, implemented within the Electronic System for Public Procurement. The database of the situation, trends and parameters in the field of public procurement is the only one of its kind in the Republic of Macedonia and reflects the overall and actual events in the field of public procurement in this country. Public procurement data in 2011 give a realistic image of the volume of public procurement with respect to the volume in previous years. The setup of ESPP itself and the obligation of contracting authorities to use it, ensures carrying out a comparative analysis of data encompassing all contracting authorities and conducted contract award procedures.

The precision and relevance of data for 2011 is increased also because of the introduction of the tool for timely and mandatory submission of information about contract award procedures. This is supported by the new competence of the Public Procurement Bureau, which was introduced by the latest amendments and modifications to the Law on Public Procurement ("Official Gazette of the Republic of Macedonia" No.185/11), according to which the Public Procurement Bureau monitors timely submission of data and disables use of ESPP for users not respecting their obligations. By introducing this tool, there is **95%** coverage of contracts with notices and records for 2011, which speaks of the quick reaction of contracting authorities as regards updating their data and with respect to their legal obligation to submit contract award notices/ cancellation notices and records of simplified competitive procedures, which is on the highest level in these past 3 years. Out of these reasons, it may be freely concluded that data presented for 2011 give the most comprehensive and most realistic image of the volume of public procurement in the Republic of Macedonia. Out of these reasons, when considering comparative data for 2011, 2010 and 2009, it should be taken into account that a certain statistical deviation is possible due to the increased scope of data for 2011 in comparison with the previous two years.

8.1 *General and comparative data on concluded public contracts*

Data in the Electronic System for Public Procurement show that a total of 23.862 public contracts were concluded in 2011, in the total amount of Denar 59,182,907,793 (including VAT). Value of public procurement in the country in 2011 accounted for 13% of GDP of the Republic of Macedonia.

According to the data available to the Bureau, the value of concluded contracts in 2011, compared to the previous year, was significantly increased by approximately 30% (most of it owes to several contracts of high value), but it is not excluded for this increased value to be down to the introduction of the **tool for mandatory submission of information** about contract award procedures, lowering the probability for a contracting authority not to have submitted data regarding concluded public contracts. As for the number of concluded contracts, the situation remained almost unchanged; that is to say, insignificant decrease is noticed (24.248 contracts concluded last year). Bearing this in mind, we also notice increase in the share of public procurement as a percentage of GDP.

Table 1 and chart 1 give comparative review of the following information in the last 3 years: the Budget of the Republic of Macedonia, GDP, the value of concluded public contracts and GDP percentage for which public procurement accounted in the respective period.

Table 1

Year	Budget of the Republic of Macedonia (Denar million)	GDP (Denar million)	Value of concluded contracts (Denar million)	Value of public procurement as % of GDP
2009	149,594	406,651	47,713	12%
2010	132,146	425,628	45,704	11%
2011	159,992	439,891	59,183	13%

Chart 1

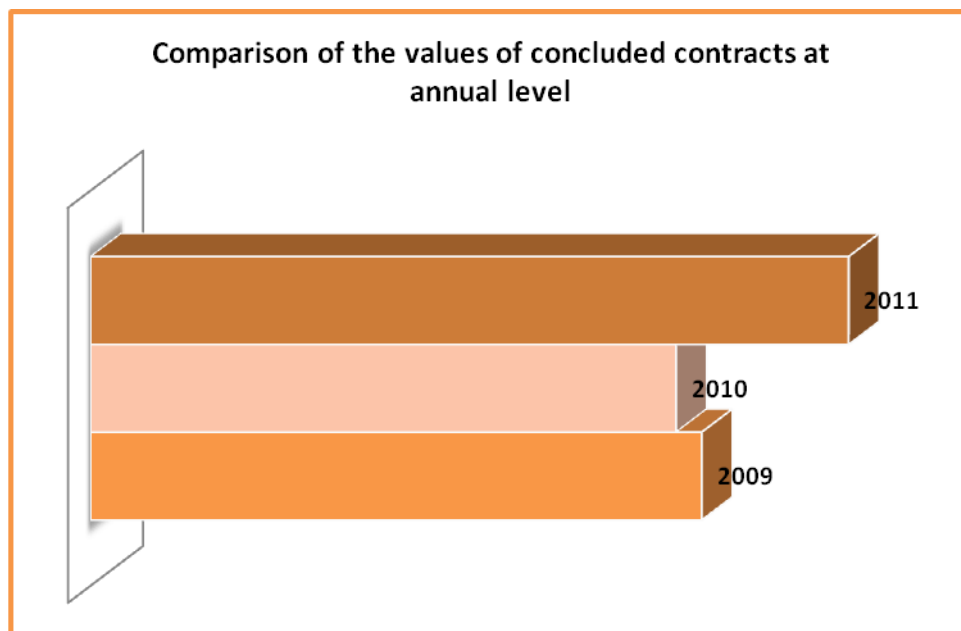


Table 2

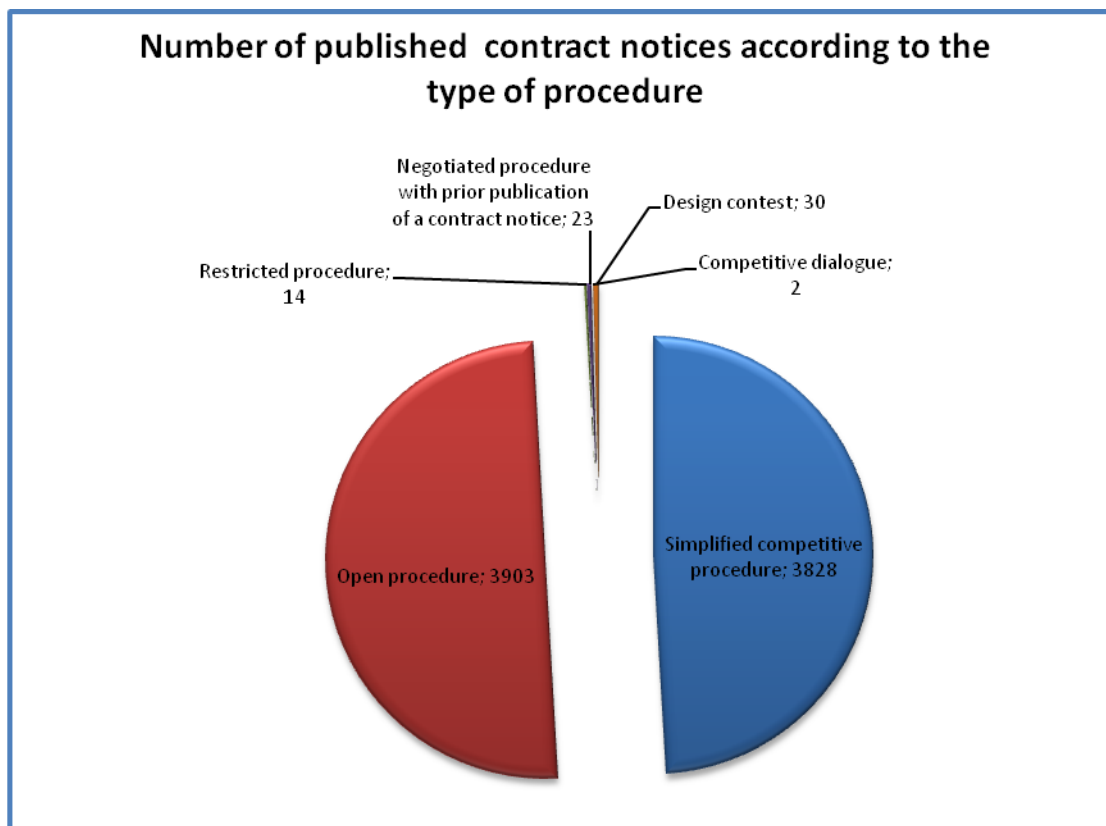
Type of procedure	Number of contract notices
Simplified competitive procedure	3828
Open procedure	3903
Restricted procedure	14
Negotiated procedure with prior publication of a contract notice	23
Competitive dialogue	2
Design contest	30
Total	7800

8.2 Data from contract notices

In 2011, **7800** contract notices were published, **3828** out of which were notices for simplified competitive procedure, **3903** were notices for open procedure, **14** were notices for restricted procedure, **23** were notices for negotiated procedure with prior publication of a contract notice, **2** were notices for competitive dialogue and **30** were

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

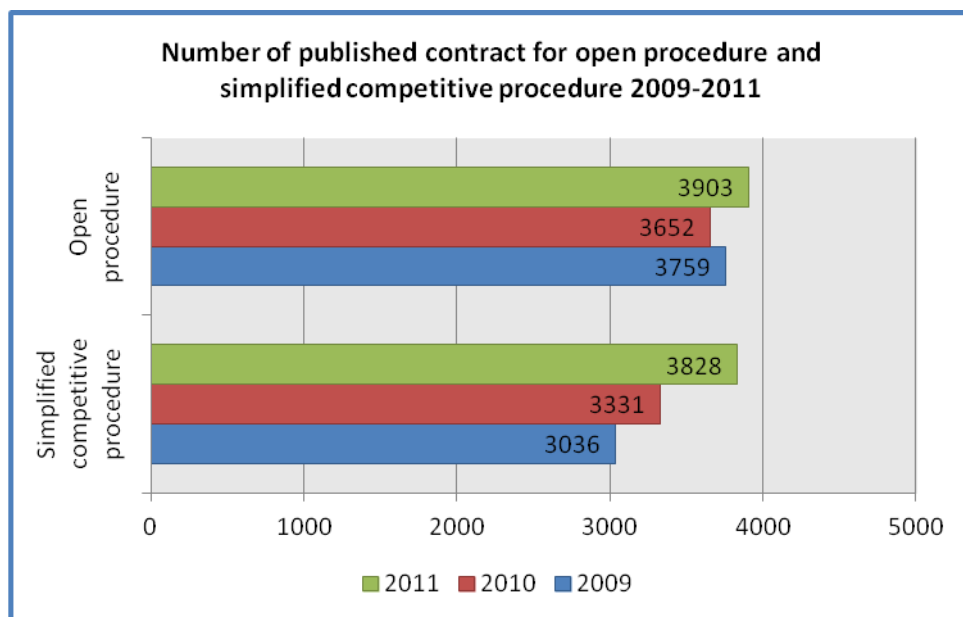
Chart 2



Above listed data lead to the conclusion that most contract notices in 2011 were published by applying the open procedure - **3903** and the simplified competitive procedure - **3828** contract notices. This points out to the fact that contracting authorities use the open procedure as one of the most transparent procedures, and they often use the simplified competitive procedure with publication of a notice for supplies and services up to EUR 20,000 and works up to EUR 50,000 in Denar equivalent, excluding VAT, which is in fact simplified open procedure. As for 2010, a total of 7091 contract notices were published, and it can be concluded that in 2011 the number of published contract award procedures marked an increase by 10%. In comparison with the previous year, it may be concluded that there are no significant differences in the type of conducted contract award procedures. Still there is a tendency of increase in the number of contract notices for open procedure and for simplified competitive procedure. The number of published contract notices for the other procedures, compared to 2010, is approximately the same, with the exception of the restricted procedure, where we mark a decrease (52 procedures in 2010, 14 procedures in 2011). If we observe these data in continuity as from 2009, an identical trend is noticed - increased use of the open

procedure and the simplified competitive procedure. Chart 3 gives the relation between the number of published contract notices of the most frequent procedures - open procedure and simplified competitive procedure - for the last three years.

