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**MONITORING PUBLIC
PROCUREMENT
AT THE LOCAL
GOVERNMENT LEVEL**

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Tatjana B. Eftimovska

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INTRODUCTION: GOALS AND METHODOLOGY

The Center for Civil Communications (CCC) is regularly monitoring the implementation of public procurement procedures in Macedonia from 2008 onwards, i.e., from the entry in effect of the new Law on Public Procurement, drafted in line with the European Commission's Directives. The purpose of monitoring activities is to assess whether and to what extent state institutions adhere to the general principles on public spending, as stipulated in the Law: competition among companies, equal treatment and non-discrimination, transparency and integrity in implementing public procurements, as well as cost-effective and efficient use of public funds.

Monitoring activities target procurement procedures organized and implemented by all state institutions country-wide, both on central and local level. Due to differences and specificities identified between central and local governments in relation to implementation of public procurements, from 2010 onwards local and central level procurements are monitored separately. Namely, this endeavour resulted in collection of more detailed and significant in-

sights that can be used by all interested parties with a view to promote and improve the manner in which public procurements are organized and implemented and guarantee compliance with the Law and application of the general principles governing public procurements.

This report is prepared on the basis of monitoring results developed for 40 public procurements included in the monitoring sample and implemented by local institutions throughout Macedonia in the period 1 April – 30 September 2013.

The monitoring sample was selected from public procurements announced in the Electronic Public Procurement System (EPPS) and the Official Gazette of the Republic of Macedonia. Moreover, the selection process made due account of the need to include broad, diverse, and equitable coverage of institutions (local self-government units and local institutions under their jurisdiction, such as public enterprises, schools, kindergartens, etc.), different types of procurement procedures (bid-collection procedures, open procedures, etc.), different types of contracts (goods, services, and works), and different procurement subjects,

as well equitable geographical distribution of institutions whose public procurements are subject to monitoring activities.

The monitoring is carried out by collection of primary and secondary data, including CCC monitors' attendance at public opening of bids, interviews with bidding companies, browsing and researching EPPS database, researching information on appeals lodged in front of and decisions taken by the State Commission on Public Procurement Appeals available on its website and by means of Freedom of Information (FOI) applications requesting information that is otherwise unavailable. Questionnaires and other forms used as part of the monitoring process are structured in a manner that enables the most effective monitoring of public procurements in terms of compliance with the legislation and adherence to general principles governing public procurements.

Data and information collected are fed into a previously structured and specially designed matrix, which allows analysis of public procurements in terms of compliance with above-referred principles, including competition among companies, equal treatment and non-discrimination, transparency and integrity in organization and implementation of public procurements, as well as cost-effective and efficient use of public funds.

Once data are analysed and processed, a report is drafted with key monitoring findings and analysis of public procurements, accompanied with recommendations aimed to address identified problems and weaknesses in the public procurement system, and detailed elaboration of the established state-of-affairs.



The Center for Civil Communications (CCC) was established in April 2005 as a non-governmental, non-profit, and non-partisan citizens' association. CCC's mission is to develop and improve communications among all societal actors in Macedonia and to inform them about various processes of broader significance. CCC monitors, analyses and strengthens democratic processes in the country and in the region, especially those related to anticorruption and good governance, media and economic development. In its nine-year operation, CCC focused its work on two groups of interrelated activities: (1) monitoring of state institutions and, on that basis, recommending measures and policies aimed at promoting their work and narrowing the space for corruption; and (2) enhancing the abilities of journalists and the special role played by the media and non-governmental organizations in the fight against corruption. In this regard, CCC – to present - has drafted and proposed several hundreds of specific recommendations concerning the measures that need to be taken to promote the legislation and practices aimed at more transparent, accountable, and responsible operation on the part of central and local governments; has trained over five hundred journalists from both, national and local media outlets, as well as representatives of civil society organizations; and has published around thirty research studies and manuals.

SUMMARY

Although mandated by law, e-auctions by means of which bidding companies should reduce their initially offered prices were not organized in 53% of tender procedures monitored. The main reason indicated for failure to organize e-auction is lack of competition, i.e. the fact that only one company submitted a bid in the tender procedure or only one bid was considered acceptable. Non-organization of e-auctions is an old problem and the share of tender procedures in which e-auctions were not organized, in average, accounts for more than 50%. Although the latest novelties introduced in the Law on Public Procurement anticipate changes in this stage of public procurements, further analysis is needed to establish the manner in which new provisions will be implemented in practice and the effects they will have.

One of the most commonly violated provisions from the Law on Public Procurement is the legal provision governing the deadline for taking the decision on the selection of the most favourable bid or the decision on tender annulment, whereby the contracting authorities must take this decision within a deadline that is not longer than the deadline for submission of bids. For example, if the tender

procedure is announced on 1 March and the deadline for submission of bids is 11 March, the companies have 10 days to develop and submit their bids. However, this also means that the contracting authority has 10 days to take the decision on selecting the most favourable bid or the decision on tender annulment.

In 41% of tender procedures monitored, the contracting authorities are late or have never published the notification on procurement contract signed (for open procedures, i.e. large-scale tender procedures), including records on procurement procedures implemented (in cases of bid-collection procedures, i.e. small-scale tender procedures), although by law the state institutions are obliged to do so. Moreover, in 60% of tender procedures, relevant tender documents were not published in the EPPS, which was not a law-stipulated obligation in effect during the monitoring period, but rather an option for state institutions that would, inter alia, contribute to greater transparency.

In as many as 53% of public procurements monitored, contracting authorities, i.e. state institutions developed eligibility criteria for tender participation that are considered inadequate or counter-proportional to the procurement's subject

or value. The newly-emerged trend requires the companies, inter alia, to demonstrate positive financial balance, i.e. to have accumulated profits in the last several years, in order to be eligible for participation in tender procedures.

Public procurements organized on local level and included in the monitoring sample often defined payment deadline as a bid-evaluation element that ultimately determines the bidding company to be awarded the public procurement contract. It should be noted that in such cases, without exception, the payment deadline is more important in the bid-evaluation process compared to other elements such as price and quality of goods and services being procured.

