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 Center for Civil Communications
Центар за граѓански комуникации

**QUARTERLY REPORT ON MONITORING THE
IMPLEMENTATION OF PUBLIC PROCUREMENTS IN
THE REPUBLIC OF MACEDONIA
3/2013**

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ABBREVIATIONS

BPP – Bureau of Public Procurements

SAO – State Audit Office

SCPPA – State Commission on Public Procurement Appeals

CA – contracting authorities

EO – economic operators

EPPS – Electronic Public Procurement System

EU – European Union

LPP – Law on Public Procurements

RM – Republic of Macedonia

CCC – Centre for Civil Communications

KEY FINDINGS AND RECOMMENDATIONS

- **Almost one third of tender procedures from the monitoring sample have been completed with awarding the procurement contract to the single bidding company that participated therein. In such cases, the tender procedure is not completed with the organization of electronic competition for reduction of initially bided prices, i.e. with the so-called e-auction. On the account of this, tender procedures with one bidding company that has been awarded the contract imply a major risk of signing the procurement contract under prices higher than the actual market prices. Namely, there is an unwritten rule whereby the bidding companies indicate higher prices for their products, services or work performance in expectation of having these prices reduced during the downward bidding (e-auction). Although planned, e-auctions were not organized in half of tender procedures from the monitoring sample.**

Recommendation: Legal mechanisms that enable bidding companies to protect themselves against favouring tender documents need to be strengthened. For that purpose, bidding companies should be given the right to appeal the tender documents immediately after the announcement of calls for public procurements.

- **Some contracting authorities continue to use bid-evaluation elements that do not guarantee objective selection of the most favourable bid. Cases have been noted where the contracting authorities allocated points to the bidding companies with whom they have signed procurement contracts in the past and lack clear methodology on point-ranking of the quality element, which ultimately increase the risk of subjective selection of the most favourable bid.**

Recommendation: Rare use of the selection criterion “economically most favourable bid” should not reduce the need for development of clear principles on the quality aspects being evaluated and the manner in which they are evaluated.

- **In the period July-September 2013, total amount of public funds spent by means of negotiation procedures without previously announced call for bids has increased by 52% compared to the same period last year. In**

this reporting period, the value of contracts signed by means of this non-transparent procedure amounts to 21.3 million EUR. In accumulative terms, procurement contracts signed in this manner in the first 9 months of 2013 amount to a total of 47.4 million EUR.

Recommendation: Trend of continuous increase of public funds spent by means of non-transparent procedures (negotiation procedure without prior announcement of call for bids) should alarm the competent authorities to take all relevant measures aimed at reducing the application of this procedure.

- **In the third quarter of 2013, every fourth tender procedure was unsuccessful. On the basis of data from tender procedures included in the monitoring sample and the official data available in the Electronic Public Procurement System (EPPS), the most frequently indicated reason for tender annulment is the fact that the contracting authority did not receive a single acceptable or adequate bid.**

Recommendation: There is an urgent need to introduce sanctions for contracting authorities with high share of annulled tender procedures against the total number of calls for bids announced for public procurements.

- **In the monitoring period, 8 companies have been prohibited to participate in public procurements. By September 2013, the so-called black list includes a total of 33 companies.**

Recommendation: First step that should be taken in that direction is to allow the section on negative references in EPPS to enlist the names of contracting authorities that issued the negative reference and the reference number of the procurement procedure in which the negative reference was issued. In addition, the right of all contracting authorities to issue this type of sanctions should be thoroughly revised, given the fact that they create serious consequences for the companies concerned.

GOALS AND METHODOLOGY

From November 2008, the Centre for Civil Communications from Skopje has continuously analysed the implementation of public procurements in the Republic of Macedonia as regulated under the Law on Public Procurement. The analysis aims to assess the implementation of public procurements in the light of the new Law on Public Procurements and the application of the underlying principles of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal proceeding, cost-effectiveness, efficiency, effectiveness and cost-effective public spending, commitment to obtain the best bid under the most favourable terms and conditions, as well as accountability for the public spending as part of procurements.

Analysis of the public procurement process in the Republic of Macedonia is performed on the basis of monitoring a randomly selected sample of public procurement procedures (40 per quarter). Monitoring activities start with the publication of calls for bids in the "*Official Gazette of the Republic of Macedonia*" and in the Electronic Public Procurement System (EPPS), followed by attendance at public opening of bids and data collection on the procedure course, and use in-depth interviews and structured questionnaires submitted to economic operators, as well as data collected from contracting authorities through EPPS and by means of Freedom of Information (FOI) applications.

The present analysis was performed on the basis of monitoring of a selected sample comprised of 40 public procurement procedures implemented by central level contracting authorities, whose public opening of bids took place in the period July - September 2013.

QUARTERLY PUBLIC PROCUREMENT MONITORING REPORT

- **Almost one third of tender procedures from the monitoring sample have been completed with awarding the procurement contract to the single bidding company that participated therein. In such cases, the tender procedure is not completed with the organization of electronic competition for reduction of initially bided prices, i.e. with the so-called e-auction. On the account of this, tender procedures with one bidding company that has been awarded the contract imply a major risk of signing the procurement contract under prices higher than the actual market prices. Namely, there is an unwritten rule whereby the bidding companies initially indicate higher prices for their products, services or work performance in expectation of having these prices reduced during the downward bidding (e-auction). Although planned, e-auctions were not organized in half of tender procedures from the monitoring sample.**

One of the key problems in implementation of public procurements is favouring of bidding companies that demonstrate high turnover and profit and have signed identical or similar procurement contracts in the previous years. The monitoring sample included tender procedures in which only one bid was submitted on the call for bids, although the competition in the said procurement procedure should be much higher. It is a matter of procurement procedures organized for office furniture, office supplies, liquid fuels, food for hospital patients, services of copyright agencies, insurance services, servicing of air-conditioning systems, wood transportation, marketing campaigns, quality research surveys, and the like.

