

BIG AND SMALL

Analysis of Municipal
Performance in Public
Procurements:

Practices and
recommendations

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Methodology

The present research and analysis targets public procurement performance and practices implemented by 21 municipalities in Macedonia, i.e., ¼ of all municipalities in the country. When defining the research sample and selecting the municipalities to be included in research activities, due consideration was made of several criteria that make the sample relevant for inferring conclusions on the state-of-affairs in all municipalities country-wide.

Municipality	Category
Vranestica	Small
Debarca	Small
Demir Kapija	Small
Zelenikovo	Small
Zrnovci	Small
Rankovce	Small
Caska	Small
Berovo	Medium
Valandovo	Medium
Vrapciste	Medium
Ilinden	Medium
Oslomej	Medium
Probistip	Medium
Resen	Medium
Bitola	Large
Kicevo	Large
Kocani	Large
Kumanovo	Large
Strumica	Large
Tetovo	Large
Cair	Large

Notably, the sample included seven small, medium and large municipalities each, classified according to their population rate (Table 1). Furthermore, due care was taken for the sample to include a combination of urban, rural and mixed municipalities, in order to provide equitable representation along geographical (regional), ethnic, and partisan (political party whose candidate was elected Mayor) lines. The selection criteria for the research sample categorized municipalities with population of up to 10,000 citizens as small, municipalities with population between 10,000 and 30,000 citizens as medium, and municipalities with more than 30,000 citizens as large.

However, in order to avoid any possibility for the focus of research efforts to be shifted on the individual municipalities rather than on improving the general situation in regard to local level public procurements, the present analysis will not disclose names, terms and conditions, data and findings obtained from individual municipalities. Also, in order to obtain truthful answers and facts on the state-of-affairs in local level public procurements, all interviewees and survey respondents were guaranteed anonymity. Hence, the examples analysed in the report do not disclose names of individual municipalities, people, companies, etc.

Research activities were conducted in a period of 12 months (December 2010 -November 2011) and concern the manner in which municipalities implemented their relevant public procurements in the course of 2010.

Table 1: Municipalities included in the research sample

Analyses were performed on primary and secondary data sources. Primary data collection was pursued by means of:

- visits to the municipalities;
- structured interviews with municipal employees responsible for public procurements;
- data obtained by means of Freedom of Information (FOI) applications; and
- public survey.

Secondary data collection was pursued by means of:

- the Electronic Public Procurement System;
- municipalities' official bulletins;
- audit reports;
- municipalities' websites; and
- other information and databases.

The present research and analysis of municipal performance in public procurements was developed with the financial support from the Foundation Open Society - Macedonia.

Introductory remarks

Previous monitoring efforts and experiences gained by the Centre for Civil Communications in working with municipalities, knowledge obtained on its numerous visits, discussions and training sessions for municipal administrations, as well as local level surveys, indicated the inconsistent enforcement of legal provisions and best practices in the field of public procurements on the part of local governments. However, except for monitoring reports and findings on the implementation of local level public procurements and specific questionnaires and recommendations developed with the aim to improve their transparency, local level public procurements have not been subjected to in-depth research and analysis.

Knowing that procurement of goods and services, and performance of works is of great importance for many local governments and provides excellent business opportunities for local companies, implementation of fair, non-discriminatory and law-compliant public procurements gains in importance. Hence the need for detailed screening of local terms and conditions related to the implementation of public procurements and with the aim to identify weaknesses, problems and inconsistencies in the process and propose actions in relevant areas that need to be improved. This especially concerns the specific circumstances related to local level operation. Another benefit from this analysis is the fact that it is prepared in the wake of the new round of evaluation as regards the decentralization process in Macedonia, and can therefore contribute to inclusion of another area of local government performance that has not been duly addressed in the past, although it directly affects the lives of local communities and the operation of municipal administrations.

The project's goal is to improve organization and implementation of public procurements by local governments in the Republic of Macedonia and to enable greater transparency, accountability and responsibility for local level public spending. Research activities targeted municipalities' performance and practices related to public procurements in order to identify weaknesses and shortfalls and provide recommendations and guidelines on improving the overall process.

Municipalities included in the research sample demonstrated different level of commitment and cooperation with the research team. Initially, only a handful of municipalities accepted the visits and interviews with employees responsible for local level public procurements. Additional efforts and interventions were needed for the remaining municipalities to cooperate and thus allow visits and interviews, whereas the third group of municipalities, despite the team's persistent efforts, did not respond to our requests for visits and interviews.

Similar were also municipalities' responses to the request on disclosing their annual public procurement plans. 45% of municipalities disclosed the plans requested by means of FOI applications

within the legally stipulated deadline. 20% of municipalities submitted their plans during the team's visits and interviews, while the remaining 35% have still not submitted their annual procurement plans.

As many as 29% of municipalities did not disclose their plans and were unwilling to allocate time for visits and interviews. While the failure to disclose the procurement plan as a public document represents a violation to the law (Law on Free Access to Public Information), the decision to refuse cooperation in research activities can be interpreted as lack of will to demonstrate minimum transparency and accountability as regards their operations or refusal to disclose data and information on public spending, the reasons for which are known only to them.