17.5% of tender procedures from the monitoring sample were annulled, which is similar to the average share of annulled public procurements implemented by local authorities. The average number of bidders in the tender procedures annulled is 2.6. Common denominator for all tender procedures annulled is the fact that decisions on tender annulment are taken late or beyond the deadline, and in one case this decision was taken five and a half months after the deadline for submission of bids.

Late payment of contract performance, short deadlines for submission of bids, restrictive terms and conditions and administrative burdens related to tender participation, insufficient and untimely communications with the contracting authorities and primacy of price over quality in public procurements are just few of the problems faced by small and micro companies that participate in tender procedures organized on local level. Representatives of these companies propose extension of deadlines, timely payment of completed procurements, division of procurements in lots, but also increased professionalism on the part of contracting authorities when drafting the tender documents and technical specifications.

OH, THOSE E-AUCTIONS

Although mandated by law, e-auctions by means of which bidding companies should reduce their initially offered prices were not organized in 53% of tender procedures monitored. The main reason indicated for failure to organize e-auction is lack of competition, i.e. the fact that only one company submitted a bid in the tender procedure or only one bid was considered acceptable. Non-organization of e-auctions is an old problem and the share of tender procedures in which e-auctions were not organized, in average, accounts for more than 50%. Although the latest novelties introduced in the Law on Public Procurement anticipate changes in this stage of public procurements, further analysis is needed to establish the manner in which new provisions will be implemented in practice and the effects they will have.

Macedonian is perhaps the only country in the world whose Law on Public Procurement obliges the contracting authorities to finalize the public procurement procedure with organization of e-auctions, once they receive the bids and take the decision on complete bids eligible for competition. E-auctions are envisaged as competition among companies for reducing the initially offered prices (downward bidding). The bidding company that reduces the price to the lowest level, i.e. offers the lowest price, will ultimately be awarded the public procurement contract (in cases when the selection criterion is defined as lowest price) or will be allocated the highest number of points for the price element (in cases when the selection criterion is defined as economically most favourable bid, where - in addition to the price - other elements are also subject of bid-evaluation and ranking). In practice, this procedure is not as easy as initially intended.

E-auctions were not organized in 53% of tender procedures monitored. The main reason indicated for failure to organize e-auctions is lack of competition, i.e. the fact that only one company submitted a bid

or only one bid is considered acceptable. In smaller number of cases, e-auctions were not organized due to the fact that the tender procedure was annulled prior to the organization of downward bidding. Non-organization of e-auctions in tender procedures with one bid is actually a direct consequence of the poor competition in public procurements.

Non-organization of e-auctions implies a lost opportunity to reduce the initial prices offered by the companies. Actually, all companies initially offer prices that are higher from the actual price, in anticipation of the downward bidding when prices will be reduced. This calculation becomes reality in cases when e-auctions are scheduled and do take place. However, in cases when e-auctions are not organized, i.e. half of tender procedures, the initially offered prices are not reduced and often contracts are signed at prices higher than the market prices. Such practices are not conducive to attainment of the original idea behind the introduction of mandatory e-auctions, i.e. savings in public procurements by reducing the prices.

On the other hand, mandatory organization of e-auctions in all procurement procedures raises the issue of increased costs for contracting authorities to implement public procurements. Namely, having in mind that e-auctions should be scheduled and organized as the final stage in all pro-

urement procedures whose value exceeds 500 EUR, the contracting authorities spend more time and resources in amounts higher than the procurement's value.

Recently, when asked about the problems they face in relation to tender participation, hundreds of small and micro companies in the country emphasized, inter alia, the problem of mandatory e-auctions for small procurements whose value ranges from 500 EUR to 5,000 EUR. In their opinion, putting the emphasis on the price and insisting the price to be as low as possible forces them to offer very low prices that endanger their businesses' viability. Moreover, the companies complain that by doing so contracting authorities undermine the quality of products, especially in cases when it should be of key importance, such as procurement of food for kindergartens and hospitals, school chairs, desks and other equipment, etc.

Non-organization of e-auctions is an old problem in public procurements which first appeared several years ago with the introduction of mandatory organization of e-auctions in all public procurements whose value exceeds 500 EUR. Although certain improvements have been noted in different monitoring periods, the share of local level tender procedures that have not been completed with e-auctions, in average, accounts for more than 50%.

Table 1. Overview of e-actions in local level tender procedures

	April 2012 – September 2012	October 2012 – March 2013	April 2013 – September 2013
Organized e-auction	46%	53%	47%
Non-organized e-auction	54%	47%	53%

Despite the fact that the latest novelties introduced in the Law on Public Procurement anticipate that, in tender procedures with only one bidder or only one eligible bidder, contracting authorities should invite the company to reduce the price which, *de facto*, would mean organization of e-auction, analyses are yet to be made of this measure's effect in practice. Procurement's estimated value will be of great importance in that regard, knowing that as of 1 January 2014 the value of all tender procedures must be published together with the call for bids. Nevertheless, in cases when the only bid in the tender procedure includes a price within the range of the procurement's estimated value, unlikely is that the bidding company will reduce the price. It seems that a more essential solution to the problem of non-organization of e-auctions would require efforts aimed at increasing the competition in public procurements, i.e. reducing the barriers for more companies to participate in public procurements.

TRANSPARENCY ABOUT PROCUREMENT CONTRACTS SIGNED IS BOTH MINIMAL AND LATE

In 41% of tender procedures monitored, the contracting authorities are late or have never published the notification on procurement contract signed (for open procedures, i.e. large-scale tender procedures), including records on procedures implemented (in cases of bid-collection procedures, i.e. small-scale tender procedures), although by law state institutions are obliged to do so. Moreover, in 60% of tender procedures, relevant tender documents were not published in the EPPS, which was not a law-stipulated obligation in effect during the monitoring period, but rather an option for state institutions that would, inter alia, contribute to greater transparency.