Several examples from the monitoring sample provide evidence in support of the conclusion that disproportionate eligibility criteria for participation in tender procedures are the main reason for the situation indicated above.

High on the list of tender procedures from the monitoring sample with inadequately defined eligibility criteria is the procurement of a research survey on patients' satisfaction with the quality of health services with 3,000 survey respondents and 300 secret patient visits. In order to be awarded the contract in the value of 20,000

EUR bidding companies were required to demonstrate previous experience defined as:

- 20 field-based public opinion surveys in the Republic of Macedonia with at least 20,000 respondents conducted on behalf of relevant clients in the last 2 years, at least 7 of which in the field of health care and health protection, including information on the value, dates and contracting authorities, and supported by letters of reference issued by the clients;
- 15 quality surveys on services performed by specific institutions in the Republic of Macedonia with the “secret client” methodology conducted for relevant clients in the last 2 years, at least 5 of which in the field of health care and health protection, including information on the value, dates and contracting authorities, and supported by letters of references issued by the clients; and
- survey results published in the last 3 years and their comparison against the actual positions of the population on the topic being surveyed, supported with relevant announcements.

These eligibility criteria are practically unattainable and raise the question whether total of 7 public opinion surveys and total of 5 quality surveys of services with the “secret client” methodology have been conducted in Macedonia in the last 2 years – all in the field of health care and health protection – and whether they have been performed by one legal entity.

Epilogue of this tender procedure is easy to anticipate: only one company submitted a bid and was awarded the contract without scheduling and organizing an e-auction.

Furthermore, one bidding company participated in the tender procedure from the monitoring sample organized for services of copyright agency and implemented by a state university. Services being procured implied payment of copyright fees in the amount of 50 million MKD, while the agency is entitled to commission in the amount of 1 million MKD. Eligibility criteria for participation in the tender procedures included:

- minimum of 200,000 MKD in financial gains after taxation for the years 2011 and 2012;

- minimum of 30,000,000 MKD available on the bank account for a continuous period of 7 working days, calculated from the date when the call for bids was published;
- minimum of 10 clients per year (for the years 2011 and 2012) that have made payments to the company in the minimum amount of 2.000.000 MKD; and
- at least 8 employees performing the services in question.

In this case as well, the contract was signed with the single bidding company, without organizing the e-auction.

The monitoring sample included a tender procedure for procurement of maintenance services for air heating and cooling systems installed at the buildings of one state-owned company. In order to qualify for participation in the tender procedure, the companies were required to demonstrate:

- total turnover of at least 25,000,000 MKD in the last 3 years;
- list of identical or similar contract performances in the last 2 years, including information on the value, dates, contracting authorities and supported with a copy of at least one contract signed with a contracting authority and letter of reference on successful contract performance issued by contracting authority and at least 4 letters of reference on successful contract performance issued by clients;
- possession of B license for service performance;
- at least 5 employees with relevant qualifications, one of which should have a degree in mechanical engineering; and
- disposal with at least 2 service vehicles.

Only one company participated in the tender procedure, but the price was higher than the procurement's estimated value, which resulted in the tender annulment on the grounds that the contracting authority did not receive any acceptable or adequate bids. However, disputable is the fact that the bidding companies were required to demonstrate total turnover of 25,000,000 MKD in the last 3 years, which when compared to the procurement's estimated value (3,000,000 MKD) results in a ratio of 1:8. According to good practices, the ratio between the procurement's estimated value and the required annual turnover should not be higher than 1:3. At the same time, concerns are raised with the tender requirement whereby bidding companies should demonstrate previous contract performance commissioned by state

institutions. These eligibility criteria discriminate some companies and favour those that have cooperated with the state institutions in the past.

In the tender procedure concerning multiannual procurement contract for office furniture, the bidding companies were required to demonstrate turnover in the amount of 600,000,000 MKD, which is 23 times higher than the value of the bid submitted by the single company that participated in the tender procedure. At the same time, eligibility criteria implied minimum of 60 employees, with detailed description of education level and qualifications for each position. Unclear is why the companies were required to have employed 2 civil engineers holding A certificates and 2 architects holding B certificates, knowing that the procurement procedure concerns office furniture (work stations/desks, chairs, desk separators, administrative closets, armchairs, window signs, notice board, etc.). According to the Construction Law, A and B certificates are awarded to engineers that work on designing, reviewing and supervising construction works of first and second and/or third and fourth category respectively, and they cannot be linked with furniture manufacturing and delivery. Only one company submitted a bid in this tender procedure and is known as a company profiled in construction works. However, the tender procedure was annulled with the rationale that the contracting authority did not receive any acceptable or adequate bids. Additional information on the future course of developments related to this procurement procedure was not provided by the concerned contracting authority.

The random sample of procurement procedures subject to monitoring activities included a tender procedure for procurement of insurance services in which the bidding companies were required to demonstrate:

- positive financial balance in the last 2 years; and
- annual turnover of at least 40,000,000 MKD in the previous year.

