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MONITORING

PUBLIC PROCUREMENT AT THE LOCAL GOVERNMENT LEVEL



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Center for Civil Communications
Центар за граѓански комуникации



REPORT NO. 5
MONITORING
LOCAL LEVEL PUBLIC
PROCUREMENTS

December 2014

PUBLISHER:

Center for Civil Communications

TRANSLATION IN ENGLISH LANGUAGE:

ABAKUS

GRAPHIC DESIGN:

Brigada Design

PRINTED BY:

Propoint

CIRCULATION:

200 copies

Free of charge/non-commercial publication

CIP - Каталогизација во публикација
Национална и универзитетска библиотека
"Св. Климент Охридски", Скопје

352.073.53:005.584.1(497.7)"2014"(047)

МОНИТОРИНГ на јавните набавки на
локално ниво : извештај бр. 5. -
Скопје : Центар за граѓански комуникации,
2015. - 34, 34 стр. :
табели ; 17x20 см

Насл. стр. на припечатениот текст:
Monitoring public procurement at
local government level : report No. 5.
- Обата текста меѓусебно печатени во
спротивни насоки. - Текст на мак. и англ. јазик.
- Содржи и: Monitoring public procurement at
local government level

ISBN 978-608-4709-25-1

а) Локална самоуправа - Јавни набавки -
Мониторинг - Македонија -
2014 - Извештаи
COBISS.MK-ID 97989898

The present report is made possible by the generous support of the American people through the United States Agency for International Development (USAID) within the USAID Civil Society Project. The contents of this publication are the responsibility of the Foundation Open Society - Macedonia and the Centre for Civil Communications and do not reflect the views of USAID or the United States Government.

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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 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.

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 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 guarantees compliance with the Law and application of the general principles governing public procurements.

This report is prepared on the basis of monitoring results for a sample comprised of 40 public procurements implemented by local institutions throughout Macedonia in the period 1 April – 30 September 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 make 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 process 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 searching 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 the 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 procurement procedures, accompanied with recommendations aimed to address identified problems and weaknesses in the public procurement system, and detailed elaboration of the observed state-of-affairs.



The Center for Civil Communications (CCC) was established in 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 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 authorities; 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

Long-awaited and, for the companies, highly-desired novelty in public procurements defined as mandatory publication of the procurement's estimated value, seems to be a hot potato for the contracting authorities which, most of them, do not know how to handle. Notably, there are numerous examples of tender procedures that have raised certain problems in terms of their implementation, with reasons thereof stemming from the procurement's estimated value.

Series of changes made to the legislation on public procurements, at least in the first months of their application, have not resulted in increased competition in tender procedures on local level. In the monitoring sample, the average competition accounted for 2.7 bidders per procedure, while 38% of monitored tender procedures included one or no bid.

High is also the number of tender procedures which, despite having two and even three bidders, appear to be without competition. This means that bidders have not participated in the e-auction or their participation was pro-form, with minimum reduction of prices.

After a two-year period in which the share of annulled tender procedures has been stabilized at around 15%, annulment of tender procedures on local level is again on the rise and accounts for 20%. Contrary to practices observed in the past when the main ground indicated for tender annulment was absence of bids, nowadays the main reason implies unfavourable prices.

Average duration of public procurement procedures from the monitoring sample, from announcement of procurement notice to contract signing, accounts for 33 days and implies

small improvement compared to the previous period. However, the most recent legal changes have increased duration of tender procedures calculated from the day a decision is taken on the need to procure goods/services to contract signing.

Due to the complexity of public procurement procedures and increased duration of the entire process (from decision to realization) on one side, and the need for specific items to be procured at precisely defined time in the year on the other side, some procurement procedures are only formally organized - to comply with the Law, but also to procure what is needed from a predesignated supplier.

In some public procurement procedures, the subject is specified in such great details that it literally refers to specific product, although such practices are prohibited and limited by the Law, and have been continuously indicated to as poor practices that favour certain bidding companies.

ESTIMATED VALUE OF PROCUREMENTS - HOT POTATO FOR THE CONTRACTING AUTHORITIES

Long-awaited and, for the companies, highly-desired novelty in public procurements defined as mandatory publication of the procurement's estimated value, seems to be a hot potato for the contracting authorities which, most of them, do not know how to handle. Notably, there are numerous examples of tender procedures that have raised certain problems in terms of their implementation, with reasons thereof stemming from the procurement's estimated value.

Major changes to the Law on Public Procurements from October 2013 stipulated mandatory publication of the procurement's estimated value together with the procurement notice, in effect from 1 January 2014. Recommendations put forward by the Center for Civil Communications had suggested such changes for a long time, in particular because of their great importance for companies participating in tender procedures. However, the monitoring activities show that contracting authorities' approach to setting the estimated value of procurements is still below the necessary level.

Most contracting authorities do not understand the meaning of estimated value and that successful implementation of tender procedures depends on it. The contracting authorities that have not estimated the value of their tender procedures by means of the newly-introduced detailed market research, but have indicated this value frivolously or copy-pasted last year's estimated value, have later felt this mistake on their own skin, during implementation of the tender procedure.

Cases were observed, especially among the municipalities, where the estimated value has been determined by particular budget item or budget programme and has been copy-pasted in the procurement notice, only to later understand that the estimated value is unrealistic, irrespective of the fact whether the indicated amount exceeds or is lower than the procurement's actual value. Hence, the same estimate value of 1,230,000 MKD was observed with different municipalities and for completely different public procurements. Actually, it is a matter of an amount expressed in MKD that accounts for 2,000 EUR, which is defined as the legal threshold for implementation of bid-collection procedures, and procurements whose value exceeds this amount are organized and implemented as open procedures. These cases inevitably imply frivolously established estimated values, without prior detailed calculations.

