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MONITORING LOCAL LEVEL PUBLIC PROCUREMENTS

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INTRODUCTION: GOALS AND METHODOLOGY

The Centre 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 Procurements, 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 underlying 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.

CCC's monitoring activities target procurement procedures organized and implemented by all state institutions country-wide, both on central and local level. Due to differences in specificities identified between central and local governments and institutions 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 insights 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 general principles governing public procurements.

This report is prepared on the basis of results from monitoring 40 public procurements implemented by local institutions throughout Macedonia that comprise the monitoring sample selected for the period 1 October 2013 – 31 March 2014.

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.), and different procurement subjects, as well as 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 Centre 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

Once “lowest price” was introduced as the single criterion on awarding public procurement contracts, and e-auctions are mandated for all tender procedures, there are numerous examples of tender procedures that have attained extremely low prices whereby likely is that the company awarded the procurement contract will not be able to perform it completely, under the required quality and quantity, as indicted therein. Contracting authorities are of the same opinion and demand introduction of safeguarding mechanism from extremely low prices that might endanger quality performance of procurement contracts.

Transparency remains one of the major problems affecting public procurements in the country. Some state institutions either do not publish tender data or publish them late, despite their obligation from the Law on Public Procurements, while other state institutions do not disclose information requested by means of FOI applications, despite their obligation from the Law on Free Access to Public Information. On the other hand, there are only a handful of institutions that are independently and voluntarily pursuing accountability and transparency and make data on public spending available to taxpayers and citizens.

Several months before legal provisions on mandatory publication of tender documents enter in effect, including legal provisions whereby defining eligibility criteria for tender participation becomes difficult and liable to sanctions, 45% of tender procedures monitored have not published their relevant tender documents, while as high as 60% of them included high eligibility criteria for tender participation.

Tender annulments continue to create problems in the field of public procurements. In this monitoring period as well, the share of annulled tender procedures ranges around the average of 15% calculated for local level public procurements. Dominant reason indicated for tender annulment is the fact that contracting authorities have not received any bids or no acceptable or adequate bids.

Deadline on selection decision-taking is complied with, but signing of procurement contracts is postponed. In only 16% of tender procedures monitored the relevant contracting authorities have taken selection or tender annulment decision beyond the relevant deadline, which is a significant improvement compared to the previous monitoring period (when this share accounted for 50%). At the same time, long period of time elapses from the selection decision to the procurement contract signing. Average duration of public procurement procedures from this monitoring sample was 47 days.

TENDER PRICES: GROWING PROBLEM IN PUBLIC PROCUREMENTS

Once “lowest price” was introduced as the single criterion on awarding public procurement contracts, and e-auctions are mandated for all tender procedures, there are numerous examples of tender procedures that have attained extremely low prices, whereby likely is that the company awarded the procurement contract will not be able to perform it completely, under required quality and quantity, as indicated therein. Contracting authorities are of the same opinion and demand introduction of safeguarding mechanism from extremely low prices that might quality performance of procurement contracts.

Monitoring of public procurements implemented by local level institutions provides numerous examples of unrealistic reduction of tender prices to levels at which even contracting authorities are uncertain of contract's performance in the manner agreed. This primarily concerns quality of goods and services procured, especially in cases when they are not described in detail as part of technical specifications.

One kindergarten from Skopje organized a tender procedure for “consultation services and tasks related to safety and health at work for the institution's employees”. Four bids were submitted in the tender procedure. Lowest price for services amounted to 214,000 MKD, while the highest price amounted to 300,000 MKD. All four bidding companies participated in the e-auction organized as downward bidding, which lasted exactly two hours and resulted in reduction of initial prices by five times, i.e. the final price attained amounted to only 42,786 MKD compared to the initial price of 214,000 MKD. In other words, a total of 215 individual price reductions were made in the course of downward bidding process (e-auction). Upon completion of these e-auctions, perceived by some bidding companies as video games, unknown is the manner in which the selected company will be able to deliver adequate quality at such low price. For illustration purposes, following is the list of services to be delivered by the company awarded this public procurement at a price of 42,786 MKD:

- Metering micro-climate conditions in summer and winter seasons, as well as lighting in the premises of all 5 buildings, and other amenities (80 in total);
- Training of employees on safety and health at work, as follows: 113 full-time employees, 1 part-time employee, 8 temporarily employed persons and 15 volunteers (total of 136);
- Training on fire protection for 10 employees;
- Risk assessment and concept statement on safety at work, according to the systematization act adopted by the institution;

- Evacuation plan for all 5 buildings and other amenities;
- Development of Rulebook with Guidelines and Measures on Safety at Work.

This is not an exhaustive list of contracted services and tasks. As part of relevant technical specifications, the kindergarten included details about the manner in which some of above-enlisted tasks should be performed. Hence, training is anticipated to be delivered according to previously developed programme with interactive methods, and should be followed up with tests for employees intended to verify their knowledge acquired.