The fact that 48% of municipalities agreed to meet with us and allowed us to interview the employees responsible for public procurements, as well as the fact that they duly disclosed their annual procurement plans together with the changes made thereto in the course of the year, shows that half of the municipalities are somewhat willing to openly discuss the manner in which they spend public funds. Most of them were aware of the problems they are faced with and were open to discuss them. This should serve as an example for other municipalities and institutions and encourage them to cooperate with civil society organizations in order to improve their practices and apply the principles of good governance in public spending.

As regards the scope of research activities, a total of 850 public procurement procedures implemented by 21 municipalities from the research sample were subject to analysis. The total value of all procurements analysed accounts for 23.7 million EUR. In average, municipalities spent around 19% of their respective budgets on public procurements. 149 from the total number of public procurements included in the analysis were implemented as open procedures, limited procedures and direct negotiations and they account for 15.3% of same-type procedures implemented in the course of the year by all municipalities country-wide and the City of Skopje. In 2010, the sum of individual contracts signed by all municipalities and following the implementation of these procedures accounts for 18.6% of funds spent under all types of procurement procedures.

These findings confirm that the broadly-defined research sample that targets 25% of all municipalities in the country provides more than a solid baseline to infer relevant knowledge and conclusions on the implementation of public procurements, as well as to develop recommendations on improving the current situation in local level public procurements.

Research Results

Organization of public procurements

There is no unified solution as to the organization of municipal competences in the field of public procurements. Each municipality has its own system on public procurements. These competences are conferred to different sectors, departments or officers depending on the municipal administration's organizational set-up, which is directly conditioned by the municipality's size, development and staff resources.

As regards the organizational unit tasked with the implementation of public procurements, municipalities applied different practices and it seems one cannot find two municipalities that have identical solution thereto. It should be noted that the municipal administration's organizational set-up often depends on its size. In large municipalities, the administration is organized in sectors, which are further divided into departments. In small municipalities, the administration is organized only in terms of departments. The number of sectors and departments varies from municipality to municipality.

On the basis of their organizational set-up, competences related to local level public procurements are conferred to different services or individual employees in the municipality. Thus, in some municipalities the implementation of public procurements is entrusted to the sector on financial and budget matters (or the sector on financial matters, the sector on financial and taxation matters, etc). In other municipalities, these competences are assigned to the sector on legal, general and public matters. In cases where the municipal administration is divided into sectors, competences on public procurements are conferred to the departments established within the relevant sectors, for example, the department on financial and budget matters within the sector on finances, or the department on general matters within the sector on legal and general matters, etc. In cases where the municipal administration is organized into departments, as was the case with other municipalities, public procurements usually fall under the competences of departments on legal and general matters or departments on financial matters. Almost all municipalities have designated employees tasked with public procurements who are directly responsible for their organization and implementation. These employees hold different municipal administration positions, those being: officer responsible for public procurements, public procurement officer, etc. In rare cases, usually noted among large municipalities that have separate departments on public procurements established within the sectors on financial matters, one to two officers are tasked with implementation of public procurements.

In practice, it was noted that -in addition to municipality's size and development level - the diversity in organizational structures on public procurements largely depends on the staff employed at the municipality. Notably, in some municipalities the decisive factor for entrusting a particular department

with implementation of public procurements is the existence of an officer with most relevant knowledge in the field of public procurements. Another factor that contributes to the array of different solutions applied in regard to public procurements is the Mayor's interest in supervising public procurements.

Diversity was also noted in regard to education background of municipal employees responsible for implementation of public procurements, which ranges from lawyers, economists to civil engineers. This is directly related to the sector or department entrusted with the implementation of public procurements. If public procurements are under the competences of the sector or department on financial and budget matters, the public procurement officer most often has education background in economy. If this competence is entrusted to the sector or department on legal and general matters, the public procurement officer has education background in legal matters. In small municipalities, despite their organization into departments, performance of work duties is often intertwined. This means that although the municipality has adopted an act on job systematization, officers with different education backgrounds, for example in civil or other engineering, are tasked to organize and implement public procurements.

This implies the need for a unified solution in regard to municipalities' organizational structure on public procurements. Although the Law on Local Self-Government stipulates the right of municipalities, by means of their Statutes, to regulate the organization and operation of their administrations, the fact that all state institutions (contracting authorities) must implement their public procurements in compliance with a separate and unique law (Public Procurement Law) imposes the need for a certain level of uniformity in the organizational structures applied for public procurements. Such decision would at least address the present practices whereby public procurement competences are conferred to different organizational units and depend on personal decisions and preferences.

Public procurement plan

The general conclusion inferred is that municipalities' public procurement plans are treated as pro-form documents that are not used as actual procurement plans throughout the year, but are adopted because of the legal obligation in effect. Hence, plans often represent "wish lists" that later remain unrealized. Rare were the cases where these plans are implemented in regular and systematic manner, or they are used as an instrument on public procurement management. Only two municipalities from the sample uploaded the annual plans on their websites.