Chart 3



Contracting authorities published a total of **145** contract notices on the system in the category *Other Notices* in 2011. These are contract notices for so-called “non-priority” services pursuant to Article 17 paragraph 1 indent 2 of the Law, such as services related to temporary employment, hotel, catering, recreational, cultural, educational, legal and other services. Upon request of some contracting authorities, it was enabled for contract notices for services from category 17 to category 27, apart from being published in the part *Other Notices*, on their choice, to be also published in the Electronic System for Public Procurement as classic contract notices.

As for the type of the subject of the public contract, most contract notices are published for procurement of supplies, more particularly **4305** contract notices, for services - **2341** and for works - **1154** contract notices. The number of published contract notices according to the type of the public contract is shown in Table 3 and Chart 4. Trend of publishing contracts for all three types of subject of procurement was the same, i.e. we mark a proportionate increase with all of them, appropriate to the increase in the total number of published contract notices. Comparative data for the last three years are presented in Chart 5.

Table 3

Type of public contract	Number of contract notices
Supplies	4305
Services	2341
Works	1154
Total	7800

Chart 4

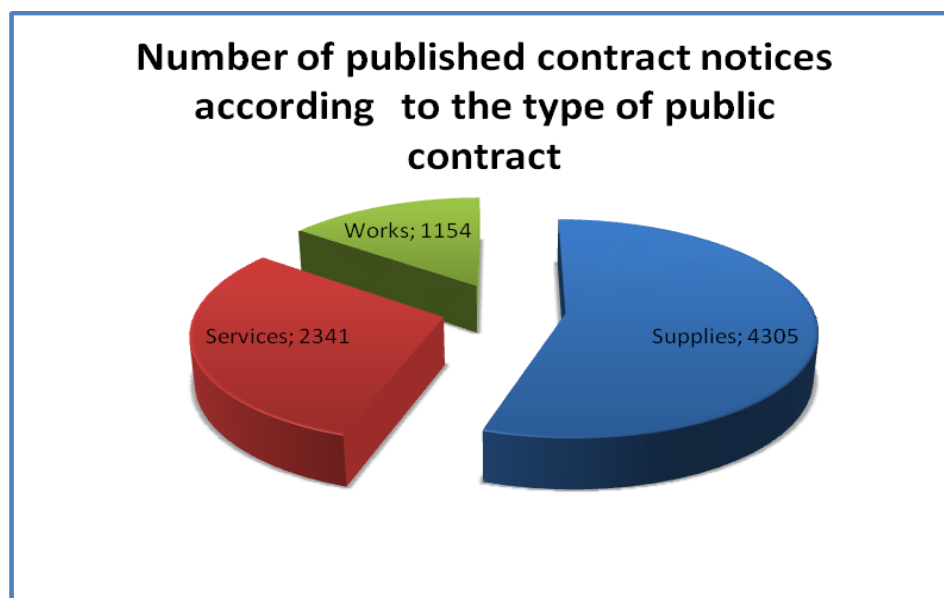
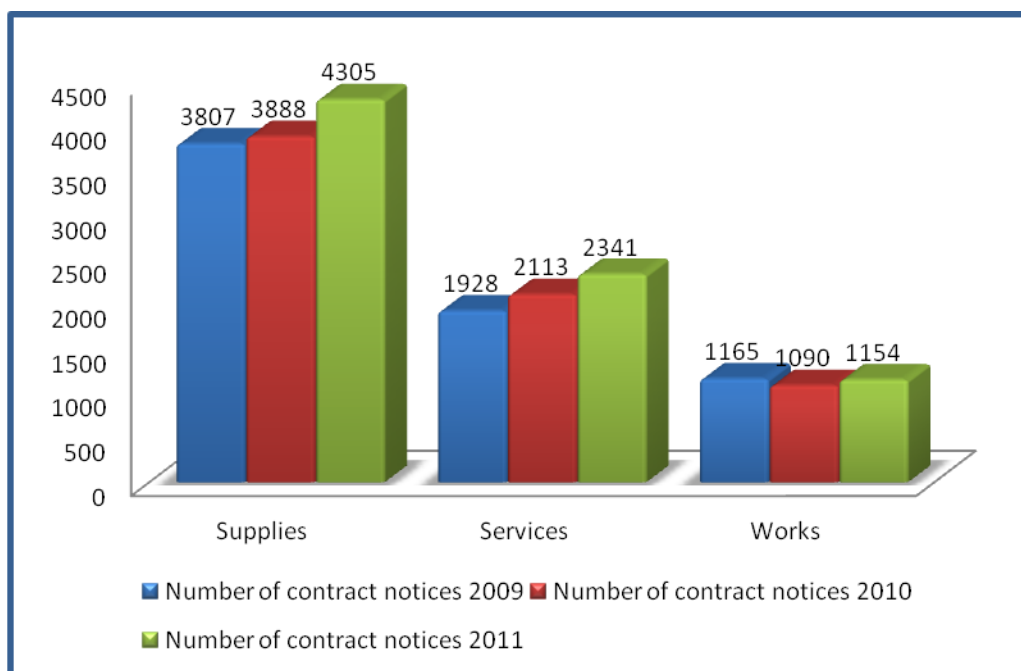


Chart 5



The 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	2000
Hire purchase	2287
Lease, with an option to purchase supplies	3
Lease, without an option to purchase supplies	7
Combination of above-mentioned types	8
Total	4305

Table 5

Type of public contract - services	Number of contract notices
Architectural and engineering services	401
Auxiliary transport services	12
Other services	106
Health and social services	34
Publishing and printing services	91
IT and related services	86
Investigative and security services	38
Education and vocational education services	17
Legal services	9
Advertising services	51
Recreational, cultural and sporting services	13
Accounting, auditing and bookkeeping services	20
Management consulting services	20
Telecommunication services	202
Air transport services of passengers and freight	43
Market research and public opinion services	3
Land and air transport services of mail	5
Land transport services	174
Maintenance and repair services	729
Sewage and refuse disposal services	31
Temporary employment services	35
Development and research services	33

Building cleaning services and property management services	24
Financial services	135
Hotel and catering services	29
Total	2341

Table 6

Type of public contract - works	Number of contract notices
Execution	1058
Design and execution	25
Realisation, by any means	71
Total	1154

The total number of published contract notices according to the 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" No. 159/07 and 74/09) is shown in Table 7 and Chart 6.

Table 7

Category of contracting authority	Number of contract
State bodies	1099
Bodies of local government units and of the city of Skopje	1748
Legal entities established for specific purpose of meeting public interest needs-indent b), paragraph 1, Article 4 of the Law	3472
Associations established by one or more contracting authorities	34
Public enterprises, joint stock companies and limited liability companies in the concerned areas	1410
Other contracting authorities	37
Total	7800

Chart 6



When analyzing the data on published contract notices according to category of contracting authority, it may be seen that most contract notices were published by contracting authorities in the category legal entities established for specific purpose of meeting public interest needs - Article 4, paragraph 1, indent b) of the Law - **3472** and by contracting authorities in the category bodies of local self-government units and of the City of Skopje - **1748** notices.

When data from contract notices are analysed, as regards the type of contract award criteria the contracting authority applied in conducted procedures, it may be determined that the lowest price criterion was used significantly more than the economically most advantageous tender criterion.

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 the data do not include some of the contract notices for restricted procedure and negotiated procedure with prior publication of a contract notice, since in some of them, the contracting authority publishing the contract notice does not publish the criterion in the contract notice, but it rather includes it in the tender documentation for the next stage of the procedure.

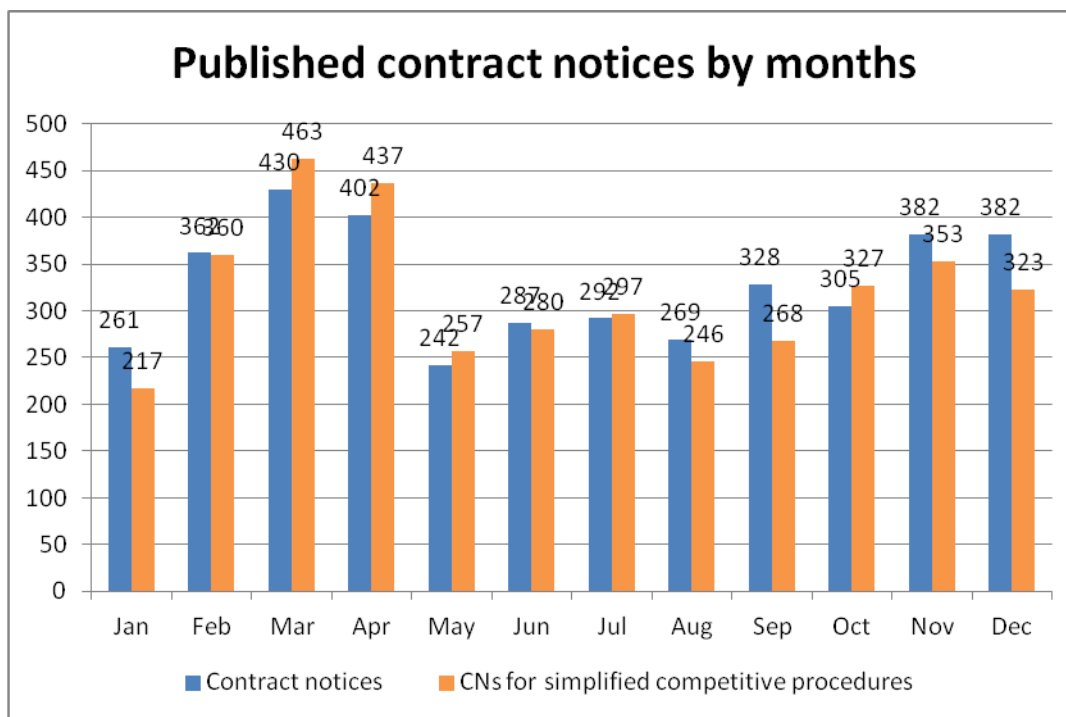
Table 8

Contract award criterion	Number of contract notices
Lowest price	4918
Economically most advantageous tender	2826

It may be concluded that in **64%** of the published contract notices, contracting authorities applied the criterion - lowest price. Compared to 2010 (when such percentage was 44%), increased use of the criterion - lowest price was evident. During the last four years, an increase is marked in the use of the lowest price criterion in contract award procedures, from approximately 16% in 2008, to even two thirds of contract award procedures conducted in 2011 having the lowest price criterion. It seems that the increase in the number of procedures where the lowest price criterion is applied is due to the increase in the percentage of mandatory and factual use of e-auctions, even though in 2011 it was enabled for e-auctions to be conducted also in cases when the criterion economically most advantageous tender is applied.

Chart 7 shows the dynamics of publishing contract notices by month. The Chart shows that most contract notices were published at the beginning of the year in February, March and April, while in mid-2011 publishing contract notices declined, to increase again at the end of the year. Such dynamics was mostly due to the fact that contracting authorities commence contract award procedures at the beginning, i.e. at the end of the year for the needs for the forthcoming year.