Metering of noise, lighting and micro-climate conditions should be performed according to precisely enlisted internationally adopted standards (ISO, EN and DIN), while risk assessment should indicate the method to be applied. All these services should be provided for only 42,786 MKD or 700 EUR! It should also be noted that it is a matter of kindergarten located 20 kilometres from Skopje downtown area, which implies that transportation costs will be a significant budget item for the company, on top of other costs related to performance of this procurement contract.

Another public procurement concerning manufacturing and assembling of furniture for one municipal library received two bids: one in the amount of 566,486 MKD and another in the amount of 855,615 MKD. E-auction resulted in attainment of reduced price in the amount of 367,340 MKD and the contract was awarded to the bidding company which initially priced its services at 855,615 MKD, i.e. the company reduced its price by 2.3 times. Although this example is far from the previous one in terms of price reduction, it nevertheless raises doubts about the quality of contract performance, having in mind the list of deliverables: procurement and installation of lights, placement of laminate floor, manufacturing of desks and book shelves, footstools, chairs, armchairs, coat hangers, room separators, closets, wall murals, wall painting and wallpaper.

Similar is the example with procurement of goods and services for “street lighting maintenance in settlements and replacement of existing lighting fixture with set of lighting fixtures with energy efficient CFL (Compact Fluorescent Lamp) bulbs” organized by one small municipality. Four bids were submitted upon the announced procurement notice and after their initial reconsideration, three of them were assessed as acceptable and participated in the e-auction at which the winning company reduced its initial price by 11 times, i.e. from 16,420 MKD to only 1,500 MKD. Long is the list of individual products (indicated per item or one meter) and services to be delivered or performed by the successful bidding company at the price offered:

- Removal of existing lighting fixtures;
- Procurement and installation of set of lighting fixtures with energy efficient CFL bulbs 1 x 55 W;

- Removal of existing and procurement and installation of new energy efficient bulbs E27-30 W;
- Protective glass;
- Porcelain lamp holders;
- Photo Electric Control Unit (PECU) for street lighting;
- Contactor CN40;
- Contactor CN25;
- Sealed ballast 125 W;
- Photoelectric sensor for PECU;
- Automatic fuses;
- Conductor 1.5 mm;
- Terminal blocks;
- Blade fuses;
- Aerial Bundled Cable (ABC) 2x16;
- Tension clamps;
- ABC clip 17;
- Energy efficient CFL (Compact Fluorescent Lamps) 1 x 55 W;
- Installation of sets removed during the installation of CFLs;
- Ballast 55 W;
- Aluminium conductor steel-reinforced (ACSR) 25 mm²;
- Insulator support with pin insulator N95, and
- Candelabra H = 6 m.

Although the total offered price in of amount of 1,500 MKD concerns one unit, one meter or one replacement/installation/removal for each of above-enlisted products and services, it seems unlikely that this procurement can be performed at the indicated price, even if the bidding company has calculated that certain more expensive items and services will be procured in smaller quantity and other cheaper items and services will be procured in larger quantity.

Under the public procurement for development and revision of urban plans implemented by one small municipality, average price reduction is by 3.2 times lower than initial prices. This procurement was divided into three lots and each of them implied individual e-auction that resulted in major reduction, not only of the starting lowest price, but also of initial price offered by the bidding company that was ultimately awarded this procurement contract. It is incomprehensible how one company can offer initial price of 4,320,000 MKD, only to reduce it by 6 times to 700.000 MKD for performance of same service. Irrespective of calculations made by the company in question, such price reduction is unfathomable. As part of same public procurement but under different lot, the same company offered a price of 300,000 MKD and ultimately reduced it to 35,000 MKD, which is a reduction by almost 9 times. In the end, the total value of contracts signed for all three procurement lots is by three times higher than the procurement's estimated value. Undisputed is the fact that such procurements enable contracting authorities to make financial savings, but they raise doubts about quality performance thereof. Moreover, this type of procurements should be monitored in the course of their performance for the purpose of establishing possible increases of their initial values. Otherwise, the procurement lot concerning development of strategic environmental impact assessment of urban plan implied that for a total amount of 35,000 MKD the company awarded this procurement lot should develop such assessments for three villages and area of 180 hectares. Again, it should be noted that the company awarded this procurement, which includes terrain visits, is located 280 kilometres from the location for which the assessment should be performed.

There are numerous examples indicated by contracting authorities about absurd situations related to prices attained in tender procedures. Often, they face problems in terms of contract performance, which is particularly the case with contracting authorities that have not anticipated guarantees for quality contract performance. While the Law on Public Procurements stipulates that contracting authorities should request details about the bid, in cases the bid implies unusually low price compared to actual market prices, which raises doubts about contract performance, this possibility is not of great help in practice. First, most contracting authorities believe that they are allowed to request such detailed accounts only for initial bids, i.e. only when prices of initial bids are unusually low (prior to the organization of e-auctions). Other contracting authorities are of the opinion that such details in written about the price can be requested only for the total bid, and not for lots. For example, when procuring office supplies according to a specification list, it is considered that tender price is only total price for all individual items enlisted in the specification. Nevertheless, there are cases in which most commonly procured products are offered at higher individual price (printing paper, for example), while office supplies that are rarely or only once procured are offered lower prices (staplers, for example). Ultimately, the bid with the lowest total price for all items enlisted in the specification is selected as the most favourable one. However, in the course of contract performance it turns out that the contracting authority is paying too much for products being procured and used on regular basis,

and too little for products being procured rarely or only once. It seems that contracting authorities have their hands tied in such cases. They also indicated that when requesting details about unusually low prices, the most frequent answer is that the said price is a result of favourable commercial conditions, and often low prices are justified with the fact that the company has certain quantity in stock and wants to clear it, or is first or direct importer of said products, which results in low prices bided.