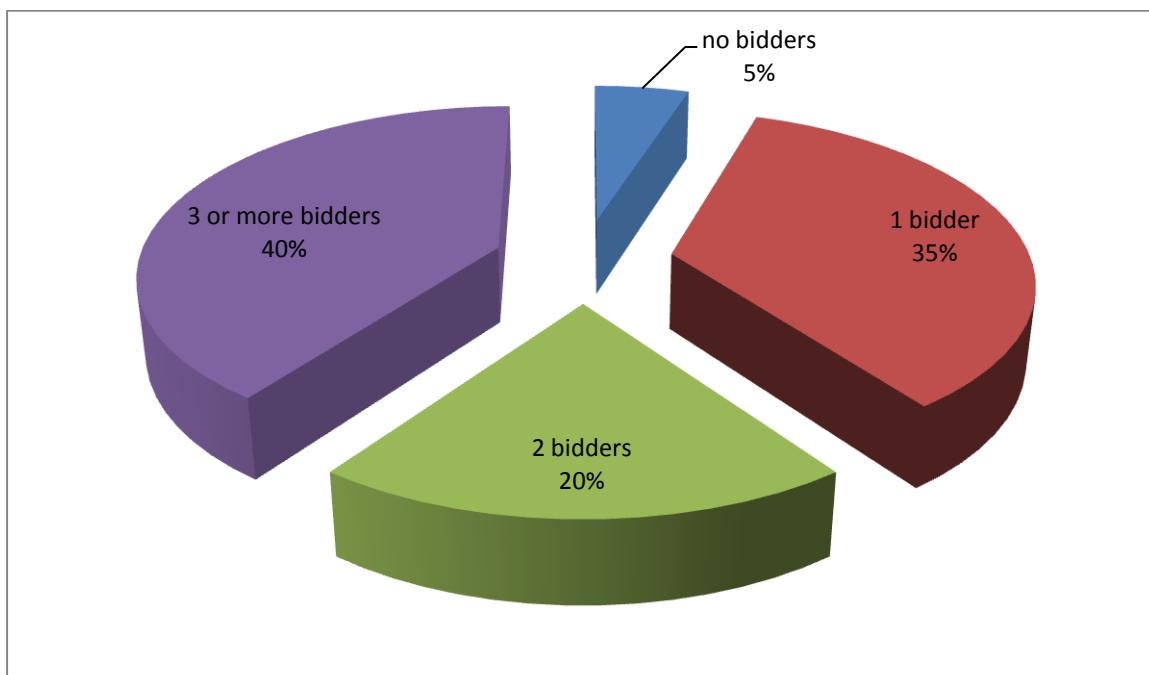
Again, only one insurance company submitted its bid in this tender procedure, and since the conditions for organization of an e-auction were not secured, the contract was signed with the single bidder in the amount of 158,000 EUR. Ratio between the contract's value and the company's annual turnover is 1:4 and does not raise major concerns as the limiting factor for greater competition identified in the eligibility

criterion whereby the companies had to demonstrate profitable operation in the last 2 years.

Positive financial balances in the last 3 years (2010, 2011 and 2012) were defined as an eligibility requirement for the companies participating in the tender procedure for procurement of electrical materials.

On the account of above-indicated problems, low competition remains one of the main features of the public procurement system in Macedonia. As shown in the chart below, no bids were received in 5% of all tender procedures monitored, two bids were received in 20% of all tender procedures, and a solid level of competition - three or more bids - was noted in 40% of all tender procedures included in the monitoring sample.

**Overview of competition in monitored tender procedures
(July - September 2013)**



On the account of low or non-existent competition, although they were initially planned as the last stage in the procurement procedure, every second e-auction was cancelled (51.28%) and the relevant procurement procedures were annulled. Tender procedures with one bidder and no e-auction imply a major risk for signing the

contract under prices higher than the actual market prices. Namely, there is an unwritten rule whereby the bidding companies indicate higher prices for their products, services or work performance in expectation of having these prices reduced during the downward bidding (e-auction).

Recommendation: Legal mechanisms that enable bidding companies to protect themselves against favouring tender documents need to be strengthened. For that purpose, bidding companies should be given the right to appeal the tender documents immediately after the announcement of calls for public procurements. Relevant preconditions for this premise to be implemented in practice are already in place, having in mind that as of 1 January 2014, the contracting authorities are obliged to publish their tender documents in electronic format (in EPPS). Therefore, there are no arguments left that would justify the legal solution in effect whereby bidding companies can lodge an appeal against the tender documents only after the public opening of bids, which – to a great extent – deferred bidding companies from doing so. To present, the legal solution in effect was justified with the different approach assumed by the contracting authorities in terms of publishing tender documents in EPPS whereby some of them published their tender documents in EPPS, while others made tender documents available only by postal services and created dilemmas about the day when the deadline for lodging an appeal against tender documents starts to expire. New legal obligations eliminate these differences and necessitate the introduction of the right to appeal immediately after the call for public procurement is published with the view of aligning the Macedonian legislation with the rights enjoyed by bidding companies in other countries.

- **Irregularities have been noted in the course of public opening of bids, implying cases in which representatives of the public procurement committees did not act in compliance with the Law on Public Procurements.**

When the monitor from the Centre for Civil Communication wanted to attend the public opening of bids scheduled for the tender procedure concerning procurement of food for hospital patients, he was informed that the procedure in question has

already been taken place. Such practices are contrary to LPP, knowing that possible changes to the date and time of public opening of bids must be published in the Electronic Public Procurement System, which was not complied with in this case.

