



# REPORT

## on the Activities of Public Procurement Bureau in Functioning of Public Procurement System in 2014<sup>1</sup>

Skopje, May 2015

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# 1. Legal Framework in the field of Public Procurement in the Republic of Macedonia

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## 1.1. Law on Public Procurement

In the course of 2014, Law on Public Procurement was modified and amended on several occasions:

- Law on Modifications and Amendments to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 28/2014);
- Law on Modifications and Amendments to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 43/2014);
- Law on Modifications and Amendments to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 130/2014); and
- Law on Modifications and Amendments to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 180/2014)

These modifications and amendments to the Law on Public Procurement were aimed at regulating more precisely the amendments introduced in 2013, in particular the work of the Public Procurement Council and the procedures for request for consent, as well as other provisions which have contributed to improving the overall public procurement system in the Republic of Macedonia.

Most significant modifications and amendments to the Law in the course of 2014 were the following:



- provisions regulating the work of the Public Procurement Council and the request for consent were amended, thus more precisely regulating the manner of operations of the Council and the necessary documentation which the contracting authorities submit in the procedure for request for consent, and the manner of operations of the Council, the establishment of the Registry of Experts and the manner of inclusion of the experts were more precisely regulated;
- definitions on additional works, surplus, shortage and unforeseen works, as a need arising after the introduction of the obligation for the contracting authorities to request consent in the cases when a need for procurement of additional works arises;
- procurement of services was amended, whereby the characteristic of the services for temporary employment as non-priority was replaced, i.e. they became priority services, and specific types of services, such as maintenance of software solution and procurement of plane tickets, were precisely regulated;
- competences of the Public Procurement Commission were supplemented;
- manner of operations of the State Appeals Commission was amended and misdemeanor provisions, pertaining to its operations, were envisaged;
- definitions on preventive and adaptive maintenance of software solutions were envisaged and the manner of procuring them was precisely regulated.

## **1.2. Bylaws**

Bylaws, as part of the legal framework regulating contract award procedures, i.e. as instruments facilitating the implementation of the Law on Public Procurement, are adopted within the envisaged deadlines and

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

In January 2014, new Rulebook on the Manner of Using the Electronic System for Public Procurement, more closely regulates the manner of using the Electronic System for Public Procurement (ESPP) and describing, in details, the procedure for carrying out e-procurement and electronic auctions. Rulebook on the Manner of Using the Electronic System of Public Procurement (“Official Gazette of the Republic of Macedonia”, no. 57/2014) ceased to be valid with the entry into force of this Rulebook.

Amendments to the Law on Public Procurement and establishment of the Public Procurement Council gave rise to the need to create Registry of Experts and to stipulate the manner in which they will be included in the work of the Council in the decision-making process as regards the granting of consent. In May 2014, Rulebook on the Manner of Keeping the Registry of Experts (“Official Gazette of the Republic of Macedonia”, no. 72/2014) and the Rulebook on the Manner of Inclusion and Work of the Experts within the Council in the Decision-Making Process as regards Granting Consent (“Official Gazette of the Republic of Macedonia”, no. 72/2014) were adopted.

In addition to the adoption of these bylaws, in the course of 2014, Rulebook on the Contents of the Tender Documentation (“Official Gazette of the Republic of Macedonia”, no. 162/2014) and Rulebook on the Form and the Contents of the Procedure Outcome Report Form (“Official Gazette of the Republic of Macedonia”, no. 162/2014) were modified and amended, while Rulebook on the Form and the Contents of the Report on Failure to Resolve Lodged Appeal ceased to be valid (“Official Gazette of the Republic of Macedonia”, no. 162/2014).

Such amendments have contributed to harmonisation of the bylaws with the amendments to the Law on Public Procurement, hence,

the legal framework, on the basis of which public procurement system in the Republic of Macedonia is established, is completed.

## 2. Public Procurement Bureau

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### 2.1. Competences

Public Procurement Bureau takes care of the proper functioning of the public procurement system and, through its numerous competences, strives for modernising and improving it, to the end of enhancing its efficiency and functionality.

In order to successfully perform its competences, the Bureau has established, from the very moment of its incorporation, good communication with both the public and the private sector and it constantly enhances it. In fact, the Bureau increases the transparency on continuous basis by promoting new communication means, which provide for better accessibility to its available information for all interested entities.

At the end of 2012, Certificate Issuance Secretariat of TÜV SÜD Management Service GmbH awarded ISO 9001:2008 Quality Management Systems Certificate to the Bureau, confirming the quality organisational setup of the working processes and the modern methods of operations of the Bureau. In the course of 2013, as well as during 2014, the Secretariat controlled and checked the operations of the Bureau and submitted a report, proving that the Bureau continuously organises the working processes and the operations in a quality and modern manner.

## 2.2. Public Procurement Council

Pursuant to the Law on Modifications and Amendments to the Law on Public Procurement (“Official Gazette of the Republic of Macedonia“, no. 148/2013), Public Procurement Council was established within the Bureau.

The Council comprises five members, who decide exclusively upon the requests for obtaining consent and decides upon issues related to their competence. Members of the Council are appointed by the Government for a period of four years, with the right to reappointment, and they elect the President from among themselves. The Council is responsible to the Government for its operations.

The Council decides upon the request by a decision. The contracting authority has the right to appeal the decision to the State Appeals Commission without any compensation, within 5 days from the day of receiving the decision. In addition to the decision, the Council may also adopt a conclusion. In fact, the Council adopts conclusion when recording and deleting the experts from the Registry, extending the deadline to respond to the request, withdrawing the request for obtaining consent by the contracting authority, as well as in other cases when performing its competences for which adoption of decision is not envisaged.

The Council submits annual reports on its operations to the Government of the Republic of Macedonia.

In the course of 2014, several modifications and amendments were introduced as regards the competences of the Public Procurement Council, the harmonisation of these provisions with the Law on Administrative Servants, as well as the manner of operations of the Council and the experts, distribution of the cases and decision-making upon the requests for obtaining consent.

## 2.3. Prepared Opinions

One of the most significant competences of the Public Procurement Bureau is the delivery of opinions on provisions and application of the Law on Public Procurement, thus helping both the contracting authorities and the economic operators which participate in the contract award procedures.

The Bureau carries out this advisory function in several manners: by giving opinions to the letters the contracting authorities and the economic operators submit by mail, answering questions posed through the web contact form on the Bureau's website and the ESPP, as well as by answering questions posed through the User Support Center.

Continuing its practice established in 2013, in the course of 2014, the Bureau also kept on organising Open Doors Day, an event at which both the economic operators and the contracting authorities can give their opinions about the Law and the manner of its implementation in practice. Thus, the Bureau directly includes the immediate participants in the creation of the future public procurement policies, i.e. in the improvement of the public procurement system. In the course of 2014, total of 70 representatives from among the contracting authorities and the economic operators took part in the two events scheduled in March and November.

During 2014, 443 requests for opinion were submitted to the Bureau by mail and 865 requests were submitted through its web contact form.

In addition, the manner of carrying out the procedures the subject-matter of the contract of which is some of the specially regulated services under the modifications and the amendments to the Law, was also one of the frequent questions posed in the requests submitted by the contracting authorities. Public Procurement Bureau, in order to meet the needs of the contracting authorities and the economic operators

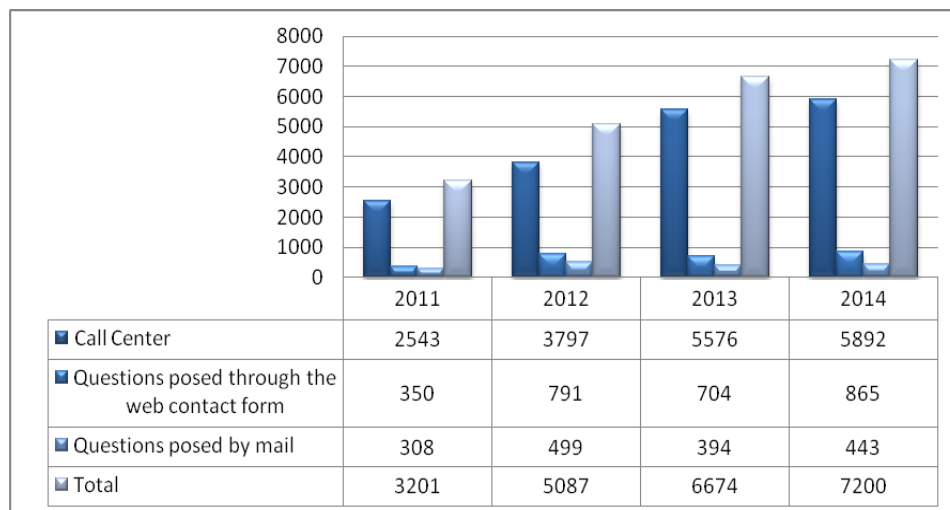
participating in the contract award procedures, continuously updates the most frequently posed questions on the Bureau's website, by adding new questions, as well as by amending and supplementing the answers in line with the amendments to the Law.

In the course of 2014 as well, employees with the Bureau provided timely and prompt advices through the User Support Center with respect to carrying out the public procurement procedures, at the same time providing expert assistance to both the contracting authorities and the economic operators.

User Support Center was available to the contracting authorities and the economic operators on daily basis in 2014. In the period from 1<sup>st</sup> January 2014 to 31<sup>st</sup> December 2014, the Center received total of 5,892 calls. 3,226 out of these calls were received by the Department for Monitoring the Public Procurement System and ESPP Management, while 2,666 calls were received by the Department for Normative Affairs, Training and International Relations.

The analysis of the submitted requests for opinions has shown that, in the course of 2014, the requests pertained to the amendments to the Law on Public Procurement which were adopted at the end of 2013, which also underwent certain modifications in the course of 2014. Hence, the most frequently posed questions pertained to the procedures for requesting consent from the Public Procurement Council, the manners of market research which the contracting authorities are to apply, amendments to the negotiated procedure without prior publication of a contract notice, as well as the new obligations of the Public Procurement Commission when carrying out contract award procedures.

Chart 1



According to the data shown in the Chart, it can be concluded that the total number of requests for opinions submitted by the contracting authorities and the economic operators to the Bureau is constantly increasing. Thereby, it is noticeable that the questions posed through the User Support Center continuously increase. Data presented in the Chart also show that both the contracting authorities and the economic operators used the direct communication with the Bureau's employees the most, which provided for prompt and simple way of resolving the practical problems they faced when carrying out the procedures.

## 2.4. Tender Document Models and Manuals

In order for the contracting authorities and the economic operators to be facilitated the application of the Law when carrying out the contract award procedures, the Bureau continuously prepares and adjusts the Manuals, the Guidelines and the tender document models and makes them available, on regular basis, to the public through its website.



In the course of 2014, tender document models were amended, i.e. they were updated, being adjusted to and harmonised with the modifications and the amendments to the Law on Public Procurement.

In addition, Department for Normative Affairs, Training and International Relations within the Public Procurement Bureau prepared new, second issue of the Manual on Public Procurement, considering that the Manual needed to be updated taking into account the numerous amendments to the Law on Public Procurement. At the same time, Manual on the Manner of Using the ESPP for the contracting authorities and the economic operators was continuously updated and harmonised with the novelties introduced to the system.

In December 2014, the Bureau, in cooperation with the Commission for Protection of Competition, prepared Guidelines on Detecting Bid Rigging, to the end of enabling the contracting authorities to become aware of bid rigging between the economic operators, i.e. establishing cartels, which can occur in the contract award procedures.

## 2.5. Negative References

Negative reference is an instrument limiting the right to participate in all future contract award procedures.

This instrument should protect the contracting authorities from the economic operators who are not serious, i.e. who do not adhere to the terms and conditions they offered in their tenders, as well as from the tenderers selected as contractors who do not respect the contractual obligations.

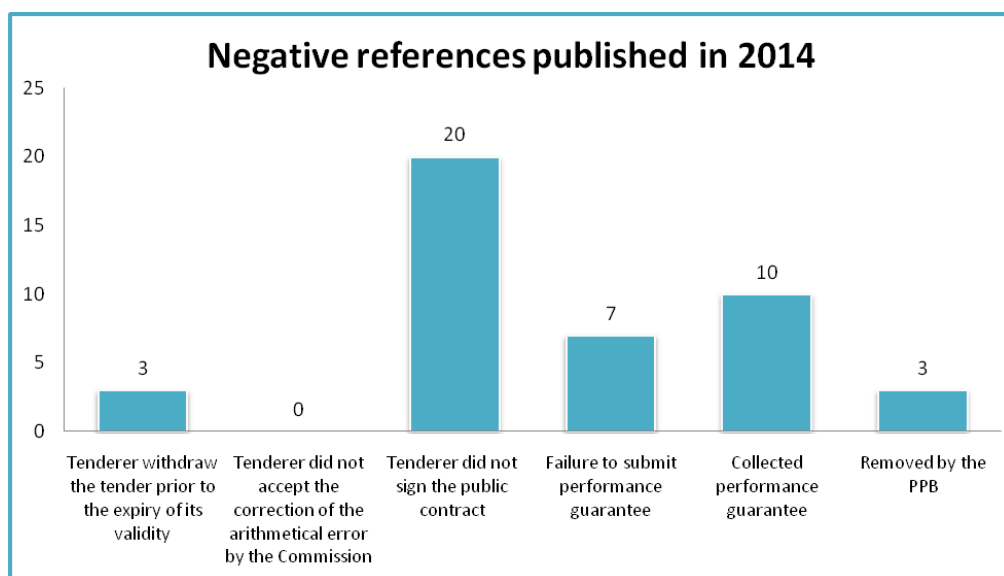
Hence, in the course of 2014, the contracting authorities published total of 40 negative references for the economic operators. Detailed analysis of the reasons due to which the negative references were published can be seen in the Chart below. The Bureau removed total of 3 negative references as follows:

- two negative references were removed upon request by the contracting authority, accompanied with a statement by the

person, having published the negative reference, given before a competent official body, pertaining to a made technical error;

- one negative reference was removed upon decision by the State Appeals Commission.

Chart 2.1



What is interesting is the fact that some tenderers, as a result of being published a negative reference, were pronounced the maximum period for not being allowed to participate, i.e. they were forbidden to participate in contract award procedures for a period of five years.

List of negative references is publicly available on the ESPP, and the terms and conditions for publishing a negative reference are clearly prescribed in the Law. Guidelines on Negative References was prepared, which is updated and available on the Bureau's website. Both the contracting authorities and the economic operators can use the Guidelines so as to obtain, in a prompt and simple manner, answers to all the questions and the dilemmas they face when implementing this instrument.

## 3. Public Procurement Training

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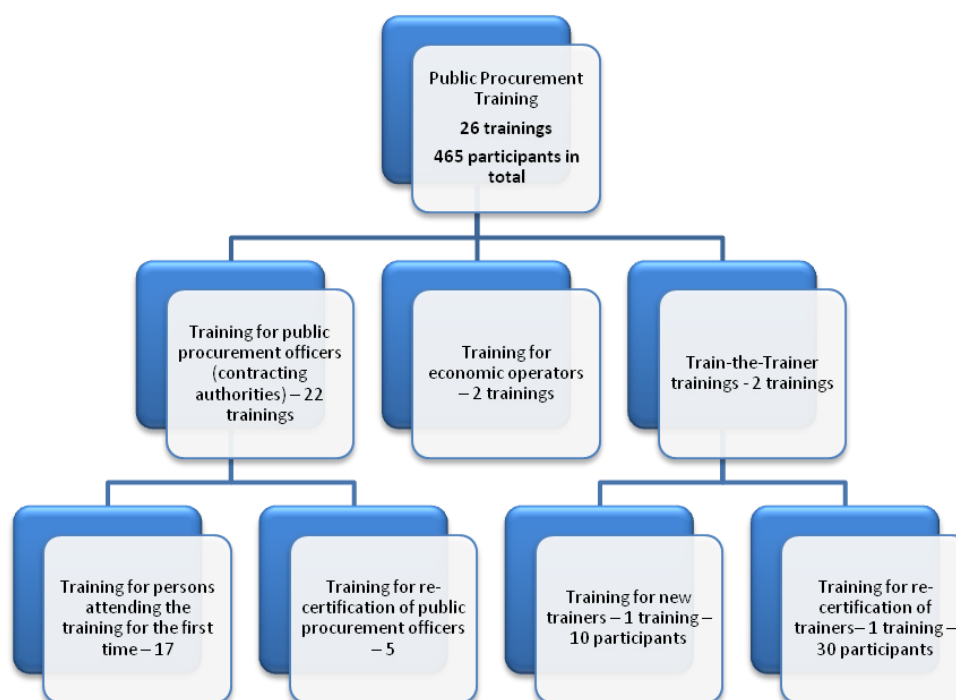
### 3.1. Data on Trainings Carried Out in 2014

Public Procurement Bureau, in line with its competences prescribed by the Law, carries out public procurement training. The main reason to launch this systemic activity is the efforts the Bureau puts in strengthening the capacities of both the contracting authorities and the economic operators for proper application of public procurement regulations. At the beginning of 2014, the Bureau adopted new internal manuals, all to the end of enhancing the training quality, as well as amending part of the manuals, in particular the following internal manuals:

- Internal Manual on Preparing and Carrying Out Public Procurement Training by the Public Procurement Bureau,
- Internal Manual on Lecturing the Contents prescribed in the Public Procurement Training Programme by the trainers and the Train-The-Trainer Programme,
- Internal Manual on Operations of the Commission Members for the Needs of Public Procurement Training,
- Internal Manual on the Manner of Organising and Carrying Out the Exam for the Participants in the Public Procurement Training,

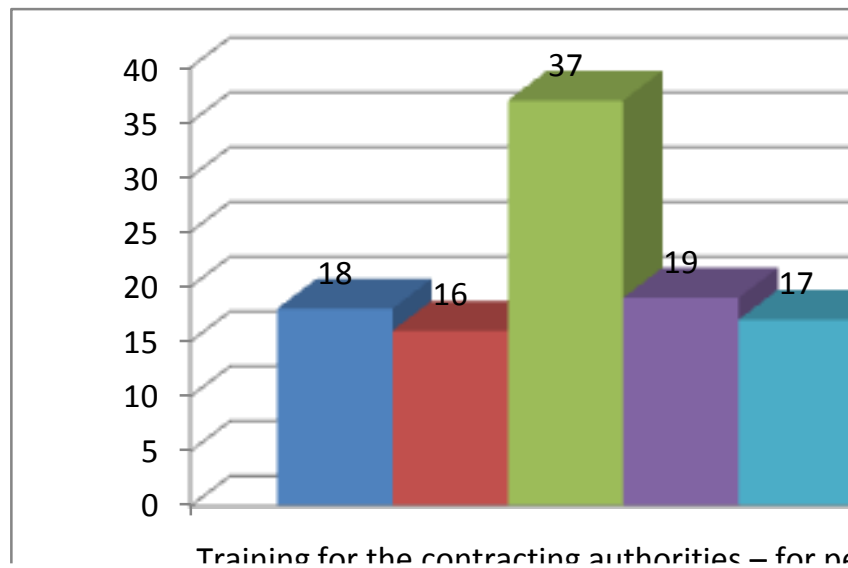
Due to the same reason, new internal procedures on quality were adopted in line with the requirements in the ISO 9001:2008 international standard, pertaining to the manner of organising the training and carrying out the written exam.

2014 Annual Plan on Public Procurement Training Realisation was adopted in January, and it was successfully realised. The Plan itself underwent several modifications in the course of the year, so as to add new training schedules and to change the existing ones, as a result of the moving of the Bureau to new premises.



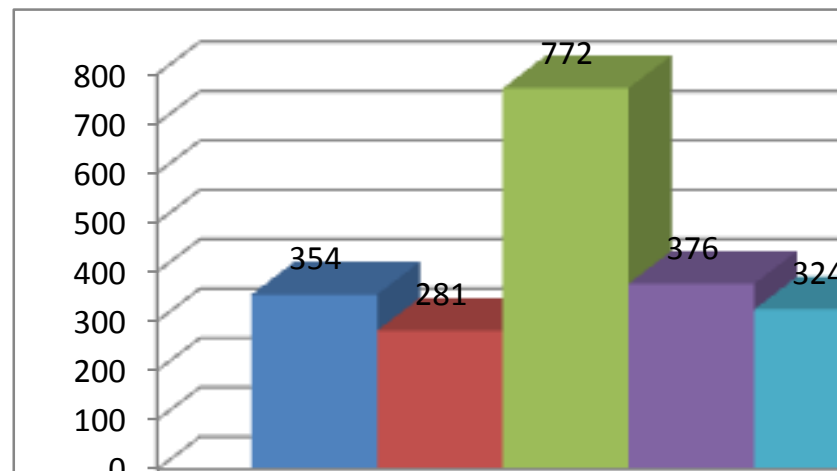
**Training for contracting authorities for the persons not having acquired the certificates for public procurement officers.** Trainings for contracting authorities (regular trainings for persons working in the field of public procurement so as to acquire the certificate for the first time, as well as trainings for re-certification of public procurement officers, the validity of whose acquired certificates has expired) and trainings for economic operators were held. Activities within the Programme were realised through lectures by public procurement trainers who acquired the trainer certificates in the course of 2014, i.e. they passed the written public procurement exam following the trainer re-certification training.

The Chart below gives a review of the trainings held in the last five years:



18 trainings were held in 2010, 16 trainings were carried out in 2011, 37 trainings were implemented in 2012, total of 19 trainings were held in 2013 and 17 trainings were carried out in 2014.