Be that as it may, it is recommended to reconsider possibilities for introduction of additional safeguarding mechanism from extremely low prices that might endanger quality performance of public procurement contracts. It seems that such mechanism would be beneficial both for contracting authorities and for companies, at least those that operate according to the principles of fair and professional business conduct.

OH, THAT TRANSPARENCY

Transparency remains one of the major problems affecting public procurements in the country. Some state institutions either do not publish tender data or publish them late, despite their obligation from the Law on Public Procurements, while other state institutions do not disclose information requested by means of FOI applications, despite their obligation from the Law on Free Access to Public Information. On the other hand, there are only a handful of institutions that are independently and voluntarily pursuing accountability and transparency and make data on public spending available to taxpayers and citizens.

Examples of non-compliance with obligations on transparency and accountability for public spending are many and wide. It has been reiterated that although the Law on Public Procurements obliges state institutions to pursue at least minimum transparency and accountability for public spending, large portion of them do not comply even with this minimum requirement. Namely, the Law on Public Procurements stipulates that institutions are obliged to publish information on procurement contracts signed within a given deadline. In case of large scale tender procedures and procurements implemented by means of negotiation procedures, within a deadline of 30 days from procedure's implementation they are obliged to submit data to EPPS on the company awarded the procurement contract, date of contract signing and contract value, as well as information on competition in the tender procedure. Same applies in cases of tender annulments, with the fact that EPPS should be presented with a notification on tender annulment, including the reasons thereof.

In cases of small scale procurements, there is no obligation for publication of such data per individual tender procedure; however contracting authorities should provide a summary notification twice a year, and include information on all contracts signed in the first and in the second half of the year. In case of contracts signed in the period January-June, this notification should be submitted in the course of July the same year, while in the case of procurements organized in the period July-December, this notification should be submitted in the course of January the next year. Notifications, in the form of tabular records, should contain minimum data on so-called small procurements implemented, such as company name, date when contract was signed, contract value and procurement subject.

Although it seems simple, such notifications are not easily published. Large share of institutions do not publish such information or they publish them late, i.e. several months after their intended deadline. It should be noted that in many cases throughout the monitoring process same institutions that do not comply with the Law on Public Procurements in this regard, also refuse to disclose said information when addressed

with FOI applications in compliance with the Law on Free Access to Public Information. In both cases, institutions' failure to comply with law-stipulated obligations on transparency and accountability is not liable to sanctions. Another problem identified in this regard is the fact that publication of these data in EPPS does not imply great transparency knowing that EPPS is not envisaged as accountability tool before citizens, but as electronic system for implementation of public procurements. Therefore, institutions need to make additional efforts to ensure transparency and accountability on public spending, i.e. they must find other ways in which they can make such information available to the public and the citizens, in easy and understandable manner.

Without engaging in reasons behind state institutions' failure to submit information on public spending to EPPS, it can be concluded that such practices are not necessarily result of large scope of data and information. Hence, one very small municipality which organizes only several procurements annually, and whose public procurement was included in this monitoring sample, did not only fail to keep records on public funds spent for the period January-June 2014 and failed to publish such information in July 2014, but published its records on public spending in the period July-December 2013 as late as July 2014, although it should have done that six months earlier, i.e. in January 2014. In reality, it is a matter of records on only two public procurements implemented in the said period. This problem gains in intensity knowing that this is the only way in which citizens of this small municipality will be able to learn about the manner in which their taxpaying money is spent.

As part of another procurement concerning foodstuffs, one big municipal kindergarten decided not to disclose information requested in compliance with the Law on Free Access to Public Information seven months after it was addressed with FOI applications, followed up with several reminders. By rule, public procurements for which institutions do not disclose and publish data concern procurements for which relevant data from EPPS indicate that they have been accompanied with certain problems.

Similar is the example with the procurement procedure for road supervision services organized by one municipality which did not respond to FOI applications, and did not submit notification in EPPS on public procurements implemented in the period January-June 2014. The said municipality submitted the notification in EPPS on public procurements implemented in the previous period (July-December 2013) four months after the relevant deadline.

Otherwise, as high as 33% of institutions included in this monitoring sample have not submitted notifications in EPPS on so-called small scale procurements by 31 July 2014 for the period January-June 2014. It should also be noted that as high as 85% of institutions that did not submit relevant notifications and records are municipalities.