Another frequent practice includes cases in which the contracting authorities, following two failed tender procedures, in their third attempt understand that they have set estimated value and the tender procedure is successfully completed only after increasing the estimated value. It should be noted that the final price attained in these tender procedures equals the price that could have been attained on the first tender procedure organized. It turns out that instead of annulling the tender procedure when the estimated value is lower than the most favourable price bided, it would have been more cost-effective for them to accept the offered price because, ultimately, after one or two annulled tender procedures, they inevitably increase the estimated value to an amount close to prices bided in the first tender procedure.

Another problem related to the estimated value was observed in cases of procurements divided into lots, i.e. tender procedures comprised of several procurement

subjects that can be awarded to different bidding companies. Although the bids include individual prices and companies are allowed to make a bid for one, several or all procurement lots, and having in mind that each lot is treated separately and implies separate e-auction, contracting authorities have indicated an overall estimated value for the entire procurement. By doing so, bidding companies are not aware of the estimated values of individual lots. Hence, it seems that indication of the estimated value in these cases is merely a formality, especially knowing that it does not offer proper information for the companies. Hence, in cases of tender procedures divided into lots, contracting authorities are recommended to indicate estimated values of all individual lots separately, so that the estimated value would make sense.

ALL'S WELL THAT ENDS WELL

Monitoring activities identified another frequent practice whereby the price attained in the tender procedure is identical with the procurement's estimated value. Although at first sight this might seem beneficial for the contracting authority, meaning it would spend the planned amount of funds allocated in the budget, this does not necessarily have to be the case in the reality. Most often, such situations were observed in tender procedures with only one bidder which, in order to be sure that it would be awarded the procurement contract, indicates an amount that is identical with the estimated value. Cases like this raise one very important dilemma. How did the bidder know that its bid would be the only one in the tender procedure and there will be no e-auction for reduction of prices, in order to offer a price identical with the estimated value and later signs the procurement contract in that amount?

Example thereof was observed in the procurement procedure concerning reconstruction of streets and roads in one municipality. The procurement's estimated value was 2,000,000 MKD, while the only bidding company that was awarded the contract offered a price in the amount of 1,999,500 MKD.

Another example includes the procurement of disinsection services in one municipality whose estimated value amounted to 700,000 MKD, with the price offered by the single bidding company in the amount of 700,000 MKD! At the time of submitting the final price, the bidding company did not submit new, reduced price and the contract was signed in the same amount, i.e. 700,000 MKD.

This list includes the procurement of services concerning prize vacation organized by one municipality, where the procurement has been estimated in the value of 600,000 MKD and the single bid submitted, predictably, amounted to 600,000 MKD. In this case as well, the bidding company did not submit a reduced price, and the contract was signed in the above-indicated value.

Slightly better and fairer behaviour was observed in the case of the single bidding company that participated in the tender procedure organized by one municipality for procurement of one vehicle, whose estimated value was set at 600,000 MKD, as it offered a price in the amount of 577,000 MKD, and even reduced the final price by 500 MKD to 576,500 MKD.

SPEAK ONE'S MIND

The next practice that cannot be logically explained includes cases in which the contracting authorities,

regardless of the price attained at the e-auction, sign the procurement contract in the exact amount indicated as the procurement's estimated value. Pursuit of this practice makes the competition among bidding companies for attainment of lower price senseless and, in the end, the contracting authority spends the same amount of funds, irrespective of the e-auction's outcome.

Staggering example thereof was identified in the procurement of printing services for the municipality's newsletter. As many as five bidding companies participated in this tender procedure and during the e-auction they significantly reduced their prices for printing services (from the starting price of 17.50 MKD per copy to 14.20 MKD per copy). It is interesting to note that, in the end, the municipality signed the procurement contract in the entire amount indicated as the estimated value, disregarding the reduced price of printing per copy.

Here is the mathematics. Estimated value of the procurement was 4,237,288 MKD. As part of its technical specifications, the municipality has indicated that it requests the bidding companies to indicate price per copy and that it intends to print 20,000 copies per month or 240,000 copies per year. Hence, the estimated value is divided by the number of copies to be printed and results in estimated value of 17.56 MKD for printing one copy. However, at the e-auction the municipality attained a much lower price per copy (14.20 MKD). Instead of signing the procurement contract on the basis of the price attained, i.e. in total value of 3,408,000 MKD for printing of 240,000 copies under the price attained (240,000 x 14.20 MKD), it signed the contract in the entire amount indicated as the estimated value. Hence, the conclusion is inferred that the lower price was attained to no avail, given that this price was not materialized. Moreover, unclear is what the municipality will do with surplus funds in amount

of 829,288 MKD from the signed contract compared to the real amount that should have been indicated.

The same practice was observed in the procurement of printing services for the municipality's newsletter organized by a different municipality, which concerned a circulation of 5,000 copies printed three times a year, with an estimated value of 500,000 MKD. The municipality anticipated that printing one issue with circulation of 5,000 copies would cost 166,667 MKD. However, the e-auction resulted in great reduction of prices, with the lowest price amounting to 49,980 MKD per one issue with circulation of 5,000 copies. This means that the successful bidding company offered a price of 149,940 MKD for all three issues. Despite that, the municipality signed the contract in the entire amount indicated as the procurement's estimated value (500,000 MKD). The same question is raised: what will the municipality do with the difference in funds of almost 350,000 MKD, as it is double the amount required for printing the municipality's newsletter.

Similar examples are many in number, especially in cases in which bidding companies are required to offer price per unit, but later sign the contracts in the entire amount planned, irrespective of the individual prices attained.

Here is an example: the procurement of water-supply and sewage network materials organized by a municipal public enterprise was comprised of 29 lots. E-auction was organized for 24 lots, while the remaining 5 lots implied submission of final price. 17 from the total of 29 lots resulted in price reduction, be it at the e-auction or as submission of reduced final price. Price reduction for individual lots range from 0.9% to 85.2% compared to the starting price or an average price reduction by

16.5% for all lots. In the end and despite such outcome of the tender procedure, the contracting authority again signed the contract with the successful bidding companies per individual lots in total amount that equals the procurement's estimated value. If the contract is truly realized in the full amount, the only logical conclusion is that the contracting authority will purchase more materials than initially planned. This raises the dilemma about the procurement's purpose, i.e. what would have happened if the reduced prices had not been attained and the contract was signed in the estimated value, but at higher prices. In such case, it seems that the contracting authority would purchase smaller quantity of materials. Hence the dilemma about the actual quantity of materials needed by the contracting authority, especially knowing that irrespective of the prices the contract was signed in the planned amount of funds.

