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Quarterly Analysis of the results from the monitoring of the implementation of the public procurement procedures in the Republic of Macedonia on central level

Summary

Civil Association “Center for Civil Communications” (CCC) from Skopje in the period November 2008 – November 2009 is analyzing the implementation of the public procurement procedures and the overall system of public procurements in the Republic of Macedonia (RoM), which are regulated in the Public Procurement Law (PPL). The monitoring is performed on the public procurement procedures conducted on central level, i.e contract notices published by the central Contracting authorities. The analysis shall include total of 160 public procurement procedures (40 in each quarter).

In order to have a comprehensive overview of the implementation of the public procurement procedures and to provide input for the analysis, the following activities are undertaken: direct monitoring of the published contract notices and public opening of the bids, questionnaires for the contracting authorities that publish the notice and economic operators that take part in the procedure, as well as collection of statistical data from the Public Procurement Bureau (PPB).

The goal of the analysis is to assess the implementation of the public procurement procedures in the RoM in light of the new PPL and to determine if and to what extent the following basic public procurement principles have been followed and applied: transparency, competitiveness, equal treatment of the economic operators, non-discrimination, legality, efficient, effective and rational spending of the Budget (best value for the money), as well as accountability of the money spent.

As a result of this first quarterly analysis, we have come up with the following general comments:

- The annual procurement plans are subject of frequent modifications, which indicates bad planning of the annual needs;
- Although PPL provides for publication of the tender documentation on the web sites of the Contracting authorities, this option has been rarely used by the contracting authorities, thus

neither economic operators can make savings nor the duration of the procedure can be reduced;

- PPL provides possibility for the contracting authorities to engage external expert to assist them in the preparation of the technical specification and/or bids evaluation, but this also has been rarely used;
- There have been cases where the defined criteria for determining the economic operator's qualifications and ability, the technical specification and the selected procedure provided possibility for discrimination;
- The percentage of cancelled procedures is high (17,5% of the analyzed procedures), which indicates that the tender documentation was not well drafted, thus this might result in waste of time and money and reduced trust among the economic operators;
- In some cases the procedure for selection of the most favorable bid lasts for more than 3 months, which comes as a result of the failure of the Law to stipulate deadlines for adoption of the decision for selection of most favorable bid;
- The commissions do not apply the PPL obligation to provide explanation of the reasons for selection or rejection of the bids;
- Huge percentage of the bids have been rejected due to formal reasons;
- Small number of bidders lodge appeals against the decision for selection of most favorable bid, which is partly due to the new PPL provisions regarding the appeal procedure;
- Contracting authorities are late in processing the payments to the contracted economic operator, which has a negative impact on the work of the economic operators;
- 1/3 of the total value of the public procurements during the first half of 2008, i.e. 2.192.334.631,38 MKD, are contracted by carrying out simplified competitive procedure or negotiated procedure without prior contract notice, which might be an indicator for a low level of application of the principle of transparency;
- Statistical data regarding the conducted procedures and concluded contracts for public procurements, which is collected, processed and analyzed by PPB provide input for quantitative analysis, but it is insufficient for analysis of the quality of the public procurement procedures, as well as for the assessment of how economic, efficient and effective the procedures in RoM are.

Taking into account all these comments and conclusions, the CCC recommends:

- Publication of the tender documentation on the web sites of the contracting authorities;
- Reduction of the established practice of the contracting authorities to request a fee for obtaining the tender documentation in cases where there are no real costs;
- As for the amount of the bank guarantee, the contracting authorities should not always request the legally highest possible percentage (3%) from the total value of the bid;
- PPB should draft standardized templates for certain types of public procurement subjects in order to have unified technical description of those subjects among the contracting authorities to the extent that is feasible;
- In order to prevent possible discrimination among the economic operators, PPB should prepare recommendations and instructions for the contracting authorities regarding the types of proves and enclosures that the contracting authorities should request from the economic operators for the purposes of determining their capability;