324 participants from the contracting authorities were trained and attended the training for the first time in 2014. The Chart below shows the persons who attended the training in the last five years:



**Training for recertification of public procurement officers at the contracting authorities.** Pursuant to the amendments to the Law in 2011, certificates for public procurement officers issued in line with the Law on Public Procurement (“Official Gazette of the Republic of Macedonia”, nos. 136/07, 130/08, 97/10 and 53/11) continue to be valid for the period for which they were issued, but no longer than the day of entry of the last amendments into force. In the course of 2014, 67 persons attended the training for Parts 14 and 15 under the Programme, while the other participants, who did not have extended the validity of the certificates yet, were invited to again attend the re-certification training, thus acquiring the re-certificates for public procurement officers. In the course of 2014, the Bureau planned five trainings intended for these participants:

**Training for economic operators.** During 2014, the Bureau scheduled 10 two-day trainings for the economic operators. However, economic operators showed poor interest in such trainings and only 2, out of the 4 trainings, were carried out, which were attended by 34 participants. Participants in the training for economic operators have no obligation to take the written exam in public procurement, hence they cannot acquire the certificate for public procurement officer. Therefore, the Bureau issues them certificates of attendance of public procurement trainings for the economic operators module.

**Train-the-trainer training.** In the course of 2014, the Bureau estimated that there was a need to carry out new train-the-trainer training, since the number of trainers on the existing list, who were interested in continuing their engagement as trainers, was not sufficient to meet the training needs in the coming years. Therefore, it was necessary to carry out the training in line with the Train-the-Trainer Programme. Quality of the trainings will thus be maintained, since they will be carried out by trainers having acquired certain experience in their realisation.

Public Procurement Bureau announced an open competition in two daily newspapers, as well as on its website. The training, scheduled in June, July and September, was attended by 10 participants, 9 out of which passed the written exam in public procurement for the trainers.

Lecturers at the training were professors from Justinian the First Faculty of Law - Skopje and the Faculty of Economics – Skopje, the competent state institutions in the respective areas (State Appeals Commission, State Anti-Corruption Commission, State Audit Office), foreign lecturer from an EU Member State on the topic of Public Procurement Directives, presentation skills, etc., to the end for the future trainers to acquire the adequate knowledge in the Law on Public Procurement and the other related laws and to be able to transfer that knowledge to the participants in the public procurement trainings.

In the period from 20<sup>th</sup> to 22<sup>nd</sup> November, training for re-certification of trainers was carried out. This training was organised since the validity of the certificates for trainers will expire at the beginning of 2015.

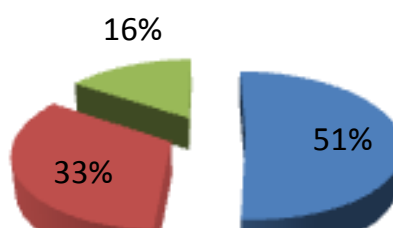
All persons having already acquired the certificates for trainers had the right to participate in the training and they were invited to take part in. The training comprised total of 14 lessons as envisaged under the Train-the-Trainer Programme, Chapters XI, XII, XIII and XIV, covering the novelties introduced in the legal framework in the Republic of Macedonia, the novelties in the ESPP, the novelties in the EU legal framework and the closing discussions. Total of 30 persons attended this training. Lecturers from the Faculty of Economics, foreign lecturer from an EU Member State, lecturer on presentation skills and lecturers from the Public Procurement Bureau took part in the lectures.

**Measuring the satisfaction of the participants in the trainings.** Public Procurement Bureau continuously measures the satisfaction of the participants in the public procurement trainings, so as to constantly improve and enhance the training quality. According to the responses received by the participants in the training, the Bureau

continuously undertakes respective improvements of the overall training and education system.

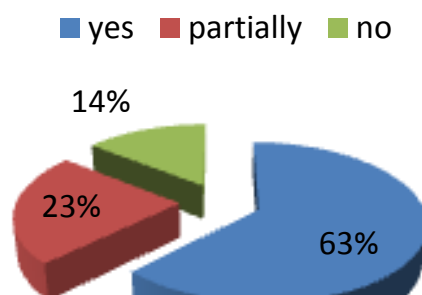
At the same time, the Bureau also analyses the application in practice of what is presented in the course of the training, after the commencement of the working tasks and duties and the change in the manner of performing the tasks and the duties, arising from the Law on Public Procurement, following the training. Participants in the training responded that *the number of cancelled procedures due to major shortcomings in the procedures or omissions in the tender documentation reduced following the training*, as follows:

**Did the number of cancelled procedures due to major shortcomings or omissions in the procedures or omissions in the tender documentation reduce following the training?**



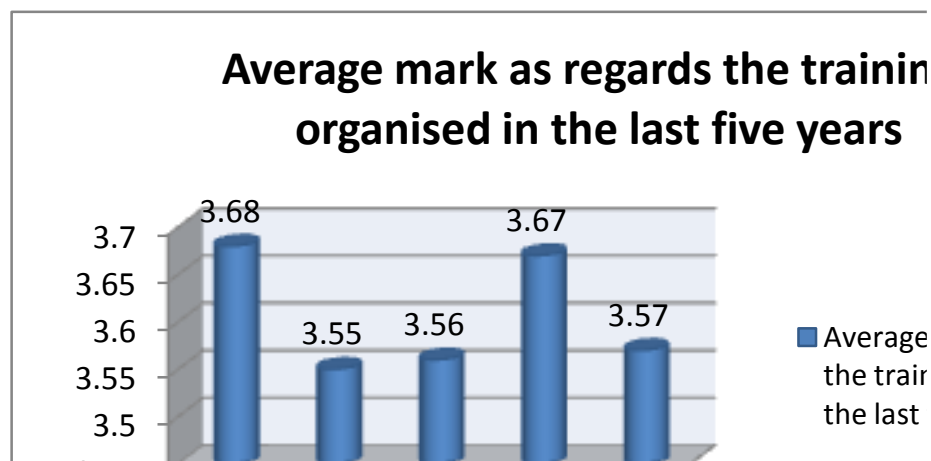
As regards the changes made in the manner of operating following the training, the participants responded as follows:

**Did you make any changes in the manner of operating following the training?**





This is a comparative table regarding the measurement of satisfaction of the participants in the trainings in the past years:



According to this comparison, it is evident that the Bureau has a continuous satisfactory average above 3.5 in relation to the highest possible average of 4, as well as that it needs to continuously improve the organisation of the trainings so as for them to retain the same or attain a higher level.

**Electronic Training System.** Electronic Training System commenced to operate at the beginning of 2012 and its main purpose is to be used for log in of the participants in the trainings, keeping records on attendance, evaluation of the trainers, filling in evaluation tests, uploading presentations and exercises of the trainers, as well as for passing the written exam.

The Bureau constantly upgraded and improved the system, so as for it to provide for more efficient trainings. The written exam is carried out fully electronically, and the results thereof are obtained immediately after the exam is completed. In the course of 2014, overall training and the written exam were carried out 100% electronically, without any paper-based examination.

**Other Activities of the Training Unit.** In the period from 25<sup>th</sup> March to 24<sup>th</sup> April 2014, Public Procurement Bureau carried out training

for the contracting authorities and the economic operators throughout different cities in the Republic of Macedonia. The training was organised by the Training Unit, while it was carried out by the Bureau's employees.

The training covered the modifications and the amendments to the Law on Public Procurement, focusing on the amendments that applied in May 2014, pertaining to the request for consent by the Public Procurement Council. The Bureau carried out this training so as to inform the persons working at the contracting authorities as public procurement officers or as public procurement commission about the obligations they have, as well as the persons at the economic operators working on the preparation of the tenders in the contract award procedures.

Each training comprised 4 lessons and it was held in the following cities: Tetovo, Gevgelija, Bitola, Ohrid, Kavadarci, Stip, Skopje, Prilep, Negotino, Kicevo, Ohrid, Bitola.

The training was attended by more than 100 participants from different contacting authorities and economic operators. All participants in the training positively accepted such Bureau's activity.

At the end of 2014 and at the beginning of 2015, Public Procurement Bureau, Public Procurement Council and State Appeals Commission held one-day trainings for the persons at the contracting authorities, focusing on the modifications and amendments to the Law. The trainings took place in the following cities: Skopje, Ohrid, Tetovo, Bitola, Stip, Negotino and Gevgelija.

The trainings were logistically supported by the Public Procurement Bureau, and the Public Procurement Bureau, the Public Procurement Council and the State Appeals Commission had one representative each participating in the trainings. The trainings were one-day event, comprising three sessions of presentations by the representatives from the three institutions, with sufficient time for Q&A session.

In June 2014, Public Procurement Bureau held a workshop for the experts involved in the work of the Council. The workshop took place in the building of the Government of the Republic of Macedonia. Opening speech at the workshop was given by the Prime Minister of the Republic of Macedonia, Nikola Gruevski MA, the Deputy Prime Minister and Minister of Finance, Zoran Stavreski MA, the Director of the Public Procurement Bureau and the President of the Public Procurement Council. Topics elaborated on the workshop were divided in three sessions, as follows:

- introduction to the Law on Public Procurement and the Electronic System for Public Procurement,
- experts' role in the work of the Public Procurement Council and guidelines on preparation of the opinions, and
- system for management of the requests for obtaining consent from the Public Procurement Council.

The Bureau held this workshop in order to timely inform the experts, who will prepare the opinions, about the work of the Council, in particular their competences and the manner in which the work will be organised. The lectures were attended by 127 participants, i.e. experts, who were accepted as such by that moment by the Public Procurement Council.

## 4.Data Obtained from Other Institutions

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### 4.1. State Appeals Commission

State Appeals Commission, pursuant to the Law on Public Procurement, is competent to decide upon appeals in the contract award procedures, as well as appeals in the procedures for awarding contracts for concessions and public private partnership and appeals to the decision adopted by the Public Procurement Council.

In fact, State Appeals Commission decides on the legality of the actions and the omissions to undertake actions, as well as the legality of the decisions which are adopted as individual legal acts in the contract award procedures. In addition, it also decides on other requests which are permitted to be submitted in the review procedures by the parties in the procedure.

According to the data from the State Appeals Commission<sup>2</sup>, total of 591 cases were submitted and registered in 2014, 575 cases out of which were resolved. 16 cases were unresolved due to incomplete documentation.

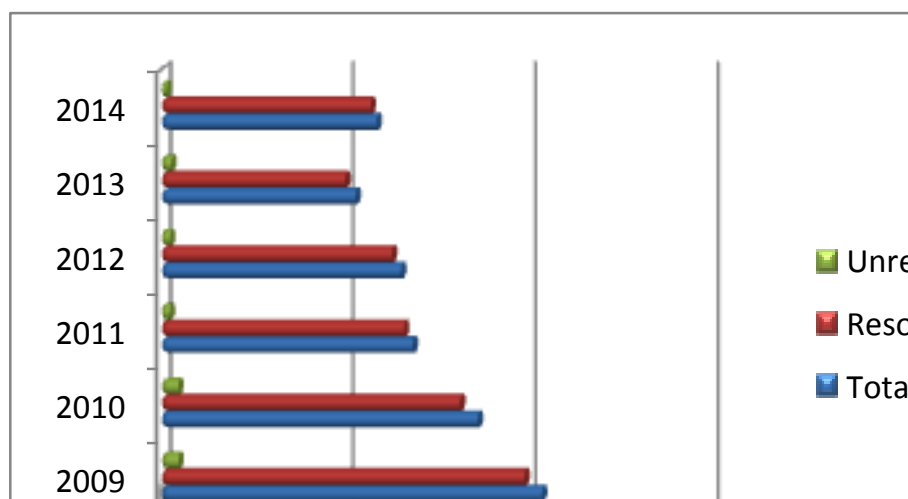
110 cases out of the 575 resolved cases were appeals lodged against the decisions adopted by the Public Procurement Council. In addition, 66 lawsuits were filed against the State Appeals Commission's decisions before the Administrative Court in the course of 2014.

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<sup>2</sup> Data, which are part of this Report, are obtained from the State Appeals Commission.

The Chart below shows data obtained from the State Appeals Commission. For comparison purposes, data from the previous 5 years are also included.

Chart 1



Data in the Chart show a downward trend of the total number of cases submitted, as well as of the number of resolved and unresolved cases.

However, compared to 2013, increase in the number of submitted cases, as well as resolved cases, in 2014 is evident. The unresolved cases category shows decline in the number of unresolved cases.

Number of submitted cases in 2014 increased, taking into account the new competence of the State Appeals Commission starting 1<sup>st</sup> May 2014, pertaining to the deciding upon the appeals lodged against the decisions adopted by the Public Procurement Council. In fact, 110 appeals out of the 575 resolved appeal cases were appeals lodged against the decisions adopted by the Public Procurement Council.

In addition, according to the data obtained from the State Appeals Commission, total of 12 requests for continuation of the procedure were submitted in 2014. 11 requests were refused, 1 request was rejected, and none of the requests was accepted.

Chart 2

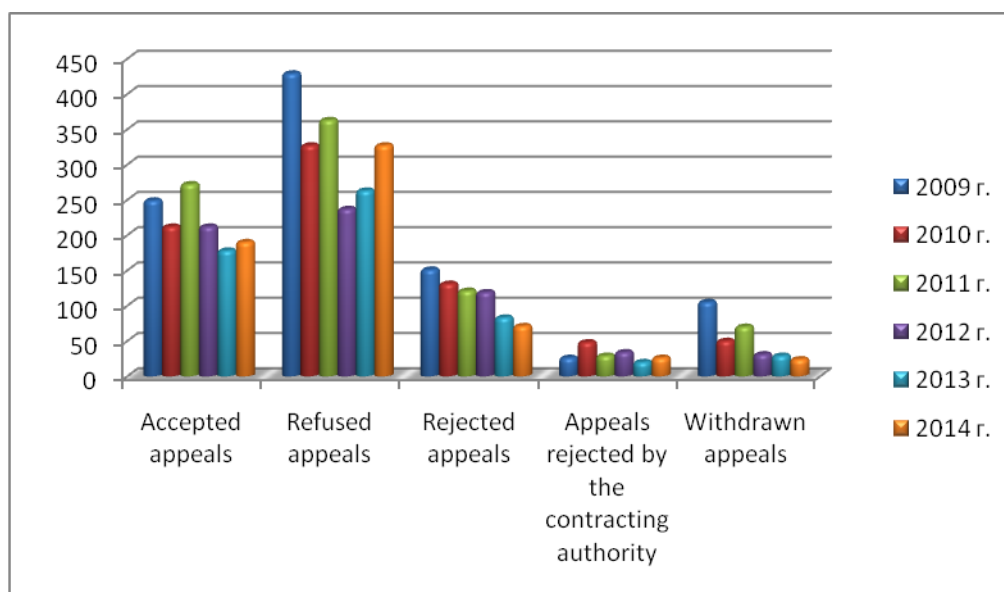
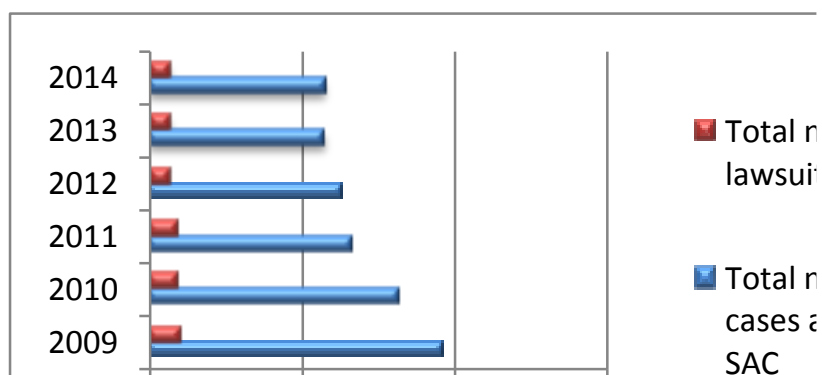


Chart 2 shows the data from 2009 to 2014 pertaining to the number of accepted appeals, the number of refused appeals, the number of rejected appeals, the number of appeals accepted by the contracting authority, as well as the number of withdrawn appeals. By comparing the data, it could be noticed that there is reduction with respect to all categories, except the category of appeals accepted by the contracting authority, where slight increase is noticed compared to the number of appeals accepted by the contracting authority in 2013.

Chart 3



*Total number of filed lawsuits against the decisions of the State Appeals Commission was the same as in 2013.*

As for the number of lawsuits against the decisions adopted by the State Appeals Commission filed before the Administrative Court of the Republic of Macedonia, Chart 3 shows the data from 2009 to 2014, whereby it could be noticed that the total number of lawsuits filed is the same as in 2013, i.e. 66 lawsuits were filed. Number of cases acted upon by the State Appeals Commission increased by two cases compared to 2013.

#### 4.2. Administrative Court of the Republic of Macedonia

Administrative Court of the Republic of Macedonia is in charge of acting upon the lawsuits filed by the parties that are not satisfied with the decisions adopted by the State Appeals Commission. Taking this competence into account, this institution is of great importance as regards the review procedures in the contract award procedures.

Public Procurement Bureau includes the data on the lawsuits against the decisions of the State Appeals Commission filed before the Administrative Court in the annual reports for the purpose of more precise perceiving of the efficiency and the effectiveness of the review procedures in the field of public procurement. These data are presented in Chart 4 below:

Chart 4

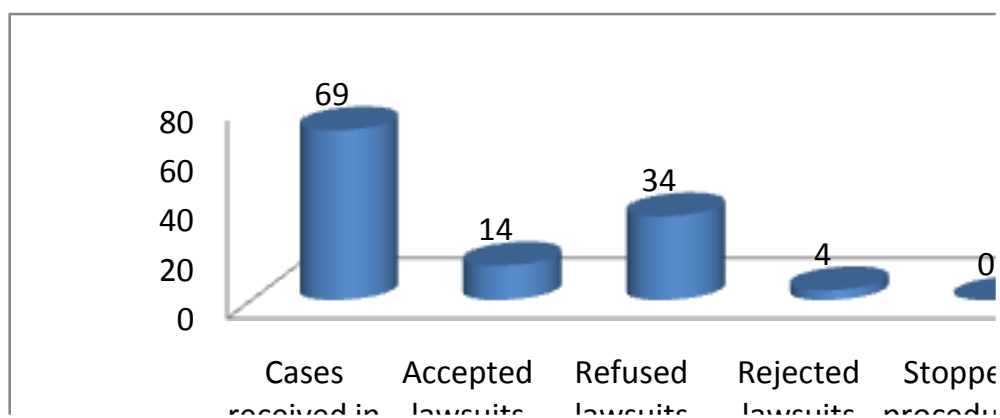
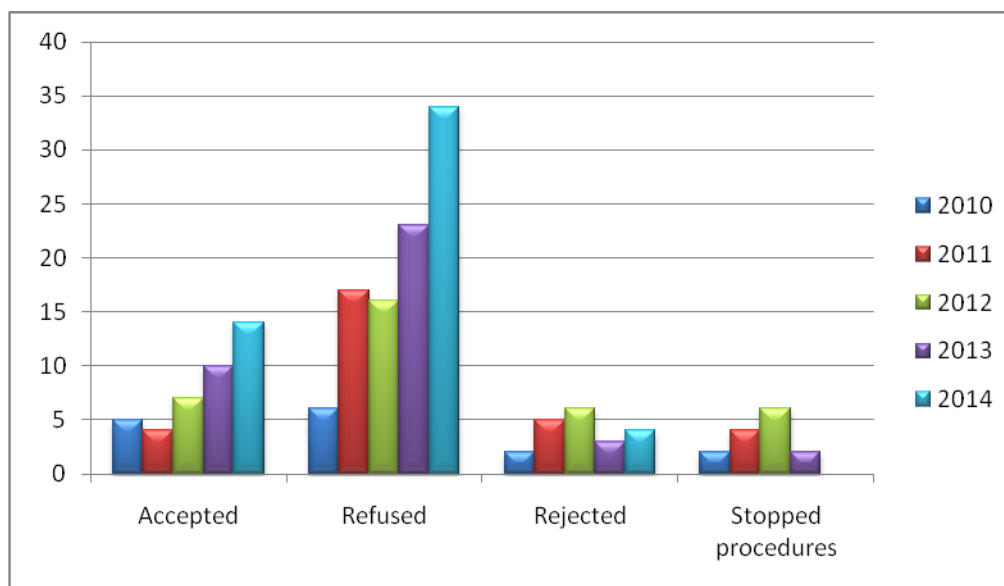


Chart 5



*Increased number of accepted lawsuits and increased number of refused lawsuits compared to the previous years.*

Chart 5 shows the data regarding the number of accepted lawsuits, refused lawsuits, rejected lawsuits and stopped procedures compared to the previous four years. 2014 data, compared to the data from 2013, 2012, 2011 and 2010, point out to an increased number of accepted lawsuits, as well as to an increased number of refused appeals. In addition, number of rejected lawsuits increased compared to 2013. As for the number of stopped procedures, there were 0 stopped procedures in 2014.

### 4.3. High Administrative Court

High Administrative Court decides upon the appeals lodged against the decisions of the Administrative Court adopted in first instance, pertaining to annulment of the decisions reached by the State Appeals Commission.