DUAL YARDSTICK

Another frequent discrepancy among contracting authorities related to the procurement's estimated value concerns their decision whether to annul the public procurement procedure when the lowest price attained is still higher than the estimated value.

In such case, the Law leaves it to contracting authority to decide to accept the higher price, provided that it can secure additional funds, if the price is reasonable and within actual market prices.

Various practices have been observed in this regard. In cases like this, tender procedures are often annulled, even if the offered price is slightly higher than the estimated

value. Nevertheless, there are cases in which the tender procedure is not annulled, even when the lowest price offered is significantly higher than the estimated value.

One contracting authority (municipality) decided to annul the procurement of computer equipment because the e-auction resulted in attainment of a price that was by 52,762 MKD higher than the estimated value. Another contracting authority (local public utility enterprise) accepted the only bid in the amount of 1,886,571 MKD for procurement of passenger vehicle, although the price offered was by 288,571 MKD or by 18% higher than the estimated value set at 1,600,000 MKD.

Otherwise, in other cases involving just one bid, the bidding company has almost always submitted a final price that is equal to the estimated value in order to make sure that the procurement will not be annulled on this ground. This was not the case in the referred procurement procedure, which means that the single bidding company did not reduce the initial price despite the great discrepancy compared to the procurement's estimated value. Ultimately, the procurement was considered successful and the company was awarded the requested price, which is significantly higher than the procurement's planned value. Here, it should be noted that this procurement procedure does not differ from the rule observed in monitored procedures that concern procurement of passenger vehicles with only one bidding company participating in the tender procedure, although there is great competition in this market sector.

POOR MAN PAYS TWICE

One municipality that wished to purchase computers, printers, cameras, overhead projector and other

computer equipment has indicated an estimated value which, without having to engage in detail mathematics, represents an undermining estimate compared against goods that should be purchased:

- **11 desktop computers;**
- **1 laptop computer;**
- **6 external hard disks;**
- **2 cameras;**
- **1 overhead projector;**
- **3 laser printers;**
- **1 hard disk;**
- **1 overhead screen; and**
- **1 voice recorder**

This tender procedure was annulled because the lowest price attained at the e-auction was higher than the estimated value by 52,762 MKD (11.3% of the estimated value). In the repeated attempt, the municipality reduced the procurement's estimated value, but also the list of goods to be purchased (3 desktop computers less, but 1 camera more). In this case, the lowest price attained at the e-auction was higher than the estimated value by 32,974 MKD (8% of the estimated value), but the tender procedure was not annulled.

In the end, given the price attained, what was purchased for the money, as well as time and money spent on implementing two procedures, it seems that it would have been more cost-effective for the contracting authority to have completed the procurement in the first attempt. In such case, it would have purchased all the equipment needed for little more than the funds anticipated, instead of implementing another tender procedure and purchasing less equipment on the account of the insignificant saving.

This and previous examples reiterate the need for precise establishment of the estimated value or, in cases when it is known that the estimated value is not precisely established, the need for greater flexibility in accepting prices that are slightly less favourable than the estimated price, but seem to realistic on the market. All of these would result in saved time and money for implementation of additional procedures which, at the time being, are taken for granted.

Hence the recommendation on careful and serious approach to setting of estimated values, by making due consideration of amounts paid in the past, market changes and actual movements and situations, developments at other contracting authorities, and even the situation on international markets.

The recommendation for greater flexibility gains in importance when reconsidered against the fact that prices planned in December or January are given once and for all and that until the tender procedure is implemented, i.e. in the course of the year, market prices can fluctuate both upwards and downwards. This is particularly important knowing that tender procedures already last for long period (from the procurement decision, through the market research, requesting and obtaining consent for the procurement, to the actual implementation of the tender procedure).

Most important is the fact that this manner of implementing public procurements will be closer to attainment of the rule whereby the procurement procedure should result in obtaining “the best value for the money”.

GODSPEED!

Monitoring of public procurements, especially those organized on local level, always reveals examples wherein tender prices are so low that it is almost unimaginable to believe that the successful company will be able to fully perform the contract in the required scope and quality.

Such is the procurement of services defined as “performance of construction and craftsmen works (water-supply, sewage, ironmongery, district heating and electricity works) for ongoing maintenance of buildings, according to the description and quantities indicated in the technical specifications, for a period of one year”. Under conditions when the procurement’s estimate value was set at 598,000 MKD and the highest price offered by one of the five bidding companies amounted to 679,812 MKD, the final price attained at the e-auction dropped to only 60,710 MKD. Although this price is expressed as price per unit of materials, labour and transport, the procurement is comprised of as many as 185 items ranging from procurement and replacement of parts, installation, excavations, supply lines and all sorts of other things. It does not take special expertise to understand that it is impossible for the successful bidding company to perform all things enlisted in the technical specifications. This contracting authority did not provide more detailed documents about the procurement that would have allowed a more insightful analysis. Additional problem with such procurements is identified in the difficult access to documents on contract performance that would allow insight as to what, how much and at what price is actually performed by the successful bidder from the list of items provided in the technical specifications. Moreover, by the end of the technical specifications the contracting authority has included the following note: “Detection of

defects in water-supply installations located in toilets, kitchens, external water-supply pipes, zinc-coated underground pipes, as well as detection of reasons for leakages that are not visible to the human eye shall fall on the cost of the contracted company”. Godspeed!