Chart 7



8.3 Concluded public contracts

This section of the Report presents data, and analysis is made of the public contracts concluded in 2011 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 notice, competitive dialogue and awarding of public services contract pursuant to Article 17, indent 2, 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 the Electronic System for Public Procurement <https://e-nabavki.gov.mk> and are fully available to the public. Contracting authorities are responsible for the reliability and validity of inserted data since they publish their contract notices, contract award notices/ procedure cancellation notices, records on simplified competitive procedures through ESPP by means of their codes and passwords.

Table 9 and Chart 8 show the number and the value of concluded public contracts in 2011 according to the type of contract award procedure. The aggregate value of

concluded public contracts in 2011 amounted to Denar **59,182,907,793.00**. According to the value of concluded contracts, most applied was the open procedure, on the basis of which **6,777** contracts were concluded in the amount of Denar **37,466,107,981.00** – 64% of the total value of public procurement in the Republic of Macedonia. Negotiated procedure with prior publication of a notice was the second most applied procedure, on the basis of which 105 contracts were concluded in the amount of Denar **8,378,647,538.00** - 14% of the total value.

Chart 8

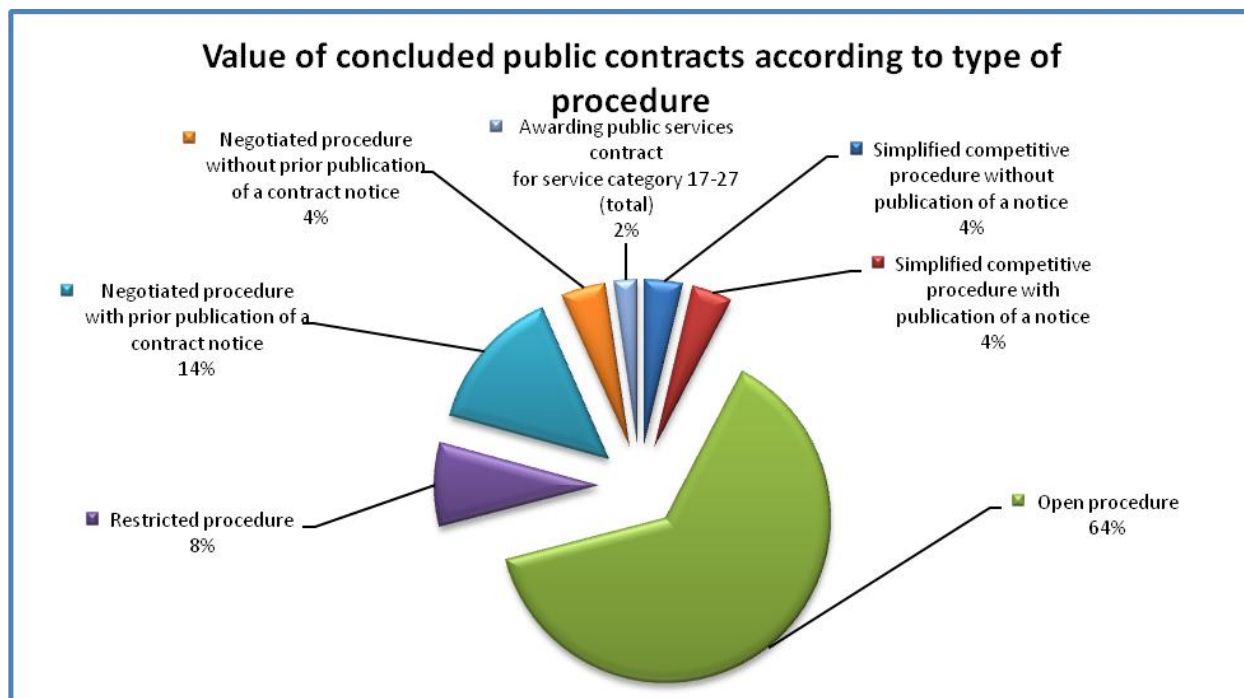


Table 9

Type of contract award procedure	Number of concluded contracts	Value of concluded contracts
Simplified competitive procedure without publication of a notice	11124	2,173,781,357.00 den.
Simplified competitive procedure with publication of a notice	3626	2,355,767,555.00 den.
Open procedure	6777	37,466,107,981.00 den.
Restricted procedure	22	4,897,757,953.00 den.
Negotiated procedure with prior publication of a contract notice	105	8,378,647,538.00 den.

Negotiated procedure without prior publication of a contract notice	904	2,547,834,151.00 den.
Awarding public services contract for service category 17-27 (total)	1304	1,363,011,258.00 den.
Total	23862	59,182,907,793.00 den.

Compared to the previous year, there are no significant changes with respect to the use of various procedures, apart from the use of the negotiated procedure with prior publication of a notice. In fact, compared to 2010, when most of the concluded contracts by number and by value were by applying the open procedure, in 2011 as well, most of the procedures were of the type open procedure, thereby marking a decline in its share (in 2010 - 76%, in 2011 - 64%). An important difference compared to the previous year is the significant increase in the share of negotiated procedure with prior publication of a notice in contract award procedures. The amount of this procedure (in 2010 - 2%, in 2011 - 14%) is owing to the conclusion of one contract of high value, which is indicated below in the text. The volume of remaining procedures is approximately the same with respect to the value of concluded contracts. Comparative data are presented in Charts 9 and 10.

Chart 9

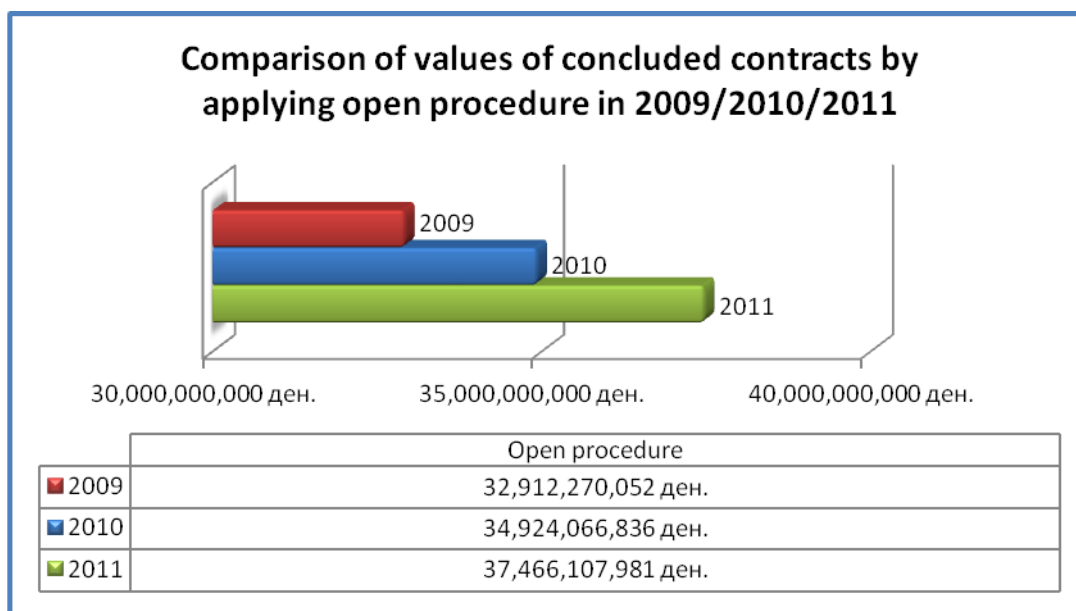
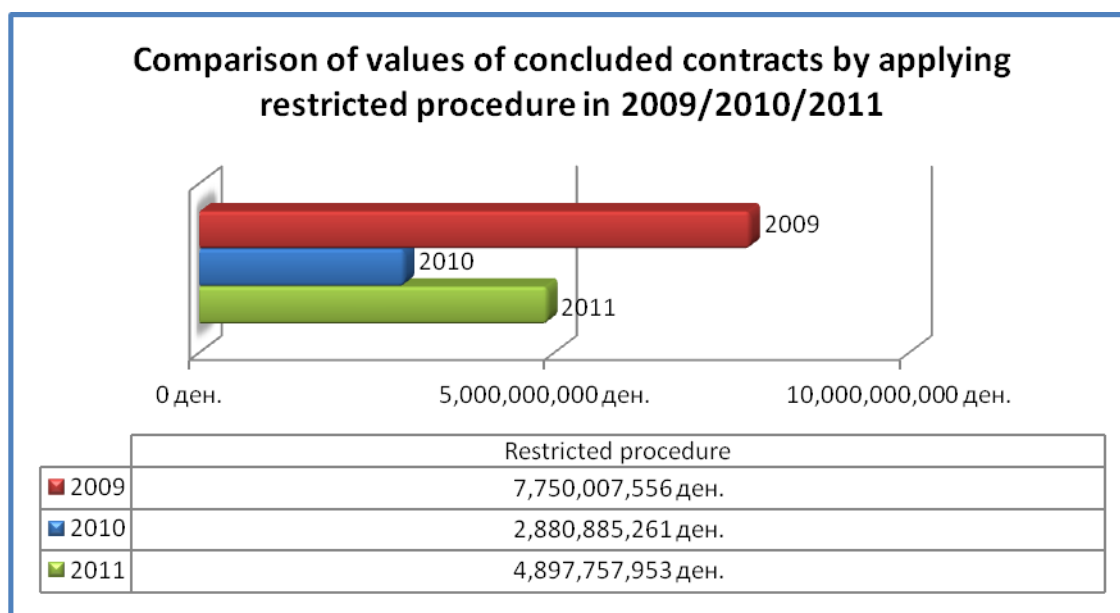


Chart 10



8.4 Data on concluded contracts according to the type of public contract

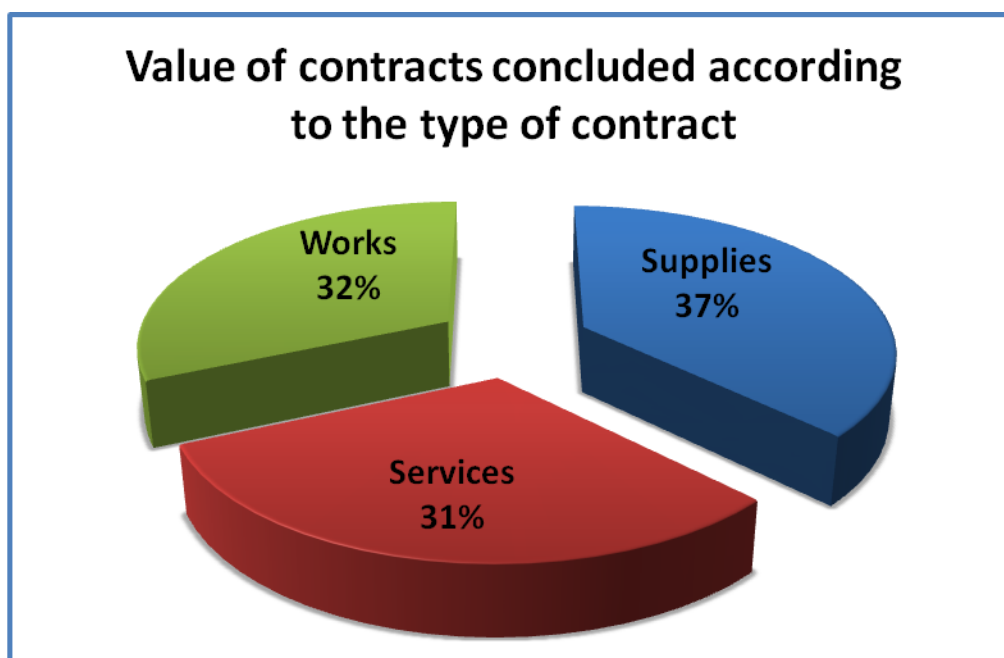
According to the subject of the public contract, a total of 12,886 supply contracts (in the amount of Denar 22,067,526,954), 8,745 services contracts (in the amount of Denar 18,432,097,683) and 2231 works contracts (in the amount of Denar 18,683,283,156) were concluded in 2011. Chart 11 and Table 10 present more detailed

data on the number and value of concluded public contracts according to the type of subject of the contracts.