- Further training on PPL for the members of the public procurement commissions should be provided;
- It should be ensured that those employees who have passed training on public procurement are appointed as permanent members of the public procurement commissions;
- Contracting authorities should pay more attention and time in order to better define the tender documentation, especially the technical specification, i.e. certain criteria should not be subject of points allocation, but it should only be checked if that criteria is met;
- The Evaluation Report should be compulsory submitted to all economic operators that took part in the procedure;
- PPB should be involved in the control of the legality of the procurement procedure;
- Introduction of a provision for compulsory submission of the concluded contracts for public procurements to the State Defendant for the purposes of control of their compliance with the decision for selection of the most favorable bid should be seriously taken into consideration;
- The processing of data collected by PPB should be re-structured in order to enable not only quantitative analysis, but also analysis of the quality and the implementation of the public procurements;
- PPB should identify all the contracting authorities that have the obligation to apply the PPL provisions;
- PPB Reports on the public procurement system should more thoroughly analyze and comment all the elements and aspects of the public procurements and should have new content dimension, i.e. they should contain: analysis, assessment, comments, findings, conclusions and recommendations related to the efficiency and effectiveness of the public procurements in RoM.

The results and recommendations contained in this Quarterly Analysis will be submitted to all stakeholders, i.e. state bodies and other interested organizations and institutions.

CCC would like to thank the PPB for the provided support to implement this project, to all the contracting authorities and economic operators that have taken part in the monitoring, as well as the Foundation Open Society Institute Macedonia for the financial support to this project.

Taken into consideration that part of the contracting authorities and economic operators did not want to take part in the monitoring, CCC would like to stress and point out the need of bigger transparency among the contracting authorities and private sector entities in order to eliminate the possibility and the doubts for existence of corruption in the public procurement process in RoM.

Detailed Report

Annual Procurement Plan – the deadline for its adoption is respected, but frequent changes to the plan during the year indicates bad planning

Contracting authorities, in principle, cannot adopt the annual plan before the approval of the Budget, then they will know the exact sums of approved funds available for procurements. Due to the fact that the state Budget is usually adopted and published at the end of each year, January is the realistic period for adoption of the procurement plan, which has been duly followed by most of the Contracting authorities.

Many contracting authorities have made one or several modifications to the annual procurement plan, which indicates that the process of the planning of the real needs has not been very successful. In some cases these modifications are result of the external factors (e.g. the Government makes re-balance of the state Budget and orders to the contracting authority to procure a commodity that was not initially planned).

Publishing and obtaining tender documentation – Although PPL provides for publication of the tender documentation on the web sites of the Contracting authorities, this option has been rarely used by the contracting authorities, thus neither economic operators can make savings nor the duration of the procedure can be reduced

The possibility to publish the tender documentation on a web site has been rarely used by the contracting authorities, although almost all of them have their own web sites. Thus, the possibility to reduce the duration of the procedure has not been used.

Related to this is the practice of the contracting authorities to request payment of a fee from the economic operators for obtaining the tender documentation. If the tender documentation is electronically published, the contracting authorities would not have legal basis to request payment of a fee for obtaining it.

Many economic operators have remarks on the bank guarantee. Namely, the contracting authorities almost always request the legally highest possible percentage (3%) from the total value of the bid, which sometimes puts a burden to many economic operators, especially those who take part in several tenders simultaneously.

Recommendation: Although the PPL provisions are very clear regarding the publishing of the tender documentation and in direction of promoting the efficiency and reduced costs for the participants, it seems that these provisions have not been applied. Therefore, publishing of the tender documentation on the web sites should be further promoted, as well as reduction of the established practice of the contracting authorities to request a fee for obtaining the tender documentation in cases where there are no real costs.

In order to increase the competition, the contracting authorities should be instructed that the percentage of the bank guarantee should not always be defined on the legally allowed maximum (3% of the total value).

Engagement of external expert – possibility that has been rarely used

PPL provides possibility for the contracting authorities to engage external expert to assist them in the preparation of the technical specification and/or bids evaluation, but this also has been rarely used. External expertise has been used in few cases, i.e. by those contracting authorities that do not have internal knowledge and capacity to draft the tender documentation and evaluate the bids due to specifics related to the procurement subject. However, there have been cases where a contracting authority uses services from one and same external expert for several procurement procedures.