As regards transparency and accountability for public spending, the Law on Public Procurement stipulates several obligations for the state institutions, but some of them do not comply with them or are late in fulfilling their obligations. In that, it should be noted that these legal provision govern the minimum information on public procurement contracts signed that should be published by state institutions. Notably, all institutions are obliged, within a period of 30 days from signing the public procurement contract, to present the Electronic Public Procurement System (EPPS) with a notification on the contract signed, including data on the successful bidder, the number of bidders, lowest and highest bid, date of contract signing, etc. Same obligation is applied in cases of annulled tender procedures, when the contracting authority is obliged, within a period of 30 days from the procedure annulment, to present the EPPS with a notification on the reasons for tender annulment, date when the annulment decision was taken, and the like. In cases of small-scale tender procedures, i.e. bid-collection procedure for procurements in the value from 500 EUR to 20,000 EUR for goods and services, and up to 50.000 EUR for works, state institutions are obliged to present

the EPPS with summary semi-annual notifications, including information about the company awarded the procurement contract, the procurement's value, the date when the contract was signed and the like. In the case of procurement contracts signed in the period from January to June, the notification should be submitted by 31 July the latest, while in the case of procurements organized in the period from July to December, the notification should be submitted by 31 January the next year.

However, contracting authorities do not always comply with and enforce their legal obligations that are of fundamental importance for securing transparency in public spending. In as many as 41% of public procurements monitored, state institutions submitted the notifications late or have not submitted the notifications to the EPPS. A case was noted in which the public procurement was organized and implemented in May 2013, but nine months later, the notification on the contract signed is still not submitted.

Interesting is also the behaviour of institutions towards another opportunity that would allow greater transparency and greater competition in public procurements, which is also one of the major problems identified in regard to organization and implementation of tender procedures. Namely, prior to being stipulated as legal obligation with effect from 1 January 2014, state institutions had the possibility to announce their tender documents in the EPPS and allow free-of-charge reading and downloading by interested companies. However, in as many as 60% of procurement procedures monitored, state institutions did not publish their tender documents in the EPPS, which means they have chosen not to use this legal opportunity to demonstrate greater transparent and attract more companies to participate in the tender procedure that would

ultimately result in lower prices and higher quality of good and services being procured. In 25% of tender procedures monitored, state institutions opted to impose fees for issuance of tender documents to interested companies, in the average amount of 850 MKD. It should be noted that the share of state institutions that do not make their tender documents available to interested economic operators and citizens is continuously increasing.

Table 2. Availability of tender documents related to local level tender procedures

	April 2012 – September 2012	October 2012 – March 2013	April 2013 – September 2013
Published in EPPS	55%	47%	40%
Not published in EPPS	45%	53%	60%

Occurrence of this problem should be avoided in the next period, because the most recent amendments to the LPP stipulate mandatory publication of tender documents in the EPPS and is no longer left to the discretion of contracting authorities, as was the case so far, whereby most of them opted out.

As regards transparency and accountability, positive practices would imply that state institutions publish the information on public procurement contracts signed on their

official websites where the citizens can easily browse them and better understand information on the accountability of the concerned institution. Moreover, many EU Member States have adopted practices whereby, in addition to the notification on the procurement contract signed, state institutions publish the invoices related to the procurement contract to facilitate easier monitoring and tracking of public spending from the beginning to the end, i.e. from the public procurement plan to the contract signing and contract performance. This means that citizens can easily check whether payments have been made for the goods and services procured and learn about the procurement's subject and value.

NON-COMPLIANCE WITH THE DEADLINE FOR TAKING THE SELECTION OR TENDER ANNULMENT DECISION

One of the most frequently violated provisions from the Law on Public Procurement is the legal provision governing the deadline for taking the decision on the selection of the most favourable bid or the decision on tender annulment, whereby the contracting authorities must take this decision within a deadline that is not longer than the deadline for submission of bids. For example, if the tender procedure is announced on 1 March and the deadline for submission of bids is 11 March, the companies have 10 days to develop and submit their bids. However, this also means that the contracting authority has 10 days to take the decision on selecting the most favourable bid or the decision on tender annulment.

This is a very important provision from the Law, because it puts companies and state institutions in equal position and aligns relevant deadlines for development and submission of bids and for taking the selection decision. It should be noted that this novelty was introduced with the 2010 amendments to the Law on Public Procurements.

In practice, this is one the most frequently violated provision from the Law. In as many as 50% of tender procedures monitored, the deadline for taking the selection or tender annulment decision was breached, which means that the selection or tender annulment decision was taken beyond the law-stipulated deadline that corresponds with the deadline for submission of bids. It should be noted that deadlines were breached by 3 to 155 days (or almost five months). In average, deadlines were breached by 24 days or the contracting authorities needed twice as much time to take the relevant decision. This means that contracting authorities take the selection decision within a period that is twice as long compared to the deadline they have defined for submission of bids.

Although it is difficult to identify the reasons why deadlines were breached (at least the monitoring activities are unable to determine them), one of the possible reasons could be the fact that contracting authorities often set the minimum law-stipu-

lated deadline for submission of bids. Actually, for each type of procurement procedure, the Law stipulates only the minimum deadline for submission of bids, while the contracting authority organizing the public procurement is responsible to set the actual deadline depending on the complexity of the procurement procedure organized. In practice, contracting authorities often set the minimum law-stipulated deadline which, except for the bidding companies, is binding for them and represents the deadline for taking the selection decision. However, by breaching the deadline for taking the selection decision, as noted in half of tender procedures, contracting authorities put the companies in unequal position. Namely, if a company does not comply with the deadline and submits its bid one minute after the deadline's expiration, this bid will not be taken into consideration and the company will be disqualified from participating in the tender procedure. On the other hand, if a contracting authority fails to comply with the deadline, i.e. it does not take the selection or tender annulment decision within the law-stipulated deadline, it will not suffer any consequences. Violation of this legal provision is not liable to sanctions and companies can only wait for the contracting authority to take the decision, without any security or possibility to plan their future business activities concerning the public procurements they participate in.