Table 10

Type of public contract	Number of concluded contracts	Value of concluded contracts
Supplies	12886	22,067,526,954.00 den.
Services	8745	18,432,097,683.00 den.
Works	2231	18,683,283,156.00 den.
Total	23862	59,182,907,793.00 den.

Chart 11



The table shows that most (37%) of the value of public contracts accounted for procurement of goods. Public work contracts accounted for 32% of the total value of contracts (most often contracting). These data show that there was a change in the structure of the value of contracts concluded according to the type of contract in 2011. Namely, while the share in the value of concluded public work contracts remained nearly the same compared to 2010 (in 2010 - 30%, in 2011 - 32%), the share of public supply contracts decreased due to the procurement of services. In 2011, the percentage of the total value of procurement of supplies amounted to 37% (the previous year it was 47%). Public supply contracts were most often realized through hire purchase. Public

services contracts participated with 31% in the total value of public procurement in 2011 (in 2010 - 23%). Their structure shows different percentage of categories of services pursuant to the Decree on services subject of public services contracts ("Official Gazette of the Republic of Macedonia", no. 157/07). Still, the largest part 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 concluded contracts 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 14 and Chart 12. Due to ESPP setup and the manner of gathering data, and according to the category of contracting authority, information given below was obtained from the contract award notices and refers exclusively to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue. These data do not include data for simplified competitive procedures because no contract award notice is filled in for these procedures, but there is a sum record on semi-annual basis.

Chart 12

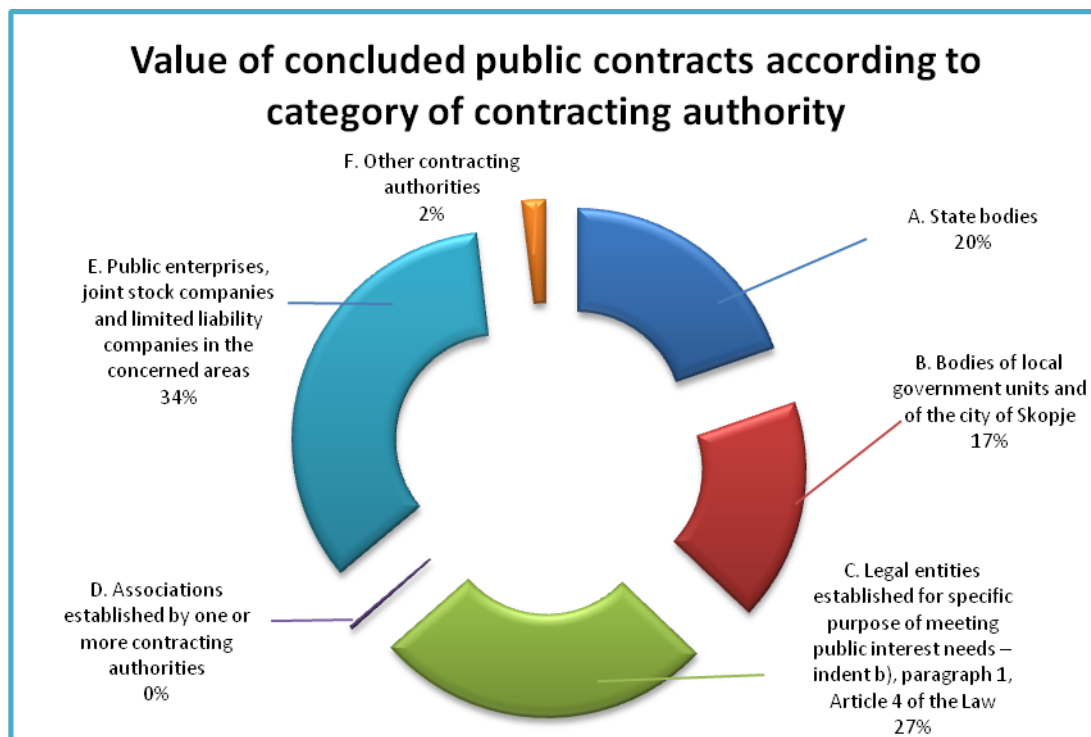


Table 11

Category of contracting authority	Main business activity	Number of contracts	Value of concluded contracts (Denar)
A. State bodies	General public services	465	5,110,796,408 den.
	Defence	158	613,329,015 den.
	Public order and security	75	432,565,366 den.
	Environment	4	135,498,376 den.
	Health	214	1,765,604,781 den.
	Economy and finance	36	290,139,023 den.
	Social protection	18	121,648,198 den.
	Sports and culture	303	1,381,405,459 den.
	Education	34	887,760,376 den.
	Housing, civil works and transport	1	123,000 den.
	Other	4	3,728,465 den.
	Total A.	1312	10,742,598,467 den.
B. Bodies of local government units and of the city of Skopje	General public services	943	9,398,902,842 den.
	Sports and culture	13	50,536,808 den.
	Environment	2	10,746,461 den.
	Other	7	25,680,060 den.
	Total B.	965	9,485,866,171 den.
C. Legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law	General public services	1101	4,995,981,285 den.
	Public order and security	36	70,294,225 den.
	Environment	57	165,271,190 den.
	Health	2299	5,244,159,261 den.
	Housing, civil works and transport	30	2,015,885,525 den.
	Social protection	254	287,465,999 den.
	Sports and culture	52	73,637,852 den.
	Education	650	1,472,634,348 den.
	Other	28	91,708,135 den.
	Total C.	4507	14,417,037,820 den.
D. Associations established by one or more contracting authorities	General public services	2	8,030,000 den.
	Education	28	72,581,446 den.
	Social protection	2	106,457,307 den.
	Total D.	32	187,068,753 den.
E. Public enterprises, joint stock companies	General public services	335	3,291,063,389 den.
	Housing, civil works and transport	14	30,659,197 den.

and limited liability companies in the concerned areas	Economy and finance	3	4,058,294 den.
	Other	696	15,377,946,887 den.
	Total E.	1048	18,703,727,767 den.
F. Other contracting authorities	Education	6	409,502 den.
	Other	38	984,620,059 den.
	Total F.	44	985,029,561 den.
Total	Вкупно A+B+C+D+E+F.	7908	54,521,328,539 den.

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

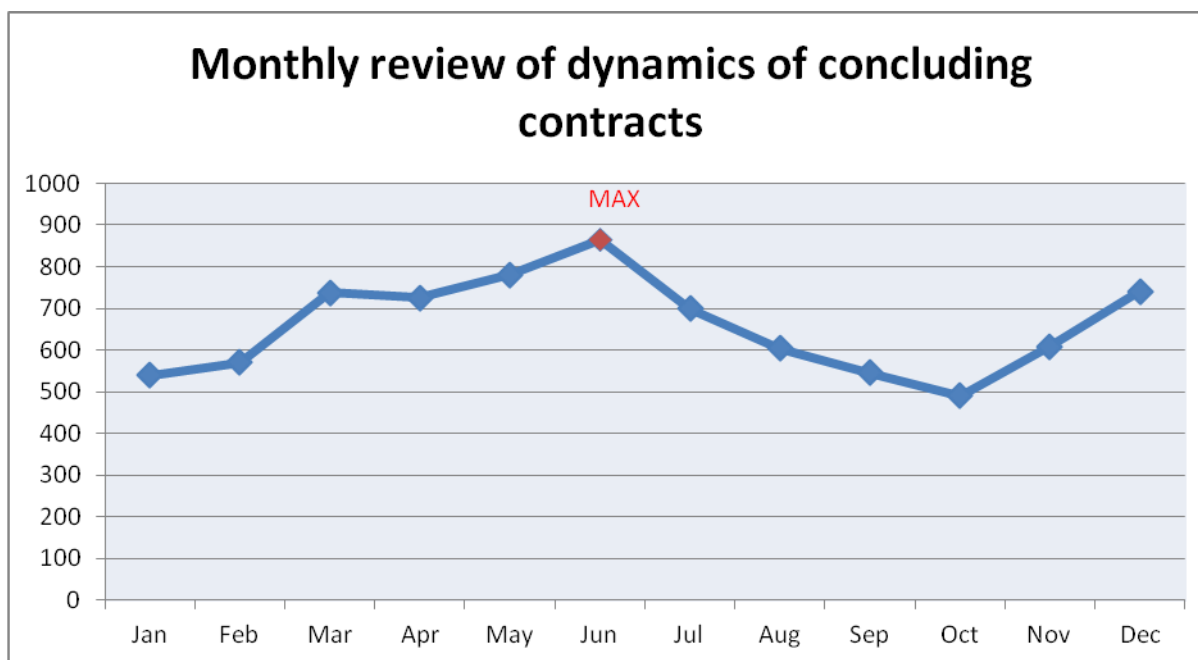
It may be concluded that the largest percentage (34%) of the value of concluded contracts accounts for the category of public enterprises, joint stock companies and limited liability companies from covered activities.

Furthermore, second according to realized public procurements, was the category of contracting authorities - legal entities established for specific purpose of meeting public interest needs - Article 4 paragraph 1 indent b) of the Law, accounting for 27% of the value of public procurement. Other categories participated with around 39% all together in the total value of public contracts.

8.6 Data on concluded public contracts according to other parameters

When analyzing the dynamics of awarding contracts by months in 2011 (Chart 13), it may be seen that most of the contracts were concluded in the month of June. It was due to the fact that contracting authorities commenced most of their procedures in the first half of the year and, taking into account the time necessary to realise the procedure up to contract award, it was expected for most of the contracts to be concluded in the middle of the year.