Municipalities' public procurement plans are developed by the employee, department or sector tasked with the implementation of public procurements (depending on the municipality's organizational structure). The plan is developed within the legally stipulated deadline, i.e., by the 31st January in the current year.

Rare were the cases where the municipality has stipulated procedures on the manner in which annual public procurement plans should be developed. Hence, plan development procedures are different and every municipality develops them according to its preferences. While among large municipalities this procedure is somewhat structured, small municipalities usually develop their plans by following Mayor's instructions. In general, municipalities that follow certain procedures, although they might not be regulated by means of a municipal act, first collect information on individual departments and sectors' procurement needs according to their previously adopted municipal programs and the budget. Then, they take into account regular procurements that are implemented on annual basis (for example: office material, hygiene and maintenance supplies representation materials, winter maintenance of streets and roads, lightning, etc.), as well as the procurements that were not implemented in the last year and are transferred in the year for which the plan is developed. In small municipalities, the plans are usually developed according to suggestions made by the Mayor and the Municipal Secretary.

Once developed, the plan's implementation and realization is entrusted to the employee, department or sector tasked with the implementation of public procurements.

The plan's realization directly depends on the realization of the municipality's budget. Hence, changes to the budget also trigger changes to the public procurement plan. Cases were recorded where the dynamics of budget's realization is closely monitored and planned procurements are implemented accordingly. However, none of the municipalities targeted with the present research has realized the entire procurement plan. Although only a handful of municipalities monitor and analyse the plan's realization on a regular basis, in general, the plans' realization rate ranges from 30% to 90%.

Municipalities have not established practices on regular monitoring, analysis and implementation of measures aimed to realize their procurement plans. Large municipalities perform such activities on monthly or quarterly basis, while other municipalities do not perform any monitoring and analysis as regards the plan's realization, or they do so once a year. If necessary, some municipalities make ad-hoc overviews of the plan's realization, usually for the purpose of amending the plan.

Changes in the public procurement plan vary from municipality to municipality. In some municipalities, the plan is changed once or twice a year, while most municipalities introduce frequent changes to the plan throughout the year or in late December. Cases were also recorded where changes in the plan concern already implemented public procurements, i.e., by changing the procurement plan the municipalities include therein already implemented procurements that were not part of the initial plan. According to the statements provided by municipal employee we interviewed, changes to the plan made in December and those concerning introduction of already implemented procurements are pursued in order to make these plans compliant with the Law, i.e., the procurements made to be included in the plan as required under the legislation in effect. Moreover, frequent changes are made to procurement plans in order to incorporate the procurements that were implemented as part of certain donations. However, changes are mainly pursued for the purpose of expanding the procurement plan, and only rarely for the purpose of downsizing the procurement plan. Planned procurements that have not been implemented in the course of the year are usually transferred in the next year's plan.

Cases were also recorded where the plan's realization directly depends on the Mayor's decisions, i.e., whether or not the Mayor wishes to realize certain procurement anticipated with the plan. In most municipalities, the Mayor has the final say on whether something will be purchased or not. In that, written explanations are most often missing as to the decision taken, especially in regard to decisions that concern non-implementation of planned procurements.

Municipal officers who develop the public procurement plans said that usually they do not face any problems in that regard. This is generally due to the fact that the plans are treated as "list of wishes and needs", and the fact that their realization is not regularly and systematically monitored prevents the plan to become an instrument on public procurement management.

However, several officers pursue a more serious approach to plan development, in order to facilitate their work on the plan's realization. Hence, they ask their colleagues from other sectors and departments to submit procurement requests in the form of official written documents endorsed with their signature. They believe that this will increase the responsibility of all officers and will enable precise planning and efficient implementation of procurements. This emphasizes the need for a more serious approach to procurement planning on the level of sectors and departments and before the procurement requests are forwarded to the centralized unit that implements all public procurements.

In this regard, some municipalities require all employees who are involved in public procurements, such as the Mayor, Secretary, heads of sectors and departments, etc., to become familiar with the Public Procurement Law. Some officers responsible for public procurements believe that this will facilitate their work and they will receive reasonable and realistic procurement proposals. In this context, some municipalities indicated the problem whereby procurement requirements implied unrealistic

procurement values. Such unrealistically estimated procurement values can further “trigger” different problems throughout the implementation of plans and procurements.

As for the availability of public procurement plans, only two municipalities uploaded the annual plans on their websites. Some municipalities published their plans in the official bulletins, which are not available on their websites. Cases were also recorded where by means of FOI applications, NGOs have asked the municipalities to disclose their plans. Majority of annual procurement plans needed for the present analysis were also obtained by means of FOI applications. All research-targeted municipalities positively responded on the question whether they are willing to make their annual procurement plans publicly available on their websites.

Announcement /availability of calls for public procurements

Except for calls announced in the Electronic Public Procurement System, small number of municipalities make these calls publicly otherwise available. These municipalities announced the calls on their websites, and some of them announced the calls in the local media. As many as two-thirds of municipalities do not publish any information on public procurements on their websites.

Municipalities rarely publish their calls for public procurements elsewhere except in the Electronic Public Procurement System and in the Official Gazette. Some municipalities justify these practices with the fact that they are not legally obliged to publish the calls elsewhere, and other claimed that their websites are not updated regularly, or they lack sufficient staff with IT skills. However, none of the research-targeted municipalities objected the proposal to upload their calls on the website.