On the basis of data provided in the report concerning the implemented public procurement, it can be concluded that the contract was awarded to the single bidding company that participated therein. In that, eligibility criteria for participation in the tender procedure concerning procurement of food for hospital patients worth 170,000 EUR required the bidding companies to have 5 chefs under full-time employment contract and minimum of 20 employees. Moreover, the bidding companies were required to commit to employment of 7 serving women whose employment contract with the contracting authority has been terminated due to economic, technical, structural, or similar changes made at the Clinical Hospital. This health institution used the same conditions and requirements when it implemented the tender procedure on food for hospital patients in 2012. It should be noted that the only bidding company that participated in the tender procedure monitored in this quarter has already signed food procurement contracts with the health institution for the last two consecutive years (2011 and 2012).

Another case that should be stressed in this context concerns the tender procedure from the monitoring sample related to Internet services for primary schools, secondary schools and state-owned student dormitories. Namely, at the public opening of bids attended by CCC's monitor, the public procurement committee established that the only bidding company participating in the procurement procedure did not deposit the requested bank guarantee at the contracting authority's archive office within the deadline indicated for submission of bids and instead, presented the committee with the bank guarantee during the public opening of bids. However, the public procurement committee did not allow deposit of bank guarantee on the public opening of bids and proceeded with tender annulment. Be that as it may, concerns are raised with the reasons indicated for tender annulment. According to the situation established at the public opening of bids, this tender procedure should have been annulled on the grounds that the contracting authority did not receive any acceptable bid (Article 169, paragraph 1, indent 2 of LPP), knowing that the law defines as acceptable only the bids that have been submitted

within the specified deadline and that completely fulfil the requirements set forth in the relevant tender documents. On the contrary, grounds for tender annulment indicated by the contracting authority implied that the bidding companies offered contract performance prices and conditions that are less favourable than actual market prices and conditions. Such course of events enabled the procurement-making entity to proceed with the negotiation procedure without prior announcement of call for bids and thus engage in direct negotiations with the only bidding company by indicating that the competition level on the open procurement procedure was insufficient for organization of e-auction. This process resulted in awarding the contract to the only bidding company under reduced prices for the required services in order to correspond with the procurement's estimated value.

Recommendation: Having in mind that such actions and practices on the part of contracting authorities have an utterly negative effect on the creation of competitive and healthy climate in the field of public procurements, the institutions need to act in compliance with and enable adherent enforcement of LPP.

- **Some contracting authorities continue to use bid evaluation elements that do not guarantee objective selection of the most favourable bid.**

Frequent use of the selection criteria defined as “the lowest price” has led to the phenomenon of little attention being paid by the contracting authorities on defining the quality of goods and services being purchased and on evaluating this aspect of the bids, with the ultimate goal of efficient and cost-effective public spending.

The monitoring sample included several tender procedures wherein the selection criterion was defined as “economically most favourable bid”. In that, a series of shortfalls have been identified in terms of bid-evaluation elements used in the process of bid-assessment and ranking. For example, tender documents in the procurement procedure for cheese, yellow cheese and other dairy products defined the selection criterion as “economically most favourable bid” with the following elements: price - 70 points, quality - 15 points, technical and professional capacity - 15 points. Moreover, the quality element was further broken down into:

- samples or catalogues and description of products - maximum 10 points;

- product origin and packaging - maximum 5 points.

On the other hand, economic operators' technical and professional ability that accounted for 15 points was further broken down into:

- list of key contract performances in the last 3 years and letters of reference on quality contract performance - maximum 10 points;
- previous experience related to contract performance for the contracting authority - maximum 5 points.

Revision of bid-evaluation elements raises major concerns with the fact that the contracting authority anticipated assignment of 5 points to economic operators with which it has previous experience in contract performance, meaning that a potential bidder that has not signed a procurement contract with the contracting authority can only hope to achieve 95 of 100 points in total. Nevertheless, the final outcome of this procurement procedure is rather interesting. Actually, the company that was awarded the contract has already signed and performed procurement contracts for same type of products with the contracting authority for three consecutive years (2010, 2011 and 2012).

Another tender procedure from the monitoring sample related to procurement of office supply used the selection criteria "economically most favourable bid" with the following elements:

- price – up to 70 points;
- ability to make delivery in Skopje and Struga - up to 15 points; and
- speed of delivery in both towns - up to 15 points.

It should be noted that the bidding companies participating in this tender procedure were required to sign two types of declarations: the first declaration implied guarantees for office supply delivery in Skopje and Struga, while the second declaration implied consent for office supply delivery within a period of 3 days from contract signing. Moreover, the tender documents specified that under this criterion bidding companies that fail to sign the declaration on delivery deadline would be assigned one point less. Use of these bid-evaluation elements is inadequate, having in mind that both elements (delivery in Skopje and Struga and delivery deadline of 3 days) could have been defined as eligibility criteria for participation in the tender

procedure, which would have allowed the contracting authority to focus on price and quality ranking in the bid-evaluation process. Therefore, it was interesting to learn about the tender procedure's final outcome, especially knowing that only one company participated therein. As expected, the tender procedure has been annulled not on the grounds that the bidding company did not fulfil these conditions, but under the explanation that "the number of competing companies is lower than the law-stipulated minimum number of companies required for this type of procedure on public procurement contract awarding"?! Having in mind that the tender in question was organized as bid-collection procedure, the Law on Public Procurements does not stipulate a minimum number of tender participants for the procurement procedure to be considered successful. This means that in cases with one bidder participating in the procurement procedure whose bid is considered acceptable and adequate, the contracting authority is obliged to sign the procurement contract with the company.