Similar is the situation observed in terms of notifications on tender annulments and contracts signed (by means of open procedures) which institutions should submit to EPPS within a deadline of 30 days from the procedure's completion, i.e. from taking the

decision on tender annulment. 38% of institutions from the monitoring sample submitted these notifications in EPPS late.

The public's presence at opening of bids is closely related to transparency of public procurements. Namely, in addition to bidders, any other interested citizen can attend the public opening of bids for tender procedures. This possibility is used as tool in monitoring of public procurements and allows monitors to learn information about the number of bids, bidders, prices, manner in which this procedure is led by the public procurement committee, etc. Although it took some time for institutions to get acquainted with this law-stipulated publicity and openness of public procurements, there are still contracting authorities that request the monitors to present them with an authorization certificate similar to the one required for representatives of bidding companies.

In the last monitoring sample one institution, municipality in the City of Skopje, schemed to prevent monitor's presence at the public opening of bids. Namely, when the monitor arrived at the municipality (15 minutes before the scheduled public opening of bids at 11:00 o'clock in the morning) and neatly presented himself to the reception desk officers, he was told to wait before a particular office where the public opening of bids is allegedly scheduled. After waiting for more than 30 minutes, and observing that the public opening has not started, nobody could answer his questions about what is going on and why the public opening of bids has not started. Finally, at 11:34 a.m. he was told that the opening of bids already took place and is completed, but in another office. Again, as is the common practice in such cases, the contracting authority did not disclose information requested in compliance with the Law on Free Access to Public Information.

As regards transparency and accountability in public procurements, i.e. on public spending, valid is the recommendation for adherent enforcement and compliance with obligations stipulated in the Law on Public Procurements and the Law on Free Access to Public Information. Recently, this set of obligations is enriched with commitments assumed under the Open Government Partnership's Action Plan. Namely, in addition to the law-stipulated obligations, state institutions are recommended to find ways for proactive and continuous improvement of transparency and accountability on public spending. In this regard, they should find ways to make information on tender procedures, from public procurement plans to implemented procurement contracts, more available. There are many examples from countries in the neighbourhood, the EU and around the world about manners and possibilities available to state institutions wishing to be more transparent and accountable about their public spending.

TO THE LAST BREATH

Several months before the legal provision on mandatory publication of tender documents enter in effect, including legal provisions whereby defining eligibility criteria for tender participation becomes difficult and liable to sanctions, 45% of tender procedures monitored have not published their relevant tender documents, while as high as 60% of them included high eligibility criteria for tender participation.

Worrying is the fact that contracting authorities are literally, to the last breath, continuing with the old and bad habits, although they have been prohibited or made more difficult with the last significant changes made to the Law on Public Procurements from October 2013, some of which entered in effect on 1 January 2014 and others on 1 May 2014. Namely, according to these legal changes free of charge publication of tender documents, together with the procurement notice or call for bids becomes mandatory from 1 January 2014. Nevertheless, although these changes were known and adopted in October 2013 with delayed effect from January 2014, and although contracting authorities had been advised for years now that documents should be publicly available and free of charge at the moment the public procurement is announced, in the period October-December 2013, they still continued with the past practices and 45% of local tender procedures monitored did not make their tender documents publicly available.

This speaks volumes about the non-adherence to principles of good governance, especially because there is no other logical explanation and justification for continued practices to the last day and until they become prohibited, all the while knowing that it would not be assessed as good practice. Any respect for principles of good governance would mean the opposite: when a phenomenon is assessed as inadequate and is prohibited by law, then immediately after learning thereof (in our case: October 2013!), it should no longer be practiced, despite the delayed entry in effect of relevant legal provisions for a period of three months.

Same conclusion is valid for definition of high eligibility criteria for tender participation, some of which are inadequate and disproportional to procurement's subject and value, while others are favouring particular bidding companies or are at least discriminatory for many new and small companies. This practice was also applied to the last possible moment, prior to being made more difficult and liable to sanctions. Namely, changes to the law, also made known in October 2013 and aimed at reducing cases in which such eligibility criteria are defined, introduced the obligation for all contracting authorities to demonstrate that there is an adequate number of companies operating on the relevant market which can submit their bid under the given requirements or, on the contrary, they should request approval for the public procurement in question from the newly

established body within the Bureau of Public Procurements – Council of Public Procurements. Again a period of time was left prior to this obligation's entry in effect on 1 May 2014. However, contracting authorities pursued implementation of public procurements including high eligibility criteria to the last moment. Namely, eligibility criteria for tender participation were defined in as high as 60% of tender procedures monitored in the period October 2013 - March 2014, i.e. when legal changes have not yet entered in effect, but they were common knowledge and their purpose was clear.