Although rare, cases were recorded where in addition to calls being announced in the EPPS, some municipalities regularly announce their calls for public procurements on their websites and in local media outlets. Also, rare were the cases noted where the municipality, in addition to the call for public procurements, also uploaded tender documents or even technical specifications on their website.

Other municipalities, however, announce part of their calls for public procurements on their websites, but these are only calls that concern funds received as a foreign donation. Probably at the request of the foreign donor, these calls for public procurements are announced on the municipality’s website in order to obtain more bids. Nevertheless, the same municipalities have not established practices on announcing the calls that are funded from the municipality’s budget, i.e., citizens’ money.

As part of their websites, some municipalities have posted links concerning public procurements, but these links lead to the EPPS’s homepage instead of the municipality’s calls for public procurements. In some cases, these links do not lead anywhere. It is important to emphasize that there is great diversity among municipalities in terms of announcement of calls for public procurements, what is announced, the share of calls announced, dynamic of announcing calls, etc. It is also important to emphasize that the situation is changing from day to day.

In summary, almost two thirds of municipalities do not upload on their websites any information related to public procurements. This group includes municipalities whose websites are not functional. 28% of municipalities publish on their websites all calls from the current year or at least on-going calls, while 10% of municipalities have inserted a link that leads to EPPS’s homepage.

Having in mind the present research’s timeline (December 2010 - November 2011), the findings presented here were compared against the initial situation recorded in regard to disclosure of public procurement-related information, i.e., the situation noted at end of 2010 was compared against the situation noted at the end of 2011. It is interesting to note that only few municipalities (19%) improved their performance, and these were the municipalities which in the course of the last year have disclosed

significantly more information related to announced calls for public procurements compared to other municipalities. Municipal performance in regard to announcement of calls remained on the same level with most municipalities (76%), and a very small share thereof have disclosed less information compared to the initial situation noted in 2010 (5%).

Announcement /availability of calls for bids

In cases when the procurement's value does not exceed 5,000 EUR, municipalities most often submit the relevant calls for bids to three companies the most, notably in order to comply with the law-stipulated obligation. Rare were the cases when municipalities submitted these calls for bids to several companies. The calls are usually submitted to companies seated in the place or town where the municipality is seated. The selection of companies to be presented with calls for bids is made by different employees in the municipal administration, the public procurement officer, the head of sector or department that needs the procurement in question, or the Mayor. The municipalities have not developed extensive lists of suppliers per certain types of goods and services that would be later used for sending calls for bids.

In cases of small procurements when the procurement's value does not exceed 5,000 EUR (without VAT), the decision on the companies that will be addressed with calls for bids is taken by different person in each of the research-targeted municipalities. Such practices depend on the municipality's size, i.e., whether the implementation of public procurements is centralized within the Mayor's office or is – to a certain extent - decentralized to a sector or department tasked with implementation of public procurements. Hence, the selection of three companies (as the law-stipulated minimum requirement) to be addressed with calls for bids is made by the sector or department that needs the procurement. In some municipalities, this decision is taken by the sector, department or the employee who implements the public procurement, while in other municipalities this decision is made by the Mayor. There were also cases where the decision is taken by the public procurement officer, but only after he/she has consulted with and made due consideration of suggestions given by the Mayor.

It should be noted that allowing submission of bids from only three companies puts them in a privileged position. Although these practices are pursued with a view to comply with the law-stipulated requirement whereby the call for bids should be submitted to at least three companies, best practices imply that calls for bids should be submitted to as many economic operators as possible, especially in large municipalities where the number of possible bidders is higher. Such practices would result in attaining lower prices or higher quality of goods and services being procured.

It is interesting to note that the situation in the field is the opposite. The research showed that large municipalities more frequently submit calls for bids to only three companies, while among small municipalities cases were noted when these calls have been submitted to four or five companies. Some municipalities have established continuous cooperation with companies profiled in various fields, and exclusively address them with calls for bids. In other municipalities, especially among small municipalities, sometimes the responsible employee browses the Internet or asks assistance from a neighbouring, usually large municipality, in order to obtain data on other companies that are later addressed with calls for bids. This is particularly true for procurement of goods or services for which the number of locally-seated companies is not sufficient to comply with the law-stipulated requirement (three bidders).

None of the municipalities from the research sample has established extensive lists of bidders in different procurement fields that would be regularly updated and complemented, so that when the need arises they would be automatically addressed with calls for bids. Moreover, they do not keep records on the municipality's satisfaction with the bidders, notably in regard to timely delivery of goods and services, the quality thereof, etc.

In this regard, some municipalities justified their actions with the fact that submission of calls for bids to several companies would further delay the procedure on bid evaluation and selection of the most favourable bid. Furthermore, they claimed that the purpose of the bid-collection procedure without previously announced calls for bids is to shorten and simplify the procedure. Other municipalities stated that locally they are unable to find more than three companies profiled in the procurement field, and almost of all of them indicated that primarily they submit the calls for bids to companies seated in their municipality. Moreover, if the municipality's territory encompasses more settlements, calls for bids were usually submitted to companies from the town or the place where the municipal administration is seated.