Such behaviour on the part of contracting authorities undermines one of the main ideas for setting the minimum deadlines for submission of bids and for taking the selection or tender annulment decision - to accelerate implementation of public procurements, to enable a degree of certainty for companies participating in tender procedures and to narrow the space for manipulations and malpractices. At the time when this change was introduced to the Law, the proposing party explained that "due to non-existence of law-stipulated deadline for public procurement committees to complete the bid-evaluation process and for the responsible person to take the adequate decision in the procurement procedure, there


is a real danger that public procurement contract-awarding procedures will be unnecessarily delayed and postponed in unjustified manner and due to subjective reasons, which is detrimental for economic operators that have submitted bids, but also for the contracting authority organizing the public procurement. On this account, proposed amendments to the Law on Public Procurement introduce a deadline for contracting authorities of taking the selection or tender annulment decision."

Analysis of procurement procedures in which the deadline for taking the selection or tender annulment decision was not complied with shows that 70% of them were not completed with the organization of e-auctions, as this stage of the procurement procedure requires more time and adds days to the deadline anticipated for taking the selection or tender annulment decision. Therefore, unknown are the reasons behind the failure to take the decision within the law-stipulated deadline, especially in cases where only one company submitted a bid and the e-auction did not take place.

Having in mind that this deadline is broadly disrespected on the part of contracting authorities and knowledgeable of the reasons that have triggered the introduction of this deadline, this problem must be seriously reconsidered and efforts and measures are needed to reduce its occurrence in practice. Additional challenges in that regard are identified in the most recent amendments to the Law which stipulate that, in particular cases, contracting authorities should request and receive an approval from the newly established Council of Public Procurements to implement the public procurement, thereby adding more days in the decision-taking deadline. Therefore, contracting authorities are recommended to set more reasonable deadlines for submission of bids and refrain from applying the minimum law-stipulated deadline, because such practices would further complicate their compliance with the deadlines.

ELIGIBILITY CRITERIA FOR TENDER PARTICIPATION – AN ETERNAL PROBLEM

In as many as 53% of public procurements monitored, contracting authorities, i.e. state institutions developed eligibility criteria for tender participation that are considered inadequate or counter-proportional to the procurement's subject or value. The newly emerged trend requires the companies, inter alia, to demonstrate positive financial balance, i.e. to have accumulated profits in the last several years, in order to be eligible for participation in tender procedures.

 In this monitoring period as well, as many as half of local level procurement procedures, except for eligibility criteria in compliance with the Law, defined additional terms and conditions to be fulfilled by companies in order to be eligible for tender participation.

Hence, the public procurement concerning reconstruction and maintenance of streets included the following additional requirements:

- **positive financial balance in the last 3 years;**
- **minimum turnover of 300,000,000 MKD in the last 3 years;**
- **minimum 3 contracts signed in the last 5 years for same type of works, where the value of individual contracts should be at least 100,000,000 MKD;**
- **minimum 30 employees;**
- **minimum 10 tipper trucks, 2 earthmover trucks, 2 skip trucks, 2 load trucks, 2 grader trucks, 1 roller truck;**
- **ISO 9001:2008;**
- **ISO 14001:2004.**

In that, it should be noted that the value of this contract amounted to 18,000,000 MKD. Therefore, the reference value set for companies' annual turnover required for tender participation is almost 17 times higher than the procurement's value. Moreover, the reference value of individual contracts performed by the company in the past (minimum 3 contracts) defined as eligibility requirement for tender participation is 5.5 times higher than the procurement's value. Companies were also required to demonstrate previous experience by means of 3 contracts signed in individual value of at least 100,000,000 MKD, only to be eligible for participation in the procurement procedure whose estimated value amounts to 18,000,000 MKD.

Another public procurement concerning food for kindergarten required the bidding companies to meet, inter alia, the following terms and conditions:

- **minimum 5 contracts performed for other contracting authorities, in the same field of procurements and in the last 3 years;**
- **minimum 7 statements on adequate, timely and quality performance of same or similar procurements in the last 3 years issued by relevant contracting authorities;**
- **possession of or disposal with relevant storage space;**
- **at least 15 employees under permanent employment contract, with uninterrupted working experience of minimum 6 months;**
- **at least 2 transportation vehicles, with refrigerating space for transportation of dairy products, meat and eggs.**

Examples of such disproportional eligibility criteria are abounding in the monitoring sample. Another procurement procedure whose contract value amounted to 6,500,000 MKD, in addition to 40 employees, required the bidding companies to demonstrate the following financial results:

- **minimum assets in the amount of 1,000,000 MKD, in the last 2 years separately;**
- **minimum income of 300,000,000 MKD, in the last 2 years together;**
- **minimum profit of 10,000,000 MKD, in the last 2 years together;**
- **at least one contract signed for performance of similar procurements in the amount of 6,000,000 MKD in the last year.**

In conclusion, only the requirement related to the bidding companies' annual turnover is 46 times higher than the procurement's value.

Another tender procedure from the monitoring sample concerning procurement of a passenger vehicle included the following eligibility criteria for the bidding companies:

- **minimum turnover of 30,000,000 MKD in the last 3 years separately and generated from sales of motor vehicles;**
- **at least 3 contract performed for same type of goods in the last 3 years and 3 statements on timely and quality performance of contracts;**
- **ISO 9001:2008.**

Such stringent eligibility criteria for procurement of one passenger vehicle! Moreover, if the contracting authority insisted on application of standards it would have been more logical to require the vehicle to comply with certain environmental standards. Only one among the many car dealers in Macedonia submitted a bid in the tender procedure and was awarded the procurement contract. The reason why other car dealers decided not to participate in the tender procedure and submit bids cannot be determined, particularly because the state institution that implemented this tender procedure refused to disclose the relevant tender documents requested in compliance with the Law on Free Access to Public Information. This FOI response was appealed in front of the Commission for Protection of the Right to Free Access to Public Information. Tender documents, which in this case were not published in the EPPS, could provide an insight in specific eligibility criteria for tender participation, including the technical specifications for the vehicle being procured.