In the next example it seems that the price has been dramatically decreased by 58%. Namely, the starting lowest price before the e-auction accounted for 811,300 MKD and was reduced to 341,887 MKD at the e-auction, although the procurement’s estimated value was set at 850,000 MKD. This means that companies participating in the e-auction have reduced the price by 41 times. The list of items to be performed by the company awarded the procurement contract includes:

- **De-assembling the old fence (metal construction) – 96 meters;**
- **Manual excavation in the base of the existing concrete socle - 4 m³;**
- **Drilling and driving in anchors at every 50 cm;**
- **Procurement and installation of mash reinforcement on both sides of the socle - 165 m²;**
- **Pouring concrete in the new designed concrete socle - 9 m³;**
- **Procurement and installation of steel anchor plates at distance of 2 cm - 49 pieces;**
- **Procurement, transport, manufacturing and placement of new fence from flat bars and bars with HSS profile with height of 150 cm in black colour - 97 m;**
- **Manual excavation of tree trunk in the base of the existing concrete socle – pieces.**

FEW MORE WORDS ON TENDER PRICES

Below are several interesting examples from the monitoring sample that concern tender prices.

Two different tender procedures from the monitoring sample included almost the same shortcoming: one of the bidding companies did not indicate the value of its bid. In the first case, the company in question was exempted from the tender procedure, but in the second case the company was allowed to write the bid’s value during the public opening of bids and was later awarded the procurement contract. Based on such cases observed in the past and as part of the monitoring reports, the competent authorities were suggested to issue some kind of recommendations, guidelines or another document that would instruct contracting authorities on how to act, with the ultimate goal of unifying their behaviour. This would enable greater security and equal treatment of all companies participating in tender procedures when such situations occur.

Different situation was observed in another tender procedure. Two companies submitted their bids on the procurement notice concerning services for temporary employment. Both companies participated in the e-auction concerning the commission fee to be charged by the agency for services provided and they reduced their fees in the range from 10.00% to 8.9%. One day after the e-auction, the successful company submitted a letter to the contracting authority informing that due to good cooperation with the municipality it has decided that the commission fee for services “will not be the rate at which the company won the tender procedure, i.e. 8.9%, but will be set at 7.5%.” Although the reduced fee is more favourable for the contracting authority, such action on

the part of the bidding company raises several dilemmas. How is it possible for bidding companies, beyond the legal methods for setting tender prices, to additionally submit new bids? Why has the contracting authority failed to reduce the price in the law-stipulated manner, i.e. during the e-auction? What would have happened if one day later the second-ranked bidding company submitted a letter informing the contracting authority that it offers an even lower commission fee?

The recommendation put forward earlier is also valid in this case: competent authorities should draft guidelines for the contracting authorities about actions they should take in such situations, as this is not the first time these practices are observed and reported throughout the several-year monitoring of public procurements.

Here it should be noted that contracting authorities apply dual yardstick in cases that are not regulated by the Law. Notably, when addressed about the need to publish their annual plans on public procurements, contracting authorities reply that they are not obliged by law and therefore do not comply with such requests. In several opposite situations, for example, the above-referred tender procedures, although some situations that emerged are not regulated by law, the contracting authorities do take actions. Given that this is obviously a matter of discretionary rights given to contracting authorities, the competent institutions should draft bylaws or other acts/decrees that provide guidelines for uniformed behaviour, of course, led by the principle that public procurements should result in the best value for the money.

Another frequent occurrence related to tender prices concerns situations in which prices offered by different companies vary to a great extent. Example thereof was identified in the procurement of services concerning

expert supervision of construction works for infrastructure projects. Four bids were submitted in the tender procedure, but the lowest and the highest price differ by as high as 1000%. Below is the list of prices:

- **Bidder A – 35,055 MKD;**
- **Bidder B – 40,590 MKD;**
- **Bidder C – 158,363 MKD; and**
- **Bidder D – 379,950 MKD.**

Another interesting fact is that only two bidding companies participated in the e-auction, and they did not include the company with the lowest bid (Bidder A), but the company with the highest bid (Bidder D) and the company with the second lowest bid (Bidder B). After only one round of downward bidding with minimum price reduction, the contract was awarded to Bidder B at the price of 34,980 MKD, i.e. at a price that is by 75 MKD lower than the starting price at the e-auction.

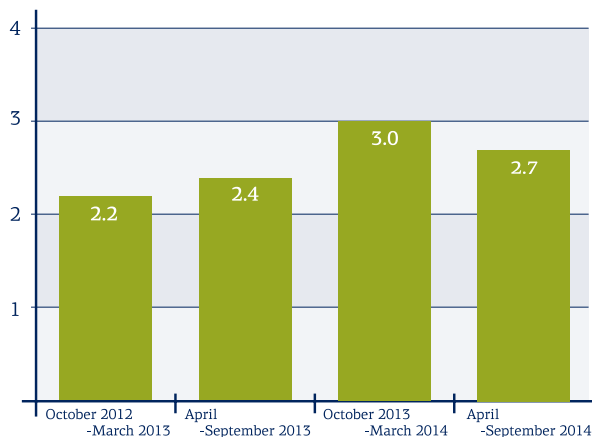
Therefore, as regards tender prices and estimated values, competent authorities are recommended to reconsider the possibility to measure the effects of price reduction at e-auctions against the procurement's estimated value. Notably, it is more correct and relevant to compare the estimated value and prices attained at the e-auction instead of taking the companies' initially bid prices as the basis for comparison. These prices are not so relevant and, in a way, they can be unrealistic because the companies initially set the prices higher so that later, at the e-auction, they are able to reduce them. Therefore, assessments on whether the public procurement has resulted in savings and establishing the scope of such savings can be made only by correlating prices attained with the money secured for the procurement and planned to be spent for that purpose.

COMPETITION IN TENDER PROCEDURES REMAINS LOW

Series of changes made to the legislation on public procurements, at least in the first months of their application, have not resulted in increased competition in tender procedures on local level. In the monitoring sample, the average competition accounted for 2.7 bidders per procedure, while 38% of monitored tender procedures included one or no bid.