Cases were also recorded where if the municipality is dissatisfied with the quality of a previous procurement it excludes the concerned company from further submission of calls for new procurements.

Nevertheless, there is no regular and established practice to research potential bidding companies, exchange information with other municipalities, establish and use databases on bidding companies, etc.

None of the municipalities researched voluntarily publishes the small procurements, notably because they are not legally obliged to do so, although cases were recorded when the municipalities spend significant funds for such procurements. In 2010, the research-targeted municipalities¹ have spent a total of 2,244,204 EUR on so-called small procurements whose individual values do not exceed 5,000 EUR. In the same year, these municipalities implemented a total of 613 small procurements, which means that in average each municipality has implemented 38 procurements of this type. The average value of such procurements accounts for 3,661 EUR. One municipality has implemented only one small procurement, whereas the municipality with the highest number of small procurements has implemented as many as 187 procurements in the course of the year.

Public procurement commissions

There is no unified solution for the composition of public procurement commissions or an answer to the dilemma whether new commissions should be established for new procurements. Moreover, rules established and pursued by some municipalities and related to public procurement commissions are considered unacceptable by other municipalities. Many different solutions and dilemmas have been raised as to the submission of statements on prevention of conflict of interests and whether such statements should be signed for each procurement separately; whether they should be signed at all in case where there is no conflict of interests or there is no reasonable doubt for such conflict and in which stage of the procedure they should be signed.

Different solutions were applied also in regard to the composition of public procurement commissions. Almost all municipalities have their own solution that differs from the solutions applied in other municipalities.

First, the municipalities have not established unified provisions that stipulate whether a new commission should be established for every individual procurement procedure or the same commission should implement all procurements. In addition, cases were recorded where the commission tasked with all public procurements (most often noted among small municipalities) is changed following the implementation of given number of procurements.

¹ This is the summary value of all small procurements implemented in 2010 by a total of 16 municipalities. The remaining 5 municipalities from the sample have not submitted their records and notifications to the EPPS, and therefore there is no information on funds they have spent for this purpose.

Diametrically opposite solutions exist in regard to the composition of public procurement commissions, i.e., the commissions' president and members. Some of the provisions established by certain municipalities are given below:

- The commission's president is always the same, and it is the head of the sector competent to implement public procurements. Moreover, one commission member remains the same and it is the public procurement officer. Only the second member of the commission can be changed, who by rule, is an expert person from the department that submitted the request for public procurement;
- The commission's composition is established on the proposal from the head of the sector or department that requires the procurement. Namely, attached to the request for procurement, the head of the relevant department submits a proposal for the commission's composition. These are usually employees from the sector for which the procurement is implemented, but as a rule the heads of sectors cannot be nominated as commission members;
- The commission's president is the same for all procurements and it is the Municipal Secretary. The remaining two members can be changed, most often according to their expertise in the field of the concerned procurement;
- The commission's president and one member are changed depending on the procurement type, while the second member remains the same, i.e., the public procurement officer.
- The commission's composition is changed for every procurement procedure and depends on the members' expertise in the field of procurement.

In small municipalities, due to the small number of employees they take turns as public procurement commission's members or deputies. Thus, the commission's composition is often the same.

It is interesting to note the different solution applied in regard to the dilemma whether the public procurement officer- which in almost all municipalities is also responsible for developing the tender documents - is or can be a member of this commission. Certain municipalities established the rule that this employee should always be a commission's member, while other municipalities, as a rule, prohibit the employee's involvement in the commission.

In the case of one municipality we noted a change in the manner on establishing the public procurement commission, the standing commission tasked with all public procurements was replaced with a rule whereby a new commission is established per individual procurement. The employees from this municipality whom we interviewed stated that after comparing outcomes from these two solutions, they found it is better to have one standing commission tasked with implementation of all procurements, notably because of the commission's professional performance.

Different solutions exist also in regard to submission of statements on conflict of interests, especially the stage of procurement procedures when these statements are signed. Some municipal employees tasked with implementation of public procurements raised concerns with the contradictory provisions that govern statements on conflicts of interest and are stipulated in the Public Procurement Law and the Law on Prevention of Conflict of Interests.

In practice, dominant were the cases where statements on conflict of interests are signed by all commission members for all procurements. In some municipalities this mandatory statement is also signed by the Mayor, notably because he/she has to endorse the decision on public procurement. However, cases were also recorded where such statements were not signed in the past, but they were introduced in 2010. In other municipalities, such statements were signed in the period until 2010 and were later abandoned as a practice.

In another municipality, the commission members sign statements on conflict of interest which are valid for the following three procurements, i.e., the statements' validity period overlaps with the members'

appointment. After the expiration of their appointment, new members are elected for the commission. Diversity exists also in regard to the procurement procedure stage, i.e., the moment when these statements are signed. In some municipalities, these statements are signed one day in advance or on the day of public opening of bids. In other municipalities, statements are signed at the moment when the decision to implement public procurement is taken and immediately after the establishment of the relevant commission. In some municipalities, these statements are signed after the opening of bids, while in others prior to signing the public procurement contract.