Interesting is the fact that another tender procedure from the monitoring sample organized by local authorities in a completely different part of the country also concerned procurement of a passenger vehicle and received only one bid. In this case, in addition to the price, the contracting authority used another bid-evaluation element related to delivery deadline, which was assigned 15 points. However, as part of the relevant tender documents, the procurement-making entity defined a delivery deadline of minimum 8 days and indicated that bids including delivery deadline shorter than 8 days will not be accepted and will be disqualified. It seems that the manner in which the bid-evaluation elements are defined and ranked are not of great benefit to the procurement-making entity, notably because the contracting authority could have anticipated the preferred delivery deadline in the tender documents, without including it as bid-evaluation element.

In both procurement procedures surprising is the fact that only one company submitted a bid, having in mind that the market of new vehicles is characterized by great competition and car dealers often complain their businesses are unviable due to the shrinking pool of customers purchasing new vehicles as a result of the facilitated import of second-hand vehicles from abroad.

In the procurement procedure for paver tiles, in addition to the requirements related to demonstration of annual turnover in the amount of 200,000,000 MKD in the last 3 years, specific technical equipment, standards, etc., the bidding companies had to demonstrate possession of A-test certificate. None of the two bidding companies that submitted a bid was able to present the required certificate and the tender procedure was annulled. One month later, on the repeated tender procedure, one of the previous bidding companies submitted a bid, but this time presented the requested certificate and was awarded the procurement contract. Otherwise, it should be noted that the contracting authority in question implemented the same procurement procedure last year, when it defined the same eligibility criteria without the A-test certificate, but added this requirement this year as eligibility criterion for tender participation.

Another procurement procedure for advertising space in daily newspapers concerning placement of ads, implemented by one municipality, required the bidding companies to demonstrate minimum annual turnover of 5,000,000 MKD in the last 3 years and newspaper circulation of 10,000 copies in Macedonian language and at least 5,000 copies in Albanian language. The procurement lot concerning the newspaper printed in Albanian language was annulled, but the contract concerning the procurement lot with newspaper printed in Macedonian language was awarded to the

most favourable bid. Nevertheless, information whether the procurement contract was signed and the amount thereof are not available, because the contracting authority did not publish the notification on the procurement contract signed in the EPPS.

The monitoring sample included cases in which the initial tender documents do not include special eligibility and selection criteria, except for the law-mandated ones. However, tender documents were changed later in the procedure and implied addition of other criteria. For example, one of these tender procedures added requirements related to submission of statements on long-term cooperation in duration of at least 5 years with a renowned manufacturer of equipment and active cooperation with companies in the field of the procurement's subject, direct experience in solving problems in this field, reference list and minimum technical staff. Only one company submitted a bid and was awarded the contract.

On the contrary, tender documents from a different public procurement included several terms and conditions, but the changes made thereto resulted in deletion of these criteria. They included statements on past cooperation with minimum 3 companies in the field of the procurement's subject and minimum 3 employees. Three bidding companies submitted their bids in this tender procedure.

Nevertheless, definition of terms and conditions, i.e. eligibility criteria for tender participation raise many concerns and questions. For example, contracting authorities often require the bidding companies to submit a description of the technical equipment they dispose with as proof of their technical and professional capacity. In that, the only criterion for contract awarding is "lowest price". The question raised is what would happen if one bidding company, according to the description submitted, is technically more equipped than the competitor. Application of lowest price as the selection

criterion means that the contract will be awarded to the bidding company offering the lowest price. Therefore, it seems useless to include vague and general requirements such as description of the technical equipment, especially if they are not assigned points in the bid-evaluation process and do not determine the tender procedure's outcome, which renders their use in practice of no crucial significance.

Another public procurement from the monitoring sample concerning printing and binding services, in addition to the accumulated profit from the company's operation in the last 3 years, at least 3 contracts performed with satisfactory quality in the last 3 years and minimum of 10 employees, required the bidding companies to demonstrate possession of printing equipment.

As part of its procurement procedure on maintenance services for company vehicles, one municipal public utility enterprise required the bidding companies to have at least one authorized service workshop located within a range of 2.5 km airline distance from the contracting authority's headquarters. It does not come as surprise that only one bid was submitted in this tender procedure and was awarded the procurement contract. Monitoring results show that almost all tender procedures of similar nature and with specified distance for bidding companies' warehouses, service workshops, seats, headquarters, etc. usually receive only one bid. Exception therefrom are tender procedures in which the contracting authorities have defined this requirement, but the bidding companies that have failed to demonstrate fulfilment of this eligibility criterion lodged appeals in front of the State Commission on Public Procurement Appeals (SCPPA). In such cases, SCPPA annuls the procurement procedure, assessing that the contested eligibility criteria result in limited competition. Nevertheless, these eligibility criteria are still used in various tender procedures.

Two procurement procedures concerning supply of food and hygiene products for two kindergartens, both located in Skopje, but under the jurisdiction of different municipalities, are interesting for this analysis. Actually, tender documents for both procurements focused on defining high eligibility criteria for tender participation, instead on what would be logical to take primacy in this type of procurements, i.e. the quality of products purchased, having in mind that it is matter of food and hygiene intended for children. Thus, in the first case, the bidding companies were required, inter alia, to demonstrate: minimum assets of 1,000,000 MKD in the last 2 years; minimum income of 300,000,000 MKD in the last 2 years together; minimum profit of 10,000,000 MKD in the last 2 years together; at least 40 employees and one identical contract preformed in the past in the amount of minimum 6,000,000 MKD. The other tender procedure used the following eligibility criteria: accumulated profits in the last 3 years; minimum annual income of 2,000,000 MKD in the last 3 years, generated in the field of the procurement's subject; 5 contracts performed in the same field and 7 statements on quality performance of contracts in the last 3 years; warehouse space and at least two vehicles with refrigerators; as well as implemented HACCP system.