Imprecise definition of the manner in which quality will be assessed and ranked was noted in the procurement procedure for foodstuff organized by a state institution. In that, the selection criterion "economically most favourable bid" included the following elements:

- quality of products – up to 50 points;
- price – up to 40 points; and
- delivery deadline – up to 10 points.

As part of the tender specifications, the contracting authority indicated the equivalent brand of all products being purchased (filter coffee equivalent to TCHIBO Family in packaging of 250 gr.; ness coffee equivalent to Nestle in packaging of 250 gr, etc.), and in the section on bid-evaluation for quality it defined that points will be distributed according to the number of equivalent commodities. Such distribution of points reserved for the quality element is incorrect and raises the dilemma of what can be considered an equivalent commodity and whether the companies offering commodities which, in the opinion of the public procurement committee, are not equivalent would be disqualified.

In the procurement procedure for servicing and maintenance of automated air-conditioning equipment (electrical and IT support), the contracting authority used the selection criterion “economically most favourable bid” with the following elements:

- quality – up to 40 points;
- price – up to 30 points;
- warranty – up to 20 points; and
- payment manner – up to 10 points.

In this procurement procedure disputable is the fact that tender documents did not define the manner in which quality points will be distributed. Such approach to quality evaluation of bids is absolutely unacceptable because it is conducive to subjective point-ranking by the public procurement committee. These irregularities might have been the reason why only one company participated in the tender procedure and was awarded the contract without the organization of e-action.

Another procurement procedure from the monitoring sample for development and promotion of a public awareness strategy raised concerns with the fact that the quality element was assigned 60 points, while the price element was assigned 40 points. Relevant tender documents indicated that:

- 60 points will be assigned to an excellent idea that contributes to achievement of expected effects and excellently developed communication strategy;
- 40 points will be assigned to a good idea and well developed communication strategy;
- 10 points will be assigned to a poorly developed idea and communication strategy according to the guidelines provided by the contracting authority, meaning that the strategy and the idea would achieve the lowest effect against the expected one.

Such distribution of points is disputable because the goals defined in the tender documents are not measurable in order to be able to assess whether an idea is excellent, good or poorly developed and leads to greater or poorer attainment of goals.

At the same time, the procurement procedure anticipated point-ranking of bids in terms of the overall price bided for development of ideas and solutions, quantity of promotional materials and proposal for media space lease. In that, the price segment

concerning the media space lease was not defined in terms of assessment, although it is the most important financial element of the campaign and would allow bidding companies to compete among by offering favourable prices. The contracting authority implementing this tender procedure did not provide the monitoring team with a copy of the report on the implemented public procurement requested in compliance with the Law on Free Access to Public Information. This prevented the monitoring team to obtain insight in the reasons behind the fact that one of the two bidding companies was disqualified and the remaining agency was awarded the contract without the organization of e-auction, despite the fact that its bid was more expensive.

Recommendation: Rare use of the selection criterion “economically most favourable bid” should not reduce the need for development of clear principles on the quality aspects being evaluated and the manner in which they are evaluated. This need becomes more prominent given the fact that in the new directives, the European Union clearly indicates the need for predominant use of the selection criterion “economically most favourable bid” against the trend in Macedonia where “lowest price” is the most commonly applied selection criterion.

- **In the period July-September 2013, total amount of public funds spent by means of negotiation procedures without previously announced call for bids has increased by 52% compared to the same period last year. In this reporting period, the value of contacts signed by means of this non-transparent procedure amounts to 21.3 million EUR. In accumulative terms, procurement contracts signed in this manner in the first 9 months of 2013 amount to a total of 47.4 million EUR.**