Chart 13

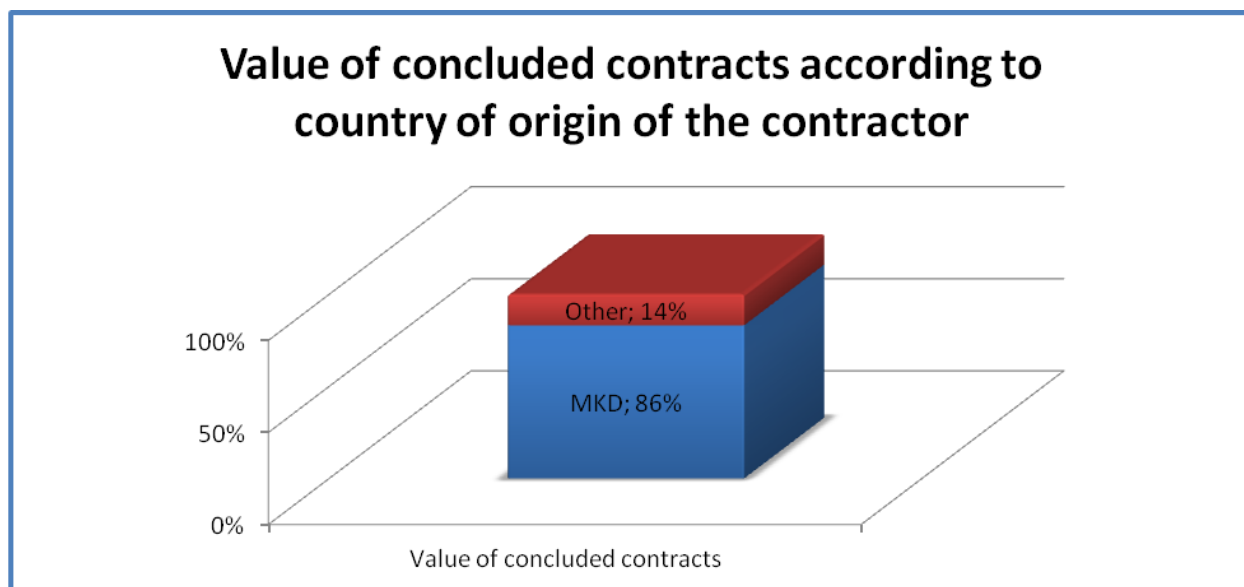


International tender was carried out for 841 of the public contracts (in the amount of Denar 26,761,472,916). Analysed by country of origin of the contractor, data are given in Table 12 and Chart 14.

Table 12

Country of origin of the contractor	Number of concluded contracts	Value of concluded contracts
Macedonia	7727	42,700,916,549 den.
EU	67	8,854,431,651 den.
Other	114	2,965,980,339 den.

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. The share of foreign companies as contractors in public contracts this year amounted to 14%, which speaks of the fact that the existing legislation ensures continuous presence of foreign companies on the public procurement market and their continuous participation in contract award procedures.

In addition, it is worth mentioning that 703 framework agreements and 162 agreements for joint contract award procedure were concluded in 2011.

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 with prior publication of a notice participated with 14%, and negotiated procedure without prior publication of a notice with 4% in the total amount of funds. It should be taken into consideration that negotiated procedure with prior publication of a notice is a regular procedure with utilities contracting authorities, which in fact use it most often. 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.

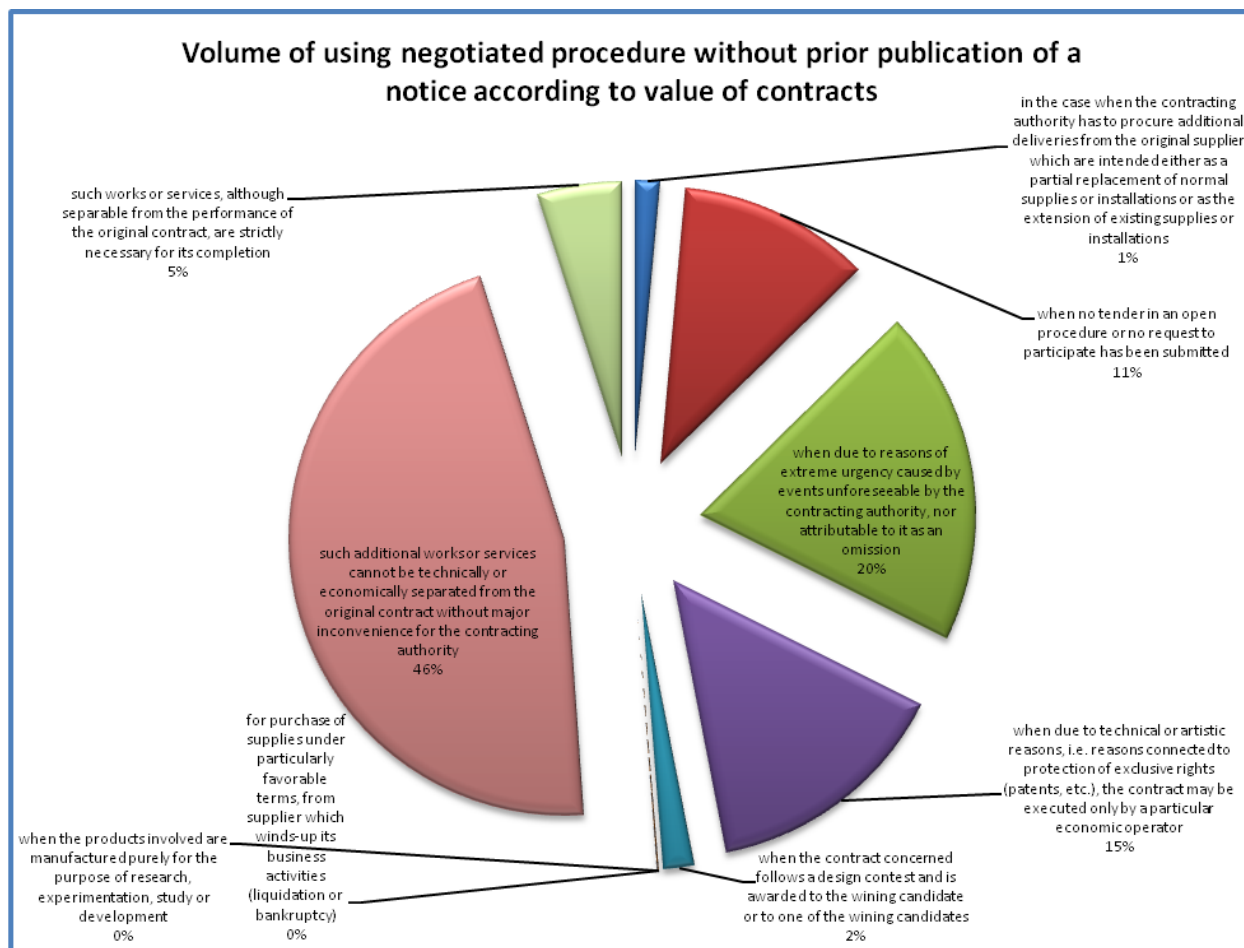
Data on negotiated procedure can lead to a conclusion that most often (46% of the value of awarded contracts under negotiated procedure without prior publication of a notice) reason/ legal justification to apply the negotiated procedure without prior publication of a notice is Article 99, paragraph (1), item 4) indent 1 of the Law, with 149 concluded contracts in the amount of Denar 1,176,426,274. Another reason for applying the negotiated procedure without prior publication of a contract notice (19%) was due to reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission.

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	If no acceptable tender has been received in open procedure, restricted procedure or competitive dialogue	3	18,233,830 den.
	in exceptional cases, when the nature of the works, supplies or services, or the risks attached thereto, do not allow a prior overall pricing of the contract	30	690,445,149 den.
	contracting authority invites to negotiations all economic operators which, in the open procedure, restricted procedure or the competitive dialogue procedure have proven their qualifications	66	453,023,339 den.
	for public services contract, where the service to be purchased is of such nature, that the technical specifications cannot be elaborated with sufficient precision to permit the awarding of the contract by applying rules governing open or restricted procedures	6	7,216,945,220 den.
	Total A.	105	8,378,647,538 den.
B. Negotiated procedure without prior publication of a contract notice	in the case when the contracting authority has to procure additional deliveries from the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations	42	36,351,692 den.

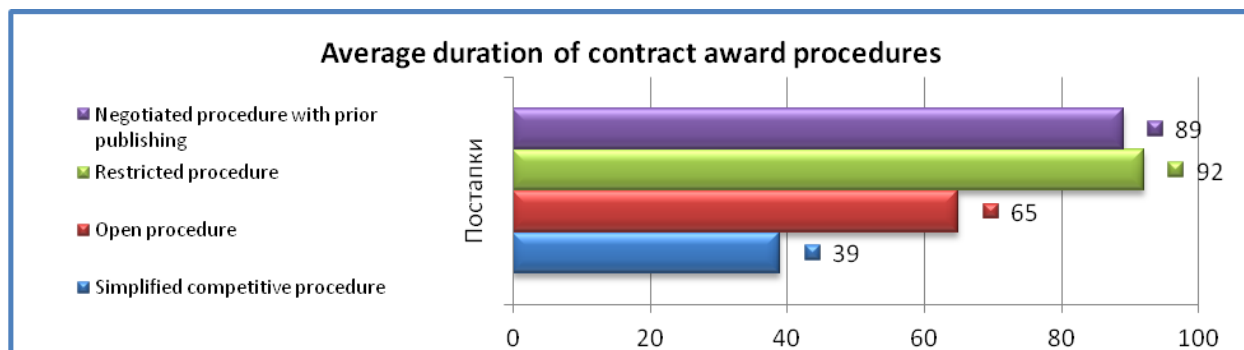
	when no tender in an open procedure or no request to participate has been submitted	123	286,053,605 den.
	when due to reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission	230	502,888,601 den.
	when due to technical or artistic reasons, i.e. reasons connected to protection of exclusive rights (patents, etc.), the contract may be executed only by a particular economic operator	268	370,662,924 den.
	when the contract concerned follows a design contest and is awarded to the winning candidate or to one of the winning candidates	28	46,123,056 den.
	for purchase of supplies under particularly favorable terms, from supplier which winds-up its business activities (liquidation or bankruptcy)	5	2,303,977 den.
	when the products involved are manufactured purely for the purpose of research, experimentation, study or development	7	1,096,593 den.
	such additional works or services cannot be technically or economically separated from the original contract without major inconvenience for the contracting authority	149	1,176,426,274 den.
	such works or services, although separable from the performance of the original contract, are strictly necessary for its completion	52	125,927,429 den.
	Total B.	904	2,547,834,151 den.

Chart 15



Data that can serve to present efficiency of contract award procedures are also 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 was **32** days, in open procedure – **48** days, restricted procedure – **92** days, and negotiated procedure with prior publication of a notice – **89** days.

Chart 16



Above-stated data show that compared to 2010, there was a significant decrease in all procedures in the number of days necessary to evaluate tenders, to reach a decision selecting the most advantageous tenderer and to conclude the contract. On average, the shortening of the time period was from 7 to 59 days. As a comparison to 2010, the duration of procedures was as follows: simplified competitive procedure with prior publication - 39 days, open procedure - 65 days, restricted procedure - 127 days and negotiated procedure with prior publication - 148 days. Hence, we may conclude that there was a significant decrease in the number of days necessary to evaluate tenders compared to the previous year, i.e. increase in the efficiency in conducting procedures. This is owing to the efforts of the Bureau to strengthen the capacity of contracting authorities through the education programme, but also to the introduction of the obligation of contracting authorities to reach a selection decision or procedure cancellation decision within a time limit not longer than the time limit for submission of tenders, i.e. applications to participate in the precise procedure, counting as of the day designated as a deadline for submission of tenders, i.e. requests to participate. Table 14 gives a comparison of the duration of procedures in 2010 - 2011.