Some interviewees who are public procurement officers raised the dilemma that stems from – in their opinion – the contradictory provisions on the statements on conflict of interests that are stipulated in two laws: the Public Procurement Law and the Law on Prevention of Conflict of Interests.

According to them, it is a matter of two different provisions. Namely, Article 173 from the Public Procurement Law stipulates that the file on the public procurement, among other things, should include a statement on the existence/non-existence of conflict of interests, which indicates that this statement should be signed for all procurements. On the other hand, Article 62 from the same Law makes a reference to application of provisions contained in the Law on Prevention of Conflict of Interests, according to which these statements should be signed only in cases where there are reasonable doubts for the existence of or there is actual conflict of interests. The interviewees explained that they were instructed by the State Commission for Prevention of Corruption that the statement should not be signed for all procurements but only when there is reasonable doubt for or there is actual conflict of interests. Moreover, they were instructed that the statements, if any, should be included as integral part of the relevant file on the public procurement.

Having this explanation in mind, some municipalities never signed or discontinued the practice on signing statements on conflict of interests for all procurements. However, among the municipalities dominant is the interpretation that these statements should be signed for all procurements, and in that they generally refer to the provision contained in the Public Procurement Law which stipulates that the statement on conflict of interests should be included in the file on the public procurement.

Tender documents and technical specifications

Tender documents are mainly developed by employees tasked with implementation of public procurements, while technical specifications are developed by the departments or sectors that requested the procurement. The decision on the criteria to be used for contract-awarding (lowest price or economically most favourable bid) is most commonly taken in close coordination with the Mayor. When the selection criterion is “economically most favourable bid”, its elements and sub-criteria are not clearly defined. When the selection criterion is “quality”, it often includes sub-criteria that otherwise should not be subject to point-allocation, notably because they are considered evidence in support of companies’ technical or professional eligibility. In some municipalities, notifications on the procedure’s outcome contain details, but in other municipalities they include only the decision on the selection of the most favourable bidder.

Tender documents contain the requirements, terms and conditions, criteria and other information necessary for the procurement and the manner of procedure’s implementation. In almost all research-targeted municipalities, tender documents for public procurements are developed by the public procurement officer or employees in the department or sector tasked with implementation of public procurements (in cases where the municipality has not appointed an individual public procurement officer). Cases were recorded where tender documents are developed by the commission established for the given public procurement.

Technical specifications, which are part of tender documents, define the quality, technical features and required performance, requirements related to environmental impact and safety of goods,

packaging, quality assurance systems, and like. In almost all municipalities, technical specifications for procurements were developed by the officers, departments or sectors that have requested the procurement of certain products, services or works. In small number of cases that usually concern small municipalities, technical specifications were developed by the public procurement officer, i.e., same employees who are responsible for developing the complete tender documents.

Distressing is the fact that in all municipalities targeted with the research, the Mayors have great influence in the development of tender documents and technical specifications. On one hand, in all municipalities development of these documents - especially of technical specifications - is treated as “technical” work and thus it is assigned to “technical staff” or employees with specific expertise in the relevant field of the given procurement. On the other hand, all municipalities acknowledged the fact that technical specifications are developed on the proposal from the officer or services which requested the procurement, but in consultation with the Mayor and - sometimes – with the commission’s president. Rare were the cases where so-called outsourced experts have been engaged to develop the technical specifications. Usually, outsourced experts are employees at public enterprises established and operated by the municipality.

Different municipalities take different decisions on the criteria used for awarding the public procurement contract, i.e., whether bids will be assessed according to the criterion “economically most favourable bid” or the criterion “lowest price”. In some municipalities, this decision was taken by the department or sector that proposed the procurement or whose needs are addressed with the procurement. In such cases, the final decision on the criteria used for contract-awarding was taken by the public procurement commission.

In some municipalities, the decision on the criterion used for contract-awarding was directly taken by the commission or the commission’s president, without requiring the procurement’s initiator to submit proposal. Such practices were noted in the municipalities where the commission’s president remains the same for all public procurements.

Regardless of practices established, almost all municipalities take the decision on the criterion used for contract-awarding in agreement with the Mayor. In this regard, even the municipalities where implementation of public procurement procedures is somewhat decentralized, it is the Mayor who takes the decision on the criteria used for contract-awarding. Such practices continue despite the fact that criteria, in principle, are or should be closely related to previous work on public procurement documents. This means that the decision on the criteria used should depend on the specific features of individual procurements and it is logical for these decisions to be taken by the same employees who developed the relevant tender documents.

The fact that such practices raise problems in implementation of public procurements was confirmed with the statement provided by one public procurement officer interviewed who stated that these officers act as executors of the decisions taken by their superiors (head of sector/department or the Mayor). The interviewed officer proposed the introduction of mandatory minutes signed by the municipal officer who selected the criteria and would include an explanation why the given criteria were selected, their elements and sub-criteria defined for all elements.