Most fashionable one, if we may use this phrase, among various eligibility criteria for tender participation defined by contracting authorities is the requirement for companies to operate with profit. In that, companies are most often required to demonstrate positive financial results in the last three years, and less often they are required to demonstrate profitable operation only for the last year. Profitable operation of companies has been defined as eligibility criterion in 46% of tender procedures monitored. In this context, one procurement procedure required bidding companies to be liquid! Also, high number of tender procedures required bidding companies to submit their relevant profit and loss statements, without indicating whether they are also required to have accumulated profits. On this account, it is not clear why companies are asked to submit their profit and loss statements if there is no clear indication on which information from the said document will be subject of assessment and verification. It is one thing that companies have been imposed additional administrative and financial burden, but on the other hand, reading and interpretation of said statements requires particular, most often economic knowledge on the part of contracting authorities.

Frequent are also examples of defining discriminatory requirements. Thus, one procurement procedure concerning construction materials with estimated value of up to 20,000 EUR required the company that will be awarded the contract to supply the said materials within one day, or should it propose another, longer deadline the bid would be rejected as unacceptable. Moreover, the company to be awarded the procurement contract has to be seated within a distance of 10 kilometres from contracting authority's headquarters. No companies participated in this tender procedure and the same was annulled. Immediately afterwards, the public procurement was re-announced and only one local company participated and was awarded the contract.

Similar requirements were imposed as part of the procurement procedure organized by one kindergarten for paints, sprays, electricity and water supply parts. Inter alia, potential bidding companies were required to submit documents on demonstrating disposal with sales premises in the municipality where the kindergarten is located.

As part of another procurement on placing laminate floor in primary school, despite being a small procurement in the value of up to 5,000 EUR, in addition to the common and only law-stipulated requirement for small procurements, i.e. submission of

evidence that the company is registered to perform the business activity in question (known as DRD form), another requirement has been defined. Bidding companies had to provide evidence on having employed at least 40 professional workers (laminat placers)! But the list does not end here. There are other interesting facts related to this procurement. First, tender documents stipulated that it is a matter of small procurement in the amount of up to 5,000 EUR; however, the estimated value (8,957 EUR) and the contract value (9,400 EUR) exceed the threshold of 5,000 EUR. Second, the contracting authority did not disclose information requested in compliance with the Law on Free Access to Public Information. Third, the only bid was submitted immediately before the public opening of bids, which means that in the previous period (which is a common practice) no bids have been submitted to the contracting authority. It should be noted that the price offered under the single bid submitted immediately before the public opening of bids is identical with the procurement's estimated value.

The procurement procedure organized for revision of planning documents required bidding companies, inter alia, to have signed at least 3 contracts in the last 3 years, to have at least 15 employees as follows: 1 holder of license for development of urban plans, 2 construction engineers, 1 electricity engineer, 3 architects, 1 electricity engineer for revising project documents related to fire protection and 1 electricity engineer for revising project documents related to safety and protection at work. Only one company submitted a bid and was awarded the contract. Above-enlisted requirements concern procurement in the value of only 800.000 MKD (13,000 EUR).

On the other hand, eligibility criteria that are most often defined under tender procedures monitored (when they were not made difficult by the law, i.e. from 1 May 2014) include requirement for bidding companies to have a pre-defined number of employees. This eligibility criterion was observed in as high as 66% of tender procedures. In that, absurd examples were noted, such as the above-enlisted procurement in the value of around 9,000 EUR which required the company to have employed as many as 40 workers that will assemble the floor laminate. As part of other procurement, also concerning revision of planning documents, whose contract value amounted to 13,000 EUR, bidding companies were required to have at least 15 employees, with detailed description of their qualifications, certificates, authorizations, licenses, education profile and degree. In that, companies were also required to have adequate licenses on performance of procurement's subject. Hence, if there are requirements on licenses issued by other authorities and whose issuance implies that companies must fulfil precisely stipulated terms and conditions, including number and profile of employees, unclear is the need for additional evidence that they have employed required personnel. Both tender procedures received only one bid each.

The public procurement concerning furniture for kindergarten in the value of 8,410 EUR could be an example for setting eligibility criteria that are disproportional and inadequate to procurement's subject and value. Namely, bidding companies were required to have total annual turnover for the last 3 years of at least 50,000,000 MKD

(813,000 EUR!). In that, the indicated amount of total annual turnover is 96 times higher than procurement's value. Moreover, bidding companies were required to have at least 30 employees, to possess quality standard ISO 9001:2008, to possess one truck and – as cherry on the top – to possess own storage facility with an area of at least 300 m²! Well, it must be admitted that such requirements are too high and too much! As expected, only one company participated in this tender procedure and was awarded the contract.

Table 1: Examples of eligibility criteria whereby companies must have achieved pre-defined annual turnover in order to participate in tender procedures

Procurement subject	Annual turnover set as eligibility criterion (in MKD)	Contract value or estimated value (in MKD)	Ratio of required turnover and procurement value
furniture	50,000,000	517,228	96.7 times
revision of planning documents	6,000,000	800,000	7.5 times
geodesy services	5,000,000	1,000,000	5.0 times
printing services	5,000,000	1,025,597	4.9 times
removal of old and installation of new street lighting fixtures	50,000,000	10,192,912	4.9 times
development of project documents	21,000,000	5,932,204	3.5 times
promotion materials	8,000,000	2,348,200	3.4 times
two new passenger vehicles	4,000,000	1,347,239	3.0 times

Evidence in support of the fact that there are no rules governing definition of eligibility criteria for tender participation is seen in the public procurement for reconstruction of streets and construction of town square organized by one small municipality in the value of 80,000 EUR. Namely, relevant documents required bidding companies to have employed 20 persons, which might seem low requirement compared against 40 employees needed for participation in the tender procedure on placement of laminate floor for one municipal school in the value of 9.000 EUR. Third procurement, concerning placement of parquet floor in buildings under competes of one municipality, with

estimated value of 27,000 EUR, required bidding companies to have at least 5 employees.