Table 14

Average duration of contract award procedures		
	2010	2011
Simplified competitive procedure	39 days	32 days
Open procedure	65 days	48 days
Restricted procedure	127 days	92 days
Negotiated procedure with prior publishing	148 days	89 days

Below are presented data on the value of concluded contracts by contracting authority (a list of 10 largest public consumers in 2011), and by contract (list of 10 highest-value public contracts in 2011). Tables 15 and 16.

Table 15

List of contracting authorities – 10 largest consumers in 2011	
<i>Name of contracting authority</i>	<i>Total value of contracts (Denar)</i>
Macedonian Power Plants joint stock company - Skopje	12,748,902,741
City of Skopje	3,905,698,941
Public Enterprise for Business and Housing Premises of the Republic of Macedonia	1,874,146,774
Ministry of Culture	1,393,652,836
Ministry of Health	1,317,055,954
Public enterprise for transport services - Skopje	1,102,726,245
Water Supply and Sewerage Authority - Skopje	1,077,266,429
EVN Macedonia	970,798,618
Macedonian Forests public enterprise - Skopje	950,960,529
Municipality of Centar	929,362,539

Table 16

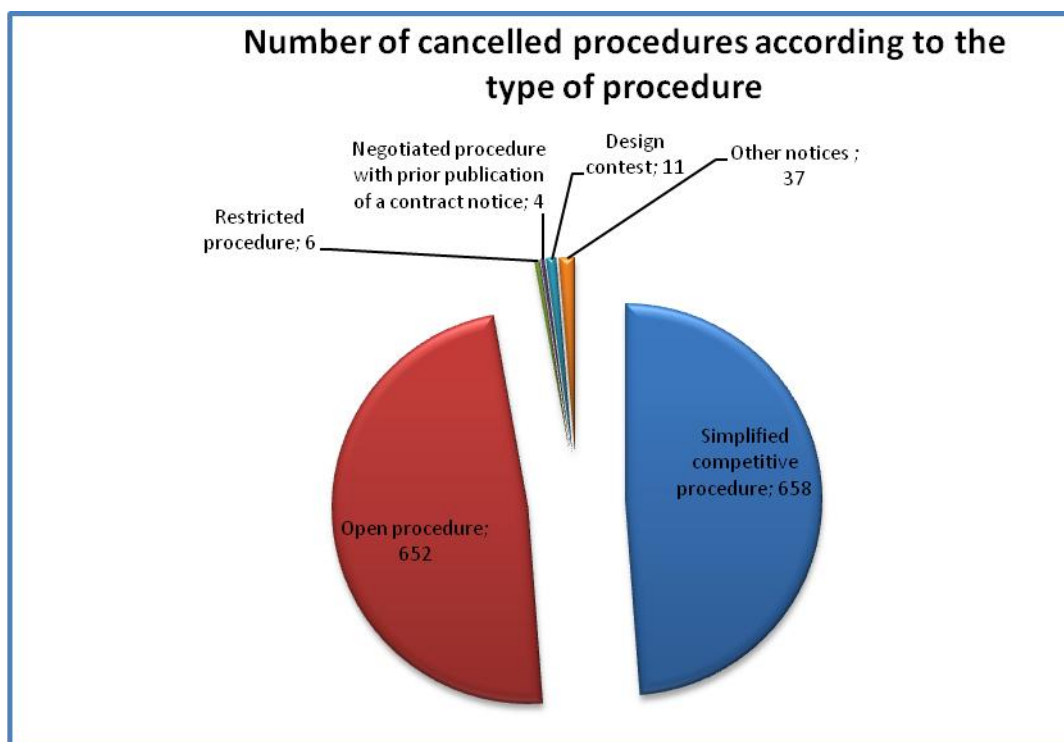
List of 10 highest-value contracts concluded in 2011			
Subject of procurement	Name of contracting authority	Contractor	Value of concluded contract
Modernization of TEC Bitola	Macedonian Power Plants joint stock company - Skopje	BABCKOCK BORSIG STEINMULLER GMBH - GERMANY	6,422,445,000
Construction works for building "Gradska kuka (City hall)"	City of Skopje	Beton Skopje	1,041,350,000
Purchase of fuel oil	District Heating of Skopje	Okta refinery Skopje	895,321,460
Construction works for building "Katna garaza"	City of Skopje	„Konstruktor inžinering“ D. D Split	850,799,951
Construction works for housing premises	Public Enterprise for Business and Housing Premises of the Republic of Macedonia	Sintek Skopje, Dekon-kom Skopje and Vardargradba DOO	823,086,952

11/2011 fuel gas (D-E IV)	Public enterprise for transport services - Skopje	MAKPETROL AD	805,008,000
Construction works for building "Katna garaza" on Mito Hadzivasilev Jasmin Street	City of Skopje	Granit AD Skopje	656,124,413
Construction and civil works for the central building of Water Supply and Sewerage Authority - Skopje	Water Supply and Sewerage Authority - Skopje	ALPINE BAU GMBH Austria	610,378,476
Construction works for 100 multipurpose sport facilities	Agency for sport and youth	„Konstruktor inžinering“ D. D Split	592,075,689
Construction works for building "Katna garaza" 9.13 (golem ring)	Public Enterprise for Business and Housing Premises of the Republic of Macedonia	Beton Skopje	553,634,499

8.7 Data from procedure cancellation notices

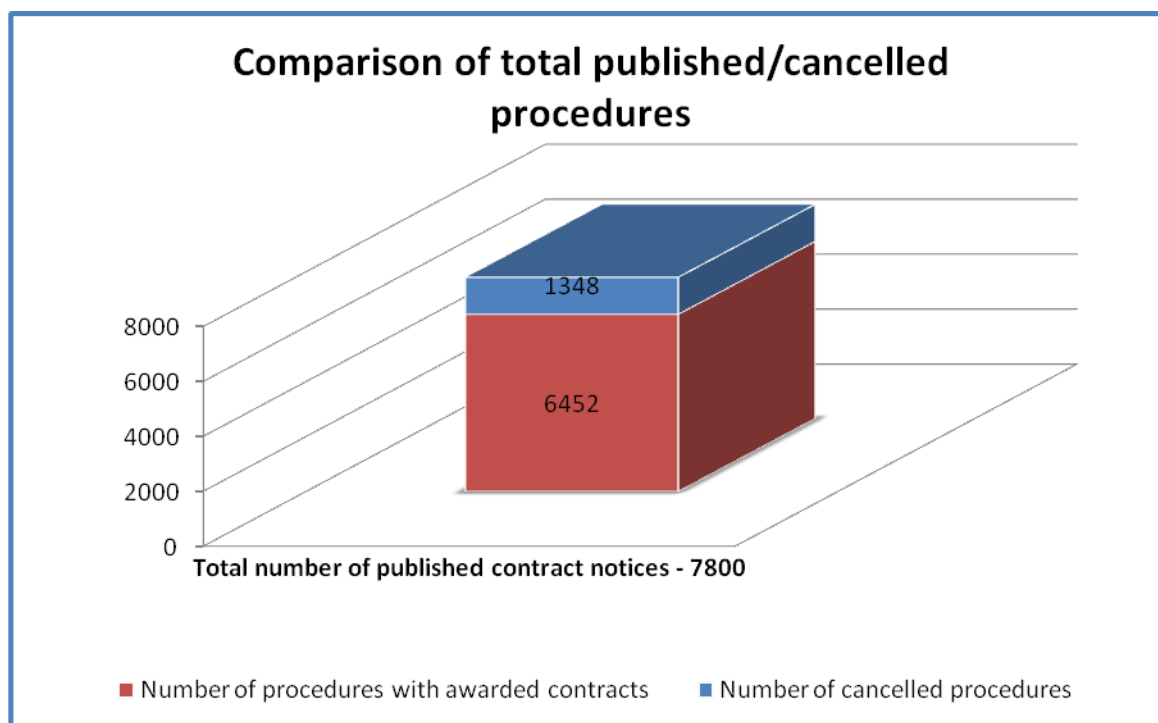
In the course of 2011, a total of **1758** cancellation notices for entire procedure or parts thereof was filled in on ESPP. It should be pointed out that these data include cancellation notices for entire procedure, as well as cancellation notices for parts thereof. When it comes to cancellation of a whole contract award procedure, following data apply - a total of **1348** cancellations of contract award procedures. Chart 17 presents data on procedure cancellation according to the type of procedure. With respect to procedure cancellations, a decrease is marked in cancelled procedures in 2011 (**1487** - last year).

Chart 17



When analyzing above-stated data, one can conclude that 29% of published contract notices were cancelled in the course of 2011.

Chart 18



The table below presents the reasons for cancellation of procedures. We may conclude that procedures in 2011 were most often cancelled due to the following reasons:

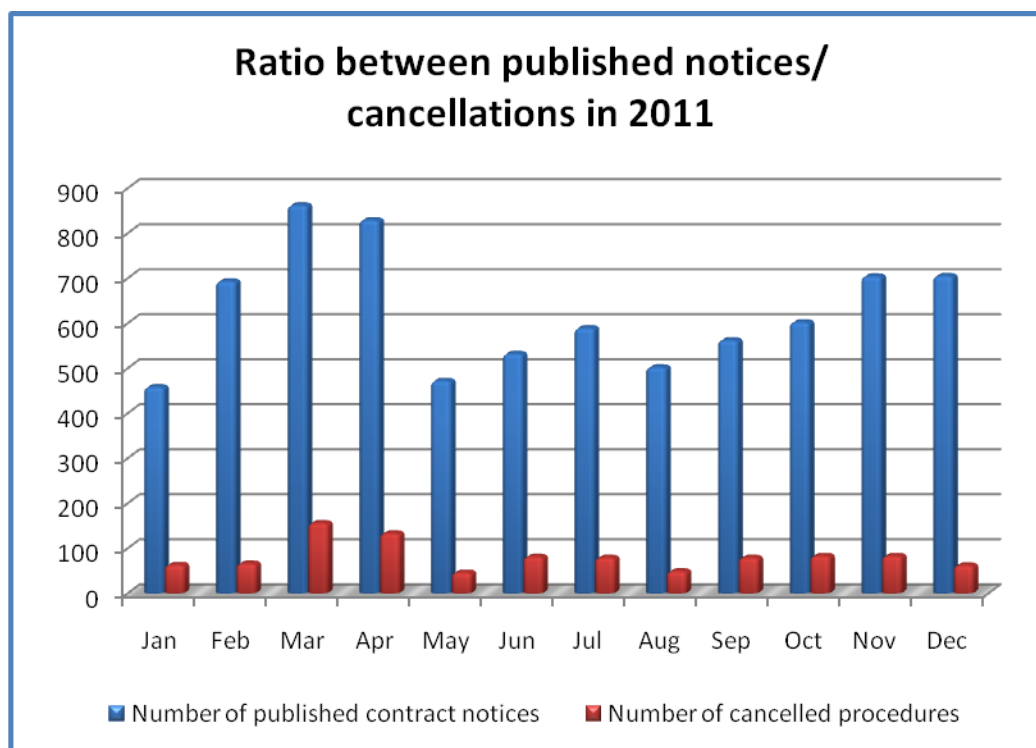
- no acceptable tender was submitted,
- no tender was submitted, and
- tender documents had major shortcomings or faults.