Municipal practices related to the use of criteria on awarding the public procurement contract differ to a great extent. In that, the array of solutions pursued range from almost 100% use of the criterion “economically most favourable bid” to also almost 100% use of the criterion “lowest price”. Municipalities that have not established such rules and define different criteria for different procurements also failed to establish relevant procedures or rules on the criteria to be used in different cases. Public procurement officers stated that different criteria are used for individual procurements and they most often depend on the procurement type and previous experiences.

The fact that this is not true in practice was confirmed by the acknowledgements made by some municipalities whereby in the past few years, i.e., from the entry into effect of the new Law, they tried

out virtually all combinations for selection criteria in an attempt to find the optimal one, but were unsuccessful. Such statements on the part of municipalities provides the conclusion that these attempts were triggered by the desire to facilitate the work of public procurement officers and that municipalities and relevant officers do not fully understand the idea behind defining criteria on contract-awarding according to the type and specific nature of procurements. Instead, they attempted to find a single, unified and most practical solution to all procurement procedures. In other municipalities, due to problems encountered by these officers and due to the fear from making mistakes, they work by inertia, i.e., do not change the criteria for public procurements implemented every year and thus copy the calls for bids announced previously.

Municipalities that - as a rule - use the criterion “economically most favourable bid” failed to provide clear definition on the criterion’s elements. Notably, they have determined only the criterion’s elements and the relevant points allocated to them, without providing a detailed explanation of the elements. This is particularly true in regard to the element “quality”. One should note that most municipalities tend to avoid this element since they are unable to make precise definition, assessment and point-allocation. Some municipalities indicated that they have resorted to practices whereby the requirements stipulated for the companies and related to the element “quality” are no longer included under bid-evaluation criteria, but are defined as eligibility criteria on bidders’ technical and professional ability. However, cases were recorded where the municipalities included certain requirements pertaining to companies’ technical or professional eligibility as part of the criteria on contract-awarding, in particular as sub-elements for “quality”. The requirements usually concerned companies’ experience, number of employees, annual turnover, etc. Characteristic for these municipalities is their failure to distinguish between the quality of the product, service or work (or as stipulated in the Law: “the characteristics of quality” which are elements defined under the criterion “economically most favourable bid”) and bidding companies’ technical or professional eligibility. This is why companies are required to demonstrate their technical or professional eligibility as part of the criterion element “quality”. Moreover, such practices lead to subjective bid-evaluation on the part of public procurement commissions, i.e., these commissions make subjective assessments as to the better quality of a particular company and what eligibility requirements are allocated points, which ultimately lead to dissatisfaction among companies and provide space for abuses and malpractices.

Interviewees from one municipality stated that as part of the element “quality” they require companies to submit reference documents issued by third parties for whom they performed same or similar work. In that, the more references submitted by the bidding company, the higher its rank in the evaluation. Such practices indicate the absence of clear definition as to what is required under “quality” and the number of points allocated thereto (the minimum number of references required or the minimum scope of works completed). On the contrary, this shows that point-allocation depends on the number of references submitted for same or similar work performed in the past.

When asked on the manner in which they define the element “quality”, interviewees from one municipality stated that they request the bidders to explain what quality means to them, i.e., to explain the characteristics of the quality of products, services or works bided. This confirms the fact that such practices later provide for subjective bid-assessment of the quality as an element included in the criterion “economically most favourable bid”.

As regards the notifications on procedure’s outcome that are submitted to the bidding companies, i.e., notifications on the selection of the most favourable bid and the decision on awarding the public procurement contracts, almost all municipalities stated that these notifications are not extensive. Half of the municipalities stated that they prepare detailed notifications and that in addition to the selection decision these notifications also include the reasons for the bid’s selection or rejection. Some municipalities have established rules whereby the notifications should be at least 2-3 pages long, while other municipalities tend to dedicate at least one quarter per page to each bidder, accompanied with the explanation on the bid’s acceptance or rejection.

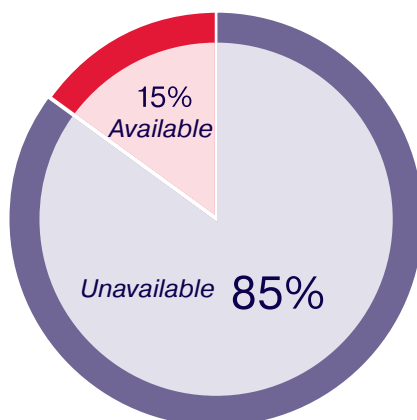
Half of the municipalities, however, acknowledged that notifications they send to bidders are short and scanty in contents. Some municipalities send notifications that include only a table on the bids’

ranking, other indicate only the company whose bid was selected, and upon the bidders' request, they forward the table on the bids' ranking. Officers from some municipalities, especially in small municipalities, said that there is no need for detailed notifications because the bidders know each other and they know the quality of individual bids.

Municipal employees indicated that bidders rarely request to be given insight in the documents related to the public procurement procedure. In cases where such insight was requested, it was enabled. However, during the interviews conducted as part of this research, public procurement officers stated that they do not object giving bidders insight in the documents related to the relevant procurement.