In both cases, it seems that the entire effort is focused on selecting the successful bidder, rather than the successful bid - as required by the Law and implied by the logic underlying the public procurement system. Namely, unlike the strictly specified eligibility criteria for tender participation, as noted in one of the public procurements, there are no accurate specifications of the characteristics of products being purchased for the purpose of supplying food and hygiene materials for kindergartens. Technical specifications only included the following requirements: whole grain bread, doughnuts, bread rolls, pastries, spaghetti, fresh cow milk, sour cream, white cow cheese, butter, yogurt, margarine, etc. In that, all these products were not specified in terms of mini-

um characteristics needed, which are commonly taken into consideration in cases of procuring food for children, such as: fat content of milk, yogurt, butter and sour cream, ingredients used for bread, doughnuts and bread rolls, sugar content in pastries, etc. The other kindergarten was more specific in terms of products' technical characteristic, but focused on packaging rather than composition and quality. Examples of these specifications include: wheat flour bread type 500, cut into slices and individually packed in wrappers of 600 grams; croissants, 70 grams, in adequate packaging; first-class butter, 250 grams, etc. However, some of the products were described in details: fresh cow's milk, pasteurized and homogenized, with 3.2 % fat contents, packed in 1/1 liter and brick packaging.

These two examples speak volumes of the fact that, nowadays, when the latest law amendments introduce lowest price as the only contract-awarding criterion, special attention should be paid to detailed specifications of products, of course, in cases where quality is of special importance. Contrary to the amendments made to the Macedonian Law on Public Procurement, the latest EU Directives adopted in January 2014 introduce quality as the most important contract-awarding criterion, especially in the sectors where quality is of great importance, such as education, health care, social protection, environment and culture. Hence, instead of lowest price, public procurements organized in these sectors will apply economically most favourable bid, but in the Republic of Macedonia the application of this selection criterion will be reduced to exceptional cases. On this account, it would be of great significance for procurements such as, for example, food for children, food for hospital patients, disposable materials needed at health facilities and the like, to specify the required quality in order to secure the best value for the money spent. In that regard, contracting authorities must abandon the practice of selecting the most favourable bidder instead of the most favourable bid.

Setting high, disproportional, inadequate, unrealistic and, sometimes, ridiculous eligibility criteria for tender participation is a problem that dates from the establishment of the public procurement system. Definition of such terms and conditions, in spite of contracting authorities' desire to secure uninterrupted contract performance, i.e. to award the procurement contract to a company that will smoothly perform the procurement, cast a shadow of doubt that they have been purposefully adjusted so that the procurement contract is awarded to a particular, favoured bidding company. Even if

the latter is not the case, the high eligibility criteria result in limited competition and close the public procurement market for participation of smaller and newly-established companies. One bid was submitted in as many as 43% of tender procedures monitored, while the average number of bidders calculated for the monitoring sample is 2.4. The share of tender procedures with only one bid from this monitoring sample is higher than the relevant shares noted in the previous monitoring periods, although the average number of bidders remains in the same range.

Table 3. Overview of competition in local level tender procedures

	April 2012 – September 2012	October 2012 – March 2013	April 2013 – September 2013
One bid	29%	37%	43%
Average number of bids	2.4	2.2	2.4

The trend of non-attendance of bidding companies' representatives at public opening of bids continued in this monitoring period. In average, only 50% of bidding companies did not attend the public opening of bids and in as high as 50% of tender procedures there were no representatives in attendance.

The latest amendments to the Law on Public Procurement introduced provisions aimed at minimizing the possibility for setting high eligibility criteria for tender participation and will enter in effect on 1 May 2014. In general, the new legal provisions stipulate that contracting authorities must provide evidence on the existence of at least three,

four or five companies operating in the relevant market (depending on the procurement's value) which meet the criteria and requirements defined in the technical specification. If they cannot provide such evidence, contracting authorities will have to request an approval from the newly established Council of Public Procurements to implement the public procurement. However, it remains to be seen how these provisions will be implemented in practice. In the meantime, contracting authorities that define high eligibility criteria are recommended to adjust their practices to the law amendments by securing competition in tender procedures they organize until the legal provisions enter into effect (May 2014).

PAYMENT DEADLINE IS MORE IMPORTANT THAN PRICE AND QUALITY OF GOODS AND SERVICES BEING PROCURED

Public procurements organized on local level and included in the monitoring sample often defined deadline payment as a bid-evaluation element that ultimately determines the bidding company to be awarded the public procurement contract.

It should be noted that in such cases, without exception, the payment deadline is more important than the price and quality of goods and services being procured.

A high number of tender procedures monitored did not use lowest price but economically most favourable bid as the selection criterion, which included a bid-evaluation element defined as payment deadline. In this monitoring sample, lowest price was used as the contract-awarding criterion in 65% of tender procedures, while the remaining 35% used economically most favourable bid. As many as 79% of tender procedures using economically most favourable bid as the selection criterion included payment deadline as one of the bid-evaluation and point-ranking elements. Points assigned to payment deadline range from 10 to 50, with an average of 22 points calculated for the entire monitoring sample. In most cases where payment deadline is included as one of the bid-evaluation

elements, the bid that offered the longest deadline was awarded the contract, which indicates that contracting authorities consider this element as the most important one for the selection of the successful bidding company, giving it primacy over quality or price of goods and services being procured.

In the tender procedure concerning season flowers procured for the needs of a municipal public utility enterprise, the contracting authority included the following elements in the contract-awarding criterion: 50 points were assigned to payment deadline expressed in days and 50 points were assigned to quality. In that, with the exception of species of season flowers being procured, the tender specifications did not include details about other characteristics of the products such as size, height, diameter, etc. Two bidding companies participated in this tender procedure. After the organized e-auction, their respective prices amounted to 200 MKD and 705 MKD. As expected, the contract was awarded to the bidding company that offered longer payment deadline and 3.5 times higher price. This company was assigned 14.18 points for the price element and 50 points for the payment deadline (total of 64.18), while its competitor was assigned 50 points for the price element and 10.70 points for the payment deadline (total of 60.70). In this case, obvious is that the contracting authority did not pay any attention to the quality aspect of the procurement, since it did not include this element in the technical specifications, nor to the price element, as it selected the bid that is several times more expensive. The bid-evaluation and selection process focused on delayed payment, although it is a matter of a small-scale procurement of insignificant value.