Table 17

Information of the reasons for cancellation of the procedure or cancellation of parts	Number of cancelled procedures	Number of cancelled parts of procedures
Number of candidates was less than the minimum set for the contract award procedures pursuant to the Law	25	1
no acceptable tender was submitted	349	139
no tender was submitted	221	160
acceptable tenders were submitted, but they cannot be compared due to different approaches in the financial or technical proposals	43	9
unforeseeable changes occurred in the budget of the contracting authority	57	7
Tenderers offered prices and conditions for execution of the public contract which are less favourable than the real prices and conditions on the market	124	33
Tender documents had major shortcomings or faults	214	16
Needs of the contracting authority changed due to unpredictable and objective circumstances	164	21
Contracting authority cannot select the winning tender due to major infringements to the Law on Public Procurement pursuant to Article 210 of this Law	52	8
Selected optimal bidder refuses to sign the contract	18	13
State Appeals Commission cancelled the procedure	53	3
other reasons (other notices, competition)	28	0
Total	1348	410

Chart 19 presents data on the ratio between published contract notices and cancelled procedures on monthly basis in 2011. It may be noticed that there were most cancelled procedures in the months of March and April.

Chart 19



With the purpose of reducing the number of procedure cancellations, the Bureau undertook a series of measures encompassed by the latest amendments and modifications to the Law on Public Procurement which was adopted by the Assembly of the Republic of Macedonia in December 2011. The effects of these measures will be possible to be analyzed in the report of the forthcoming year of 2012.

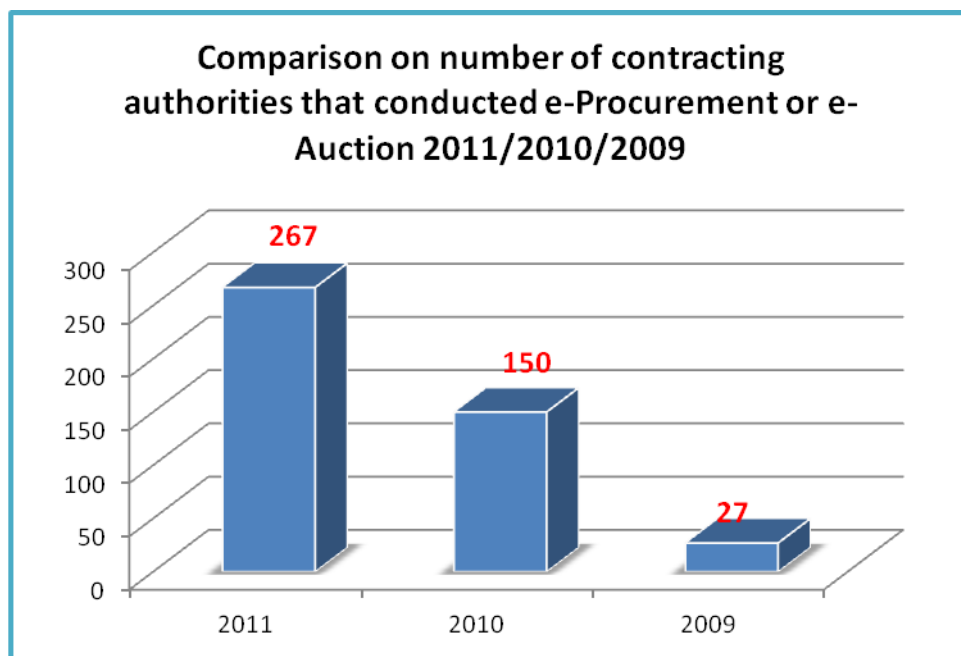
8.8 Data from forms for amending and supplementing the contract notice

In 2011, a total of **1393** forms for amending and supplementing the contract notice were published through ESPP. These data show that 18% of contract notices, after being published, underwent amendments or supplements to the contents of the contract notice and the tender documentation.

8.9 Carried out electronic procedures

In 2011, a significant increase is noticed in the use of ESPP with respect to publishing contract notices for contract award procedures which will be carried out electronically. In the course of 2011, 267 of the registered contracting authorities published a contract notice and conducted an e-procedure through ESPP, which compared to the figures from previous years is a substantial increase, i.e. approximately 20% of contracting authorities has conducted at least one contract award procedure electronically.

Chart 20

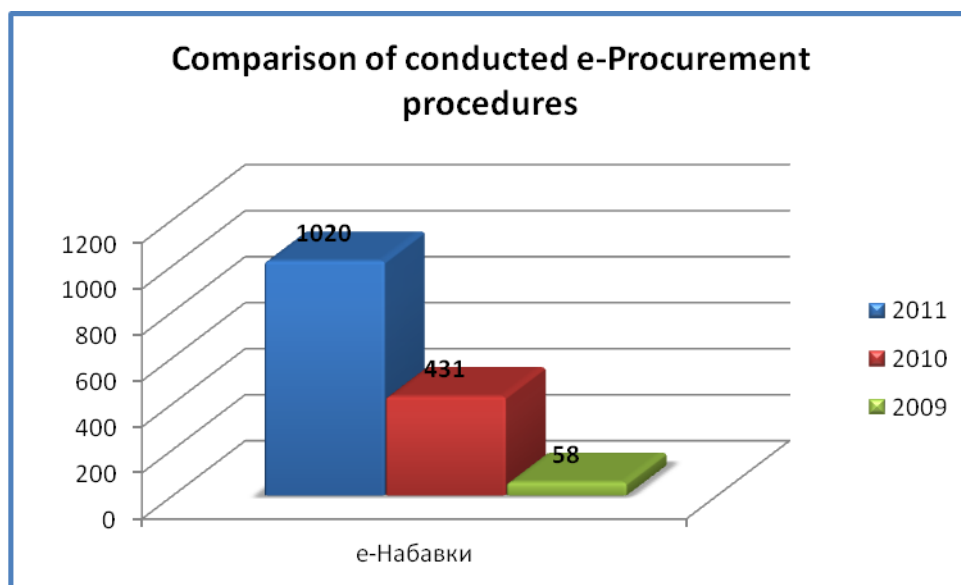


Largest users of ESPP, with respect to electronic publication of procedures among contracting authorities in 2011, were:

- Ministry of Education and Science
- Macedonian Power Plants JSC
- Ministry of Transport and Communications
- Central Registry of the Republic of Macedonia
- PE Water Supply and Sewerage – Skopje.

The aggregate number of electronic procedures conducted through ESPP in 2011 amounts to **1020**, which is an increase of over two times compared to the figure of conducted procedures in 2010 (431 electronic procedures). Chart 21 gives a comparison of conducted procedures on annual basis.

Chart 21

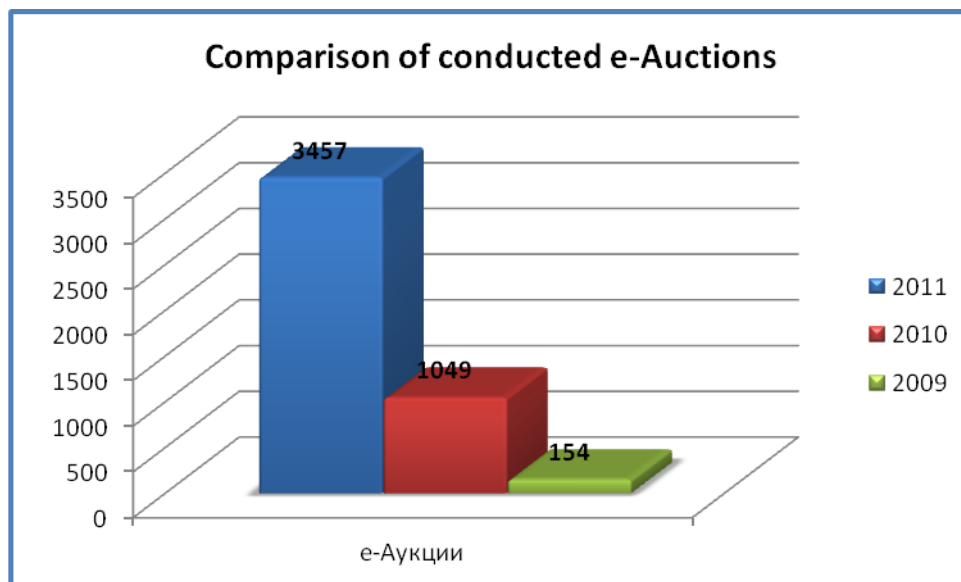


8.10 Electronic auctions

The number of published contract notices for procedures ending with e-auctions as a last stage in electronic procedures or in procedures previously conducted in paper form, amounts to **3505** in the year of 2011, which is an increase of almost 3 times compared to the figure of conducted auctions in 2010 (1049 auctions). This figure leads to the conclusion that in 2011, 45% (nearly one half) of published contract notices were chosen to end with an electronic auction. So as to reach the legally prescribed minimum use of e-auctions, the Bureau took measures, both legal and operational in the Electronic System for Public Procurement, which effect will be possible to be seen in the next report for the year of 2012.

However, it should be stated that in 2011, contracting authorities used e-auctions in an incomparably higher number of contract notices than in previous years in accordance with the policy of the Government of the Republic of Macedonia on increased use of electronic auctions in public procurement.

Chart 22



8.11 *Positive effects of carrying out e-auctions and e-procurements*

In the course of 2011, taking into account the data on conducted auctions, it may be concluded that 11% average savings were realized or **Denar 1.564.807.608,09** (or over EUR 25.000.000) in absolute terms, calculated as difference between the initial price at the e-auction (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 - with auctions having the criterion - lowest price, whereas with auctions having the criterion economically most advantageous tender calculated as the difference between their own initial price and the price after the auction of the tenderer with the most advantageous tender. It should be hereby emphasized that considered as aggregate value, savings are even higher, because in the abovementioned value auctions which were carried out by a single price are also calculated, thus when that value is presented as an aggregate value of the contract, savings have higher aggregate value. Compared to last year, a small increase in the savings percentage is marked (in 2010 the percentage amounted to 10%), and also a significant increase in the aggregate value of savings by over five times (last year the value of savings amounted to – Denar 295.151.100). In addition, realized savings may be listed here for the two concepts of auctions - lowest price or economically most advantageous tender. With auctions having the criterion - lowest price, savings amount to Denar 1.431.990.401 in absolute terms, whereas with auctions having the criterion economically most advantageous tender, they amount to Denar 132.817.207. The chart below gives an overview of realized savings by means of using electronic auction, whereas Table 18 gives a comparison of the aggregate value of savings realized in 2010 and 2011.

Chart 23



Table 18

Total value of generated savings by using e-auctions	
2010	295.151.100 den.
2011	1.564.807.608 den.

Of the published contract notices for procedures ending with an e-auction – 3.505, with 3107 (89%) there were at least 2 acceptable tenders and auctions were carried out, whereas with 398 notices the procedure ended with cancellation or contract was concluded with the only acceptable tenderer (chart 24). Of scheduled and conducted auctions on the system, with **65%** there is one lowering of the initial price, whereas the average number of lowering the price when carrying out auctions for 2011 amounts to approximately **25** times lowering of price.