Poor competition in tender procedures organized on local level, as well as those organized on national level, remains one of the biggest problems affecting public procurements. In this monitoring period, the average number of bids per tender procedure was reduced from 3 (last six months) to 2.7 in this monitoring period (April – September 2014). It should be noted that competition is dropping after a longer period of modest increase that was observed in the last semester (October 2013 – March 2014) when it achieved a record level of 3 bids per tender procedure.

Figure 1. Overview of competition in the monitored tender procedures organized on local level, average number of bidders in tender procedures



When competition in the monitoring sample is represented according to other measures for central tendency such as, for example, median and mode, the resulting situation is even worse. The median, i.e. the middle number of bidders when ranked in an order, accounts for 2. The mode, i.e. the most frequently occurring number of bidders, is 1, because one bidder was observed in as many as 12 tender procedures.

Increasing order of the number of bidders:

0 0 1 1 1 1 1 1 1 1 1 1 1 1 1 1 2 2 2 2 2 3 3 3 3 3 3 4 4 4 4
5 5 5 6 6 6 6 6

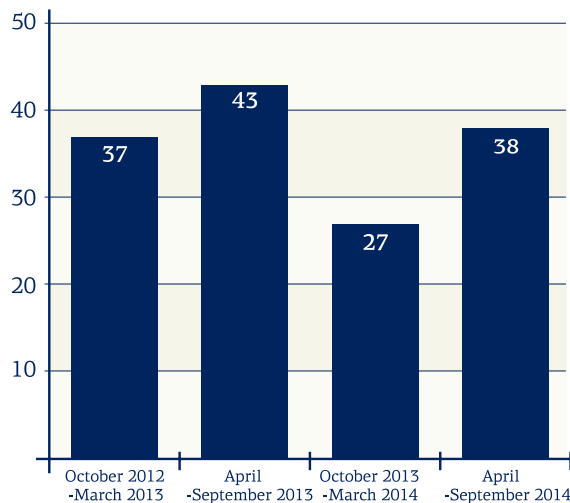
Arithmetic mean: $101 : 37 = 2.7$ bidders.

Median: 2 bidders (middle of the order).

Mode: 1 bidder (most frequently occurring number of bidders).

In addition to the average number of bids per tender procedure, reduced competition was observed also according to the criterion defined as share of tender procedures with one or no bid. According to this criterion, the share of such tender procedures in this monitoring period accounts for 38%, unlike the share observed in the previous period when there were only 27% of tender procedures with one or no bid.

Figure 2. Overview of competition in the monitored tender procedures organized on local level, share of tender procedures with one or no bid



Although these parameters concern only the first five months from the implementation of new changes in the Law on Public Procurements (in effect from May 2014) which, inter alia, were intended to improve competition in tender procedures, for the time being it cannot be established that they have produced the desired effects. This conclusion is more concerning when reconsidered against the fact that some changes entered in effect earlier, i.e. in January 2014, and could have contributed to increased competition. These changes include mandatory and free-of-charge publication of tender documents, mandatory announcement of the procurement's estimated value, and the like.

While it is early to infer more serious conclusions, based on these initial indications it can be stated that the current situation is a result of companies' illiteracy about the new legal changes. Also, having in mind previous conditions in the area of public procurements, it can be said that the companies might need longer period to restore or regain trust in public procurements, especially after the introduction of more stringent rules for setting high and discriminatory eligibility criteria for companies' participation in tender procedures.

Analysis of tender procedures included in the monitoring sample shows that some contracting authorities are still setting high eligibility criteria for companies' participation despite the legal changes that have made such practices more difficult and limited. Such is the example with the procurement of works concerning refurbishment and reconstruction of streets and roads announced on 28 May 2014, i.e. after the new legal changes entered in effect. The contracting authority (one municipality in the City of Skopje), inter alia, enlisted the following eligibility criteria for companies' participation in the tender procedure:

- **Annual turnover of at least 30,000,000 MKD for the year 2013, and total turnover for the last three years of 50,000,000 MKD.**
- **At least two contracts signed in the minim value of 8,000,000 MKD in 2013 for performance of works related to the procurement's subject.**
- **List of works performed in the last five years, with submission of at least three receipts and references on satisfactory contract performance.**
- **ISO 9001 and ISO 14001 standards.**

Otherwise, it is a matter of procurement with an estimated value of 3,400,000 MKD, but the contract was signed in the amount of 4,000,000 MKD. The requirement related to annual revenue that should be demonstrated by the companies in order to participate in the tender procedure is 8.8 times higher than the estimated value. Addition problem is the requirement on two contracts signed in the same year and in the value of 8,000,000 MKD, as it is much higher than the procurement's estimated value. Two bidding companies participated in the tender procedure.

Having in mind that the municipality did not disclose the information requested in compliance with the Law on Free Access to Public Information, the monitoring team was unable to assess whether the contracting authority had previously conducted a market research and whether it has proved that there is sufficient number of companies in the market that fulfil the eligibility criteria or has requested a consent for the eligibility criteria from the Council of Public Procurements. Be that as it may, the requirements are not in compliance with the new spirit promoted by the series of legal changes in the area of public procurements concerning setting of eligibility criteria for companies that are inadequate not only in relation to the procurement's value and the procurement's subject, but also in relation to the market situation.

On the other hand, despite the more stringent and limited possibilities, in as many as 30% of monitored tender procedures the contracting authorities have defined eligibility criteria for the companies. Most prominent among them are criteria related to technical equipment requirements, previous contracts performed and reference lists, then requirements on companies' annual turnover, staff and standards, as well as requirements whereby the companies have to demonstrate positive financial operation or balance.

Having in mind that, as previously indicated in this report, the rules governing setting of eligibility criteria for companies' participation in tender procedures have been changed, i.e. have been made more stringent and difficult, and that the contracting authorities still include them in their tender documents, valid is the recommendation for more frequent and mass training on the new rules, targeting not only contracting authorities, but companies as well.

ALMOST COMPETITION

High is also the number of tender procedures which, despite having two and even three bidders, appear to be without competition. This means that bidders have not participated in the e-auction or their participation is pro-form, with minimum reduction of prices.