Determination of the economic operator's ability criteria and technical specification – in general precisely determined, although there have been cases where the defined criteria and procedure might have been discriminatory

Although these criteria have been in most of the cases precisely defined and non-discriminatory, yet there have been procedures where the documents for proving the technical ability have been very rigorous, i.e. the conditions could not be met by the smaller or new economic operators; additional unnecessary documents have been requested, though prove could have been obtained from another submitted document; and additional verifications and documents have been requested for the foreign economic operators.

Economic operators indicate that in some cases they have faced with commissions whose members were unprofessional and incompetent to carry out the procedure.

Recommendation: Taking into consideration that there are so many different procurement subjects, it is not recommendable and feasible to draft provisions for each possible type of technical specification. However, PPB should draft standardized templates for certain types of public procurement subjects in order to have unified technical description of those subjects among the contracting authorities to the extent that is feasible. Also, the ability criteria should not be further regulated in the PPL, but the practice could and should be changed. In order to prevent possible discrimination among the economic operators, PPB should prepare recommendations and instructions for the contracting authorities regarding the types of proves and enclosures that the contracting authorities should request from the economic operators for the purposes of determining their capability.

Having in mind the fact that the PPL has recently entered into force, the public procurement commission members should be further trained. Furthermore, it should be ensured that the employees, who have passed training on public procurement, are appointed as permanent members of the public procurement commissions.

Evaluation – paying more attention to define the selection criteria in order to eliminate the possibilities for manipulation

Bids have been rejected and were not subject of evaluation due to high prices. In case where there is only one bid, which price is exceeding the estimated value, than the Commission has a right to reject the bid, i.e. there are legal basis for a cancellation of the procedure. However, if there are several formally acceptable bids, than the Commission should evaluate them all, including those whose prices exceed the estimated value.

Answers of the economic operators differ on the question whether the selection criteria has been appropriately chosen and defined. Those who think that the selected criteria have not been appropriate have remarks on the fact that the price has been the only criteria, or vice versa, too many points were allocated to the quality criteria, which leads to a possibility for subjectivity and manipulation. Quality criteria should not be defined and graded, especially in those cases where the procurement subject is a certain product that must fulfill international standards (e.g.ISO). On the other hand, when the price is the only criteria there is no possibility for manipulation, but the possibility to procure cheap product with low quality is bigger (this especially refers to the procurement of drugs).

In most of the cases, the economically most advantageous bid has been defined as criteria, in very few cases the lowest price. When the criterion economically most advantageous bid is set, then the elements within this criterion are price and quality in different ratio for allocation of points, and sometimes other elements are added within this criterion (e.g. delivery deadline and payment deadline).

There have been cases where the criteria lowest price has been set or most points allocated, but due to various reasons the most expensive bid has been selected. Moreover, cases have been reported where the minutes from the public opening of the bids have not been shown to the economic operators, which is not in line with the principles of transparency and objectivity.

Recommendations: Contracting authorities should pay more attention and time to better define the tender documentation, and especially the technical specification, in order not to set certain criteria as subject to points allocation, but only as pre-condition for further evaluation of the bid. Thus, contracting authorities shall only define the criteria lowest price, but they will ensure prior to the grading that all the bidders satisfy all the conditions and criteria so that they can be easily compared only in the prices.

Decision for selection or cancellation of the procedure and deadlines for bringing a decision – high percentage of the cancelled procedures might indicate that the tender documentation was not well drafted, thus this might result in waste of time and money and reduced trust among the economic operators, which is partly due to the failure of PPL to set a deadline for bringing a decision, thus the selection very often lasts for more than 3 months

Decision for selection of most favorable bid has been made in 60% of the analyzed procurement procedures. In 22,5% of the procedures the decision has not been made yet, while in 17,5% cases the procedure was cancelled.

The high percentage of cancelled procedures speaks for incompetence during the preparation of the tenders and it results in delayed procurement and waste of time, money and reduced trust among the economic operators.