*No decisions were reached to revoke the decisions of the State Appeals Commission.*

According to the data supplied from the High Administrative Court upon request by the Public Procurement Bureau, in the course of



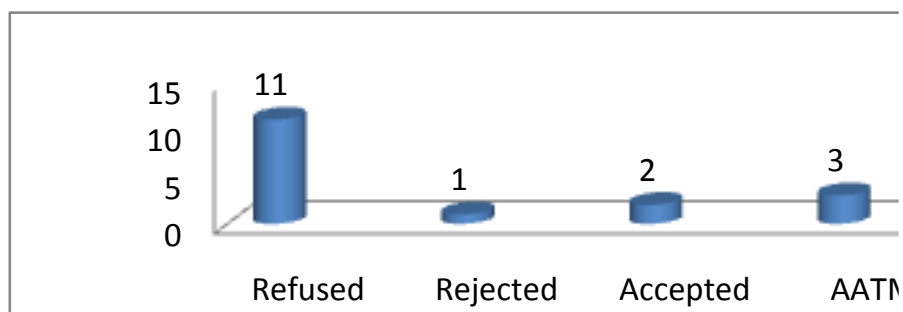
2014, the High Administrative Court acted upon resolving 17 cases, 14 out of which were administrative appeals, while the other 3 were administrative appeals with temporary measures.

With respect to 11 AA cases, decisions were reached to refuse the appeals and the decision of the Administrative Court was confirmed, in 1 (one) case the appeal was rejected, in 1 (one) case the appeal was accepted and the decision of the Administrative Court was reversed and in 1 (one) case the appeal was accepted, the decision of the Administrative Court was revoked and the case was remitted for re-examination to the Administrative Court.

As for the 3 (three) registered AATM cases, decisions were reached to refuse the appeals, and the decisions of the Administrative Court were confirmed. Regarding the concerned cases, no decisions were reached to revoke the decisions of the State Appeals Commission.

Total of 17 cases, out of the above-mentioned number of cases, were resolved in the course of 2014. These data are presented in Chart 6 below:

Chart 6



#### 4.4. State Audit Office

State Audit Office is the supreme audit institution in the Republic of Macedonia, carrying out, among other things, regularity audit and performance audit in public procurement. When carrying out regularity audit, among other things, the audit teams examine and assess the use of

*Data obtained from SAO are of especial significant to the Bureau which, on the basis of such data, plans the undertaking of respective measures to eliminate the irregularities.*

funds in line with the legal regulations. Hence, the manner of planning, carrying out and implementing public procurement procedures carried out in the auditing period are inspected.

Data received from the State Audit Office is of especial importance to the Bureau which, on the basis of such data, plans the undertaking of respective measures, aimed at eliminating the detected irregularities at the contracting authorities, subject to audit.

State Audit Office prepares Annual Report on Audits Carried Out and submits the results therefrom to the Parliament of the Republic of Macedonia for consideration by 30<sup>th</sup> June in the current year at the latest for the previous year. As regards the information published in the concerned Report, the Public Procurement Bureau can use them for its purposes.

### 4.5. State Anti-Corruption Commission

In the course of 2014, State Anti-Corruption Commission acted upon total of 25 charges lodged for possible corruption in the field of public procurement regarding the contract award procedures carried out by the contracting authorities. With respect to 6 of the concerned cases, State Anti-Corruption Commission considered for there to be grounded suspicion for criminal deed committed in performing ex-officio duties and authorities by the responsible persons at the contracting authorities. In fact, State Anti-Corruption Commission raised 6 initiatives before the Public Prosecutor's Office of the Republic of Macedonia for initiating a procedure for criminal prosecution of elected or appointed officials, officers or responsible persons at the public enterprises, the public institutions or other legal entities managing state-owned capital due to existence of basis for suspicion for committed criminal deed "Abuse of Official Position and Authorisation" referred to in paragraph 3 in Article

353 of the Criminal Code of the Republic of Macedonia, because they failed to ensure, while carrying out public procurement procedures, proper, earmarked and legal use and protection of the financial resources of the institutions in which public procurement procedures were carried out. It should be pointed out that the procedures on the basis of the above-mentioned initiatives are ongoing.

Should one compare the previous years (2012, 2013), it can be concluded that continuous downward trend of lodged charges is evident in relation to the previous period (there were even 45 charged lodged in 2011). In fact, 29 charges for possible corruption were lodged in 2012, only 14 charges were lodged in 2013, and 25 charges for existence of suspicion for corruption in public procurement were lodged in 2014. It could be concluded that public procurement training for the contracting authorities, which the Public Procurement Bureau carries out, covering topics that refer to prevention of corruption in public procurement and conflict of interest, provides for them to be better informed and contributes to drop in the cases of corruption in public procurement.<sup>3</sup>

#### **4.6. Commission for Protection of Competition**

Free competition is of special importance for all states, the economies of which are based on the free-market principle, where distribution of funds is a result of the relation between the supply and the demand on the market. Right to competition, as one of the European Union and its Member States internal market policies, as well as the policies of all countries having established the free market principle in their economies, is aimed at preventing certain practices and business

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<sup>3</sup> Data are obtained from the State Anti-Corruption Commission.

activities on the market, which can place certain companies in an unjustifiably more favourable position in relation to other companies.

Such placing of certain companies in a more favourable position than the other companies when awarding public contracts would also bring into question and jeopardise the free competition among the companies.

Legal implementation of contract award procedures, especially adherence to the principle of competition among economic operators and equal treatment and non-discrimination of economic operators, is a subject of interest to the Commission for Protection of Competition and, in the course of 2014, it detected no severe or lesser offences regarding the competition at public procurement and no fine was pronounced for a committed offence, i.e. no collusive contracts between companies when submitting the tenders in contract award procedures were determined.

Taking into account that Commission for Protection of Competition issued two decisions on collusive contracts between the companies since 2012, the above-mentioned information represents a decrement, especially taking into account 2013, when Commission for Protection of Competition detected no severe or lesser offences as regards the competition at public procurement, i.e. it detected no collusive contracts between the companies when submitting the tenders in contract award procedures.<sup>4</sup>

It should be mentioned that the Public Procurement Bureau has been receiving same or similar data as regards competition protection from the Commission for Protection of Competition for several years in a row now. Indicated data do not fully correspond to the actual situation and information the Bureau receives from the economic operators, which

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<sup>4</sup> Data are obtained from the Commission for Protection of Competition.

complain very often about the abnormally low prices or the limitation of the competition on other bases.

It could be concluded that more comprehensive analysis is needed for the reasons thereof, whether it is a matter of insufficient awareness of the economic operators as where and whom they should turn to when they believe real competition in the contract award procedure is hindered.

## **5. Cooperation with Other Institutions**

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### **5.1. Cooperation with Institutions in the Republic of Macedonia**

With respect to the good cooperation the Public Procurement Bureau continuously has with Justinian the First Faculty of Law, and regarding its cooperation with the Faculty of Economics – Skopje commenced in the course of 2014, mostly pertaining to public procurement training, to the end of intensifying the cooperation in the field of training and other areas of interest to the Public Procurement Bureau, as well as the Faculty of Law and the Faculty of Economics, Public Procurement Bureau proposed for the mutual cooperation to be officialised by signing Memorandum of Cooperation with both Faculties.

Signatories of the Memorandum have agreed to stimulate and develop the mutual cooperation and exchange the knowledge in the field of training on the basis of mutual benefit.

Mutual cooperation and exchange of knowledge will be implemented on the basis of the existing legal regulations and the available financial resources. At the same time, the signatories have also agreed to strive for encouraging favourable conditions in realising their cooperation and exchange of knowledge, to put efforts in identifying new areas of common activities and, if considered adequate, to strengthen and expand the existing programmes.

Memorandum signatories will also strive for encouraging mutually useful educational activities, which will include persons with associate title, i.e. teaching – academic title, to teach, carry out research and develop mutually useful programmes and to encourage cooperation which will facilitate the exchange and the dialogue aimed at the education management, methods, assessment of the achieved results

and the research, as well as to strengthen both the administrative and the institutional capacities of the contracting authorities by organising and carrying out specialised public procurement training.

### **5.2. Cooperation with International Institutions related to Public Procurement and International Cooperation within the process of EU Integration**

Within its competences as regards cooperation with international institutions and other foreign entities on matters related to the development of the public procurement system, representatives of the Public Procurement Bureau, upon invitation by certain international institutions, had the possibility, in the course of 2014, to exchange experience with representatives of these institutions, as well as representatives of other participating countries. Hence for instance, in the period from 27<sup>th</sup> to 30<sup>th</sup> May 2014, Tenth Public Procurement Knowledge Exchange Platform was held in Istanbul, Republic of Turkey, where Public Procurement Bureau actively participated, holding a presentation on the topic “Reforms in the field of Public Procurement in the Republic of Macedonia”. This event was organised by the Public Procurement Authority of the Republic of Turkey, and was supported by the World Bank, the Asian Development Bank, the Islamic Development Bank, the European Bank for Reconstruction and Development, SIGMA and the European Investment Bank.

In the course of 2014, the Bureau continued cooperating with SIGMA representatives as well. “SIGMA Training in New EU Directives” Workshop was organised on 16<sup>th</sup> and 17<sup>th</sup> June 2014 in Skopje, attended by representatives from the State Appeals Commission and employees from the Public Procurement Bureau. SIGMA also organised Workshop on legal disputes “Procedures Allowing Negotiations and Exceptions for

“Internal” Procurement” on 3<sup>rd</sup> and 4<sup>th</sup> November 2014 in Skopje, in which representatives from the State Appeals Commission and employees from the Public Procurement Bureau took part. At the same time, other preparatory activities aimed at realisation of the activities envisaged under the “2014 – 2018 Strategic Priorities of the Public Procurement Bureau for Further Development of Public Procurement System in the Republic of Macedonia“ were implemented together with SIGMA.

Taking into account that continuous harmonisation with the European Union Acquis is ongoing, representative from the Public Procurement Bureau participated in the meeting organised by the Regional School of Public Administration (ReSPA), held on 15<sup>th</sup> and 16<sup>th</sup> January 2015 in Warsaw, Republic of Poland, covering two topics: e-procurement and managing irregularities in carrying out public procurement procedures.

Advisory Committee on Public Contracts is an advisory body of the European Commission, at which various problems encountered by the Member States, pertaining to public procurement, are discussed. In addition, this Committee discusses about modernisation of the public procurement system, the new directives and solutions to be introduced in the EU Acquis, where Republic of Macedonia, as a candidate country, takes part as an observer. Representatives of the Republic of Macedonia in the Statistical Working Group and the E-Procurement Working Group are usually Public Procurement Bureau employees. In the course of 2014, representatives from the Public Procurement Bureau participated as observers in the public procurement working group and the e-procurement working group of the Advisory Committee on Public Contracts in Brussels, the Kingdom of Belgium.

Public Procurement Bureau also manages the Working Group under Chapter 5. Public Procurement within the “National Programme for Adoption of the Acquis Communautaire”. In the course of 2014, the Working Group realised the envisaged activities. In addition, the Bureau



also took active participation in the work of the Working Group under Chapter 23 - Judiciary and Fundamental Rights through activities aimed at prevention of corruption in public procurement. During 2014, the Bureau also took part in the work of the Inter-Ministerial Body for Coordination of Activities against Corruption, having as its members all relevant institutions in the Republic of Macedonia in this area.

It could be underlined that, during 2014 as well, the Public Procurement Bureau continued cooperating with the institutions in charge of monitoring the public procurement systems in southwest Balkan countries, all to the end of further harmonisation with the European legislation and application of the good practices in the field of public procurement.

## 6. Use of the Electronic System for Public Procurement

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Increased use of electronic public procurement or e-procurement is one of the important goals of the Europe 2020 Strategy. New EU Directives on public procurement introduce mandatory use of e-procurement starting 2016, as follows:

- mandatory publication of both the contract notices and the tender documentation online (e-notification and e-access to tender documentation) by March 2016;
- mandatory submission of tenders electronically (e-submission) for the contract notices published by the central purchasing bodies (contracting authority awarding public contracts or concluding framework agreements on behalf and for the account of one or more contracting authorities) by March 2017;
- mandatory submission of tenders electronically (e-submission) for the contract notices published by all contracting authorities by September 2018.

Introduction of the Electronic System for Public Procurement has provided a possibility to all contracting authorities in the Republic of Macedonia to carry out their contract award procedures electronically. In fact, contract notices are mandatory published on the ESPP, together with the tender documentation which the registered economic operators can download. However, taking into account the fact that carrying out the procedures electronically is on voluntary basis, number of e-procurement procedures being carried out from year to year is relatively small. The expectations are that the number of e-procurement procedures can increase by introducing a legal obligation, as well as by holding continuous training at which the advantages and the good practices of applying them will be pointed out and presented.

Having in mind the main features of the Electronic System for Public Procurement - EASIER, FASTER, CHEAPER, we are confident to say that e-procurement simplifies the manner of carrying out the

procedures, contributes to achieving better results, reduces the duration of the procedures and lowers the costs by improving the efficiency of the public expenditures. In addition, e-procurement increases confidence in the public procurement system, which is noticeable through the increased registration on the ESPP and the participation of SMEs.

In the light of this context, the European Commission, in cooperation with external consultants, created report on providing objective data on the features of different platforms used for e-procurement in the EU, all to the end of ensuring solutions to the existing problems and creating e-procurement good practices. The Golden Book of e-Procurement Good Practices comprises 24 good practices, arising from the observations and the analyses of 28 platforms used for e-procurement in 18 EU Member States. Electronic System for Public Procurement in the Republic of Macedonia meets 17 out of these 24 goods practices, as follows:

- Practice 1: Publication of contract and contract award notices on a single point of access platform as regards e-procurement
- Practice 2: Economic operators and contracting authorities benefit from continuous trainings and easy-to-use system
- Practice 3: Activities in place to promote the use of e-procurement
- Practice 4: Economic operators may register on the platform without providing all the required information (required and optional boxes)
- Practice 5: Platforms support English in addition to the official language of the country
- Practice 6: Economic operators use a username and a password to log in to a platform
- Practice 7: Economic operators can search contract notices using a set of advanced search criteria
- Practice 8: Economic operators can evaluate whether the tender documentation is relevant for them, on the basis of the information available in the contract notice

- Practice 9: Economic operators are notified of any changes to the tender documentation
- Practice 10: Contracting authorities can re-use information contained in their profile to create contract notices, tender specifications and contract award notices
- Practice 11: Economic operators receive a proof of delivery upon successful submission of their tenders
- Practice 12: Economic operators can resubmit their tenders up until the submission deadline
- Practice 13: Platforms keep tenders encrypted until the opening session
- Practice 14: Contracting authorities can evaluate part of their tenders automatically based on pre-determined criteria
- Practice 15: Platforms clearly indicate all costs related to the use of the platform
- Practice 16: Economic operators can create tenders using a core set of structured data and unstructured documents
- Practice 17: Economic operators have the freedom to choose the platform of their preference, without being locked in by the choice of the contracting authority.

As for the other practices the Electronic System for Public Procurement does not meet – part of them are not relevant or are not in line with the Law on Public Procurement Law, and part of them are planned to be implemented in future as new system functionalities and improvements.

ESPP does not meet the following practices: economic operators can register on the platform without having to provide country-specific information, economic operators complete their registration on a platform by clicking an activation link sent by e-mail, platforms support automatic transmission of all types of contract notices to TED, economic operators and contracting authorities can search CPV categories based on their code or their description, economic operators can choose to manually or electronically sign a submission report containing the hash

value of each submitted document, platforms use European e-signature validation services to validate e-signature during e-submission and platforms use standard specifications to structure their data and to promote interoperability.

In addition to the number of benefits arising from the use of the ESPP, such as increased transparency, better and faster communication between the contracting authorities and the economic operators and unification and standardisation of the steps undertaken when carrying out certain types of procurement procedures, since the time the ESPP was introduced, both the contracting authorities and the economic operators have faced many challenges as regards their use, pertaining in most cases to the following:

- fear of the unknown and resistance to change the well-established manner of carrying out paper-based public procurement procedures;
- insufficient knowledge of the information and communication technology and its use;
- distrust in the new technologies to undertake actions related to public procurement procedures.

As for using the system, and as a result of all so-far implemented activities, following was achieved in 2014:

- around 1,390 contracting authorities (with total of 9,717 users within the contracting authorities, out of which 7,476 users are active) and over 4,800 active economic operators (out of 10,400 registered economic operators) used the system;
- over 2,300 answered questions through the Q&A link on ESPP posed by the contacting authorities and the economic operators pertaining to the manner of functioning and using ESPP in the course of 2014;
- total of 3,226 calls received through the user support center, pertaining to the functioning of the Electronic System for Public Procurement and e-auctions;

*As for using the system, and as a result of all so-far implemented activities, following were the more significant indicators in 2014:*

*- 1,390 contracting authorities and more than 4,800 active economic operators use the ESPP;*

*- 18,654 contract notices and 22,022 contract award notices of different type and 15,684 tender documents were published;*

*- total of 29,477 e-auctions were carried out.*

## Use of the Electronic System for Public Procurement

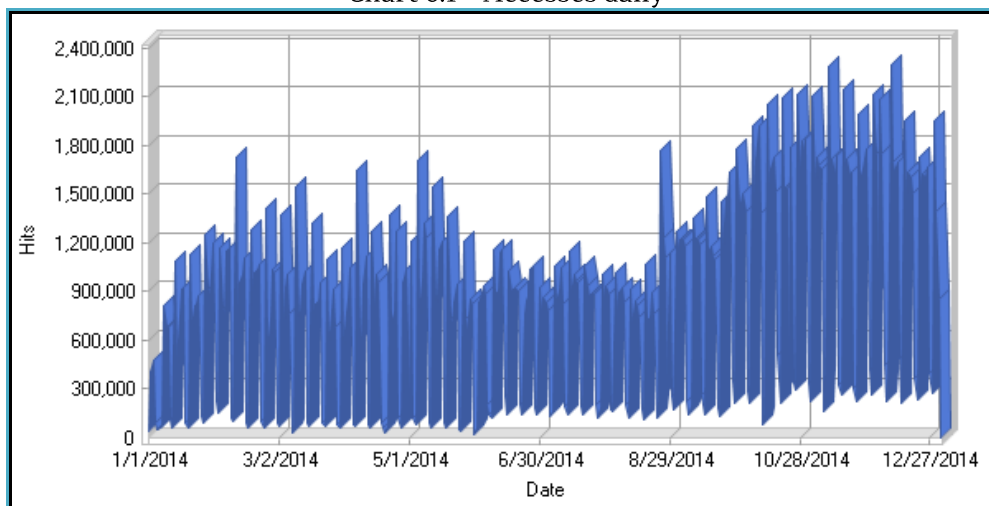
- 15,738 contract notices of different type and 22,022 contract award notices of different type published;
- total number of published tender documents – 15,684;
- 29,477 e-auctions carried out, i.e. more than 112 e-auctions daily in average (only working days).

With respect to the number of visitors of the system and the use of the system, data are provided in the tables and chart below:

Table 6.1

Page browsing	
Total page browsing	48,522,880
Total page browsing	132,576
Average page browsing per visitor	84.23
Visitors	
Total visitors	576,080
Average number of visitors per day	1,573
Total unique IP addresses	163,655

Chart 6.1 – Accesses daily



## Use of the Electronic System for Public Procurement

Chart 6.2 – Activities per day in the week

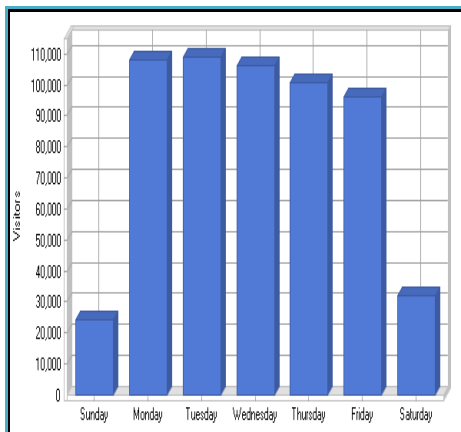


Chart 6.3 – Activities per hour in the day

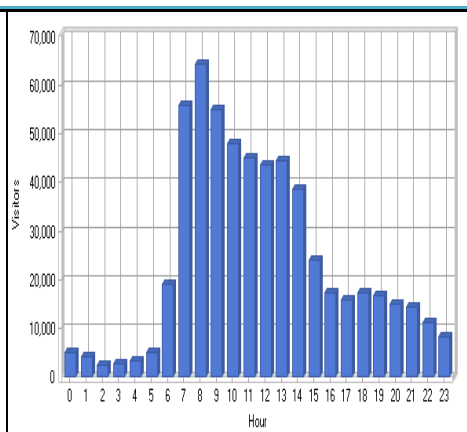


Chart 6.4 – Visitors per country

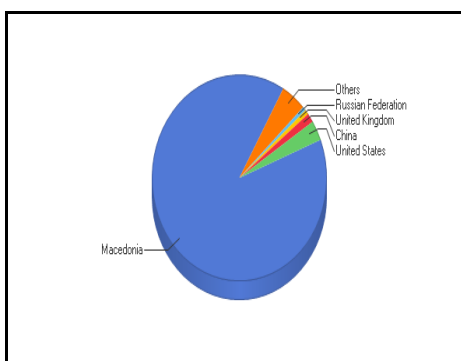


Chart 6.5 – Web-pages – top affiliates of ESPP

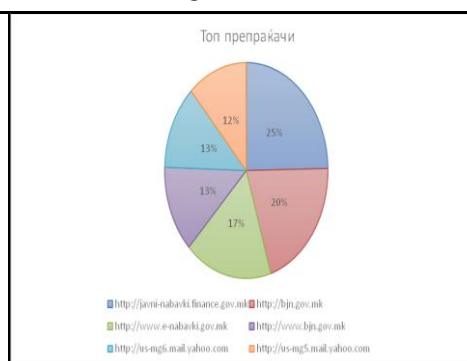


Chart 6.6 – Web browser of visitors

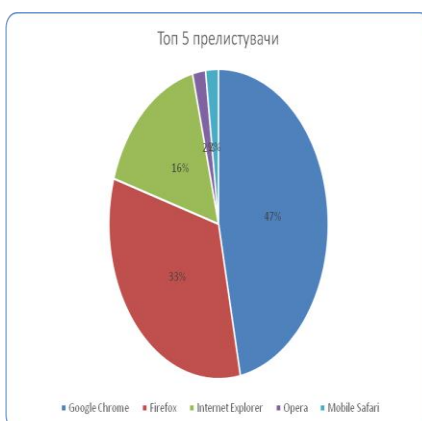


Chart 6.7 – Type of device



## 7. Analysis of Public Procurement Market in 2014

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This Chapter presents qualitative and quantitative analysis of the public procurement market in the Republic of Macedonia in 2014. Data are categorized by different parameters and types, so as to better observe the developments in the field of public procurement, the financial trends and the implications on public spending through the carried out procedures. Data shown in this Report pertain to the contract notices, the design contests, the annexes, the cancellations and all public contracts concluded in the respective period. All listed forms are published and publically available on the ESPP.