Such is the example of the procurement concerning one laptop computer organized by a kindergarten. Three companies submitted their bids in the tender procedure. Only two of them participated in the e-auction, but not the company that offered the lowest price. The other two companies participating in the e-auction reduced their prices only once and only by 33 MKD. The procurement contract was awarded to one of these companies at a price that is by 66 MKD lower than the starting price at the e-auction. Below are the details:

- **estimated value of the procurement: 33,333 MKD;**
- **offered prices:**
 - Bidder A: 33,333 MKD;
 - Bidder B: 33,200 MKD;
 - Bidder C: 33,000 MKD;
- **starting price at the e-auction: 33,000 MKD;**
- **most favourable price after the e-auction: 32,934 MKD.**

Despite the procurement's low value and the fact that it was organized as expedite and simplified procedure, it should be stressed that this tender procedure lasted for 33 days, with the deadline for delivery of goods set at 3 days! If the contracting authority was in such hurry to procure the computer, unclear is why it delayed the procedure for so long.

In another procurement procedure concerning materials for maintenance of water-supply and sewage network, in estimated value of 1,000,000 MKD, bids were submitted by as many as six companies. Their prices ranged from 999,827 MKD (the lowest) to 1,175,454 MKD (the highest). At the e-auction for price reduction, none of the six bidding companies reduced their price and the contract was awarded to the company that previously offered the lowest price, which is almost identical with the procurement's estimated value.

Similar is the procurement of tractor with trailer. Two bids were obtained and their prices differed by only 1,190 MKD. At the e-auction, none of the companies offered lower price and the contract was awarded to the company that initially offered a lower price. More specifically:

- **estimated value of the procurement: 737,000 MKD;**
- **offered prices:**
 - **Bidder A: 732,143 MKD;**
 - **Bidder B: 733,333 MKD.**

Although tender procedures were successful and the prices attained are within the estimated value, in these and similar cases, contracting authorities are recommended to examine whether such situations are accidental or perhaps it is a case of certain agreements

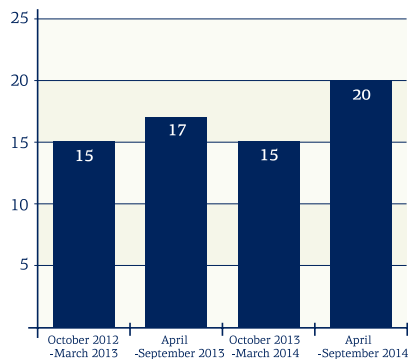
between bidding companies. In this regard, due consideration should be made of indications put forward in the "Guidelines on Detecting Illegal Agreements in Public Procurement Procedures" recently published by the Commission on Protection of Competition and the Bureau of Public Procurements.

TENDER ANNULMENT ON THE RISE AGAIN, BUT ON DIFFERENT GROUNDS

After a two-year period in which the share of annulled tender procedures has been stabilized at around 15%, annulment of tender procedures on local level is again on the rise and accounts for 20%. Contrary to practices observed in the past when the main ground indicated for tender annulment was absence of bids, nowadays the main reason implies unfavourable prices.

Tender annulment was and seems to remain one of the main problems in the area of public procurements in Macedonia. In the case of tender procedures organized on local level, the share of annulled tender procedures has again reached 20%, a figure that was characteristic for the situation observed two years ago, but not in the last period. Namely, unlike the situation observed in the past, in the last two and more years, the share of annulled tender procedures in the monitoring samples on local level was around the average of 15%.

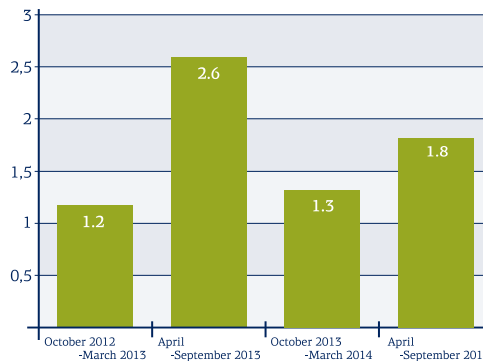
Figure 3. Overview of the share of annulled tender procedures in the monitoring sample on local level



Analysis of reasons indicated for tender annulment shows a different main ground on whose basis the contracting authorities annul their tender procedures. If in the past tender procedures were mainly annulled on the grounds that there are no bids submitted, nowadays the reason is identified in prices offered by the bidding companies. Namely, high 62% of tender procedures were annulled because the offered prices had been assessed as more unfavourable than market prices. This means that e-auctions (in cases of several bidders) or submission of final price (in cases of one bidder), the final price was not decreased at a level lower than the procurement's estimated value and the contracting authority annulled the procurement procedure.

As regards the average number of bids in public procurement procedures that have been annulled, it is calculated at 1.8 bidders and is marked by an increase. This is indicative of a definitely unfavourable trend in terms of tender annulments, in particular because it is a matter of annulling tender procedures with two bids, which can account for certain, albeit very low, competition.

Figure 4. Average number of bidders in the annulled tender procedures



Given that after a period of stagnation, the share of annulled tender procedures is again on the rise, the competent authorities are recommended to carefully analyse reasons for this situation. In particular, they should assess whether this occurrence is related to any of the new legal provisions, because the increased share of annulled tender procedures overlaps with the entry in effect of new legal provisions.

For that propose, a detailed analysis is needed of the relation between the increased share of annulled public procurements and problems that are result of inadequate setting of estimated values. Nevertheless, it remains to be seen whether there will be certain improvements in the course of this year, as the second year in which estimated values of procurements will be published and the contracting authorities will have the experiences from 2014 in the course of which price proved to be a very problematic element of public procurements.

TENDER PROCEDURES LAST UP TO FOUR MONTHS

Average duration of public procurement procedures from the monitoring sample, from announcement of procurement to contract signing, accounts for 33 days and implies small improvement compared to the previous period. However, the most recent legal changes have increased duration of tender procedures calculated from the day a decision is taken on the need to procure goods/services to contract signing.