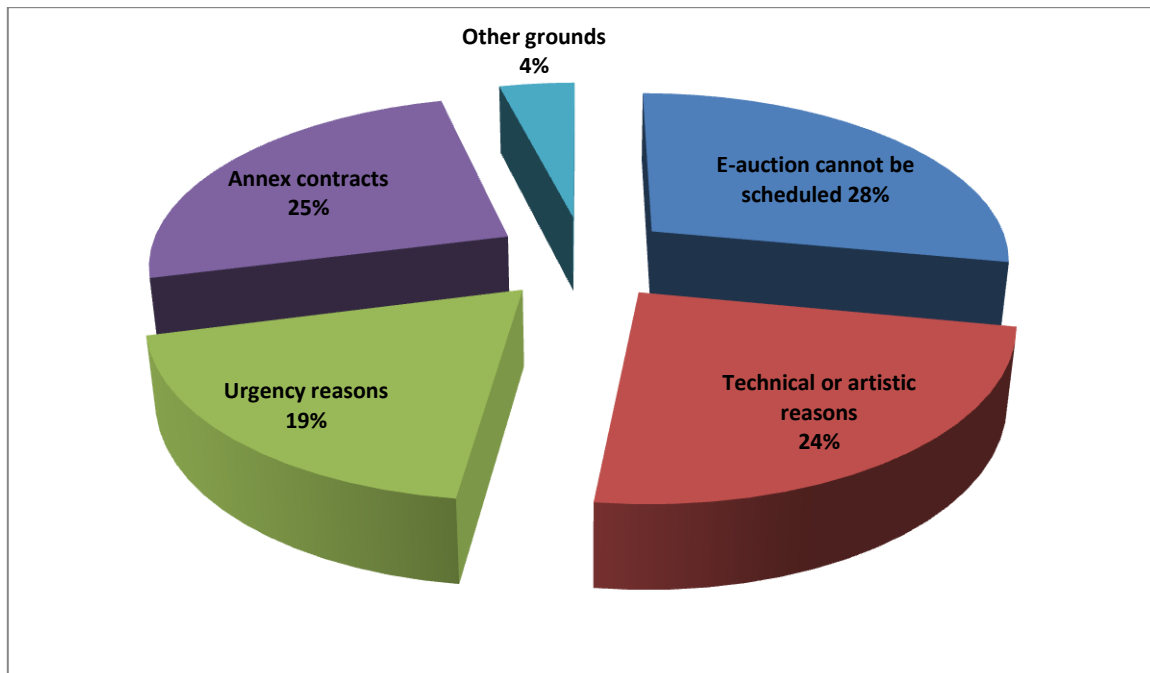
In the third quarter of 2013, a total of 284 contracts in accumulative value of 21.3 million EUR have been signed under the non-transparent negotiation procedure without previously announced call for bids and results in an increase of 52% compared to the public funds spent in this manner calculated for the same period last year.

Overview of contracts signed by means of negotiation procedure without prior announcement of call for bids

Period	Value of contracts (in million EUR)	Difference
July – September 2011	7.5	-8,5%
July – September – 2012	14.0	+86.7%
July – September 2013	21.3	+52.1%

In the third quarter of 2013, the most frequently indicated reason for the organization of negotiation procedures without prior announcement of call for bids and shown in the chart below is the inability to organize e-auctions as the final stage in the procurement procedure on the account of low competition (28%). 70 contracts in accumulative value of 6 million EUR have been signed on this ground. It is a matter of cases in which the institutions first organized tender procedures with previously announced calls for bids, but given the fact that only one company submitted its bid or only one company fulfilled the eligibility criteria and offered goods or service prices that are higher than the estimated value of the procurement in question, the tender procedure was annulled and the contracting authority proceeded with organization of direct negotiations with the only bidder for the purpose of reducing the initially bided prices to a level that corresponds with the procurement's estimated value.

Overview of reasons indicated for contract signed by means of negotiation procedure without prior announcement of call for bids



Although only 36 annex contracts were signed in the monitoring period, their share in terms of the total amount of funds (5.3 million EUR) accounts for high 25% of all public funds spent on public procurements. In that, 5 of the 10 biggest contracts signed by means of direct negotiations without previously announced call for bids in the period July-September 2013 are annex contracts. It is a matter of annex contracts signed for performance of additional works on already completed or initiated construction works commissioned by central level institutions (Sports Hall “Boris Trajkovski” Ltd. Skopje, Ministry of Culture, Agency for Electronic Communications, Parliament of the Republic of Macedonia and the Department for General and Common Matters at the Government of the Republic of Macedonia).

Monitoring results for this quarter reveal high share of contracts signed by means of direct negotiations without prior announcement of call for bids on the grounds of technical or artistic reasons, i.e. protection of exclusive rights (patents and the like), implying that the contract can be signed only with one company (24%). These contracts include procurement of primary and secondary schoolbooks for 2013/2014, purchase of natural gas, etc., but also services related to upgrading and

maintenance of already developed software solutions. This raises the question whether the institutions are purposefully omitting maintenance and related services from their initial procurement procedures organized for development of software solutions. The exclusive right given to the company selected for the development of software solutions puts it in a favourable position to impose higher prices for services related to software maintenance. Given the frequent and common use of software solutions in all spheres of social life, the institutions must define a transparent model for selection of the most favourable bid, not only in terms of software design, but also in terms of software maintenance and upgrading. Current procurement practices applied by high number of contracting authorities do not guarantee selection of the most favourable bid in its true meaning.

High 19% of all funds spent by means of negotiation procedures without prior announcement of call for bids refer to contracts signed due to urgency reasons, meaning that “due to urgent needs caused by new developments at the contracting authority that are beyond its control and cannot be attributed as its fault, the contracting authority cannot organize an open public procurement procedure, limited competition procedure, bid-collection procedure or negotiation procedure with prior announcement of call for bids, because the deadlines related to these types of procurement procedures are too long”. In the monitoring period, total of 62 contracts were signed on this ground in accumulative value of 4.1 million EUR. Here, it should be noted that the contract with the highest value was signed in this quarter and implied organization of direct negotiations without previously announced call for bids. This contract was signed by Macedonian Power Plants JSC Skopje and concerns deployment of construction machinery for the needs of REK Bitola (mining and electricity producing facility). The rationale given for the manner in which this contract was signed refers to urgent need for additional machinery that would enable normal operation of REK Bitola and REK Oslomej until the selection of the most favourable bidder as part of the open procurement procedure. This contract was signed in the amount of around 2.3 million EUR and concerns deployment of dredges, dozers, shovel loaders and tipper trucks at REK Bitola. Same grounds were used to sign two more contracts (one concerns deployment of trucks at REK Bitola and the other concerns deployment of dozers, trenchers and shovel loaders at REK

Oslomej), in additional value of 620,000 EUR. These contracts were signed for the period September 2013 – September 2014.