*In 2014, 21,938 public contracts were awarded, in the total amount of around Denar 60,4 billion or more than EUR 980 million.*

All gathered data are analysed by applying the module on monitoring and statistical review of trends in public procurement, implemented in the Electronic System for Public Procurement. ESPP database is one of a kind in the Republic of Macedonia and it reflects overall actual developments in the field of public procurement in the country. It is necessary to point out that the manner of evaluation and the statistical review of the reports obtained from the Electronic System for Public Procurement were amended and revised in 2014, all to the end of introducing the new legal solutions and the obligations, such as the estimated value and the final price.

The tool for timely and mandatory submission of information on the procedures, introduced with the ESPP, provides for gathering complete and relevant data and making comparative analysis of the data, which covers all contracting authorities and all procurement procedures carried out, hence, the data presented in the text below provide for a full picture of the trends on the public procurement market in 2014. Still, it should be underlined that accuracy of the data presented may fluctuate with a slight statistical error, which is due to the incorrect entering of some of the values when filling in the contract award notices on the ESPP. In fact, it is the contracting authorities' responsibility to correctly fill in the electronic forms and, due to the type and the volume of the process of filling in, no automatic control or review of the filled in forms is possible to be carried out by the Bureau.

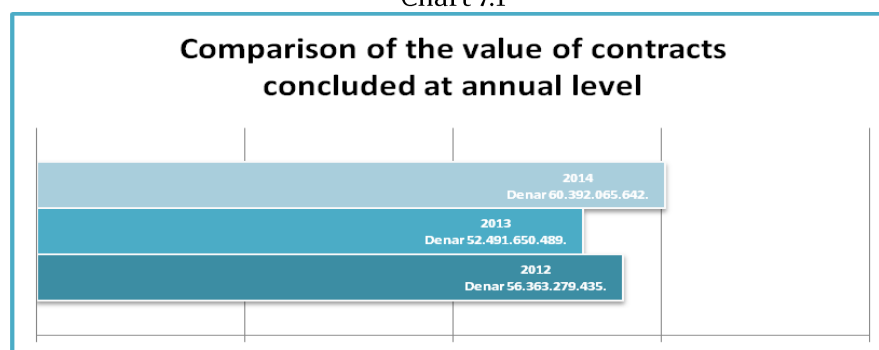


Data on the number of the awarded public contracts in 2014, obtained from the ESPP database, show that 21,938 public contracts were concluded, in the total amount of Denar **60,392,065,642** (around Denar 60.4 billion) or approximately EUR 980 million. Value of public procurement in the country in 2014 accounted for 12% of GDP of the Republic of Macedonia. According to data available to the Bureau, value of concluded contracts in 2014, compared to the previous year, increased by around 15%. In addition, number of concluded contracts also surged (20,654 contracts were concluded last year).

*15,738 contract notices were published in 2014.*

Hence, it can be pointed out that, in the last three years, value of the concluded public contracts in the Republic of Macedonia was at the highest level – Chart 7.1. Comparative data on the volume of public procurement, as share of GDP, and the 2014 Budget are presented in Table 7.1.

Chart 7.1



*Most contract notices in 2014 were published by applying the simplified competitive procedures, total of 12,159 contract notices.*

Table 7.1

Value of concluded public contracts	Public procurement as % of the Budget	Public procurement as % of GDP
Denar 60.4 billion	34%	12%

## 7.1. Data from Contract Notices

In 2014, **15,738** contract notices were published, 8,045 out of which were notices for simplified competitive procedures with an estimated value up to EUR 5,000 in Denar equivalent, 4,114 were notices for simplified competitive procedures with an estimated value of up to EUR 20,000 in Denar equivalent for supplies and services and up to EUR 50,000 in Denar equivalent for works, 3,510 were notices for open procedure, 8 were notices for restricted procedure, 11 were notices for negotiated procedure with prior publication of a contract notice, 9 were announcements for establishment of a qualification system and 36 were notices for design contest.

Pursuant to the legal amendments adopted in 2014, if the estimated value of the public contract, excluding VAT, exceeds EUR 500,000 in Denar equivalent for supplies and services, i.e. exceeds EUR 2,000,000 for works, the contract notice is to be mandatory published in the Official Journal of the European Union – TED (Tenders Electronic Daily). Total of 717 contract notices were published on TED.

Table 7.2 and Chart 7.2 show the number of published contract notices according to the type of procedure.

Table 7.2



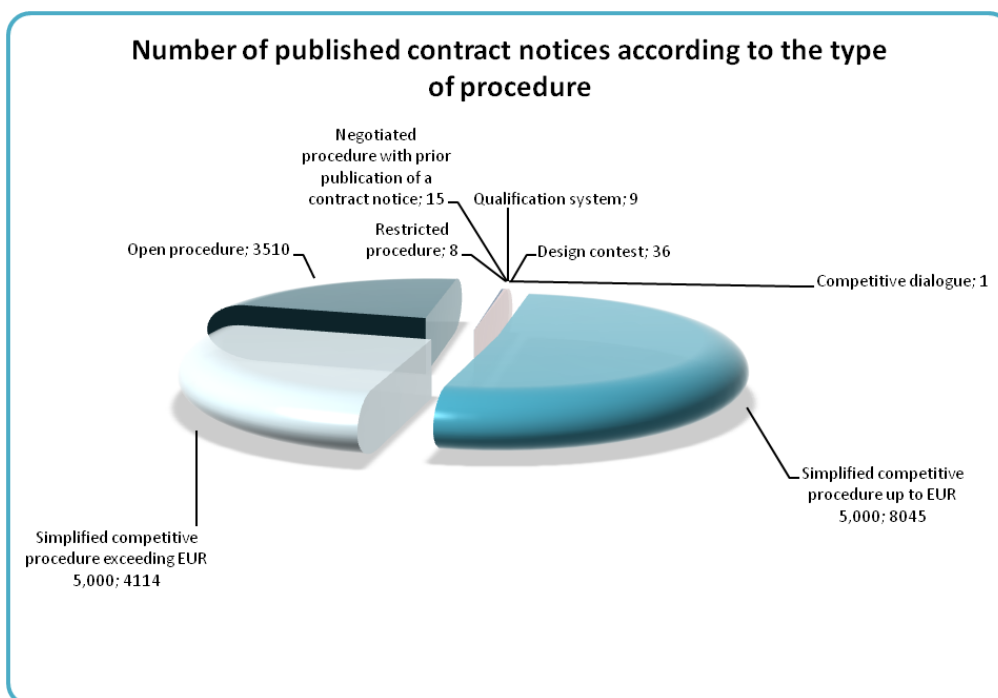
Type of procedure	Number of contract notices
<b>Simplified competitive procedures <sup>5</sup></b>	<b>8045</b>
Simplified competitive procedure	4114
Open procedure	3510
Restricted procedure	8
Negotiated procedure with prior publication of a contract notice	15
Qualification system	9
Competitive dialogue	1
Design contest	36
<b>Total</b>	<b>15738</b>

Chart 7.2

<sup>5</sup>  - simplified competitive procedure of up to EUR 5,000 in Denar equivalent.

Number of published contract notices dropped by 16% compared to 2013. The reason therefore could be found in the amendments to the Law on Public Procurement made in 2013, which started to be applied in May 2014 (request for consents, establishment of the Public Procurement Council, etc.).



Most contract notices in 2014 were published by applying the simplified competitive procedures, total of 12,159 contract notices, and open procedure – 3,510 contract notices. Out of the total of 12,159 contract notices by applying the simplified competitive procedures, 8,045 were contract notices published for procedures with an estimated value of up to EUR 5,000 in Denar equivalent.

As for 2014, total of 15,738 contract notices were published, and it can be concluded that the number of published contract notices dropped by 16% compared to 2013, when 18,654 contract notices were published. Significant decline in the number of contract notices by applying the simplified competitive procedures was observed, with 12,159 contract notices being published in 2014 compared to 14,162 contract notices published in 2013. The declining trend as regards the contract notices was also registered at the contract notices by applying the open procedure, with 3,510 contract notices being published in 2014 compared to 4,419 contract notices published in 2013. With respect to the other procedures,

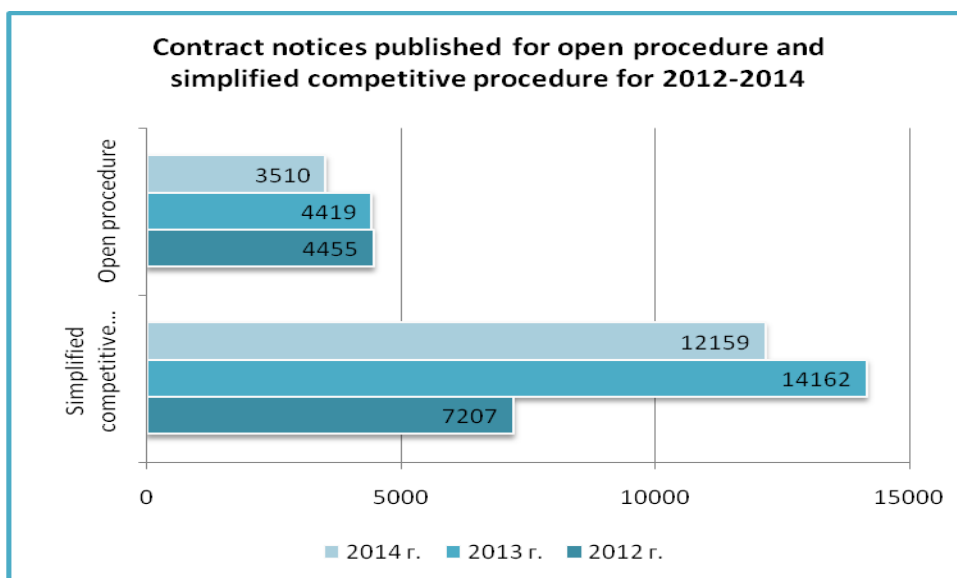
As regards the type of procedure, the largest drop in the number of published contract notices was observed at the simplified competitive procedure.

slight decline in the number of published contract notices was observed at the restricted procedure and the negotiated procedure with prior publication of a contract notice. Total of 9 announcements for qualification systems were published in 2014. Decreased use of this type of announcements for the utilities could be noted, with only 9 announcements for qualification systems were published. Out of the total number of published contract notices in 2014, 12 announcements were published for establishment of public-private partnership, which were awarded as public contract.

As for 2014, it could be concluded that the number of published contract notices dropped by around 3,000 compared to 2013 (as mentioned before, around 16% decline). The reason therefore could be found in the amendments to the Law on Public Procurement made in 2013, which started to be applied in May 2014 (request for consents, establishment of the Public Procurement Council, etc.). Accordingly, the contracting authorities needed more time to prepare the public procurement procedures (request for consents, obtaining negative opinions by the PPC, etc.), which directly contributed to drop in the volume of published contract notices. Thereby, it could be pointed out that such decline was a result of the application of the new provisions for a period of six months, i.e. if applied for a whole year, the projections would point to a decline of more than 30% (one third of the contract notices).

Chart 7.3 shows the ratio between published contract notices for the most used procedures – open procedure and simplified competitive procedure – in the last three years. As mentioned above, number of published contract notices by applying the simplified competitive procedures significantly decreased.

Chart 7.3



The analysis of the number of contract notices according to the type of the subject-matter of the public contract shows that most contract notices were published for procurement of supplies – 8,171 contract notices.

In 2014, contracting authorities published total of 599 contract notices on the system in the category *Other Contract Notices*. It is a matter of contract notices for procurement of so-called “non-priority” services pursuant to indent 2, paragraph 1, Article 17 of the Law, such as services related to temporary employment<sup>6</sup>, hotel, catering, recreational, cultural, educational, legal and other services.

Pursuant to Article 19 of the Law on Concessions and Public-Private Partnership, announcements for establishment of public-private partnership as a public works concession or as a public service concession are published on the Electronic System for Public Procurement in a special module for public works concessions and public service concessions. Total of 13 such announcements were published in 2014.

Analysis of the number of contract notices according to the type of the subject-matter of the public contract shows that most contract notices were published for procurement of supplies – 8,171 contract

<sup>6</sup> Pursuant to the Law on Modifications and Amendments to the Law on Public Procurement, published in the “Official Gazette of the Republic of Macedonia” no. 130/2014, temporary employment services in indent 2, paragraph 1, Article 17 are shifted to indent 1.

notices, 6,253 contract notices were published for procurement of services and 1,314 contract notices were published for procurement of works. Published contract notices according to the type of public contract are shown in Table 7.3 and Chart 7.4. These data show that number of published contract notices for procurement of supplies significantly declined in relation to last year. Similar situation is observed at the contract notices for procurement of works, while drop in the number of published contract notices for procurement of services was not that evident. Such trend confirms the above conclusion that drop in the volume of published contract notices was a result of the amendments to the LPP and the introduction of the requests for consents, i.e. the practice for mandatory request for consent for the technical specification when applying the procedures for procurement of supplies.

Comparative data for the last 3 years are presented in Chart 7.5.

Table 7.3

Type of public contract	Number of contract notices
Supplies	8171
Services	6253
Works	1314
<b>Total</b>	<b>15738</b>

Chart 7.4

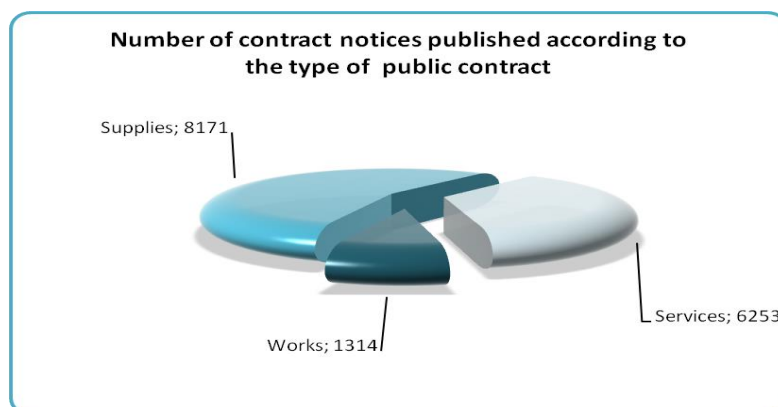
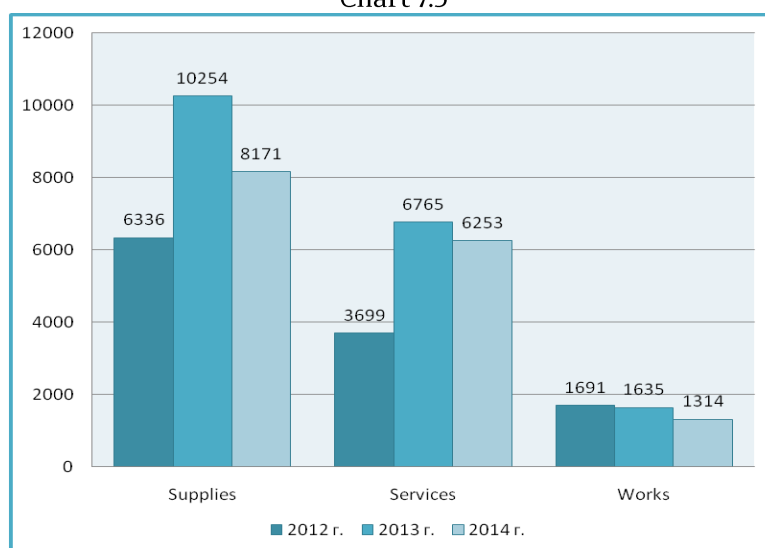


Chart 7.5



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

Table 7.4

Type of public contract– supplies	Number of contract notices
Purchasing	4037
Hire purchase	4105
Lease, with an option to purchase supplies	1
Lease, without an option to purchase supplies	12
Combination of the above-mentioned types	16
<b>Total</b>	<b>8171</b>

Table 7.5

## Analysis of Public Procurement Market in 2014

Type of public contract – services	Number of contract notices
Architectural and engineering services	957
Auxiliary transport services	45
Other services	3
Health and social services	107
Publishing and printing services	313
IT and related services	322
Investigative and security services	114
Education and vocational education services	38
Legal services	45
Advertising services	81
Recreational, cultural and sporting services	33
Accounting, auditing and bookkeeping services	124
Management consulting services	39
Telecommunication services	455
Air transport services of passengers and freight	82
Market research and public opinion polling services	9
Land and air transport services of mail	28
Land transport services	370
Maintenance and repair services	1888
Sewage and refuse disposal services	146
Temporary employment services	96
Development and research services	40
Building cleaning services and property management services	75
Water transport services	1
Rail transport services	2
Financial services	444
Hotel and catering services	91
<b>Total</b>	<b>6253</b>

Table 7.6

Type of public contract – works	Number of contract notices
Execution	1179
Design and execution	46
Realisation, by any means	89
<b>Total</b>	<b>1314</b>

Total number of published contract notices according to category of contracting authorities, pursuant to Article 4 of the Law on Public Procurement and the Decision on Determining the Indicative List



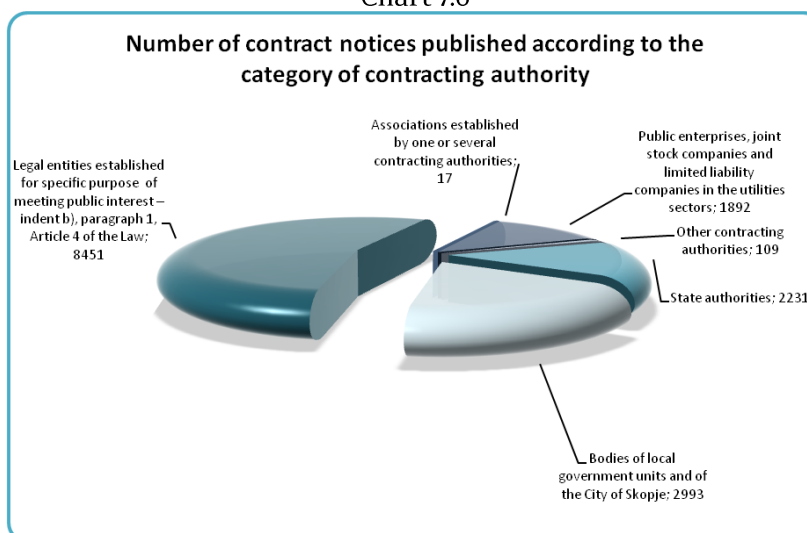
(“Official Gazette of the Republic of Macedonia”, nos. 159/07 and 74/09) is shown in Table 7.7 and Chart 7.6.

Table 7.7

Category of contracting authority	Number of contract notices
State authorities	2231
Bodies of local government units and of the city of Skopje	2993
Legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law	8451
Associations established by one or several contracting authorities	17
Public enterprises, joint stock companies and limited liability companies in the utilities sectors	1892
Other contracting authorities	109
<b>Total</b>	<b>15693</b>

*In 2014, the most contract notices were published by contracting authorities falling in the category legal entities established for specific purpose of meeting public interest needs - indent b), paragraph 1, Article 4 of the Law – 8,451 contract notices.*

Chart 7.6



When analysing the data on the published contract notices according to category of contracting authority, it can be seen that most contract notices - 8,451 were published by contracting authorities falling in the category legal entities established for specific purpose of meeting public interest needs - indent b), paragraph 1, Article 4 of the Law and by

contracting authorities falling in the category bodies of local government units and of the city of Skopje – 2,993.

Table 7.8 shows data on the number of published contract notices according to the contract award criterion applied in the procedure. Pursuant to the amendments dated 1<sup>st</sup> May 2014 (“Official Gazette of the Republic of Macedonia”, no. 148/2013), use of the lowest price criterion is mandatory criterion when awarding public contracts, while, upon exception, the economically most advantageous tender may be used as contract award criterion.