In the absence of a deadline set in the PPL for making a decision, usually it takes 15-20 days from the day of the public opening. However, there are procedures where the evaluation and decision making process lasted too long (up to 96 days), which indicates the inefficiency of the procurement procedures.

Contracting authorities follow the deadline for submission of the decision to the economic operators (3 days from the day of the signing of the decision). In some cases, in order to speed up the procedure (period for lodging the appeal) decisions have been sent by fax.

Recommendations: In order to increase the number of successful procurement procedures it should be considered to introduce control and assessment of the objectivity for the cancellation of the procedures and sanctions for those commission members who have made mistakes, which resulted in cancellation of the procedure. In order to speed up and make the procedure more efficient, as well as with the aim to make the entire process easier and with less blocked funds for the economic operators (bank guarantee), a deadline for making a the decision should be introduced in the PPL, which can differ and depend on the estimated value and the number of received bids.

Explanation of the decisions and compatibility of the decision with the criteria – commissions do not follow the PPL obligation to explain the reasons for its decision for selection or rejection of the bid and most of the bids have been rejected due to formal reasons

Most of the economic operators state that neither in the notification for the decision nor in the decision for selection itself, the contracting authorities do not follow the PPL provision for compulsory explanation of the reasons for selection of the most favorable bid, as well as the reasons for rejection of the bid; it is only stated whose bid was selected.

The decisions are in compliance with the defined selection criteria, but it happens very often during the evaluation phase most of the bids to be rejected due to various formal reasons, which at the end results in selection of the only acceptable bid, although the offered conditions in terms of price, quality etc. are not the most advantageous.

Recommendation: Since the obligation for submission of explanatory notification for selection or rejection of a bid has not been followed, it should be considered to introduce provision for compulsory submission of the Report on the conducted evaluation to all bidders, which will increase the transparency of the procedure.

Appeal procedure – Small number of bidders lodge appeals against the decision for selection of most favorable bid, which is partly due to the new PPL provisions regarding the appeal procedure

Only few economic operators that have taken part in the analyzed procurement procedures lodged an appeal, which is partially owed to the fact that some procedures are still ongoing (decision for selection has not been made), but also due to the new PPL provisions for the appeal procedure that have entered into force at the end of the last year, i.e. when the project was launched.

Most of the appeals referred to: content of the decision for selection, selection of a bidder that did not satisfy the criteria, as well as on the elements of the criteria economically most advantageous bid. The appellants sometimes request cancellation of the entire procedure and sometimes annulment of the decision and re-evaluation.

Only in few cases decision upon the appeal has been made, but the economic operators assess the decision as inadequate, i.e. insufficiently explained or not explained at all. Also, according to the words of the economic operators in 2 procedures the deadline for making a decision upon the appeal has not been respected (15 days from the completion of the documentation). None of the contacted economic operators has further contested the decision of the State Appeals Commission before the courts.

Due to the fact that the State Appeals Commission has recently been elected it is too early to assess its work, especially in the part of explaining the decisions.

Realization of the public procurement contracts – Contracting authorities are late in processing the payments to the contracted economic operator

One of the most significant comments made by the economic operators is the late payment of the contracted amount for the completed work, which in some cases goes up to 10 months. This has a negative impact on the work of the economic operators. Also, there is no control over the work of the contracting authorities, neither during the procurement procedure nor afterwards during the contract realization.

Recommendations: PPB should be involved in the control of the legality of the procurement procedure. The proposal to introduce provision for compulsory submission of the concluded contracts for public procurements to the State Defendant for the purposes of control of their compliance with the decision for selection of the most favorable bid (in cases where the contracting authority is a state body) should be taken into consideration.