As regards setting eligibility criteria for tender participation, another public procurement for promotion materials organized by one municipality provides interesting information. Namely, the procurement was divided into four lots (promotion materials and representative materials with two lots each) and each lot implied separate eligibility criteria. In that, it should be noted that the two lots on promotional materials, in addition to other requirements, requested bidding companies to have 30 employees for one lot, and 20 employees for the other lot. Moreover, bidding companies wishing to submit bids for both lots must fulfil cumulative eligibility criteria defined under the individual lots, i.e. it must have at least 50 employees. Among other requirements, bidding companies had to demonstrate: pre-defined annual turnover, dispose with precisely stipulated printing machines, have a car park, certificates on quality management standards ISO 9001 and on environmental protection ISO 14001, etc. It does not surprise that for three of the four lots the tender procedure was annulled because the contracting authority did not receive any bids or bidding companies did not meet eligibility criteria defined, and procurement contract was signed only for one lot. Otherwise, this is the second, repeated procurement notice, given the fact that the first tender procedure had been annulled. After this procurement, another – third – procurement notice was announced for the same type of services, but under significantly lowered eligibility criteria. For example, bidding companies were no longer requested to demonstrate pre-defined annual turnover, requirement on number of employees was lowered, and use of more sophisticated printing machines was no longer valid. Be that as it may, even the third attempt at this public procurement failed, because – except for one lot for which the contract was signed – the other two lots were yet again annulled on the grounds of high prices attained. At the moment, the municipality has announced the fourth tender procedure for procurement's remaining lots.

This monitoring sample also included a case in which the contracting authority, i.e. kindergarten, instead of attempting to secure quality of products being purchased by means of detailed description in technical specifications, pursued quality assurance by means of setting high eligibility criteria for bidding companies. Examples like this raise the question whether relevant contracting authorities wish to select the most favourable bid, as stipulated by law, or they focus on selecting the most favourable company. Hence, contrary to detailed eligibility criteria defined for companies' tender participation, relevant technical specification of products being procedure only referred to: cow white cheese, cow milk curds, cow milk yellow cheese, fresh home-slaughtered veal minced meat, etc., without precise description of product quality in terms of fat contents, meat source (animal body parts for the meat), etc.

Another frequently used eligibility requirement noted in tender procedures concerns previously performed contracts with similar of same procurement subject. In that,

majority of tender procedures including this requirement indicated the exact number of contracts which bidding companies have to have performed in order to qualify for tender participation, most commonly three or five. In the same context, bidding companies are required to have these contacts signed and performed in the previous years, most commonly in the previous three years. This type of eligibility criteria were observed in as high as 71% of tender procedures monitored. This practice on the part of contracting authorities can be easily qualified as discriminatory, at least for newly established companies without previous tender experiences, but also for companies operating for a longer period which have never won tender procedures or have not participated in tender procedures and are now attempting to enter the public procurements market.

Other frequently used eligibility criteria include: possession of particular equipment, enlisted in type and number of machines, vehicles, machinery, and the like, which was observed in 54% of tender procedures monitored, and certificates on quality management standards (ISO 9001) and on environmental protection (ISO 14001), which was observed in 29% of tender procedures monitored. It should be noted that above-indicated standards are often required as part of public procurements that do not allow establishment of logical connection between the standard required and the procurement's subject, as well as its successful performance. 49% of tender procedures monitored imposed other requirements, such as particular licenses, certificates, authorizations, etc.

In the context of setting eligibility criteria, valid is the recommendation for these requirements to be adequate and proportionate to procurement's subject and value. Practices show that tender procedures including high and inadequate eligibility criteria are marked by very low competition, and often receive only one bid or no bids. When eligibility criteria are adequate to the procurement in question, more likely is that contracting authorities will be presented with more bids, which increases chances for attainment of higher quality at lower price.

Although recent rounds of amendments to the law, and especially those that entered in effect on 1 May 2014, render definition of such criteria more difficult, efforts on monitoring implementation and enforcement of legal provisions governing competition in public procurements must continue. Namely, new danger might emerge in terms of market research that contracting authorities should perform in order to ensure that there is sufficient (law-stipulated) number of bidding companies that fulfil given eligibility criteria. Commonly, contracting authorities present a requested number of companies with technical specifications and description of eligibility requirements for the latter to confirm fulfilment thereof. In truth, the danger identified with such practices is the selection of companies presented with these documents, i.e. the possibility for this phenomenon to easily replace previous practices whereby three potential bidding companies were invited to submit their bids, which was revoked by law several years ago as dangerous and corruptive practice.