Total value of contracts signed by means of non-transparent procedures in the period January-September 2013 amounts to 47.7 million EUR. This information was calculated on the basis of official data from all 980 contracts signed in the first 9 months of 2013, whose contract notifications have been submitted in EPPS by 10 January 2014.

**Total amount of funds contracted by means of negotiation procedure
without prior announcement of call for bids**

Period	Value of contracts (in million EUR)	Difference
January – September 2011	29.2	+48.9%
January – September 2012	31.9	+9.2%
January – September 2013	47.7	+49.5%

On the basis of data shown in the table above, the conclusion is inferred that the value of these contracts is by 49.5% higher compared to the value of same type of contracts signed in the same period last year. Despite all indications made on the need to reduce the application of this type of procurement procedures, the contracting authorities are using them more intensively.

Should the current trend on contract signing by means of negotiation procedure without prior announcement of call for bids continues in the fourth quarter of 2013, likely is that by the end of the year a new record high public funds will be spent by means of negotiation procedures. In 2011, the share of these contracts accounted for 4% of all funds spent on public procurements, while the relevant 2012 share was twice as high and accounted for 8%.

Recommendation: Trend of continuous increase of public funds spent by means of non-transparent procedures (negotiation procedure without prior announcement of call for bids) should alarm the competent authorities to take all relevant measures aimed at reducing the application of this procedure.

- **In the third quarter of 2013, every fourth tender procedure was unsuccessful. On the basis of data from tender procedures included in the monitoring sample and the official data available in the Electronic Public Procurement System (EPPS), the most frequently indicated reason for tender annulment is the fact that the contracting authority did not receive a single acceptable or adequate bid. In general, the high share of annulled tender procedures brings us back to the basic problem: high eligibility criteria for the companies to participate in tender procedures, which prevents competition and selection of the most favourable bid.**

Tender annulments remain one of the major problems in implementation of public procurements. In the period July-September 2013, a total of 1,129 tender procedure were annulled and represent 25.7% of all calls for bids announced in the given period (4,397). Compared against the two previous years, the conclusion is inferred that the frequency of tender annulment is more or less on the same level in the last three consecutive years (details are given in the table below).

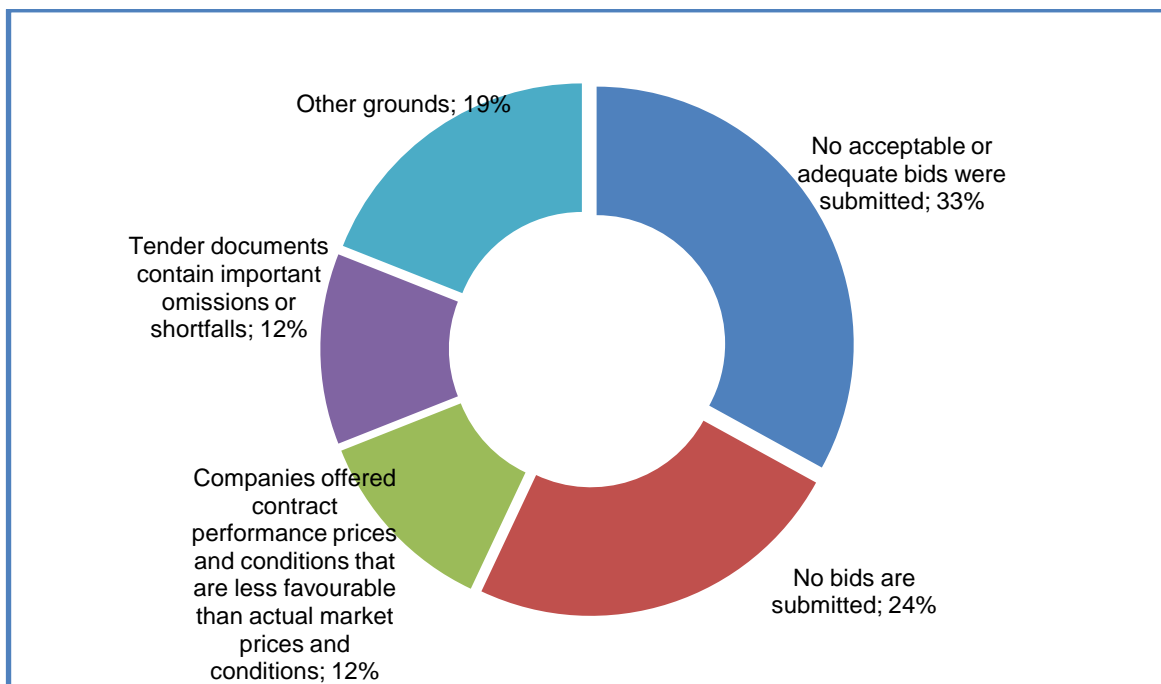
Trend in tender annulments, per quarter

Period	Number of announced procedures	Number of annulment decisions	Share of annulled tenders
July – September 2011	1,672	419	25.1%
July – September 2012	3,071	780	25.4%
July – September 2013	4,397	1,129	25.7%

Source: EPPS official data from January 2014

Analysis of the reasons indicated for tender annulment provides the conclusion that tender procedures' failure is a consequence of low competition among companies in public procurements.