Statistical data on the conducted procedures and concluded contracts for public procurements, which is collected, processed and analyzed by PPB – the processing of data collected by PPB should be re-structured in order to enable not only quantitative analysis, but also analysis of the quality and the implementation of the public procurements, as well as the assessment of the thriftiness, efficiency and effectiveness of the procurement procedures in RoM

Statistical data and indicators related to the public procurements might be a good basis for profound analysis and review of the functioning of the economical and legal system in this very significant area in our country. However, the content of the PPB's Report (for the 1st half of 2008) and the data and indicators contained therein do not provide sufficient and precise basis for transparent dissemination of information to the public in regards to the public procurement area from the aspect of:

- Legality and regulation of the public procurement procedures;
- Flow and analysis of the financial parameters in the public procurement area;
- Implications on the public consumption; and
- The basic economic standards and principles in the management and spending of the public money, the principles of thriftiness, efficiency and effectiveness.

This opinion is based on the following:

- PPB reports are overview (summary) of the statistical data related to the public procurements without analysis, assessment, comments, findings, conclusions, recommendations and proposal of measures for improving the overall public procurement process;
- Statistical data is only given as absolute figures, thus it cannot provide comprehensive review of the overall public procurement process. Analysis of their relative size is missing, as well as their comparison in time and period; without this a more precise and clear indication of the tendencies in this area cannot be given;
- There is no analysis, review or comments by PPB on the very high number of concluded contracts for public procurements through the simplified competitive procedure. This procedure was applied in 74,4% of the public procurements or in 6.449 from the total of 8.668 concluded contracts from the period January-June 2008 (5.517 without prior publication of a notice and 932 by publishing a notice). The total value of these contracts is 1.435.402.150,15 MKD or 18,8% from the total value of the public procurements. This might be an indicator of a low level of transparency of the public procurement procedures;
- If we add to this number of concluded contracts (6.449) the contracts that have been concluded through carrying out negotiated procedure without prior publication of a notice, which is 544, i.e. 756.932.461,23 MKD, then the total number of contracts that are concluded in less transparent manner will be increased to 6.993 or 80,7% from the total number of contracts (8.668), the total value being 2.192.334.631,38 MKD. This reaches 28,7% or almost 1/3 of the total public procurements in RoM;
- There is no analysis of the spending according the duration of the procurement subject such as: long-term, capital, basic assets, immovable or movable property and other type of long-term asset and quick asset, small stocks and other type of asset of limited duration etc., in order to more efficiently follow the principles of thriftiness, efficiency and effectiveness of the public consumption, i.e. spending of the state budget by the budget users, budget of the units of the local self-government, as well as of the other public institutions, public enterprises and other semi-state institutions in RoM;
- The report contains descriptive and/or not well defined categories for the structure of the public procurements, which makes a difficulty for the reader or the public to follow the

indicators and to come up with conclusions for the type and character of the public procurements;

- The report contains some indicators for the procedures cancelled by the contracting authorities, but their presentation, analysis and quality are not on a satisfactory level;
- The report refers to only 700 contracting authorities, all registered on the PPB's web information system and only for the first half of 2008, which means that data on the overall public procurements in RoM cannot be presented, thus the possibility to come up with secure and precise conclusion about the general transparency, thriftiness, efficiency and effectiveness of the public procurements cannot be made.

Recommendations: The application of the principle of transparency in the area of public procurements is still on a low level, which as a consequence has the difficulty to justify the procurement from the point of view of thriftiness, efficiency and effectiveness. Therefore, we recommend the following:

- To restructure the processing of the data available to PPB in order to enable not only quantitative analysis, but also analysis of the quality and the implementation of the public procurements, as well as the assessment of the thriftiness, efficiency and effectiveness of the procurement procedures in RoM;
- PPB should identify all the contracting authorities that are obliged to apply the PPL provisions, so that a precise, overall and efficient system of statistical, financial and legal analysis of the public procurements is established;
- PPB should start to timely inform the public by publishing of monthly, semi-annual и annual reports on the public procurement process in RoM, in which they will thoroughly analyze and comment all the public procurement procedure aspects, including the appellate procedure before the State Appeals Commission and responsible court bodies, as well as other elements of cooperation with the competent executive and judicial bodies, as well as bodies established to fight against crime and corruption in this area.
- PPB reports and documents aimed to inform the wider public should get new content dimension, i.e. they should contain: analysis, assessment, comments, findings, conclusions and recommendations related to the efficiency and effectiveness of the public procurements in RoM.