In the monitoring period covered by this report (October 2013 – March 2014), minor increase, i.e. improvement was observed in terms of competition in tender procedures. Average number of bidders calculated for this monitoring sample accounted to 3, unlike the average calculated for the previous six months (2.4) and the average calculated for the same period last year (2.2). At the same time, share of tender procedures with no bids or only one bid is marked by a reduction, from 43% in the previous six months to 27.5% in this monitoring period.

Table 2. Overview of competition in local level tender procedures

	October 2012 – March 2013	April 2013 – September 2013	October 2013 – March 2014
One bid/no bids	37%	43%	27.5%
Average no. of bids	2.2	2.4	3.0

Unlike the growing number of bidding companies, the number of their representatives attending the public opening of bids is decreasing. As high as 58% of companies that have submitted bids in tender procedures from this monitoring sample did not attend the public opening of bids, while public opening of bids for 31% of tender procedures monitored were not attended by any representative of respective bidding companies.

TENDER ANNULMENTS, AGAIN!

Tender annulments continue to create problems in the field of public procurements. In this monitoring period as well, the share of tender procedures annulled ranges around the average of 15% calculated for local level procurements. Dominant reason indicated for tender annulment is the fact that contracting authorities have not received any bids or no acceptable or adequate bids.

While the share of tender annulments under tender procedures monitored continues to range around 15% and is within the average calculated for local level tender procedures, the average number of bidders per tender annulled is also marked by a decrease. For this monitoring period, the average number of bidders per tender annulled accounted for 1.3 and is twice as lower compared to the previous monitoring period, when there were an average of 2.6 bidders per tender annulled, which further complicated matters in public procurements.

Table 4. Overview of tender annulments in local level tender procedures

	October 2012 – March 2013	April 2013 – September 2013	October 2013 – March 2014
Share of tender annulments	15%	17.5%	15%
Average no. of bidders per tender annulled	1.2	2.6	1.3

In as many as two thirds or 66.7% of annulled tender procedures, the reason indicated for such decision implied no bids received or no acceptable or adequate bids received.

Remaining portion of annulled tenders include several interesting cases. The first one concerns annulment of tender procedure organized for procurement of park benches and litter bins for one municipality in Skopje. Three bids were submitted in the tender procedure, but the committee on bid-evaluation decided to annul the tender procedure on the grounds that “contracting authority cannot make the selection of most favourable bid due to serious violations of the Law on Public Procurements, in compliance with Article 210 of the Law”. Same explanation was provided in the decision on tender annulment and the notification submitted to all bidding companies. Unclear is which serious violations of the law have occurred in this and similar cases. This is particularly

important for bidding companies, as they have the right to appeal tender annulment decisions of contracting authorities, but in the absence of information on the reasons for tender annulment they are unable to exercise this right. This is particularly worrying given the fact that grounds for tender annulment enlisted under Article 210 of LPP are numerous and vaguely defined. This procurement procedure includes another problem that has been duly noted on several occasions throughout the monitoring of local level public procurements. It is a matter of extremely delayed decision-taking on tender annulment, which in this case was taken as late as two months from the deadline for submission of bids. By doing so, the contracting authority has exceeded the deadline for selection or tender annulment decision, which is equal with the deadline for submission of bids by companies, by whole six times.

Another interesting thing related to this tender is the fact that although the annulment decision was taken in October last year, the procurement procedure has not been repeated to present. Numerous are cases in which once annulled tender procedure is not re-announced or repeated and they raise the question on what happens with such procurements: do contracting authorities no longer need the procurement in question and how can something planned to be procured due to being assessed as needed is suddenly not being procured or considered unnecessary.

Reason for tender annulment in another public procurement implied that “due to unpredictable and objective circumstances, the contracting authority’s procurement needs have changed”. According to the Law on Public Procurements, when a tender procedure is annulled on this ground, the contracting authority is not allowed to repeat the procurement procedure for a period of six months from the date when the previous procurement procedure was annulled. Be that as it may, in this case the relevant decision on tender annulment was taken on 3 December 2013, and already the next day, and not six months later as mandated by law, a new procurement notice was published. It should be noted that three bids were submitted to the first and repeated procurement notice. Contrary to the first notice, the second, i.e. repeated procurement procedure reached the stage of e-auction, and only afterwards another tender annulment decision was taken, this time on the grounds that the contracting authority did not receive any acceptable or adequate bids. The contracting authority implementing this public procurement refused to disclose requested information about the tender procedure from the monitoring sample (i.e. first tender procedure), but voluntarily disclosed information on the second tender procedure, but they were incomplete. To make matters more complicated, following is the official response of the contracting authority to our FOI application submitted in compliance with the Law on Free Access to Public Information: “We would like to inform you that although the school is holder of requested information, you should indicate the specific reason for requesting disclosure of said information and justify it. The school is held responsible only before relevant competent authorities”. Nicely done! First, the school is aware that it disposes with requested information, but did not disclose them according to the relevant FOI application submitted. Second, the Law on Free Access to Public Information decisively

stipulates that FOI applications do not need to be justified. Third, if the school is held accountable before the competent authorities, it should report to them that it has violated the Law on Free Access to Public Information by not disclosing neatly requested information in compliance with the law. Moreover, the school should be held accountable for violation of the Law on Public Procurements as it re-announced the public procurement one day after having it annulled, and should not have done that for the next six months.