Similar is the situation observed under another tender procedure concerning procurement of notebook comput-

ers for the needs of one municipality. The contracting authority defined the following bid-evaluation elements: price was assigned 50 points, delivery deadline was assigned 25 points and payment deadline was assigned 25 points. Two bidding companies participated in the tender procedure and again, as if by following an unwritten rule, the more expensive bid was awarded the contract, notably because the other two bid-evaluation elements were of decisive importance in the contract-awarding procedure. The company that was awarded the contract offered a payment deadline of 720 days (or 2 years) and delivery deadline of 1 hour upon properly submitted notice of procurement. This company is seated in the same municipality where the tender procedure was organized. On the contrary, its competitor is seated in Skopje and, having in mind the distance of the said municipality from Skopje, was unable to deliver the goods within one hour time. Be that as it may, the amazing speed for delivery of notebook computers and the unimaginable payment deadline in duration of 2 years were of decisive importance for the selection of the more favourable bid compared to the price offered. It seems as if the contracting authority did not consider the price as an important factor in the procurement.

When discussing selection criteria, interesting is to analyse the procurement procedure for heating oil organized for the needs of one municipal school and implemented by the municipality. In this case, the contracting authority decided to base the selection of the most favourable bid on the following elements: price was assigned 40 points, payment deadline was assigned 40 points and quality was assigned 20 points. Concerns are raised with the fact that quality of heating oil is defined as bid-evaluation element, although the contracting authority, i.e. the municipality has no means to check and assess this aspect, but re-

quested the bidding companies, as part of the eligibility criteria for tender participation, to submit reports from quality tests performed by an accredited laboratory. As expected, all three bidding companies submitted such quality test reports and were assigned 20 points each, which renders the inclusion of this bid-evaluation element useless in the selection process. And finally, contrary to other similar tender procedures, the bidding company offering the lowest price was awarded the procurement contract.

Here it should be noted that the last round of amendments to the Law stipulate that as of 1 May 2014 lowest price will be the single contract-awarding criterion in all public procurements, thereby revoking, with very few exceptions, the second most frequently used selection criterion defined as economically most favourable bid. By doing so, contracting authorities are denied the right to use other elements in the bid-evaluation and raking process, such as quality, technical and operational characteristics of products, post-sale services, etc. This means that in the future, contracting authorities will need to develop very precise technical specifications for their public procurements and, when necessary, include some of the above-indicated elements in the technical specification for the purpose of guaranteeing procurement of quality goods and services. Contrary to the changes made in the Macedonian LPP, the most recent EU Directives on Public Procurements adopted in January 2014 stipulate that in cases of public procurements where the quality takes primacy, the single contract-awarding criterion will be economically most favourable bid. It is a matter of public procurements whose value exceeds a pre-defined threshold and which are implemented in the fields of health care, education, culture, environment, social protection and the like. Moreover, the

changes made to EU Directives put a special emphasis on making sure that the selection of the most favourable bid takes into account overall costs that might occur in the lifespan of goods being procured, not only the costs known at the moment of procurement. An example for such procurement is equipment used in health care where, in addition to the price of apparatus being procured, due account is made of overall costs related to the apparatus' operation, including the chemical agents and other supplies needed throughout the entire period in which the apparatus is used. Another example is procurement of printing machines where, in addition to the price, due account is made of overall costs related to their operation, i.e. consumption and price of toner cartridges, printing paper, etc.

What needs to be seen and analysed in the future is the manner in which contracting authorities will get accustomed to and enforce the legal provision, according to which as of May 2014 they can only use lowest price as the selection criterion in procurement procedures. This is especially important in the light of the fact that, according to the monitoring results, high number of contracting authorities often use the other selection criterion defined as economically most favourable bid, which will no longer be used for most public procurements and which, in the past, allowed them great space for manipulations and malpractices in the contract-awarding process. Due to these reasons, contracting authorities are recommended to make the best of the forthcoming period until 1 May 2014 to adjust to the law changes and start applying lowest price as the selection criteria, making due consideration of accurate description of technical specifications for the goods being procured by means of tender procedures.

NUMBER OF TENDER ANNULMENTS REMAINS AROUND THE AVERAGE, BUT DECISIONS ARE TAKEN LATE

17.5% of tender procedures from the monitoring sample were annulled, which is similar to the average share of annulled public procurements implemented by local authorities. The average number of bidders in the tender procedures annulled is 2.6. Common denominator for all tender procedures annulled is the fact that decisions on tender annulment are taken late or beyond the deadline, and in one case this decision was adopted five and a half months after the deadline for submission of bids.

Tender annulments are one of the long-standing problems that affect public procurements. Nevertheless, from the moment the Law on Public Procurement entered in effect and after it was aligned with the EU Directives in 2008, which overlaps with the start of monitoring activities implemented by the Centre for Civic Communications, the share of annulled tender procedures organized by local authorities is significantly lower compared to the share of annulled tender procedures organized by central authorities.

In this reporting period (April - September 2013), 17.5% of tender procedures monitored were annulled. 14% of these tender procedures were annulled by means of a decision taken by the State Commission on Public Procurement Appeals, while the remaining tender procedures were annulled by the relevant contracting authority.

Compared to previous monitoring periods and findings, this share is slightly higher, but is within the range of the average share of 15% calculated for local level tender procedures.

Table 4. Overview of local level tender procedures annulled

	April 2012 – September 2012	October 2012 – March 2013	April 2013 – September 2013
Share of annulled tenders	15%	15%	17.5%
Average number of bidders in annulled tenders	3.5	1.2	2.6

As regards the reasons for tender annulments, the most frequently indicated reasons (29% each) include:

- **important violations to the Law on Public Procurement; and**
- **prices and conditions for contract performance obtained on the tender procedure are less favourable than the market prices and conditions.**

Particularly interesting is one tender procedure from the monitoring sample where the contracting authority procured smart cards for parking services. First, the public

procurement committee established at the contracting authority (public utility enterprise) prevented the monitor from CCC to attend the public opening of bids, although - in compliance with Article 136 of the Law on Public Procurement - attendance at public opening of bids is allowed for all interested parties. Nevertheless, as is the case with many other violations to this law, this violation is not accompanied with sanctions for contracting authorities. Moreover, the contracting authority did not disclose the documents related to the tender procedure monitored and requested in compliance with the Law on Free Access to Public Information. Once CCC lodged an appeal in front of the Commission for Protection of the Right to Free Access to Public Information and informed the contracting authority thereof, the requested documents were disclosed before the Commission was able to take any decision and resulted in discontinuation of the appeal procedure.