Although, in average, the time period from procurement notice's announcement to contract signing is reduced, there are still procurement procedures that last between three and four months for which, by rule, the contracting authorities do not disclose documents requested in compliance with the Law on Free Access to Public Information.

Such is the procurement procedure for water-supply and sewage materials organized by local public enterprise which, without any obvious reasons, lasted for entire 114 days, i.e. almost 4 months. This procurement procedure started in May and ended in September. 40 days have passed from the public opening of bids until the e-auction was scheduled, and another 29 days passed from the

e-auction until the contract was signed. In that, the e-auction was scheduled in the midst of the summer, on 13th August. Although the procurement could have been divided into many lots, only two lots were defined and total of six companies submitted their bids. It should be noted that the contracting authority that organized this procurement is among the rare entities that did not disclose the documents requested in compliance with the Law on Free Access to Public Information, which raises additional suspicion about the entire procedure.

Duration of the procurement procedure

Date of procurement notice's publication	20 May 2014	
Deadline for submission of bids	4 July 2014	45 days
Date of e-auction	13 August 2014	40 days
Date of contract signing	11 September 2014	29 days
Date of contract notification's submission to BPP	6 October 2014	25 days

The monitoring sample included a similar example in terms of the number of days the procurement procedure lasted (112 days), but this tender procedure was divided into as many as 29 lots, implied 11 bids and one appeal in front of the State Commission on Public Procurement Appeals, which inevitably prolonged the procedure's overall duration. Another similarity is seen in the fact that in this procedure as well the contracting authorities did not disclose documents requested in compliance with the Law on Free Access to Public Information.

Duration of the procurement procedure

Date of procurement notice's publication	9 June 2014	
Deadline for submission of bids	30 June 2014	21 days
Date of e-auction	5 September 2014	67 days
Date of contract signing	29 September 2014	24 days
Date of contract notification's submission to BPP	20 October 2014	21 days

Throughout the years of monitoring public procurements, as if by an unwritten rule, monitored tender procedures for which the institutions do not disclose documents are those with uncommonly long duration.

Example thereof is the municipality that has spent 4.5 months on procuring water-supply network elements. Namely, the procurement procedure was successful in the third attempt, after two previously annulled procedures because it has been assessed that tender documents contain significant shortcomings in the period until the public opening of bids. In the second attempt, prior to annulling the tender procedure, one change was made to tender documents in the period when the procurement's notice was valid. The same thing happened in the third attempt. Knowing that the first tender procedure was annulled on this ground, unclear is how the same thing happened again and resulted in loss of several months. And, as if that was not enough, a total of four rounds of changes were made to tender documents. All in all, 4.5 months have elapsed from the procurement notice's first announcement in May 2014 until the contract signing

under the third attempt in October 2014. In situations like this, the question about the time when the contracting authority needs the materials being purchased and related to performance of construction works remains unanswered. Since the contracting authority's first attempt to procure these materials was in May, it is logical to conclude that the materials were needed for performance of construction works during the summer, but knowing that they were purchased in the fall, the construction works remain to be performed in the winter.

As regards duration of tender procedures, one should have in mind the observations made by contracting authorities concerning the fact that tender procedures' duration is continuously increasing, but these statements could not be verified against relevant data collected as part of the monitoring process. This does not refer only to the public procurement procedure (from announcement of procurement notice to decision on bid selection and contract signing), but includes the period from the decision on the public procurement until the actual signing of the contract. Notably, in this period the contracting authorities have to conduct the mandatory market research, request and obtain the necessary consent from the Council of Public Procurements, when needed. Only afterwards, they announce the procurement notice and organize the procurement procedure. Therefore, the recent series of new legal changes delay implementation of tender procedures for months, which is contrary to one of the principles underlying the basic text of 2007 Law on Public Procurements: to accelerate public procurement procedures. As this problem is duly indicated by the contracting authorities themselves it should not be ignored and should be duly reconsidered and adequately analysed and, if needed, measures should be taken to properly address it.

FORMAL PROCEDURES

– MORE FREQUENTLY DUSTED THAN AGAINST MOSQUITOS

Due to the complexity of public procurement procedures and increased duration of the entire process (from decision to realization) on one side, and the need for specific goods/services to be procured at precisely defined time in the year on the other side, some procurement procedures are only formally organized – to comply with the Law, but also to procure what is needed from a predesignated supplier.

A staggering example of such formal implementation of public procurements is the procedure organized by one municipality for procurement of services for dusting against mosquitos or as literally indicated in the procurement notice: “Disinsection – aerial treatment for protection against mosquitos”.

The procurement notice was published on the same day when the contracting authority obtained the necessary consent from the newly established Council of Public Procurements, since the market research report drafted by the public procurement committee has established that there is only one entity in the market that can perform this service. Consent from the Council was requested on 19 May 2014 and was issued by the Council on 4 June 2014, followed by publication of the procurement notice the next day (5 June). Although the deadline for submission of bid was set by 16 June, i.e. 11 days, three days prior

to the deadline's expiration, on 13 June, the municipality made an announcement that dusting against mosquitos will take place on 17 June, meaning only one day after the public opening of bids. Furthermore, the law mandates that in cases of one bid, the company should be asked to submit a final price (if it wishes to reduce the initially offered price), but in this case, the submission of final price happened two days after the public opening of bids, on 19 June. On 17 June, the day when the dusting activity was scheduled, performance of services was delayed for 19 June due to unfavourable weather conditions. Dusting against mosquitos took place on 19 June, but the public procurement contract was signed with the selected company as late as 1 July. This raises several questions:

- ▶ How did the committee know that the tender procedure whose opening of bids was scheduled for 16 June would be successful, in order to announce on 13 June that dusting will take place only one day after the public opening of bids, i.e. on 17 June?
- ▶ Why the committee confident was that everything will be all right with the submitted bid and that the bid will be acceptable in order to schedule the dusting one day after the deadline for submission of bids?
- ▶ How could the committee schedule the dusting one day after the opening of bids knowing that, according to the Law, the procedure is still not completed and there are five significant stages and steps that follow: e-auction or, in case of only one acceptable bid, invitation to the company to submit a final bid through EPPS; adoption of decision on the most favourable bid; notification of the bidding company; deadline of three days for submission of appeal and signing of the public procurement contract?