*The lowest price criterion was used in 97% of the total published contract notices as contract award criterion.*

Significant decline in the number of published contract notices when using the economically most advantageous tender criterion can be observed as a result of this legal amendment. As for 2013, total of 2,665 contract notices were published by using the economically most advantageous tender criterion, while 584 contract notices were published by using the same criterion in 2014 (most of them in the first half of 2014). In the period from 1<sup>st</sup> May 2014 to 31<sup>st</sup> December 2014, the economically most advantageous tender criterion was used in 21 contract notices, whereby, compared to 2013, 1,822 contract notices were published in the same period. It is necessary to point out that these data do not include some of the contract notices for restricted procedure and negotiate procedure with prior publication of a contract notice, because, depending on the complexity of the subject-matter of the procurement, the contracting authority publishing the contract notice did not publish the criterion in the contract notice, but rather included it in the tender documentation for the next stage of the procedure.

Table 7.8

Contract award criterion	Number of contract notices
Lowest price	15204
Economically most advantageous tender	484

Chart 7.7 shows the dynamics of publishing contract notices by month. It could be seen therein that most of the contract notices were

published in April, as well as in March and January 2014. If these data are analysed in more details, it could be concluded that the volume of publishing contract notices in April was mostly due to the fact that, starting 1<sup>st</sup> May, provisions in the Law prescribing mandatory request for consent from the Public Procurement Council entered into force, and most of the contracting authorities published the contract notices in April, prior to the entry of these provisions into force, so as for the procedures to be carried out pursuant to the legal provisions prior to the amendments thereto. Chart 7.8 shows the published contract notices with the estimated value, whereby the first chart presents the contract notices with an estimated value of up to Denar 1,200,000 and the second one shows the contract notices with an estimated value above Denar 1,200,000.

Chart 7.7

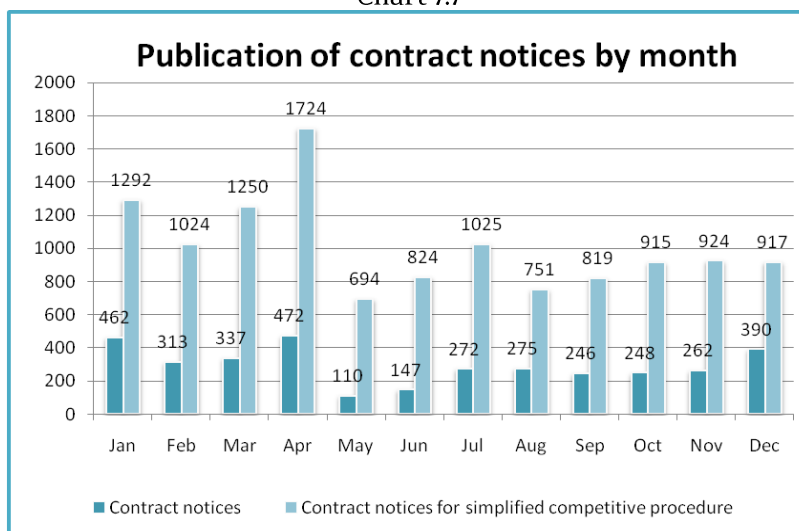
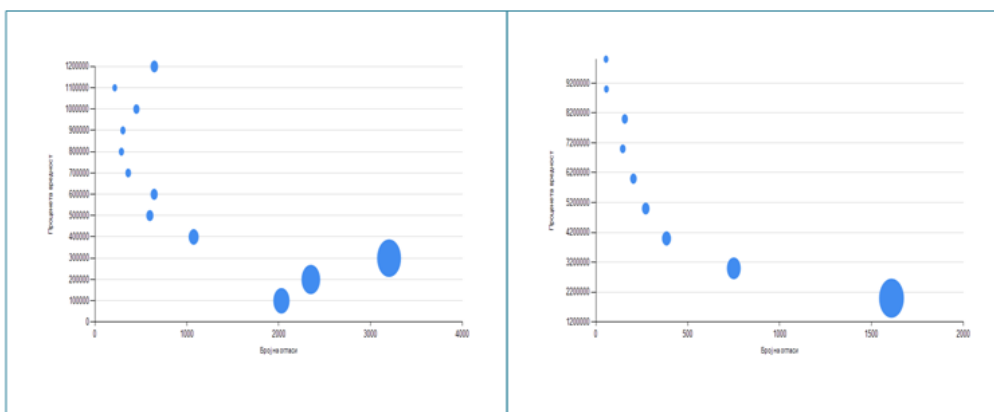


Chart 7.8



## 7.2. Concluded Public Contracts

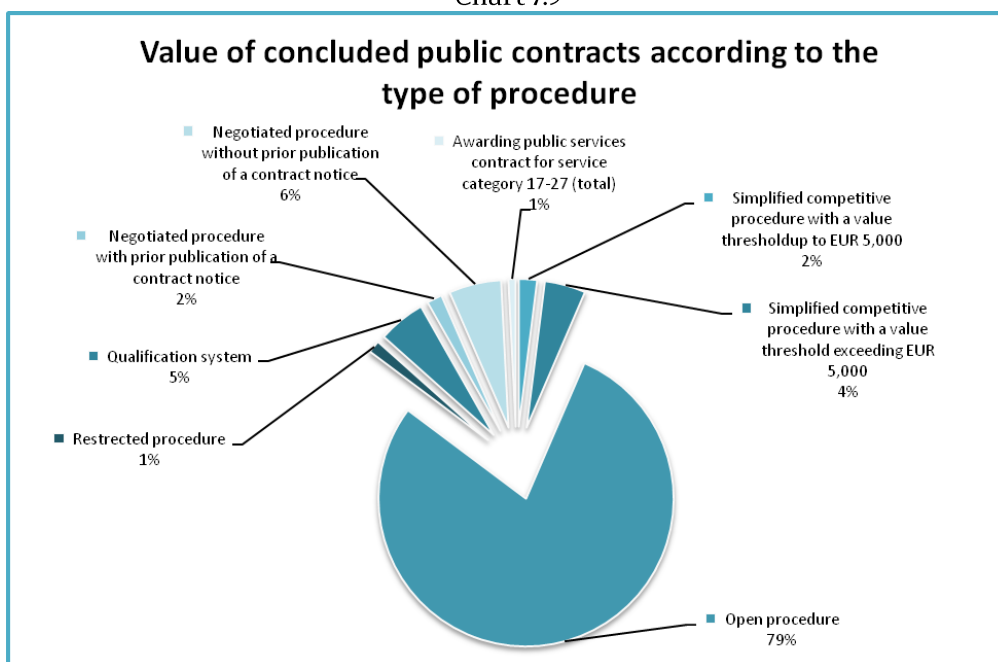
Value of contracts concluded in 2014 amounted to Denar 60.4 billion.

Compared to last year, value of the concluded contracts surged by 15%.

Analysis of the data on concluded public contracts includes a review of the data on the public contracts concluded in 2014 on the basis of different parameters. Data mainly refer to the total number of concluded public contracts and their value, however, with respect to some parameters, due to ESPP setup (depending on whether data are received from contract award notices or from the records on simplified competitive procedures), data are grouped and refer only to the procedures - open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice, competitive dialogue and awarding of public services contract pursuant to indent 2, Article 17, exceeding EUR 20,000 in Denar equivalent, excluding VAT. These Tables and Charts are presented below. All data regarding concluded public contracts are published on the ESPP <https://e-nabavki.gov.mk> and are fully available to the public. Contracting authorities are responsible for the reliability and accuracy of the entered data, since they publish their contract notices, contract award notices/cancellation notices and records on simplified competitive procedures through the ESPP by means of their usernames and passwords.

Number and value of concluded public contracts in 2014 according to the type of contract award procedure are presented in Table 7.9 and Chart 7.9. Total value of concluded public contracts in 2014 surged by around 15% compared to 2013, amounting to Denar 60,392,065,642. Most applied procedure according to the value of the concluded contracts was the open procedure, on the basis of which 7,115 contracts were concluded in the amount of Denar 47,552,437,543, i.e. 79% of the total value of public procurements carried out in the Republic of Macedonia. The second most applied procedure was the negotiated procedure without prior publication of a contract notice, on the basis of which 826 contracts were concluded in the amount of Denar 3,466,477,316 – 6% of the total value.


Chart 7.9



As regards the application of different types of procedures, compared to 2013, the same trend as in the previous three years continued. In fact, with respect to the value of concluded contracts, most of them were concluded by applying the open procedure (66% in 2012, 68% in 2013 and 79% in 2014). As regards the share of restricted procedure, significant downward trend continued (5% in 2012, 2% in 2013, 1% in 2014).

The same applies for the share of negotiated procedure with prior publication of a contract notice, which declined from 19% in 2012 to 7% in 2013 and 2% in 2014. In addition, there was a significant difference compared to last year, when share of the negotiated procedure without prior publication of a contract notice dropped significantly (8% in 2012, 12% in 2013 and 6% in 2014). With respect to this type of procedure, there were 1,452 contracts concluded in 2013 in the amount of Denar 5,936,324,555, while in 2014, 826 contracts were concluded in the amount of Denar 3,466,477,316. More detailed data on the negotiated procedures will be presented in the text below. Volume of the other procurement procedures is approximately the same in terms of value of the concluded contracts. Comparative data are presented in Charts 7.10 and 7.11.

Table 7.9

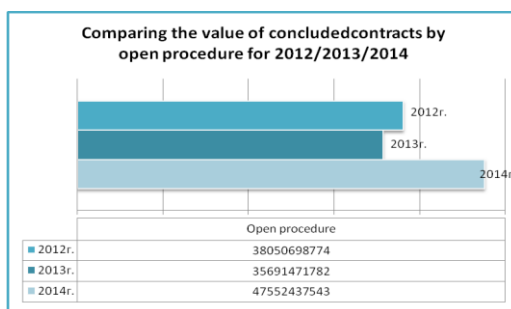
Type of contract award procedure	Number of concluded contracts	Value of concluded contracts
<b>Simplified competitive procedure</b> 	7321	Denar 1,199,762,556.00
<b>Simplified competitive procedure</b>	5284	Denar 2,713,349,316.00
<b>Open procedure</b>	7115	Denar 47,552,437,543.00
<b>Restricted procedure</b>	3	Denar 825,957,016.00
<b>Qualification system</b>	48	Denar 3,136,662,301.00
<b>Negotiated procedure with prior publication of a contract notice</b>	68	Denar 1,010,909,117.00
<b>Negotiated procedure without prior publication of a contract notice</b>	826	Denar 3,466,477,316.00
<b>Awarding public services contract for service category 17-27 (total)</b>	1273	Denar 486,510,477.00
<b>Total</b>	<b>21938</b>	<b>Denar 60,392,065,642.00</b>

### 7.2.1. Data on Public Contracts Concluded according to the Type of Public Contract

According to the subject-matter of the public contract, 12,370 supply contracts in the total amount of Denar 27,825,314,317, 8,173 services contracts in the total amount of Denar 14,602,522,364 and 1,395 works contracts in the total amount of Denar 17,964,228,961 were concluded in 2014. Chart 7.12 and Table 7.10 present more detailed data on the number and the value of concluded public contracts according to the type of the subject-matter of the contract.

According to the type of public contract, the highest percentage (46%) of the value of public contracts accounted for procurement of supplies.

Графикон 7.10



Графикон 7.11

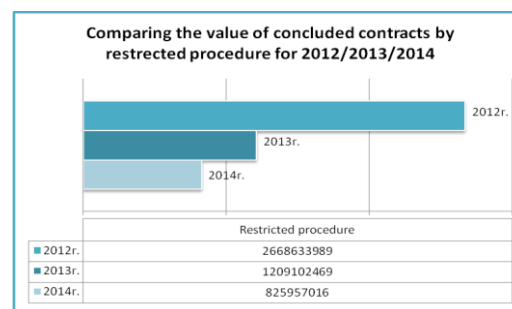


Chart 7.12

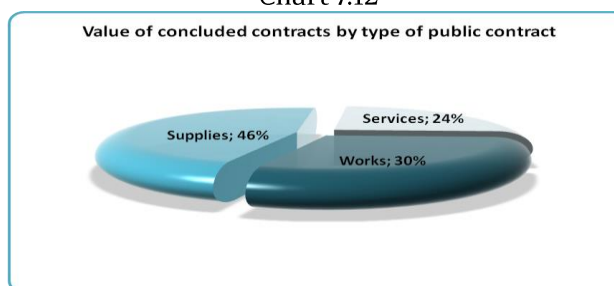


Table 7.10

Type of public contract	Number of concluded contracts	Value of concluded contracts
Supplies	12370	Denar 27,825,314,317.00
Services	8173	Denar 14,602,522,364.00
Works	1395	Denar 17,964,228,961.00
<b>Total</b>	<b>21938</b>	<b>Denar 60,392,065,642.00</b>

The highest percentage (46%) of the value of public contracts accounted for procurement of supplies. Public supply contracts were most often realised through purchasing and hire purchase. By comparing the data on the value of the concluded public contracts according to the type of the contract, it is noticeable that share of the procurement of supplies surged by 7% in 2014, while share of the procurement of services increased by 1%, in relation to last year. Public services contracts accounted for 24% in the total value of public procurement in 2014 (they accounted for 30% in 2012 and 23% in 2013). Their structure shows different percentage of categories of services pursuant to the Decree on services subject-matter of public services contracts (“Official Gazette of the Republic of Macedonia”, no. 157/07). However, most of the value of public services contracts accounted for public contracts for architectural and engineering services (category No. 12) and land transport services (category No. 2), same as in the previous years. Public work contracts accounted for 30% of the total value of contracts (most often execution of works). These data show that share of public works contracts dropped by 8% compared to 2013.

### **7.2.2.Data on Public Contracts Concluded according to the Category of Contracting Authority**

Number and value of contracts concluded according to the category of contracting authority and its main business activity are shown below (Table 7.11 and Chart 7.13). Information presented below were obtained from the contract award notices and refer exclusively to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue. This was due to ESPP setup and the manner of gathering data according to the parameter – category of contracting authority. In fact, these data do not include data on the simplified competitive procedures due to the fact that contract award



notice is not filed in for these procedures, but rather summary records on semi-annual basis are prepared.

Chart 7.13

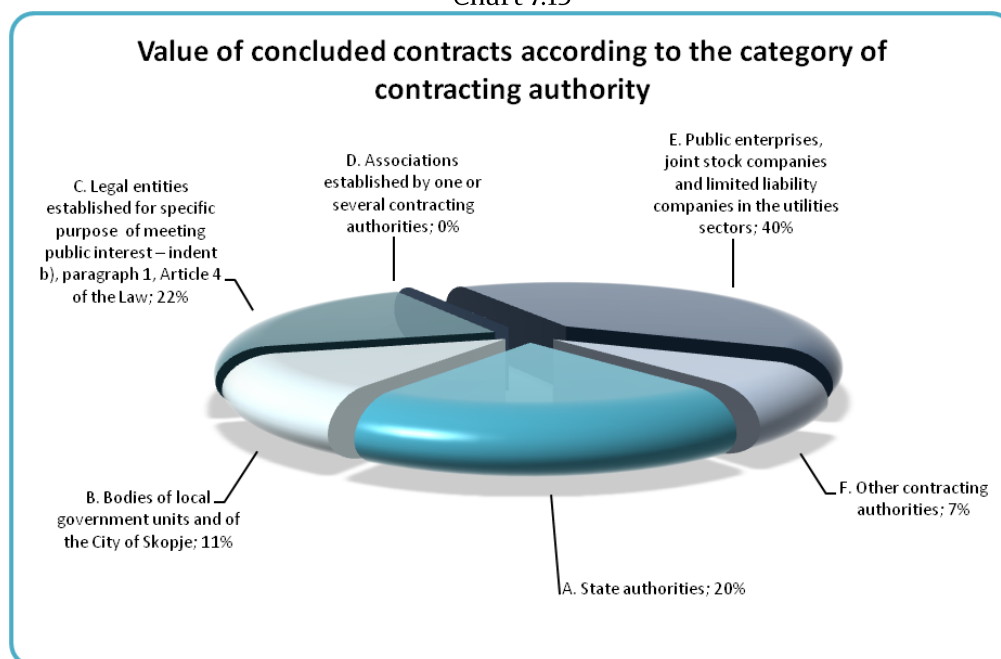


Table 7.11

Category of contracting authority	Main business activity	Number of contracts	Value of concluded contracts
A. State authorities	General public services	447	Denar 4,240,482,530
	Defence	111	Denar 243,182,562
	Public order and security	113	Denar 635,642,377
	Environment	10	Denar 257,515,134
	Economy and finance	25	Denar 77,240,486
	Health	76	Denar 3,161,963,893
	Social protection	32	Denar 83,482,128
	Sports and culture	20	Denar 2,181,323,616
	Education	61	Denar 533,166,456
	Other	5	Denar 3,235,015
	<b>Total A.</b>	<b>900</b>	<b>Denar 11,417,234,197</b>
B. Bodies of local government	General public services	1042	Denar 6,423,383,026

## Analysis of Public Procurement Market in 2014

The highest percentage of the value of concluded contracts in 2014 accounted for the category public enterprises, joint stock companies and limited liability companies in the utilities sectors, accounting for 40% of the value of public procurement.

Positive benefit worth mentioning is the two-fold decline of the total value of concluded contracts in relation to last year as regards the negotiated procedures without prior publication of a contract notice.

units and of the city of Skopje	Sports and culture	14	Denar 23,840,630
	Education	3	Denar 1,231,028
	Other	2	Denar 2,962,331
	<b>Total B.</b>	<b>1061</b>	<b>Denar 6,451,417,015</b>
C. Legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law	General public services	901	Denar 6,744,006,645
	Public order and security	35	Denar 173,756,646
	Environment	50	Denar 145,791,681
	Health	2990	Denar 5,890,314,723
	Housing, construction and transport	30	Denar 538,114,710
	Social protection	321	Denar 721,570,042
	Sports and culture	176	Denar 1,491,981,985
	Education	576	Denar 221,055,712
	Other	<b>64</b>	<b>Denar 313,229,481</b>
	<b>Total C.</b>	<b>5138</b>	<b>Denar 12,112,510,119</b>
D. Associations established by one or several contracting authorities	Other	12	Denar 9,276,743
	<b>Total D.</b>	<b>12</b>	<b>Denar 9,276,743</b>
E. Public enterprises, joint stock companies and limited liability companies in the utilities sectors	General public services	444	Denar 9,029,547,065
	Environment	2	Denar 9,470,137
	Economy and finance	3	Denar 26,822,285
	Health	6	Denar 1,056,419
	Housing, construction and transport	16	Denar 75,969,560
	Sports and culture	2	Denar 2,691,199
	Other	561	Denar 13,211,012,046
	<b>Total E.</b>	<b>1034</b>	<b>Denar 22,356,568,711</b>
F. Other contracting authorities	General public services	5	Denar 15,270,590
	Social protection	1	Denar 1,463,000
	Education	2	Denar 868,000
	Other	75	Denar 3,977,360,300
	<b>Total F.</b>	<b>83</b>	<b>Denar 3,977,360,300</b>
<b>Total<sup>7</sup></b>	<b>Total A + B + C + D + E + F</b>	<b>8228</b>	<b>Denar 56,341,968,675</b>

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

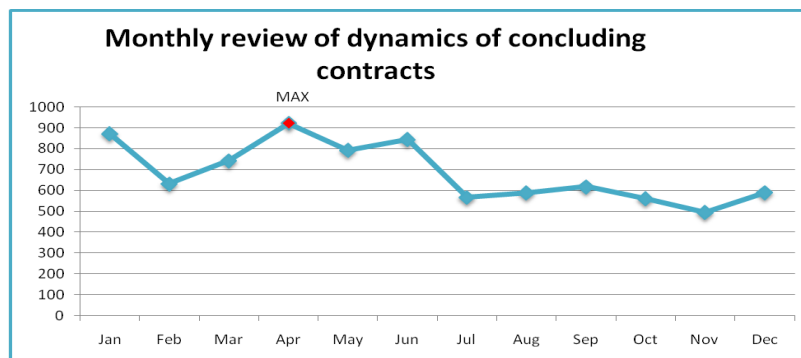
<sup>7</sup> Data refer only to contracts concluded by applying open procedure, restricted procedure, negotiated procedure with and without prior publication of a contract notice and competitive dialogue, and public services contracts referred to in indent 2, paragraph (1), Article 17, when the estimated value exceeds EUR 20,000 in Denar equivalent.

contracting authorities. In 2014, the highest percentage of the value of concluded contracts accounted for the category state authorities, as well as contracting authorities falling within the category of public enterprises, joint stock companies and limited liability companies in the utilities sectors, accounted for **40%** of the value of public procurement. Further on, on the basis of the realised public procurements, legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law accounted for 22% of the value of public procurement. Other contracting authorities participated with around 38% all together in the total value of public contracts. Compared to 2013, significant increase of the share of contracts concluded by public enterprises, joint stock companies and limited liability companies in the utilities sectors was registered (26% in 2012, 24% in 2013, 40% in 2014), while share of contracts concluded by legal entities established for specific purpose of meeting public interest needs – indent b), paragraph 1, Article 4 of the Law declined (28% in 2012, 33% in 2013, 22% in 2014). In addition, certain decline of 4% was observed at the share of state authorities, as well as drop of 2% at the bodies of local government units and of the city of Skopje.

### **7.2.3.Data on Public Contracts Concluded according to Other Parameters**

When analysing the dynamics of awarding contracts by months in 2014 (Chart 7.14), it can be seen that most of the contracts were concluded in April.

Chart 7.14



In addition, it is worth mentioning that 670 framework agreements (total of 678 framework contracts were concluded in 2013) and 250 agreements for conducting joint procurement were concluded in 2014.