Chart 24

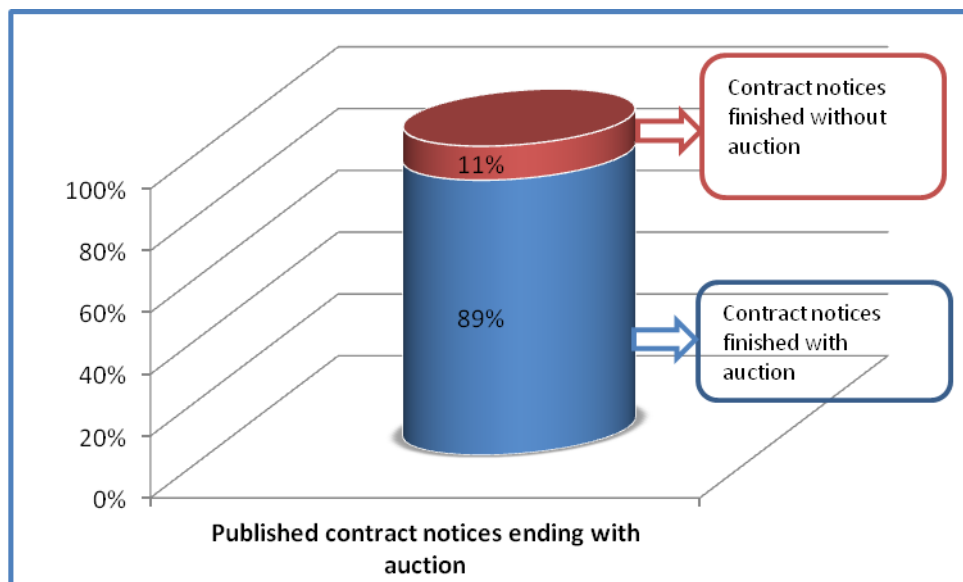
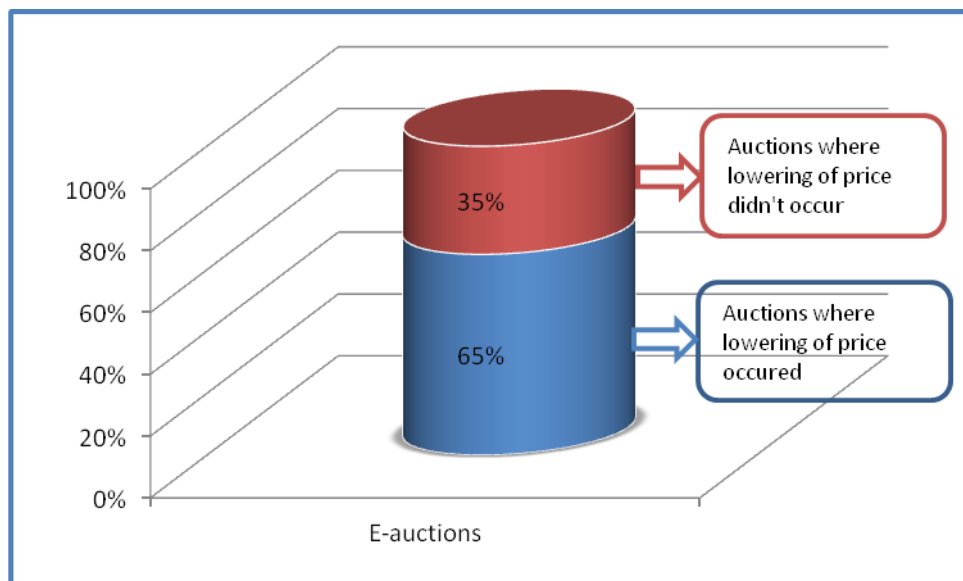


Chart 25

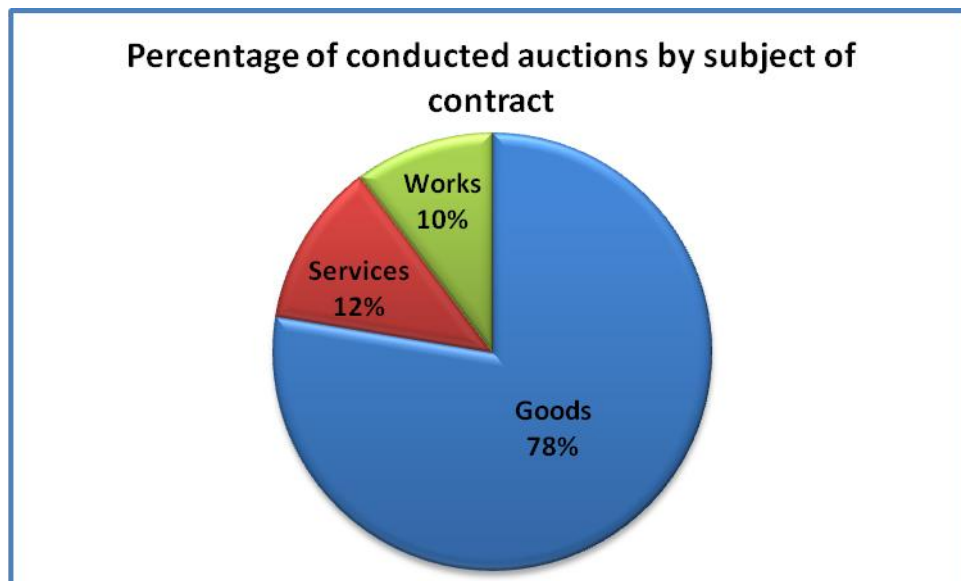


The average duration of an auction is one hour and twenty minutes (inclusive of continuations). The largest number of scheduled auctions on ESPP for a single day in the course of 2011 was on 26 December – 86 scheduled and carried out auctions. Of the analyses carried out during the auctions, tenderers most often begin lowering on average after the first fifteen minutes as of the start of the auction.

Number of re-scheduled auctions

- due to technical problems: 35
- upon decision of the State Appeals Commission: 17.

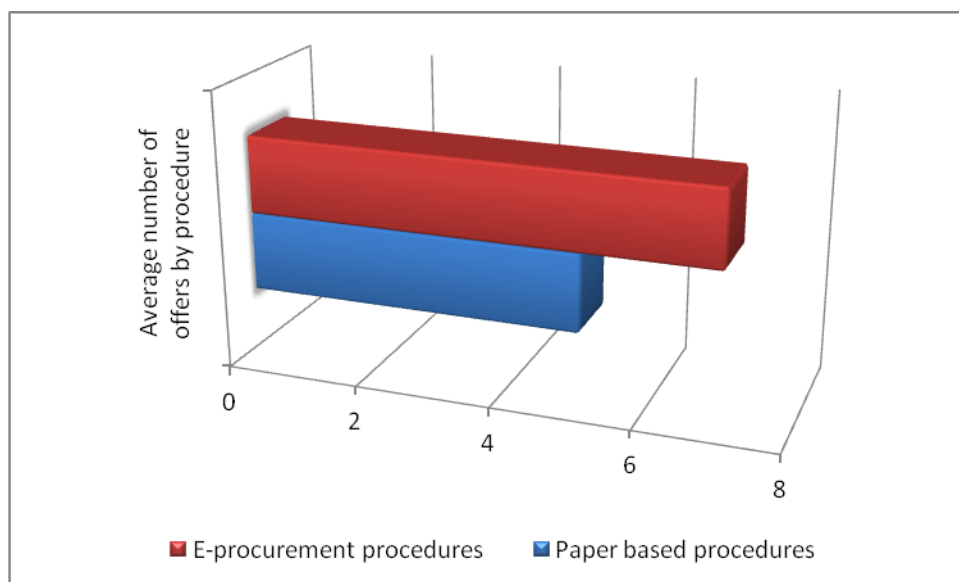
Chart 26



8.12 Competitiveness in contract award procedures

The average number of submitted tenders per contract may serve as competitiveness indicator, one of the main principles when awarding public contracts. The use of electronic resources when awarding public contracts gives positive results with this parameter as well. Namely, the average number of submitted tenders in procedures conducted in paper form in 2011 amounts to 5 tenders per procedure. In procedures conducted fully electronically, the average number of submitted tenders amounts to - 7 tenders per procedure. This also directs to the preparedness of economic operators to follow the steps and demands of the use of information and communication technology.

Chart 27



Tables 19 and 20 give summary of submitted tenders per contract by type of procedure and by type of the subject of the contract.

Table 19

Type of procedure	Average number of tenders per contract
Simplified competitive procedure without publication of a notice	2
Simplified competitive procedure with publication of a notice	4
Open procedure	4
Restricted procedure	5
Negotiated procedure with prior publication of a contract notice	3
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	1
Awarding public services contract for service category 17-27, with estimated value above EUR 20.000	2

Table 20

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

If we take into account all data per paper form procedure and per electronic procedure, it may be concluded that the level of competition increased compared to 2010 only with electronic procedures, whereby per 7 tenders were received on average (6 tenders in 2010). A decrease was noticed in the average of submitted tenders at open procedure, i.e. on average **4** acceptable tenders were submitted per contract (in 2010, this average was 5 tenders). The situation with the other procedures was nearly the same with respect to the average number of tenders, compared to last year.

9. Proposals for Improvement of the Public Procurement System

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

- strengthening the administrative capacities of PPB, with a view to maintaining the level of timely and high-quality completion of increased competences;
- further decreasing procedure cancellations and detailed explanation of the reasons for cancellation so that direct and precise measures could be taken to overcome the negative trend;
- adjusting the education programme for various target groups, and especially, distinguishing a separate training module for economic operators in accordance with the education experience gained until now;
- intensifying the training module for contracting authorities in the eve of the mandatory certification of procurement officers, which will be mandatory as of September 2012;
- rationalization of obligations to publish public procurement notices by abrogating the obligatory publishing of such notices in the Official Gazette of the Republic of Macedonia;
- implementation of new legal provisions with respect to the project “Small Public Procurement Portal”, technical dialogue, negative references, publishing concession and PPP notices and qualification systems;
- mandatory use of electronic auctions in 100% of the number of published notices for open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and for simplified competitive procedure with publication of a notice from 1 January 2012;
- continuous observation of new EU initiatives and regulations in the area of public procurement and harmonization of the national legal framework, in particular in the part of legal protection in contract award procedures;
- improvement of planning with an aim to lower the number of cancelled procedures and improvement of the use of negotiated procedures without prior publication of a notice on the basis of urgency;
- preparation of a 2012-2016 National strategy on the Public Procurement System;
- maximum use of the possibility to publish tender documentation on ESPP;
- further shortening the period for evaluation of tenders and selection of the winning tender;

- comprehensive and systematic approach when entering data in contract notices with a view to avoiding filling out a form for changes, that is, additional information, corrections in the notice and continuation of the duration of the deadline for tenders submission;
- finding a systematic solution to improve monitoring of the realization of public contracts;
- use of ESPP in accordance with detailed guidelines and manuals for use, due to the fact that any corrections whatsoever in the system databases is impossible to make.