Hence, clear is that the tender procedure for this public procurement was only formally implemented, and involved several violations to the Law on Public Procurements. It should be noted that no disciplinary or misdemeanour charges are stipulated for any of these violations. On the other hand, legal provisions that have been complied with (market research and request for consent from the Council) are those whose violation is liable to imprisonment sanctions. Inevitably this raises the question whether lack of sanctions for a multitude of legal provision from LPP renders them liable to easy and daily violations.

Timeline of the procurement procedure

05.06.2014	Announcement of the procurement notice
13.06.2014	Public statement that dusting against mosquitos will be performed on 17.06.2014
16.06.2014	Deadline for submission of bids and opening of bid scheduled at 14:00 hours
17.06.2014	Initial day scheduled for dusting against mosquitos in the period 5:00-8:00 hours
17.06.2014	Dusting is delayed for the next day due to weather conditions
17.06.2014	Invitation to the company to submit a final price
18.06.2014	Due to weather conditions, dusting is re-scheduled for the next day
19.06.2014	Dusting activity is performed
01.07.2014	Public procurement contract is signed

Analysis of this procurement did not undermine the fact that it is a specific procurement from several aspects. First, the services being procured can be performed only by one company. Second, in that period of the year, dusting against mosquitos is performed throughout the country and it is important for the company to have proper schedule of work in order to perform all services contracted. Third, dusting is most often coordinated between neighbouring municipalities to be performed at the same time also for the purpose of rationalizing the activity and achieving a greater effect. However, having in mind that this service is not covered by an exemption stipulated in the Law on Public Procurements, fact is that, despite all specifics, this procurement must be implemented fully in compliance with the Law.

Again, series of questions are raised:

- ▶▶ Why did the Council of Public Procurement fail to publish a list of goods and services, such as this one, exempted from obtaining consent because there is only one company in the market?
- ▶▶ Is there are need to regulate the relation with the only possible company in a different manner, especially considering its specific position in the market?
- ▶▶ Is there a need for these and similar procurements to be exempted from the Law on Public Procurements and to regulate them in a different manner, having in mind that public procurement procedures in such cases are implemented only formally, with the ultimate aim of reducing costs for organizing the procedure and saving public funds?
- ▶▶ Is there a need for a more efficient and general coordination at state level about the manner and time for provision of this service?

Answers to these questions should also result in adequate solutions to these and similar situations that occur in relation to implementation of tender procedures in the country.

ENOUGH IS ENOUGH!

In some public procurement procedures, the subject is specified in such great details that it literally refers to specific product, although such practices are prohibited and limited by the Law and have been continuously indicated to as poor practices that favour certain bidding companies.

Such is the procurement organized by one municipality for “used passenger vehicle Sedan with 4 standard doors”. Analysis of this procurement procedure shows that the municipality wished to purchase exactly that vehicle and therefore the public procurement procedure was only formally organized, for the sake of complying with the Law.

Namely, the vehicle is described in so many details that an Internet browsing exercise with information from the technical specification results in specific make and model of the vehicle. Moreover, the figures enlisted in the technical specifications are inscribed with English language markers, for example, 8.5 litres, instead of 8,5 and 1,735 kg instead of 1.735, which indicates that they

might be copy pasted from a specification in English language.

Below is the actual technical specification for the vehicle in question: :

- Engine: Diesel
- Engine displacement: **3,222 cm³**
- Engine power: **from 100 to 150 kw**
- Body style: **4 standard doors Sedan, M. Black 20**
- Number of seats: **5**
- Vehicle length: **above 4,815 meters**
- Vehicle height: **above 1,452 meters**
- Baggage space: **above 450 litres**
- Average fuel consumption: **less than 8.5 litres per 100 km**
- Empty vehicle weight: **1,735 kg.**
- Exhaust emissions: **EURO 5**

Minimum vehicle equipment:

- 5 seats
- Dual-zone air-conditioning “Climatronic”
- Anti-lock breaking system (ABS)
- Electronic stability program (ESP)
- Cruise control
- Electronic parking brake
- Auto-hold hill start control
- Start/Stop system
- Aluminum wheels 16”
- Disc brakes on all wheels

- 6 airbags
- Front and back fog lamps
- Built-in Radio CD with MP3, CD charger with minimum 6 CDs, touch screen, and 8 speakers
- On-board computer
- Multifunction leather steering wheel
- Electromechanical power assisted steering wheel, adjustable in height and depth
- Height-adjustable driver and front passenger seats
- Front and rear power windows
- Alarm
- Interior lights
- Central lock with remote control and two keys
- Press and drive ignition
- Sunglasses car holder
- Coded key
- Heater power rear view mirror
- 12 V power outlet in the car trunk
- Galvanized body
- Iso-Fix child car seat system
- External rear view mirrors and handlebars in the same colour as the body
- Front glove-box with cooler
- Front and rear seat armrests
- Spare wheel

In addition to the problem concerning overly detailed specification of the procurement subject, concerns are raised as to why the municipality needed the vehicle being purchased for official purposes to include the following features:

- child car-seat fixing system;
- exact number of the body colour, indicated as metallic black;
- installed CD system with charger capacity for at least 6 CDs, 8 speakers and touch screen;
- leather steering wheel; and
- front glove-box cooler.

Having in mind the basic principle of public procurements upheld in the Western European countries, whereby the public procurement should result in obtaining “the best value for the money”, the impression is gained that this and similar procurements may fit within that principle. However, the dilemma remains whether in cases of old products, spare parts for old products that are no longer manufactured (for example, computers) and similar, the Law on Public Procurements should be applied, given that legal provisions are already being violated and that the procurement procedure is only formally implemented.