As mentioned at the beginning of this Chapter, negotiated procedure with prior publication of a contract notice accounted for 2% (7% in 2013), while negotiated procedure without prior publication of a contract notice accounted for 6% (12% in 2013) in the total amount of funds. Table 7.12 and Chart 7.15 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.

Compared to the previous years, use of negotiated procedure with/without prior publication of a contract notice significantly declined. Such decline was due to the latest amendment to the Law, i.e. the introduction of the final price concept, whereby the basis for applying the negotiated procedure without prior publication of a contract notice is deleted, when in an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and simplified competitive procedure, the contracting authority cannot schedule electronic auction since there is not enough competition.

In fact, this legal provision pertaining to the possibility to submit the final price in case when the contracting authority receives only one tender provides for greater transparency in the contract award

procedures. Introduction of the consents to be obtained from the Council also has certain effects on the declining of the number of carried out negotiated procedures.

Data on the negotiated procedure can lead to the conclusion that the most used reason/legal justification for the application of the negotiated procedure without publication of a contract notice (27%) is indent 3, point 1), paragraph (1) of Article 99 of the Law, by reasons of extreme urgency caused by events unforeseeable by the contracting authority nor attributable to it as an omission. Other reasons, accounting for 22% in the total value of contracts awarded by applying the negotiated procedure without prior publication of a contract notice, were related to protection of exclusive rights (patents, etc.), i.e. when due to technical or artistic reasons, the contract may be executed only by a particular economic operator, while 10% of the reasons related to additional works which cannot be technically or economically separated from the original contract. Following reason accounted for 6% in the total value of the contracts awarded by applying the negotiated procedure without publication of a contract notice, i.e. when the contracting authority had to procure additional deliveries from the original contractor.

Table 7.12

Type of procedure	Justification for selection of a procedure	Number of concluded contracts	Value of concluded contracts
<b>A. Negotiated procedure with prior publication of a contract notice</b>	when no acceptable tender was received in an open procedure, restricted procedure or competitive dialogue, and the previous procedure was cancelled without substantially modifying the initial requirements in the tender documentation;	3	Denar 10,028,181
	in exceptional cases, when the nature of the works, supplies or services, or the risks arising therefrom, did not allow a prior overall pricing of the contract;	30	Denar 846,409,411
	contracting authority invited, in the	25	Denar 140,503,525

## Analysis of Public Procurement Market in 2014

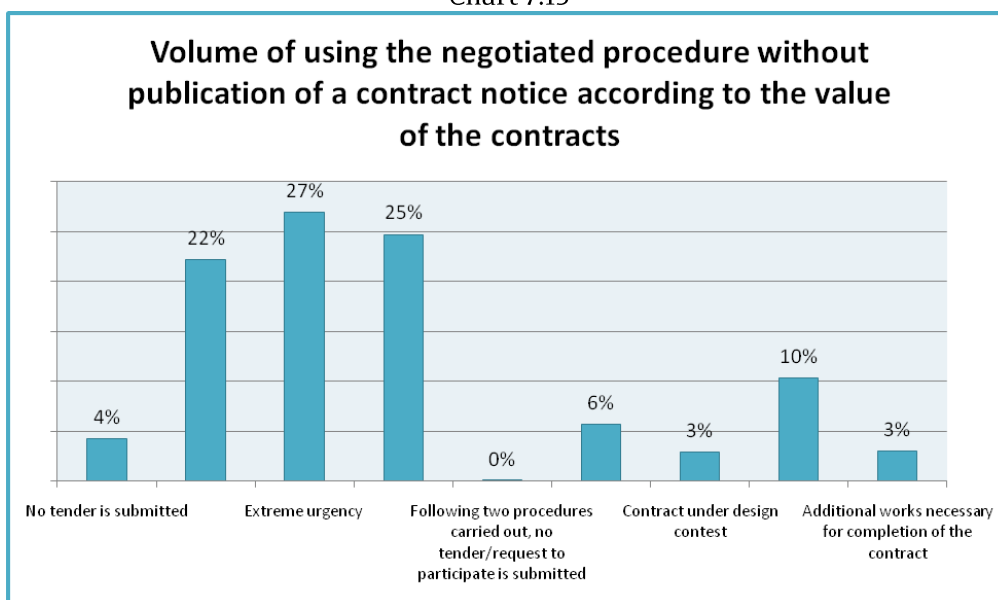
	negotiated procedure, to negotiations the economic operators which, in the open procedure, restricted procedure or the competitive dialogue procedure proved their qualifications and submitted tenders in line with the requirements of the respective procedure;		
	for services, if the service was of such nature, that the technical specifications could not be determined with sufficient precision so as to enable the awarding of the contract on the basis of the most favourable tender in accordance with the rules governing open or restricted procedure;	10	Denar 13,968,000
	<b>Total A.</b>	<b>68</b>	<b>Denar 1,010,909,117</b>
	when in an open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice and simplified competitive procedure, the contracting authority could not schedule electronic auction since there was not enough competition <sup>8</sup> ;	52	Denar 856,230,540
	<b>B. Negotiated procedure without prior publication of a contract notice</b>		
	when the contracting authority had to procure additional deliveries from the original contractor for the purpose of partial replacement of common goods or installations or extension of the existing goods or installations;	12	Denar 197,903,671
	when no tender in an open procedure or no request to participate in the first phase of a restricted procedure was submitted, provided that the initial requirements of the contract were not altered;	96	Denar 146,600,698
	in case of reasons of extreme urgency caused by events the contracting authority could not foresee, nor they	263	Denar 932,404,660

<sup>8</sup> Pursuant to the Law on Modifications and Amendments to the Law on Public Procurement, published in the "Official Gazette of the Republic of Macedonia" no. 148 dated 29<sup>th</sup> October 2013, indent 4 in point 1, paragraph (1), Article 99 is deleted. I.e. awarding contracts by applying this provision is no longer allowed/used.

## Analysis of Public Procurement Market in 2014

could be attributed to it as an omission;		
when due to technical or artistic reasons, i.e. reasons connected to protection of exclusive rights (patents, etc.), the contract could be executed only by a particular economic operator;	304	Denar 769,210,342
when the contract concerned followed a design contest and was awarded to the best ranked participant or to one of the best ranked participants;	6	Denar 100,182,604
manufactured purely for the purpose of research, experimentation, study or development, but not for goods in mass production by which gain or recovery of research and development costs might be realised;	7	Denar 1,072,764
such additional works or services could not be technically or economically separated from the original contract without major inconvenience for the contracting authority;	73	Denar 357,839,055
such works or services, although separable from the performance of the original contract, were strictly necessary for its completion.	13	Denar 105,032,982
<b>Total B.</b>	<b>826</b>	<b>Denar 3,466,477,316</b>

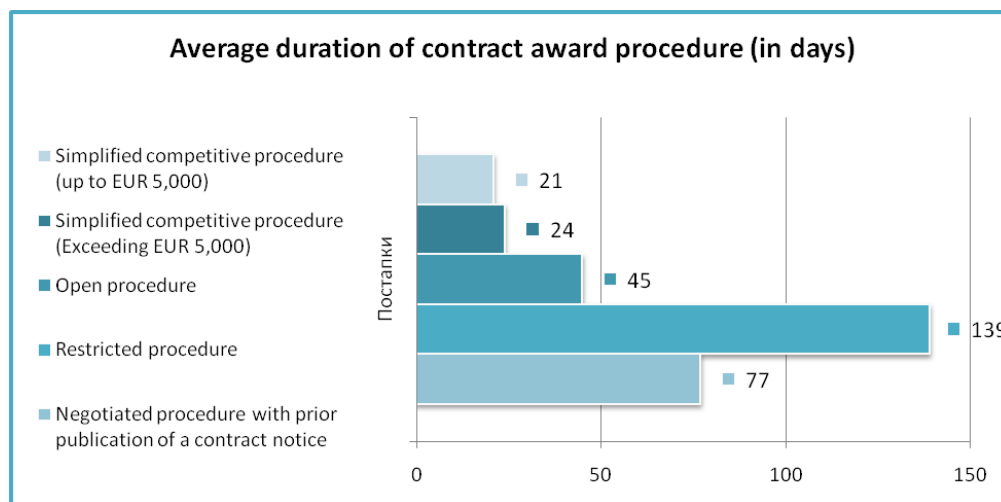
Chart 7.15



*Increase of the efficiency in carrying out the procedures is due to the efforts of the Bureau to strengthen the capacities of contracting authority through the training programme, as well as to the introduction of the obligation for the contracting authorities to reach decision for selection or cancellation of the procedure within a time limit not longer than the one for submission of tenders*

Data that can also serve to present efficiency of contract award procedures are average duration of the procedures from the public tender opening to concluding the contract. Gathered data lead to the conclusion that average duration of the evaluation phase in 2014 in simplified competitive procedure with an estimated value of up to EUR 5,000 in Denar equivalent was 21 days (26 days in 2012 and 12 days in 2013), simplified competitive procedures with an estimated value of up to EUR 20,000 in Denar equivalent for supplies and services and up to EUR 50,000 in Denar equivalent for works was 26 days (31 days in 2012 and 26 days in 2013), open procedure - 45 days (42 days in 2012 and 28 days in 2013), restricted procedure - 139 days (63 days in 2012 and 156 days in 2013), while as regards negotiated procedure with prior publication of a contract notice, evaluation phase lasted, in average, 52 days in 2012, 66 days in 2013 and 77 days in 2014.

Chart 7.16



Comparison of the duration of procedures in the last 3 years is presented in Table 7.13.



Table 7.13

Average duration of contract award procedures			
	2012	2013	2014
Simplified competitive procedure (up to EUR 5,000)	26 days	12 days	21 days
Simplified competitive procedure (exceeding EUR 5,000)	31 days	26 days	24 days
Open procedure	42 days	28 days	45 days
Restricted procedure	63 days	156 days	139 days
Negotiated procedure with prior publication of a contract notice	52 days	66 days	77 days

Below are presented data on the value of concluded contracts by contracting authority (a list of 10 largest public consumers in 2014), and by contract (list of 10 highest-value public contracts in 2014). Tables 7.14 and 7.15.

Table 7.14

List of contracting authorities – 10 largest consumers in 2014	
<i>Name of contracting authority</i>	<i>Total value of contracts (Denar)</i>
Macedonian Power Plants Joint Stock Company - Skopje	8,886,917,890
Distribution of Heat Balkan Energy DOOEL Skopje	5,078,009,440
EVN Macedonia joint stock company - Skopje	3,968,905,833
Ministry of Health	3,167,847,738
Public Transport Enterprise SKOPJE	2,824,464,639
Ministry of Culture	2,185,604,636
Public Enterprise for State Roads	1,849,743,210
Water Supply and Sewerage Public Enterprise - Skopje	1,143,087,602
Ministry of Transport and Communications	1,138,933,529
Common Service Agency within the Government of the Republic of Macedonia	943,681,407

Table 7.15

List of 20 highest-value contracts concluded in 2014			
Subject-matter of procurement	Name of contracting authority	Contractor	Value of concluded contracts
Procurement of natural gas up to 126,000,000 Hm3	Distribution of Heat Balkan Energy DOOEL Skopje	Sintez Green Energy Cyprus Limited	3,115,279,440
Excavation of coal and tailing in the mine Brod – Gneotino PE Mines	Macedonian Power Plants Joint Stock Company - Skopje	PELISTER Bitola DOO Construction and Services Company	2,908,700,000
Procurement of heating oil – crude oil up to 55,000,000 kg	Distribution of Heat Balkan Energy DOOEL Skopje	OKTA Oil Refinery joint stock company - Skopje	1,962,730,000
Execution of construction, construction and craftsmanship, interior and installation works on the facility of the Large Concert Hall for the Macedonian Philharmonic Orchestra	Ministry of Culture	STRABAG AG	1,666,632,000
Construction of Panoramic Wheel with accompanying facilities and bridge in the center area of Skopje	Public Transport Enterprise SKOPJE	BETON AD Skopje Construction Company (joint stock company)	1,128,981,761
Diesel fuel	Public Transport Enterprise SKOPJE	MAKPETROL joint stock company for sales of oil and oil derivatives Skopje	1,032,300,000
Execution of construction, construction and craftsmanship works and other works, turn-key principle for construction of a theater and a library in Tetovo	N.U.C.K. Iljo Anteski - Smok	URBAN PLAN KONSTRUKTI company for production, construction, transportation, catering, trade and services	819,504,100
Procurement, delivery, installation and commissioning of equipment for improvement of telecommunications and networking of AD ELEM	Macedonian Power Plants Joint Stock Company - Skopje	ERICSSON TELECOMMUNICATIONS MACEDONIA DOOEL – trading and services company, export – import Skopje	713,987,988

## Analysis of Public Procurement Market in 2014

Overground pedestrian crossing (Skenderbeg Square monument – phase 2)	Cair Municipality	Company for construction, trading and services BAUER BG DOO Skopje	663,964,093
Execution of reconstruction and adaptation of the façade for the purpose of improving the energy efficiency and reconstruction of the interior of the administrative building – AD MEPSO Head Office	AD MEPSO	Construction Company BETON-STIP, joint stock company, Stip	650,612,485
Supervision over the construction of A2 highway, Kicevo – Ohrid section	Public Enterprise for State Roads	Civil Engineering Institute MACEDONIA AD – Skopje (joint stock company)	621,427,767
PP 01-213/2013 Designing and construction of a facility - six-seat cable car on Popova Sapka ski center	Macedonian Power Plants Joint Stock Company - Skopje	Leitner AG/SpA	581,002,500
Supervision over the construction of A4 highway, Miladinovci - Sveti Nikole – Stip section	Public Enterprise for State Roads	Company for construction, sales and services GEING Krebs und Kifer International and Others DOO Skopje	496,362,116
Construction works for reconstruction, adaptation and rehabilitation of the facility of NI Albanian Theater - Skopje	Albanian Theater - Skopje	Lamone Moreda	495,599,998
Procurement of insulin, glucagon, insulin needles and blood glucose test stripes and insulin pumps with consumable supplies for the period August 2014 - August 2016	Ministry of Health	Trading, production and services company FENIKS FARMA DOOEL Skopje	462,897,140
Works related to execution of construction and	Water Supply and Sewerage Public Enterprise - Skopje	Construction, intermediation, trading	462,470,215

construction and craftsmanship works for completion and finalisation of all phases on the administrative building of Water Supply and Sewerage Public Enterprise - Skopje		and service company ALDING – ENGINEERING DOOEL Skopje	
Biochemical analysis tests	Ministry of Health	Sale and consulting company FARMAHEM DOOEL Skopje	434,242,018
Services for insurance of property and employees in AD ELEM for three insurance years up to 31 <sup>st</sup> December 2016	Macedonian Power Plants Joint Stock Company - Skopje	Insurance MACEDONIA a.d. Skopje – Vienna Insurance Group	432,191,970
Execution of construction and construction and craftsmanship works for construction of administrative building	Common Service Agency within the Government of the Republic of Macedonia	Company for construction, trading and services BAUER BG DOO Skopje	431,408,000
Gauges for embedded GSM modem and switch	EVN Macedonia joint stock company - Skopje	Trading, production and services company ISKRA ATG DOO Skopje	414,254,988

## 7.2.4. Participation of Economic Operators in Contract Award Procedures

Data on the participation of the economic operators in contract award procedures by contract, i.e. number of individual economic operators selected as contractors according to the number of concluded contracts, as well as according to the value of the concluded contracts in 2014, are presented below.

Table 7.16

List of 20 economic operators being awarded the most public contracts	
Contractor	Number of concluded contracts
Sale and services company BIOTEK DOO export-import Skopje	754
Sale company MAKEDONIJA LEK DOOEL Skopje	506
Company for domestic and international sales ZEGIN DOO Skopje	483
Trading, production and services company PROMEDIKA DOO Skopje	431
Trading, production and services company BI-EL ENGINEERING import – export DOOEL Strumica	382
Joint stock company for production of pharmaceuticals, medical equipment and supplies, sales and services D-R PANOVSKI Skopje	358
Sale and services company AHEMA DOO export-import Skopje	322
Sale and services company AVICENA DOO export-import Skopje	320
Trading and services company EURO – FARM import – export DOOEL Bitola	289
Company for production, trading and services HOSSAM DOO import – export Skopje	287
MAKPETROL joint stock company for sales of oil and oil derivatives Skopje	272
Company for wholesale and retail sale, services, marketing and import – export MANCE DENT Velika DOOEL Bitola	267
Company for production, sales and services VESTA PHARMACY Zoran and Bosko import - export Skopje	261
Company for production, trading and services S. COM DOOEL export – import Skopje	246
Sale and consulting company FARMAHEM DOOEL Skopje	240
Sale and services company ALKALOID KONS import - export DOOEL Skopje	222
Trading and services company VIZIOMED GBG DOOEL Bitola	222
ONE Telecommunication Services DOO Skopje	186
Trading and services company Aco Stojanoski GRINI DOOEL Ohrid	181
Company for production, trading and services PUCKO PETROL import - export DOO Village of Plasnica, Plasnica	179

Table 7.17

List of 20 economic operators with the most concluded contracts according to the value of the concluded contracts	
Contractor	Value of concluded contracts
PELISTER Bitola DOO Construction and Services Company	3,467,880,170
Sintez Green Energy Cyprus Limited	3,115,279,440
OKTA Oil Refinery joint stock company - Skopje	2,484,488,860
MAKPETROL joint stock company for sales of oil and oil derivatives Skopje	1,931,872,901
STRABAG AG	1,853,249,499
Company for construction, trading and services BAUER BG DOO Skopje	1,424,689,816
Civil Engineering Institute MACEDONIA AD - Skopje (joint stock company)	1,337,087,334
BETON AD Skopje Construction Company (joint stock company)	1,305,503,281
Sale and services company ALKALOID KONS import - export DOOEL Skopje	1,126,565,887
Construction and trading company ZIKOL DOOEL export – import Strumica	987,951,803
Company for production, trading and services PUCKO PETROL import - export DOO Village of Plasnica, Plasnica	932,833,465
URBAN PLAN KONSTRUKTI company for production, construction, transportation, catering, trade and services	838,274,968
Joint stock company for production of pharmaceuticals, medical equipment and supplies, sales and services D-R PANOVSKI Skopje	808,342,361
Construction Company BETON-STIP, joint stock company, Stip	719,439,974
ERICSSON TELECOMMUNICATIONS MACEDONIA DOOEL - trading and services company, export – import Skopje	713,987,988
GRANIT AD Skopje Construction Company	712,837,839
Insurance MACEDONIA a.d. Skopje - Vienna Insurance Group	672,081,184
Company for construction, sales and services GEING Krebs und Kifer International and Others DOO Skopje	665,271,792
Trading, production and services company PROMEDIKA DOO Skopje	617,795,590
Construction, intermediation, trading and service company ALDING - ENGINEERING DOOEL Skopje	613,293,669

Data on the number and the value of contracts concluded by category of tenderer and by country of origin of the contractor are presented below. In fact, it is necessary to mention that annual subscription to use the services offered by the Electronic System for Public Procurement was introduced in 2012. The fee to be paid by the economic operators depends on the company size as registered in the Central Registry of the Republic of Macedonia, according to the Tariff Book on Fee for Using Electronic System for Public Procurement, published in the “Official Gazette of the Republic of Macedonia”, no. 44 dated 30<sup>th</sup> March 2012. As per the above mentioned, 4,788 economic operators are registered and active on the Electronic System for Public Procurement, which, according to the category of tenderer, are presented in Table 7.18.

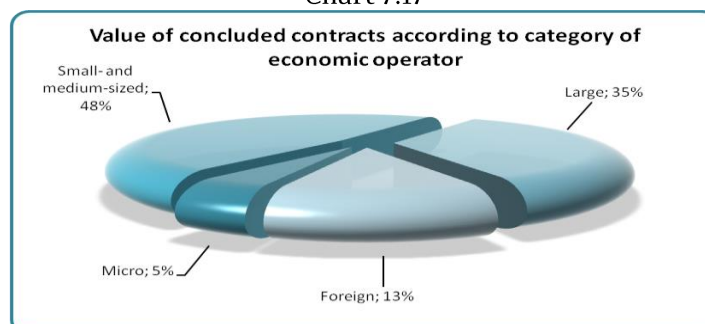
Table 7.18

Registered economic operators according to the category of tenderer	
<i>Category of tenderer</i>	<i>Active economic operators</i>
<b>Micro</b>	1765
<b>Small- and medium-sized</b>	2853
<b>Large</b>	80
<b>Foreign</b>	90

Table 7.19

Number and value of concluded contracts by category of tenderer		
	Number of concluded contracts	Value of concluded contracts
Micro	2967	Denar 3.14 billion
Small- and medium-sized	15652	Denar 30.00 billion
Large	3241	Denar 20.09 billion
Foreign	78	Denar 7.18 billion

Chart 7.17



Large companies, although only 80 registered on the ESPP, participated with 35% in the total value of concluded contracts.

Analysis of both the number and the value of concluded contracts by category of tenderer (Table 7.19), shows that most of the contracts concluded in 2014 (15,652 contracts) fall within the category of small- and medium-sized companies, accounting for 48% of the total value of the concluded contracts. In fact, value share of the category large companies accounts for 35% (3,241 contracts), while micro companies account for the least – 5 % of the total value of the public procurements carried out (2,967 contracts concluded), taking into account that they account the most in the simplified competitive procedures.