The final outcome of this tender procedure is the following. Two bids were submitted in the tender procedure, followed by organization of e-auction that resulted in the selection of the most favourable bidder. In the meantime, after all events around the (non)disclosure of documents and initiation of the appeal procedure in front of the Commission for Protection of the Right to Free Access to Public Information, the contracting authority has still not taken the selection decision month and a half after the public opening of bids, although the deadline for this decision was 20 days and corresponded with the deadline for submission of bids. In the end, 55 days after the public opening of bids, the contracting authority adopted a decision on tender annulment with a rationale spread on whole two pages. Namely, the decision refers to the fact that the responsible person has decided not to accept the report submitted by the public procurements committee because it considers that the selection of the successful

bidder has been made contrary to the Law on Public Procurement, i.e. the tender documents included eligibility criteria for tender participation that are contrary to the Law.

As regards annulment of tender procedures monitored, it should be noted that there were no cases of annulled tender procedures with one bidding company, followed by negotiations with the bidder for the purpose of reducing the price. Such situations and practices were more common in the previous monitoring period. In this sense, the last most significant changes made to the Law on Public Procurement introduced the possibility to invite the single bidder to re-submit the bid with new, reduced price. This newly introduced legal provision aims to eliminate the need for tender annulments and will reduce the number of tender procedures that are not completed with e-auctions, notably because the bid's re-submission with a reduced price will be considered as if the e-auction has taken place and third, it will reduce the number of contracts signed by means of direct negotiations.

Although this legal provision is expected to reduce the number of tender annulments, the number of procurement procedures in which mandatory e-auctions are not organized and the number of procurement procedures organized by means of direct negotiations, valid is the recommendation for competent institutions to analyse tender annulments and to limit the possibilities for annulment of tender procedures. Monitoring of public procurements shows that tender annulments are still easily pursued and leave space for contracting authorities to abuse this legal possibility.

SMALL COMPANIES ABOUT THE PROBLEMS IN LOCAL LEVEL PUBLIC PROCUREMENTS

Late payment of contract performance, short deadlines for submission of bids, restrictive terms and conditions and administrative burdens related to tender participation, insufficient and untimely communications with the contracting authorities and primacy of price over quality in public procurements are just few of the problems faced by small and micro companies that participate in tender procedures organized on local level. Representatives of these companies propose extension of deadlines, timely payment of completed procurements, division of procurements in lots, but also increased professionalism on the part of contracting authorities when drafting the tender documents and technical specifications.

By the end of 2013, hundreds of representatives from small and micro companies operating in 20 municipalities in the East and Vardar region of the country and participating in public procurements organized at municipal level were asked to share their opinions about the problems they face when participating in local level public procurements, as well as to provide proposals with a view to improve the overall situation with public procurements. This section provides an overview of their opinions, grouped per problem and set of proposals, presented in their original form as articulated by the representatives of small and micro companies.

Most frequent problems faced by small and micro companies participating in tender procedures organized on local level include:

- **Late payment on the part of contracting authorities and non-compliance with payment deadlines defined in the public procurement contracts;**
- **Short deadlines for submission of bids (especially in cases of small-scale**

procurements where the deadline is usually 5 days and the call for bids is often announced on Friday, ultimately making the deadline only two working days long);

- Tender documents often include discriminatory terms and conditions for small and micro companies to participate in tender procedures;
- Numerous documents required for tender participation;
- Tender documents are not available at the moment when the call for bids is announced and result in lost time and money for obtaining them;
- High costs related to submission of appeals in front of the State Commission for Public Procurement Appeals;
- Insufficient independence of public procurement committees (comprised exclusively of employees in the state institution that organizes the tender procedure);
- Application of lowest price as the contract-awarding criterion is not favourable and beneficial for micro companies, as it fails to take into consideration the quality of goods and services;
- Tender procedures are rarely divided into lots for the micro companies to be able to submit bids for smaller lots of the procurement subject;

- Unlike the black-listing of companies, sanctions are not imposed to contracting authorities in cases of errors made in the course of implementing public procurements;
- Delayed and difficult communication with representatives of contracting authorities.

Proposals put forward by representatives of small and micro companies aimed at improving the implementation of local level public procurements include:

- Timely payment on the part of contracting authorities for performance of public procurement contracts signed;
- Increased professionalism on the part of contracting authorities when drafting the tender documents and technical specifications, with engagement of outsourced experts from the business community;
- Increase the minimum deadline of five days for submission of bids in small-scale public procurements (and defining it as five working days instead of five calendar days);
- Revoke the provision on mandatory organization of e-auctions in the case of small-scale procurements whose value does not exceed 5,000 EUR;
- Mandatory publication of planned quantity and estimated value of the procurement in parallel with the announcement of the call for bids;

- **Introduce fines and sanctions for contracting authorities that violate the provisions from the Law on Public Procurement;**
- **Free-of-charge publication of tender documents and their availability in parallel with the announcement of the call for bids;**
- **Promote communication between contracting authorities and economic operators by introducing deadlines and open telephone line at all contracting authorities for tender procedures underway;**
- **Reducing the fees imposed to economic operators for lodging an appeal in front of the State Commission on Public Procurement Appeals;**
- **Introduce economically most favourable bid as the only contract-awarding criterion;**
- **Introduce general and common rule for all contracting authorities to act in cases of two or more identical bids;**
- **Free training for micro companies for participation in public procurements.**

include introduction of lowest price as the single contract-awarding criterion, which is detrimental for small and micro companies. Other proposals made by the companies are yet to be reconsidered by competent authorities and be accepted in the following period.

Having in mind that the proposals made by small and micro companies were provided prior to the adoption of the last round of amendments to the Law on Public Procurements, it should be noted that some of them have already been accepted, including the mandatory publication of tender documents and the procurement's estimated value in parallel with the call for bids. On the other hand, some changes made to the Law on Public Procurement are completely opposite from the proposals made and they