Reasons indicated for tender annulments in the second quarter of 2013



Majority of tender procedures are annulled on the grounds that the contracting authority did not receive any acceptable or adequate bids (33%). Some contracting authorities reported that they have been presented with an offer that fulfils the required conditions from the tender documents, but the bidding company priced the goods or services in an amount that exceeds the budget allocated by the contracting authority for the public procurement in question. In such cases, tender procedures are annulled and the contracting authority proceeds with a negotiation procedure without prior announcement of call for bids for the purpose of reducing the initially bided prices to a level that corresponds with the procurement's estimated value. Decisions on tender annulments that refer to the legal grounds whereby the bidding companies offered contract performance prices and conditions that are less favourable than the actual market prices and conditions (12%) are also followed up with non-transparent procedures, i.e. some contracting authorities continue the procurement procedure by organizing direct negotiations for the purpose of reducing

the initially bided prices to a level that corresponds with the procurement's estimated value.

Every fourth tender procedure (24%) is annulled on the grounds that the contracting authority did not receive any bids.

In 12% of cases, the reason indicated for tender annulment implies omissions or shortfalls in the tender documents, which is indicative of insufficient expertise among administrative staff members, who cover their mistakes by spending state resources (public funds) given that an announcement of call for bids is charged with 600 MKD by the Bureau of Public Procurements.

In general, the high share of annulled tender procedures brings us back to the basic problem of high eligibility criteria for companies to participate in tender procedures, ultimately preventing competition among the companies and selection of the most favourable bid.

The share of annulled tender procedures in the period January-September 2013 accounts for 22.9% of all tender procedures and represents an insignificant decrease compared to the relevant share for the same period in 2012, when they accounted for 24.7% of all tender procedures.

Trend on tender annulments for the period January-September

Period	Number of announced procedures	Number of annulment decisions	Share of annulled procedures
January – September 2011	5,685	981	17.2%
January – September 2012	7,248	1,774	24.5%
January – September 2013	13,445	3,072	22.8%

Source: EPPS Official data, January 2014

Recommendation: Having in mind these facts, reasons for the high share of annulled tender procedures should be identified in the subjective behaviour of and conscious or unconscious mistakes made by the contracting authorities. Therefore, there is an urgent need to introduce sanctions for contracting authorities with high share of annulled tender procedures against the total number of calls for bids announced for public procurements.

- **Competition in tender procedures has been curbed by fees charged for tender document fees and bank guarantee requirements.**

The fact that tender procedures whose tender documents are not published in EPPS are characterized by lower number of bidders does not seem to raise concerns among the contracting authorities. In the monitoring period, some contracting authorities did not use the possibility to publish their tender documents in EPPS, together with the call for bids. In 42.5% of procurement procedures from the monitoring sample, the contracting authorities - instead of publishing the tender documents in electronic form - requested the potential bidders to obtain them in hard copy. At the same time, some contracting authorities continue to impose fees for tender documents in the amount of 300 to 1,500 MKD. The request whereby economic operators should submit their tender documents in hard copy does not only increase costs related to submission of bids, but also decrease their time for preparing the bids because they lose days in obtaining access to tender documents (directly at the contracting authority's premises).

Another discouraging factor for bidding companies is the fact that contracting authorities request the seriousness of bids to be demonstrated by means of bank guarantees instead of a statement of serious intent. In this regard, 37.5 % of tender procedures from the monitoring sample requested the bidding companies to submit a bank guarantee in the amount of 3% of their bid's value. Unclear is why the contracting authorities continue to use bank guarantees, especially knowing that submission of statements of serious intent has the same weight in the tender procedure. In both cases – activation of bank guarantees or acting in breach of the statement of serious intent - the companies are issued negative reference and are therefore prohibited to participate in tender procedures.

Recommendation: Last round of amendments to the Law on Public Procurements introduced a legal obligation for the contracting authorities to publish their tender documents in EPPS. In order to stimulate greater use of statements of serious intent, the institutions should not be given the possibility to request bank guarantees.

- **In the monitoring period, 8 companies have been issued negative references, by means of which 7 new companies are included on the black list and are prohibited to participate in public procurements for a period of one year and one company's prohibition was extended until 2017. By September 2013, the so-called black list includes a total of 33 companies.**

Four of eight negative references have been issued on the grounds that the companies in question refused to sign the public procurement contract, while three companies had their negative references issued on the account of activation of the bank guarantee for quality contract performance. In that, seven companies are prohibited to participate in public procurements for a period of one year, while this round of negative references brought about the fourth negative reference for one company which is now prohibited to participate in public procurements for cumulative period of 4 years, i.e. by mid-2017.

By September 2013, the so-called black list includes 33 companies, 2 of which have been prohibited to participate in public procurements for a period of 5 years, one company – 4 years, while 2-year and 3-year prohibitions were issued to one company each. Remaining 28 companies were issued prohibitions in duration of 1 year.

Recommendation: Having in mind the risks related to possible abuse of negative references, and the manner in which they are issued, as well as contracting authorities' inclination to amnesty their favoured companies that should have, but are not issued negative references, there is an urgent need for greater transparency in the system on negative references. First step that should be taken in that direction is to allow the section on negative references in EPPS to enlist the names of contracting authorities that issued the negative reference and the reference number of the procurement procedure in which the negative reference was issued. In

addition, the right of all contracting authorities to issue this type of sanctions should be thoroughly revised, given the fact that they create serious consequences for the companies concerned.