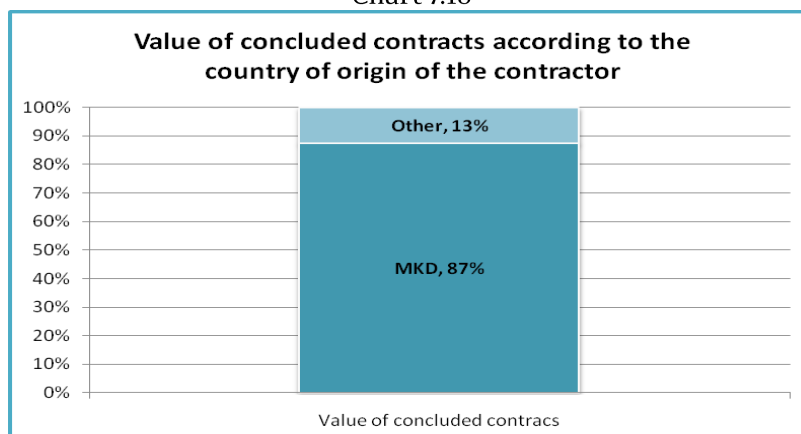
Analysed by country of origin of the contractor, data are presented in Table 7.20 and Chart 7.18.

Table 7.20

Country of origin of the contractor	Number of concluded contracts	Value of concluded contracts
<b>Macedonia</b>	21,860	Denar 53.21 billion
<b>EU</b>	53	Denar 6.96 billion
<b>Other</b>	25	Denar 220 million



Chart 7.18



The data lead to the conclusion that national companies participated the most on the public procurement market in the Republic of Macedonia, accounting for 87% of the value of awarded public contracts

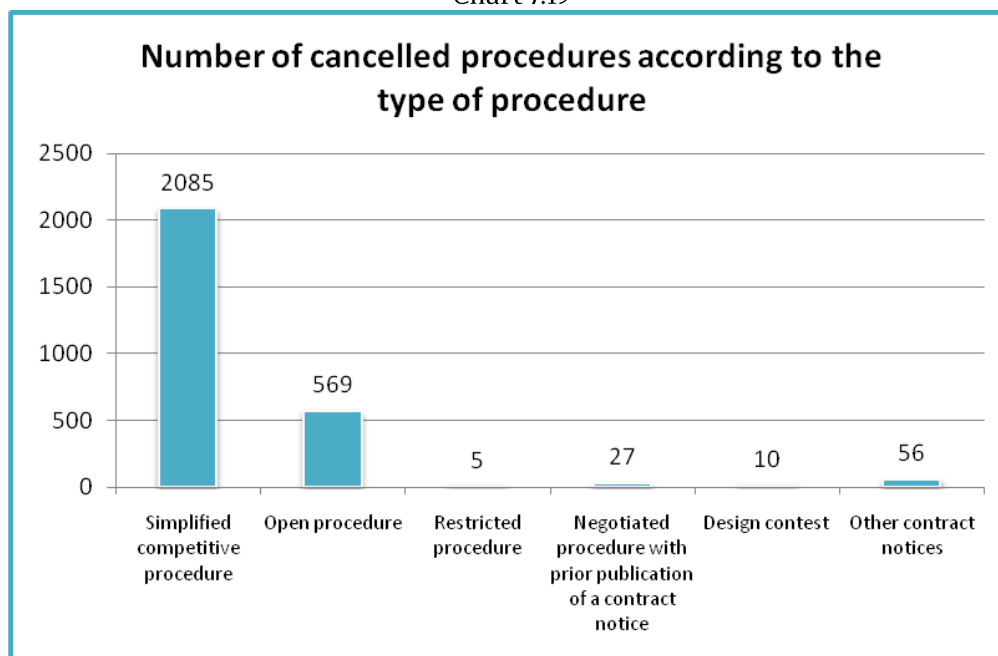
Above-stated data in Table 7.20 and Chart 7.18 lead to the conclusion that national companies participated the most on the public procurement market in the Republic of Macedonia, accounting for 87% of the value of awarded public contracts. Share of foreign companies as contractors in the public contracts accounted for 13% in 2014. Value and percentage of awarded contracts to companies outside Macedonia increased compared to the previous year (9% in 2013).

## 7.3. Data from Cancellation Notices

Analysis of the data on the number of cancellations in 2014 shows that total of 2,752 cancellation notices were filled in through the ESPP. These data refer to the cancellation of the whole procedure, rather than to cancellation of parts thereof. Chart 7.19 presents data on cancellation of procedures according to the type of procedure.

In 2014, 17% of the published contract notices were cancelled.

Chart 7.19



Above-presented data lead to the conclusion that 17% of the published contract notices was cancelled in the course of 2014, being lower percentage of cancellations compared to 2013.

Chart 7.20

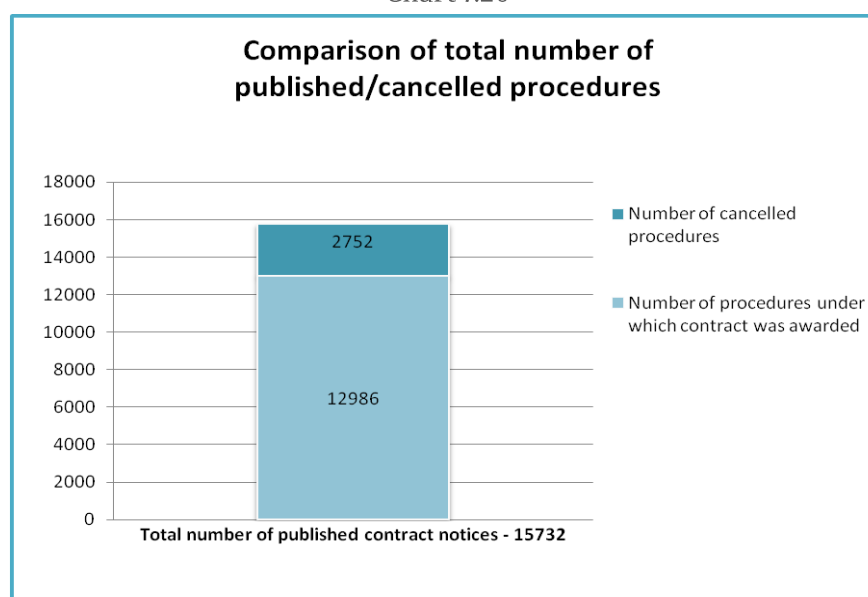


Table 7.21 presents the reasons for cancellation of procedures. It can be concluded that procedures in 2014 were most often cancelled due to the following reasons:

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

*The most common reason for cancellation of the procedures in 2014 was that no tender was submitted.*

Table 7.21

Information on the reasons for cancellation of the procedure or cancellation of parts thereof	Number of cancelled procedures	Number of cancelled parts thereof
number of candidates was less than the minimum number set for the contract award procedures pursuant to the Law	40	10
no acceptable or no appropriate tender was submitted	649	197
no acceptable tender was submitted	63	24
no appropriate tender was submitted	29	15
no tender was submitted	740	391
acceptable tenders were submitted, but they could not be compared due to different approaches in the financial or technical proposals	50	14
unforeseeable changes occurred in the budget of the contracting authority	67	3
tenderers offered prices and conditions for execution of the public contract which were less favourable than the real prices and conditions on the market	367	133
tender documents had major shortcomings or faults	337	17
needs of the contracting authority changed due to unpredictable and objective circumstances	95	17
contracting authority could not select the winning tender due to major infringements to the Law on Public Procurement pursuant to Article 210 of this Law	183	37
selected tenderer withdrew from signing the contract	11	4
State Appeals Commission cancelled the procedure	108	5
other reasons (other notices, design contest)	13	/
<b>Total</b>	<b>2752</b>	<b>867</b>

In the course of 2014, 2,752 procedures were cancelled, being by 836 procedures less compared to 2013, however, number of parts of procedures being cancelled increased, i.e. there were 169 cancelled parts more in relation to last year.

Table 7.22

Contracting Authority	Cancelled procedures	Published contract notices	Percentage of cancelled contract notices
Ministry of Defence	136	372	37%
Macedonian Power Plants	116	294	39%
Bitola Municipality	35	146	24%
Ministry of Health	32	60	53%
Komunalec public utility enterprise - Prilep	26	55	47%
Ohrid Municipality	24	77	35%
Common Service Agency	24	141	17%
Fort Oslomej	23	25	92%
Bitola Clinical Hospital	23	89	25%
Macedonian Railways Transport AD - Skopje	19	45	42%
Sveti Nikole Municipality	19	57	33%
Ministry of Labour and Social Policy	19	70	27%
TPP Negotino AD	17	43	39%
“Cistota i Zelenilo” Public Enterprise – Kumanovo (sanitation and greenery)	17	65	26%
AD MEPSO	15	29	51%
Public enterprise “Macedonian Radio Broadcasting”	15	40	38%
PHI General Hospital – Kumanovo	14	38	37%
PHI General Hospital – Strumica	11	42	26%
Public Health Center Skopje	7	31	22%

### 7.3.1. Data from Forms for Amending and Supplementing the Contract Notice

In 2014, total of 3,515 forms for amending and supplementing the contents of the contract notice were published through the ESPP. These data show that 22% of contract notices, after being published, underwent amendments or supplements to the tender documents, and amendments

to the time period, which was by 10% more compared to 2013. Amendments and supplements were most often made at the simplified competitive procedures - 800 amendments and supplements, open procedures - 735 amendments and supplements, restricted procedure - 3 amendments and supplements, negotiated procedure with prior publication of a contract notice - 3 amendments and supplements, design contest - 16 amendments and supplements and qualification system - 7 amendments and supplements.

### 7.4. E-Procurement Procedures

Data analyzed by the Public Procurement Bureau regarding the carrying out of e-procurement showed continuation of the trend of using the traditional “paper-based” form when carrying out of the procedures at most of the published contract notices in the course of 2014. Compared to 2013, there was slight decline in the percentage of procedures carried out fully electronically, which was due to the overall decline in the number of published contract notices in 2014. Despite the fact that positive results from carrying out the procedures fully electronically are obvious, contracting authorities are still using the paper-based method of carrying out the procedures to a great extent.

*Despite the efforts the Bureau puts for the contracting authorities to use the ESPP more as regards the carrying out of the procurement procedures fully electronically, they are using more the traditional “paper-based” form of carrying out of the procedures.*

This especially refers to the smaller institutions which might not have the necessary capacity or public procurement officers are not sufficiently encouraged to use electronic means, and one should also take into account the fact that carrying out the procedures electronically is still not a mandatory obligation pursuant to the Law on Public Procurement.

Public Procurement Bureau carries on with the continuous education and training, as well as transferring the European standards and guidelines for usage of the electronic means when carrying out the procedures. As regards e-procurement, we are undoubtedly ahead of many EU Member States and certainly leaders in the region in this field.

Experience of the users having accepted the e-procurement, as well as the training with simulated practical exercises, show the contentment from the use of the electronic system as a tool which provides the users to carry out the procurement procedures faster, more efficiently and with significant savings.

What is of particular significance, on the basis of the comparative analyses of the procedures carried out electronically and those carried out in the traditional paper-based form, is the information on the average duration of the procedures. In fact, according to the data available to the Bureau, average duration of the procedures carried out electronically is by 3.5 times shorter than the time necessary to carry out the procedures in a paper-based form.

However, the decision to use the electronic means is on the contracting authorities.

*In 2014, 2,303 contract notices were published electronically, i.e. approximately 15% of the total number of published contract notices.*

On the basis of the results obtained so far regarding the use of the electronic means in procurement, as well as taking into account the guidelines and the recent legal solutions at European level, recommendations and commitments of the Public Procurement Bureau are aimed at implementing a mandatory e-procurement. As in the case of mandatory use of e-auctions, the legal obligation would pertain to gradual proportionate use of e-procedures in relation to the overall published contract notices annually.

Percentage of carrying out contract award procedures fully electronically in 2014 was approximately the same as in 2013. According to the analyzed data, it could be concluded that the contracting authorities, having recognised the benefits arising from this manner of awarding contracts, continued, fourth year in a row, to carry out the procedures electronically. Contracting authorities, which have mainly oriented to shifting from the paper-based method to e-procurement procedure and have been carrying out, several years in a row now, the procedures electronically are the following:

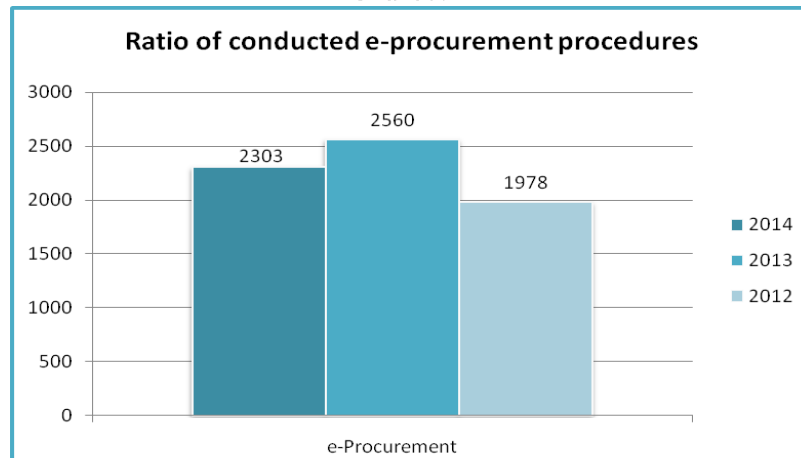
- Macedonian Power Plants Joint Stock Company
- Water Supply and Sewerage Public Enterprise – Skopje
- Real Estate Cadaster Agency
- “8<sup>th</sup> September” City General Hospital PHI - Skopje
- Ministry of Internal Affairs of the Republic of Macedonia
- Bitola Municipality
- Kisela Voda Municipality
- Customs Administration of the Republic of Macedonia
- Ministry of Transport and Communications
- Struga Municipality

It could be noted that certain contracting authorities used the ESPP more when carrying out the procedures in 2014 as well. Contracting authorities which used the ESPP to a greater extent to fully carry out the procedures electronically in 2014 are the following:

- Central Registry of the Republic of Macedonia
- Youth and Sport Agency
- PHI Gynecology and Obstetrics University Clinic Skopje
- Insurance Supervision Agency
- Pension and Disability Insurance Fund of the Republic of Macedonia
- Ministry of Labour and Social Policy
- Ministry of Education and Science
- Ministry of Information Society and Administration
- Public Enterprise “Official Gazette of the Republic of Macedonia”
- PHI Psychiatric Hospital “Demir Hisar”
- PHI Skopje Health Home
- PHI General Hospital “Dr. Ferid Murad” - Gostivar
- PHI Psychiatric Hospital – Negorci, etc.

Total of 2,303 e-procurements were carried out through the ESPP in 2014. There were less procedures carried out compared to 2013, but the decline in the number of published contract notices in 2014 should be also take into account. Chart 7.21 shows comparison between procurement procedures carried out at annual level.

Chart 7.21



As already mentioned, carrying out the procedures electronically is still not at the satisfactory level. Published contract notices show that around 14.7% of contract award procedures in 2014 were carried out fully electronically, similar like in 2013, when 15% of the procedures were carried out electronically.

Important data regarding the positive benefits from the carrying out the procedures fully electronically is the average is also the average number of submitted tenders. In fact, average number of tenders submitted in procedures carried out fully through the ESPP is 3.4 tenders per procedure, while with respect to the paper-based procedure, 2.9 tenders are submitted in average. These data speak in favour of the fact that the use of electronic means in public procurement is not a limiting factor for the economic operators to participate in the procedures, but also encourages the e-procurement trend in general.

Tenderers - economic operators having participated in number of e-procurements are the following:

1. Civil Engineering Institute MACEDONIA AD - Skopje (joint stock company), 84 times
2. Construction and trading company ZIKOL DOOEL export – import Strumica, 64 times
3. Sale and services company BIOTEK DOO export-import – Skopje, 55 times



*The threshold for mandatory carrying out of e-auctions in 100% of the published contract notices was attained.*

4. Company for production, sales and services OFIS PLUS DOOEL import – export – Skopje, 55 times
5. MAKPETROL joint stock company for sales of oil and oil derivatives – Skopje, 54 times
6. Joint stock company for production of pharmaceuticals, medical equipment and supplies, sales and services D-R PANOVSKI – Skopje, 51 times
7. AD INSURANCE POLICY National Insurance Group (joint stock company) – Skopje, 46 times
8. Macedonian Telecom joint stock company for electronic communication – Skopje, 45 times
9. Company for construction, sales and services GEING Krebs und Kifer International and Others DOO Skopje, 43 times
10. Company for production, trading and services PUCKO PETROL import - export DOO Village of Plasnica, Plasnica, 41 times

### 7.5. Electronic Auctions

E-auctions were mandatory carried out in 100% of published contract notices in 2014 as well. In 2013, provision on mandatory carrying out of e-auctions in 100% of published contract notices was applied second year in a row. The 100% threshold was attained in 2014 as well, i.e. the contracting authorities successfully applied the legal provision. Successful and efficient application of the legal provision on mandatory carrying out of e-auctions in 100% of the contract notices was a result of the following factors:

*Public Procurement Bureau plays key role in carrying out such government policy.*

- introduction of legal and operational measures by the Bureau, which had significantly helped in the application of this legal provision (improvement of the legislation, ESPP control mechanisms, etc.),
- continuous training and technical support to the users of the ESPP,

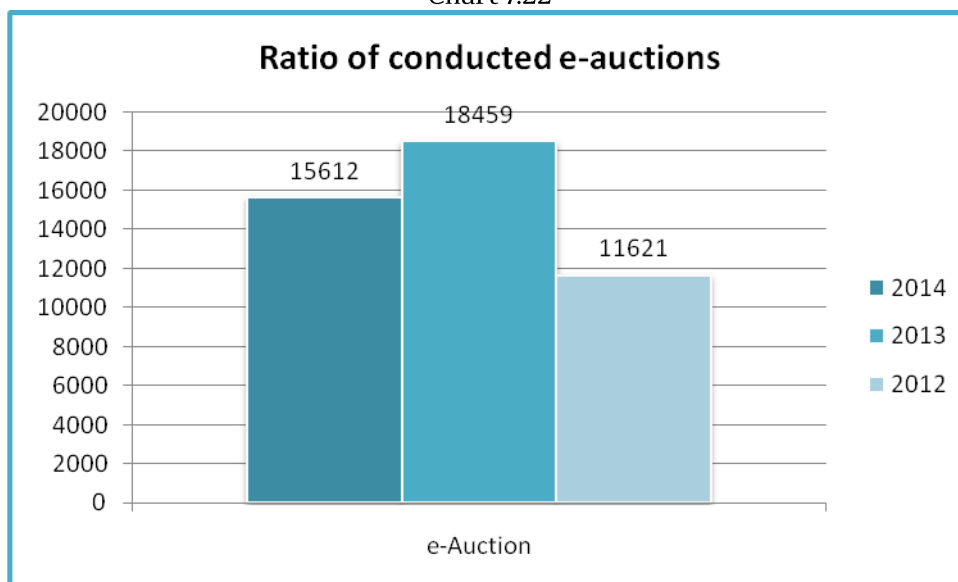
- continuous development and upgrading of the ESPP (optimising the application, adding new functionalities, etc.).

Public Procurement Bureau fully performed its legally prescribed competence to control the carrying out of e-auctions by the contracting authorities and implemented certain automated control processes in the Electronic System for Public Procurement, which prevents avoidance of the application of e-auctions, except in cases prescribed by the Law. Like in 2013, it can be concluded that percentage of mandatory e-auctions was achieved, and the Bureau played key role in implementing such government policy.

Starting 1<sup>st</sup> January 2014, pursuant to the amendments to the Law on Public Procurement, in cases of procedures when only one tender is submitted or when only one acceptable tender is submitted, the contracting authority mandatory invites the single tenderer to submit final price through the ESPP. Pursuant to these amendments, the system provides for a module through which the single tenderer has the possibility to reduce the initially submitted price. Data regarding the submitted final prices will be presented in the additional analyses below in this Report.

In 2014, there were 15,612 contract notices published for procedures with e-auctions as a final phase in e-procurement procedures or procedures previously carried out in a paper-based form. This figure leads to the conclusion that 99.5% of the published contract notices in 2014 included e-auction as final phase of the procedure. Other contract notices fall within the exception from the application of e-auction referred to in Article 123 of the Law on Public Procurement and they are not taken into account when determining the percentage of procedures that are to include e-auction as final phase on mandatory basis. Even if they are taken into account, it can be seen that they are in an insignificant number – only 85 contract notices.

Chart 7.22



The Chart presents the total published contract notices envisaged to include e-auction as final phase. However, it should be taken into consideration that only one acceptable tender was submitted for part of the procedures or parts thereof, hence submission of final price was the final phase in these procedures/parts thereof. More detailed analyses will be presented below in this Report.

An important data, providing for the volume of using the ESPP itself, is also the number of carried out e-auctions on the Electronic System for Public Procurement. There were 29,477 e-auctions carried out in 2014 or 112 e-auctions a day in average. Submission of final price is added to this figure. In fact, in the course of 2014, there were total of 19,744 submissions of final price or 75 submissions of final price a day in average.

### 7.5.1. Positive Effects from Carrying Out E-Auctions and E-Procurement

So-far experience in public procurement analysed by the Bureau shows that the most significant effect achieved by carrying out the e-auctions is generating savings. Thereby, the Bureau calculates the savings generated through e-auctions as follows:

- a) the lowest price being the criterion for awarding the contract - the savings generated is the difference between the initial price at the e-auction (the lowest price from all tenders previously evaluated and accepted to participate in the e-auction) and the final price achieved at the e-auction, i.e. the value of the contract concluded.
- b) economically most advantageous tender being the criterion for awarding the contract - the savings generated is the difference between the own initial price and the price of the tenderer with the most favourable tender, following the e-auction.