It should be noted that this is neither single nor isolated case. Situations like this or similar situations are common feature in all monitoring samples.

Therefore, valid is the recommendation for state institutions to increase their transparency and adherently enforce the laws in effect. This particularly concerns legal provisions whose non-implementation is not liable to misdemeanour or other sanctions for perpetrators. They include legal provisions on disclosing tender-related information in compliance with the Law on Free Access to Public Information, but also a series of provision from the Law on Public Procurements governing transparency and accountability on public spending by means of tender procedures. Transparency-related provisions include the obligation on publication of information - within a given deadline - on signed procurement contracts (company awarded the contract, date of contract signing, contract value and number of bidding companies in the tender procedure). In reality, this provision is not complied with, although it is the only way for citizens to learn about the manner in which their taxpaying money is spent. There are examples of institutions which do not comply with this law-stipulated obligation, but also do not respond to FOI applications submitted in compliance with the Law on Free Access to Public Information. On this account, efforts are needed for additional education of contracting authorities' representatives responsible for these issues, in parallel with education on practical organization and implementation of public procurements.

DEADLINE ON SELECTION DECISION-TAKING IS COMPLIED WITH, BUT SIGNING OF PROCUREMENT CONTRACTS IS POSTPONED

In only 16% of tender procedures monitored, the relevant contracting authorities have taken the selection or tender annulment decision beyond the given deadline, which is a significant improvement compared to the previous monitoring period. At the same time, long period of time elapses from the selection decision to the procurement contract signing. Average duration of public procurement procedures for this monitoring sample was 47 days.

The law-stipulated deadline for contracting authorities to take selection or tender annulment decision is equal to the deadline set by the contracting authority for submission, i.e. preparation of bids by interested companies. Unlike the situation observed for the previous monitoring period, this monitoring period is marked by significant improvement in terms of compliance with such deadlines.

Deadline on decision-taking was exceeded in 50% of tender procedures from the previous monitoring sample, but the relevant share of tender procedures from this monitoring sample accounts for only 16%. Otherwise, non-compliance with the deadline on taking selection or tender annulment decision was one of the most frequently violated obligations from the Law on Public Procurements. Four year ago when this obligation was introduced in the law, it aimed to shorten duration of tender procedures and provide level playing field for state institutions and companies whereby both groups of stakeholders in public procurements will enjoy same deadlines for their respective obligations: companies to prepare their bids and institutions to select the most favourable bid.

Despite the significant improvement noted in terms of compliance with this deadline, which is very important not only for companies, but also for speeding procedures and efficiency of contracting authorities, and for the entire system of public procedures, new trend is emerging and concerns prolonging other stages of procurement procedures. In other words, recently cases have been noted in which long period of time elapses from the selection decision to the contract signing. It seems that these practices are attempting to annul benefits created by timely selection or tender annulment decisions, especially having in mind that long period of time elapses before the contract is signed and the procurement is performed. For this monitoring sample, the average period elapsed from selection or tender annulment decision to contract signing accounted for 17 days. In that, it should be noted that it is not a matter of procurement procedures that included an appeal process, but regular procedures under which once the selection decision is taken, bidding companies should be notified and several days should be left for possible appeals (three or eight days depending on the type of procedure

organized). Moreover, contracting authorities often attach the procurement contract template to relevant tender documents, so companies are fully aware of what they should sigh if awarded the procurement.

Otherwise, the average duration of public procurement procedures from this monitoring sample accounted for 47 days. In that, the average duration of small scale procurements whose value does not exceed 20,000 EUR for goods and services and 50,000 EUR for construction works, which are implemented by means of simplified bid-collection procedure, accounted for 33 days. In the case of public procurements organized as open procedures, which imply longer deadlines, the average duration from announcement of call for bids to contract signing accounted for 57 days.

As regards deadlines for selection of the most favourable bid and general duration of public procurements, valid are the recommendations aimed at more efficient implementation of procurement procedures, with reasonable deadlines. Namely, the initial deadline set by contracting authorities for submission of bids condition the deadline for contracting authorities to take the selection decision, which includes activities on bid-assessment and bid-evaluation, scheduling and organization of e-auction. Having in mind that from 1 May 2014 contracting authorities are obliged to research the relevant market and possibly request and obtain approval from the newly established Council of Public Procurements (in law-stipulated cases), it would be of great importance to implement public procurements under accelerated dynamics, which in turn will allow contracting authorities sufficient time for previous, better preparation of tender procedure prior to announcing the procurement notice.