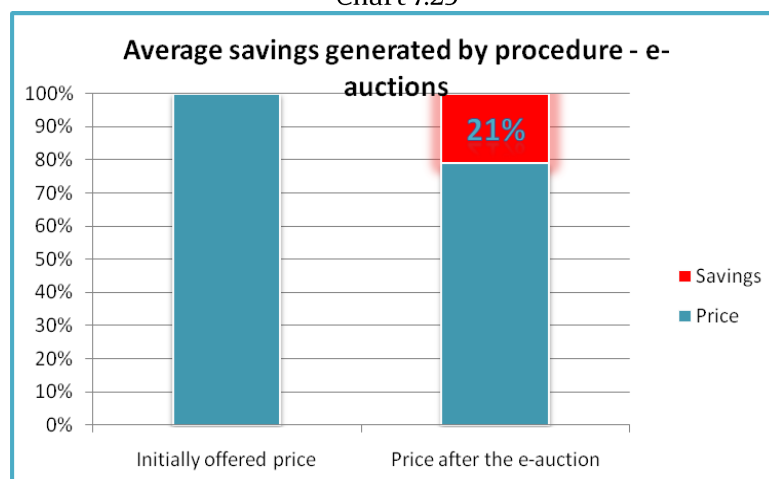
Data on the carried out e-auctions in the course of 2014 show that average savings of 21% were generated or savings in the amount of Denar 3,595,492,629 were generated in absolute terms (or more than EUR 58 million). Thereby, it should be emphasised that, considered as an aggregate value, savings are even higher, since the above-mentioned value also included e-auctions which were carried out at unit price, thus when such value is presented as an aggregate value of the contract, savings have higher aggregate value. If savings generated upon submission of final prices, in the absolute amount of Denar 703,704,098 (expressed as percentage, 16%), are added to these savings, total savings amount to almost EUR 70 million.

Analyses made by the Bureau lead to the conclusion that the amounts of the savings, both as aggregate value and as a percentage, had

constantly increased in the last three years. Amounts of the savings generated at the carried out auctions in the last three years are presented in Table 8.23. Amounts of the savings by type of the criterion used for awarding the public contract are as follows:

- as regards e-auctions in procedures in which the lowest price is the criterion applied, savings in the amount of Denar 3,516,439,575 were generated,
- as regards e-auctions in procedures in which the economically most advantageous tender is the criterion applied, savings in the amount of Denar 79,053,054 were generated.

Chart 7.23



2014 data and so-far practice lead to the conclusion that submission of final price, as a tool, does not even close yield the results obtained with e-auctions, i.e. when there is competition as regards the procedures.

Table 7.23

Total amount of savings generated through e-auctions	
2014	Denar 3,595,492,629
2013	Denar 3,382,290,268
2012	Denar 2,680,501,017

Data gathered show constant increase of the amount of savings generated in the last three years.

Such trend was mostly a result of the increased volume of procedures (published contract notices) in which the e-auction was the final phase in the e-procurement. However, many other factors, contributing to the increased amount of savings, could be also mentioned, such as: significant reduction of the prices in conditions of increased competition, as well as submission of abnormally high prices in the initial tenders at some types of procedures, etc.

As regards the savings generated upon the final prices submitted by the tenderers, insignificant percentage of savings (1.22%) could be observed on the basis of the initially offered price by the single tenderer. This is especially due to the mandatory publication of the estimated value, whereby last year, being the first year following the introduction of these legal amendments, it was observed that prices were abnormally high up to the amount of the estimated value, especially at specific subject-matters of procurement for which there is no competition on the market. It is worth mentioning here that savings generated through the final price mechanism participated with approximately 15% in the total amount of generated savings. If this information is compared with the number of contract notices with submission of final price as final phase – 36% of the published contract notices, it could be concluded that, as regards the amount of savings and the percentage of savings, submission of final price does not even close yield the results obtained with the e-auctions, but rather the tenderers, most often, reduce their prices only to be within the estimated value (approximately at the same level as the estimated value).

As regards savings generated on the basis of different procedures, data are presented in the Table below:

Table 7.24

Type of procedure		Total amount of savings	Percentage of savings
Simplified competitive procedure up to EUR 5,000	LP	Denar 128,198,603	21%
	EMA		
	T	Denar 5,827,052	30%
Simplified competitive procedure up to EUR 20,000	LP	Denar 231,432,856	19%
	EMA		
	T	Denar 10,068,897	24%
Open procedure	LP	Denar 2,974,409,471	16%
	EMA		
	T	Denar 63,157,104	18%

In 2014, the same trend continued – larger savings were generated at the procedures with higher value thresholds. In fact, 84% of the total amount of the savings was generated at e-auctions carried out at the open procedures (share of open procedures in the total number of published contract notices accounted for approximately only one fourth of the contract notices). Higher percentage of savings was observed at the simplified competitive procedure, however, as an aggregate amount, the amounts were low. Savings at restricted procedure and negotiated procedure with prior publication of contract notice were insignificant and are not included in this review.

As is the case with the procedures and the savings on the basis of carried out auctions, the savings generated on the basis of submission of final prices – the highest percentage (94%) was also observed at the open procedures.

As regards savings on the basis of auctions by type of procurement, i.e. type of supplies, service or works procured, more important data are shown in the Table below:

*The largest amount of savings were generated at the e-auctions as final phase of the open procedure – even 85% of the total savings were savings generated at the open procedures.*

Table 7.25

Activity/sector	Percentage of savings
Consumable supplies and stationery and printing/publishing services	26.48%
Pharmaceuticals, medical/health consumable supplies, equipment, medical devices and related health services	22.6%
Fixed assets	22.30%
IT and telecommunication goods and services	20.9%

Like in 2013, the largest savings, in average, were generated in the sectors where standardised supplies and services are offered and where competition on the market exists. As it can be seen from the Table, savings of more than 20% in average are generated in these sectors. In these terms, market competition means that more competitive tenderers participate with their tenders in the contract award procedures. Thereby, it has to be pointed out that, although market competition can exist in a particular sector, if the companies do not participate with their tenders, there would not be real competition in the contract award procedures and the e-auctions would not yield the expected positive effect. In the light of the savings generated at public procurement by type of sector, it is worth to mention that savings in the health sector increased, probably due to the latest legal amendments in carrying out e-auctions for pharmaceuticals and consumable medical supplies, i.e. dividing the procurements to separate lots. In addition, the trend of high percentage of savings in the construction works sector continues, as well as in the sectors for procurement of services (financial - 40,99%, education, legal, consulting, marketing services and temporary employment services –

*In 2014, e-auctions were carried out in 64% of the published contract notices, while 36% of the published contract notices included submission of final price as final stage, accounting for a large percentage of the contract notices.*



32%, etc.) where savings of more than 40% were generated on the basis of the carried out e-auction. Since this type of savings does not account as a significant item within the total amount of savings, it is not presented in the Table.

In 2014, out of the total number of published contract notices for procedures having an e-auction as final phase, at more than 64% of the procedures there were at least two acceptable tenders and e-auctions were carried out, while as regards the remaining 36% of the procedures, final price was submitted. This ratio is presented in Chart 8.23. These data show a significantly large share of the procedures/parts thereof having the submission of final price as final phase in the total number of contract notices for which contracts were concluded.

Quite positive information as regards the use of e-auctions and participation of the tenderers is the percentage of e-auctions at which there was reduction of the initial price. Reduction of the initial price was observed at 71% of the e-auction scheduled and carried out through the system. In 2014, at 14,650, out of total 19,744, scheduled submissions of final prices no reduction was made or in 74% of the cases there was no price reduction.

Average number of price reductions when carrying out e-auctions in 2014 was around 23 price reductions, while in 2013, there were 19 price reductions in average.

*Reduction of the initially submitted price was observed at 71% of the scheduled e-auctions.*

*Tenderers DID NOT reduce the price in 74% of the submissions of final price.*

Chart 7.24

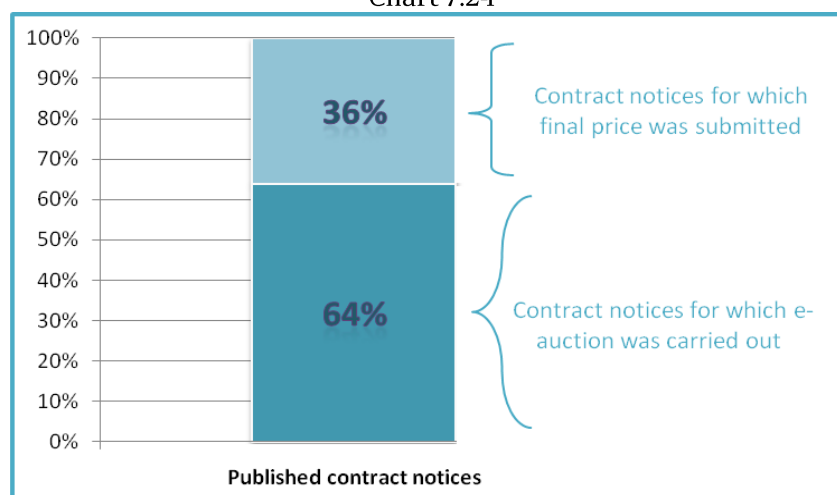
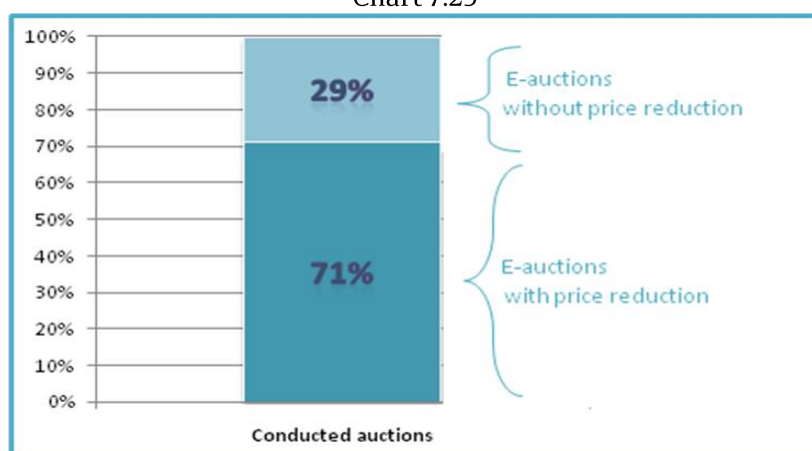


Chart 7.25



Average duration of an e-auction was around thirty minutes (including the extensions of 3 minutes if new reduced price was submitted in the last 3 minutes). Most scheduled e-auctions in one day through the ESPP in the course of 2014 were held on 12<sup>th</sup> May, when 627 e-auctions were scheduled and carried out, a significantly higher number compared to 2013, when 372 e-auctions at the most were scheduled in one day.

Chart 7.26

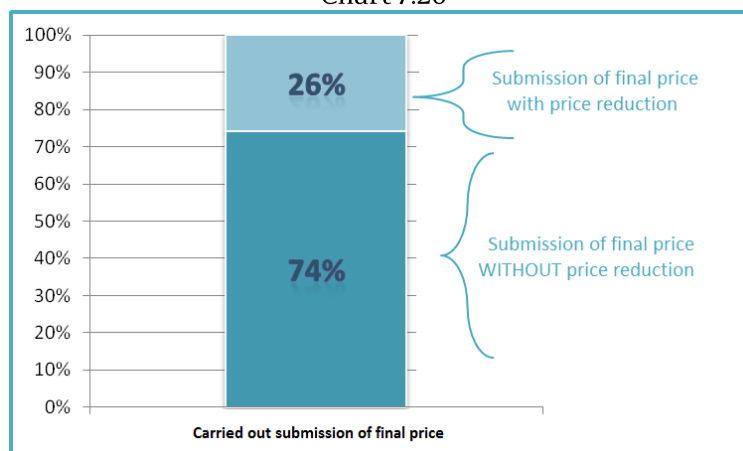
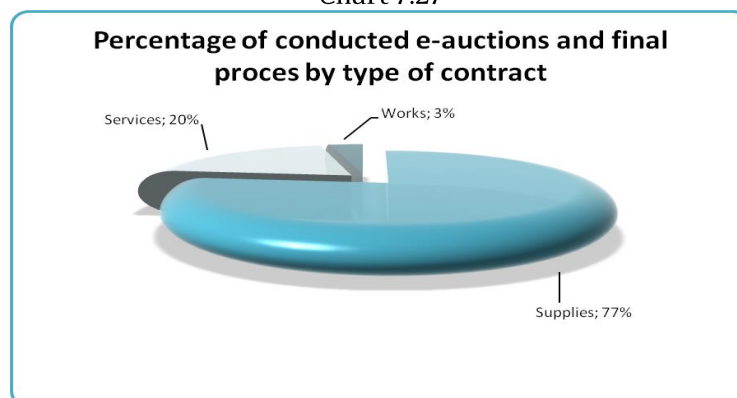


Chart 7.27



## 7.6. Competition at Public Procurement

With respect to the analyses made on the basis of the data available to the Public Procurement Bureau as regards competition at public procurement, below are presented certain significant data on the number of tenders by procedure, type of contract, as well as data on the basis of how the procedure was carried out (paper-based form or electronically).

It should be taken into consideration that the data are obtained from the ESPP database, whereby with respect to the tenders in the

procedures carried out electronically, the system itself produces the number of submitted tenders, while regarding the paper-based procedures, data are obtained from the forms the contracting authorities fill in manually when recording the concluded contracts. Hence, the reliability of these data depends, to a great extent, on the accuracy of the data entered by the institutions.

Average number of tenders submitted in procedures carried out fully through the ESPP is 3.4 tenders per procedure, while with respect to the paper-based procedures, 2.9 tenders are submitted in average.

Average of the submitted tenders at the contract award procedures (including both those carried out electronically and in a paper-based form) is presented in the Tables below:

Table 7.26

Procedure	Average number of tenders
Simplified competitive procedure up to EUR 5,000	2.60
Simplified competitive procedure up to EUR 20,000	2.85
Open procedure	3.17
Restricted procedure	2.33
Negotiated procedure with prior publication of a contract notice	2.94
Negotiated procedure without prior publication of a contract notice	1.82
Awarding public services contract for service category 17- 27	2.45
Qualification system	3.50
Average of all procedures	2.79

Table 7.27

Type	Average number of tenders
Supplies	2.88
Services	2.54
Works	3.73

## 8. Effects from the Introduction of the New Legal Solutions

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### 8.1. Analysis of the effects from the introduction of the legal solutions, in force from 1<sup>st</sup> January 2014 (publishing the estimated value, uploading the tender documentation and introduction of final price)

It is early to speak about the results and the effects from the introduction of the legal obligations – mandatory publishing of the estimated value, mandatory uploading of the tender documentation together with the publishing of the contract notice and introducing final price, having in mind that these obligations commenced to apply from 1<sup>st</sup> January 2014. However, we would like to point out that analysis of the data pertaining to the above-mentioned novelties in 2014 can lead to the following conclusions:

- As regards the mandatory publishing of the estimated value in the contract notice, it has been concluded that, in most of the cases, the prices in tenders received were higher than the published estimated value. That is to say that, in average, the prices were higher from 15% to 35% than the published estimated value, all to the end of leaving space to reduce them during the e-auction in case there is competition. Contracting authorities usually estimate the value of the contract on the basis of which they concluded the last year's contract or the estimated value in the amount of the funds envisaged under the budget. When determining the estimated value in our case, other factors also play an important role, those being the following: volume of the procurement, market competition, as well as whether the

contracting authority timely fulfills the due liabilities. Hence, it is very difficult to talk about determining the real market price of the subject-matter of public procurement, regardless of whether it is a matter of supplies, services or works. Although the period from the introduction of this amendment is short to reach any general conclusion, still it seems that thorough market price analysis is lacking in most of the cases and there is financial uncertainty at the contracting authorities, hence the effects from the publishing of the estimated value are mostly negative. Analyses of the estimated value show that the estimated value, published in the contract notice, was changed in 27% of the published concluded contracts.

- Publishing of tender documentation – increased transparency was observed on the basis of the analysis as regards the introduction of the mandatory publishing of tender documentation. Unlike previously, when economic operators received information about the public procurement procedure only from the contract notice, today all interested economic operators are available the whole tender documentation and technical specification as its integral part. Hence, the economic operators are informed about all terms and conditions and the requirements regarding the procedure in parallel to the veru publication of the contract notice. Bureau's assessment is that this measure has significant positive effects on strengthening the competition and improving the quality of the procedures, since exchange of experience is provided by publishing the tender documentation.
- Final price concept – final price concept has been introduced together with the previous amendments. In case when only one tender is submitted, which is acceptable, or when only one acceptable tender is submitted, the contracting authority mandatory invites the single tenderer to submit final price

through the ESPP. The invited tenderer submits the final price at a determined time only once, and should it fail to submit the final price, the initially submitted price is deemed as final. Analyses as regards the introduction of this novelty, mentioned earlier in this Report, lead to the conclusion that number of negotiated procedures, when there is only one acceptable tender, has reduced, which is a positive effect from the introduction of this novelty. Other analyses as regards the estimated value of the procurement, the offered tender price and the final price show that the final price is submitted only in case when the initially submitted tender price higher than the estimated value. In cases when the offered tender price is within the estimated value, there is no or there is symbolic reduction of the price, i.e. insignificant savings. In the light of the savings, insignificant savings were generated in relation to the initial prices submitted by the single tenderers. This is partly due to the publication of the estimated value, which has also become mandatory, and, as mentioned above in the Report, it is not in the interest of the single tenderers to reduce the initially submitted price which is within the published estimated value. On the other hand, the Bureau cannot prepare good comparative analysis of the savings in case of a single tender, i.e. in case of submission of final prices, compared to the reductions made in the negotiated procedures without publication of a contract notice. Better analysis of the trends can be expected to be prepared next year, taking into consideration that the final price is submitted through the ESPP. By introducing the legal obligation for mandatory inviting of the single tenderer to submit final price, number of cancelled procedures and negotiated procedures has dropped, especially in the light of adding the possibility for a transparent and efficient completion of the

procedure and in case when a single tender is submitted or when only one acceptable tender is submitted.

### 8.2. Analysis of the Effects from Carrying Out E-auctions on the Overall Public Procurement System

According to the analyses made by the Public Procurement Bureau, it can be concluded, as regards 2014 as well, that effects for carrying out e-auctions were significant and they speak in favour of generating large savings in public procurement. What was concluded in the past years is also applies to the procedures carried out in 2014. Public Procurement Bureau maintains the recommendations and the conclusions analyzed in the 2013 Report, when main features and trends related to e-auctions were presented, as well as the cases when e-auctions do not provide for the best benefits:

- e-auctions yield the expected results when standardised supplies and services are procured, with well-defined technical specifications and when used on a market with high level of competition and prevailing fair competition relations (according to the data from the Report – stationery - 26.48% savings, pharmaceuticals, consumable medical supplies - 22.60% savings, etc.). Thereby, it should be underlined that even if the e-auctions are used for procurements in a sector in which there is competition, if, as regards the respective procedure, there is unfair competition or “cartelization”, the e-auctions will not yield a positive effect. Thereby, it could be mentioned that not all subject-matters of procurement are suitable to be tendered at an e-auction, i.e. theoretically/technically, e-auctions could be used in all procurements, however, they do not give the results and do not justify the purpose of their existence if used in 100% of the procurements.

*E-auctions yield the expected results when standardised supplies and services are procured, with well-defined technical specifications and when used on a market with high level of competition.*

*Theoretically/technically, e-auctions could be used in all procurements, however, not all subject-matters of procurement are suitable for the e-auction to be applied.*



*Real effect of the savings ONLY at the higher-value procurements, i.e. at the procurements with higher value threshold.*

*Negative effect from the e-auctions – abnormal increase of the prices in the phase prior to the auction.*

- real effect of the savings ONLY at the higher-value procurements, i.e. at the procurements with higher value threshold. Slight effect at low-value procurements – although savings are generated at procurements with low value threshold, i.e. low-value procurements of supplies in smaller quantities or for everyday use, they are in small amounts and account for an insignificant percentage in terms of the value of the supplies or the service procured.
- Abnormal increase of the prices in the phase prior to the e-auction – this trend occurs with the mandatory use of the e-auctions at public procurement. Tenderers participating in the procurement procedures, already having acquired experience with the e-auctions and expecting reduction of the prices with the beginning of the e-auction (dynamic acting and rapid drop of the prices), when submitting their initial tenders, offer higher price, i.e. they abnormally increase the cost prices. This trend distorts the real market picture and the relations, thus presenting inaccurate results from the market research.
- Abnormally high prices and large possibility for speculative activities as regards the price and the reduction – on the basis of the so-far practice. By observing the experience of the developed countries, it is shown that such concept of e-auction (same for all subject-matters and for all value threshold) give a possibility for certain speculative activities as regards the price defining/reducing. In fact, when there is public opening and the prices are disclosed to the competitors, the tenderers have an open possibility for “collusion” and “price rigging”, of course at the expense of the contracting authority (the contracting authority pays more). Therefore, it is necessary to analyze the possibilities for new types of e-auction concept, optional use of some subject-matters of procurement, etc.