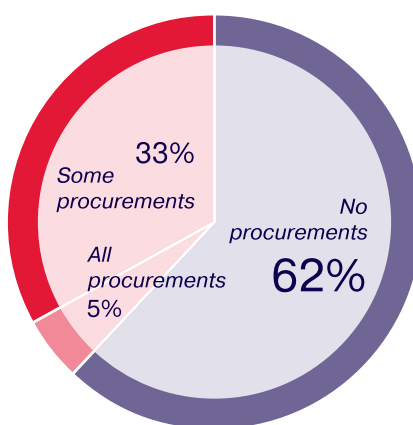
As for the availability of tender documents in the EPPS, research showed that they were available only for 15% of the calls announced in the course of 2010 (Chart 1).

Chart 1: Availability of tender documents related to calls for public procurements in the EPPS (from the total number of calls)



As for the remaining 85% of calls for public procurements announced, the municipalities did not make relevant tender documents available in the EPPS. On the contrary, bidders and interested companies had to request or take them from the municipality.

Chart 2: Availability of tender documents related to calls for public procurements in the EPPS (on the level of the municipality)



In the course of 2010, only 5% of municipalities published the tender documents for all calls for bids in the EPPS, while as high as 62% of municipalities did not publish any tender documents in the EPPS (Chart 2).

Appeals

In the course of 2010, an average of 1 to 2 appeals were lodged against each municipality in front of the State Commission on Public Procurement Appeals. 7% of all public procurement procedures implemented by the municipalities were appealed. In addition to appeals, the municipalities were addressed with complaints from the bidding companies and related to tender documents, technical specifications, decision-taking procedure or bid evaluation.

In the course of 2010, the SCPA was addressed with a total of 30 appeals (related to 24 public procurement procedures) against the decisions on contract-awarding or procurement annulment taken by the municipalities from the research sample. This means that in average each of these municipalities was appealed for one to two public procurements implemented. Compared to the total number of procurement procedures, the share of appealed procedures accounts for approximately 7%, i.e., every 14th public procurement procedure was appealed.

The analysis of appeals' outcome shows the following results:

- 40% of appeals were rejected on the account of being unreasonably grounded;
- 27% of appeals were approved;
- 17% of appeals were denied;
- 13% of appeals were withdrawn, and
- in 3% of cases, the procurement procedure was terminated following the submission of relevant appeals.

As regards the outcome of approved appeals, in 57% of cases the public procurement procedures were annulled, whereas in the remaining 43% of cases the procedure was returned for repeated bid-evaluation and decision-taking.

Interesting is to note that appeals were lodged against 43% of research-targeted municipalities, and as high as 47% of all appeals lodged concern only one municipality. 20% of appeals were lodged by construction companies and companies working in the field of oil derivatives supply, each, followed by companies working in the field of transport, telecommunication and trade companies. 13% of all appeals were lodged by the same company, but against different municipalities.

Employees from the departments and sectors tasked with implementation of public procurements claimed that, in addition to official appeals lodged, they also receive unofficial complaints from bidders, which usually concern certain aspects of the procurement procedures.

These complaints are mainly related to inaccuracies or lack of detailed description of technical characteristics in the tender documents, especially in the technical specifications. This was particularly the case in the so-called bills of quantity for performance of works. For instance, a case was indicated where the bidding companies were required to offer a price per 1m³ earth excavation works, without indicating the total quantity of earth to be excavated. Companies complained that the price thereof varies according to scope of excavation works needed, 10m³ or more. Therefore, a proposal was made for these types of procurements to indicate the total amount planned in order for companies to have general idea on the scope of work needed and to appropriately establish the price, i.e., the bid.

Another set of complaints submitted to the municipalities concern the insufficient explanation of the element "quality". In some municipalities, the companies complained on the imprecise allocation of points to this element during the bid-evaluation process and the subjective assessment of "quality" by the public procurement commissions. Also, complaints were received in regard to various certificates whereby the companies are required to demonstrate their technical or professional ability and specifically concern the non-recognition of these certificates by the public procurement commissions.

Other companies complained about the bank guarantees they were required to secure and submit for individual procurements separately. Employees from the municipality that indicated this case said that after they received such complaints, they decided not to request bank guarantees in one procurement procedure, but were later faced with problems in signing the contract. From that point on, they decided to request bank guarantee set in the minimum amount of 1% from the bid's value.

Another municipality also emphasized that they were presented with this type of complaints. Notably, the municipality was contacted by some companies – during the development of their technical bids - to discuss the technical details of the bid. Later, these same companies hoped that such communication would give them advantage in the process on public procurement contract awarding, but were unsatisfied if they are not awarded the contract.

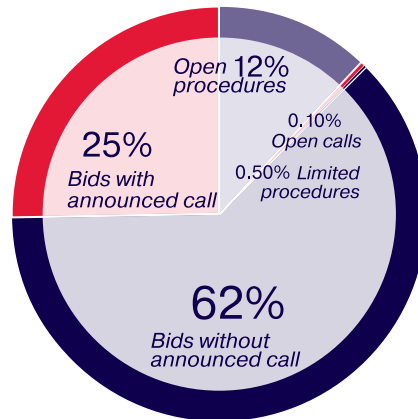
Specific experiences related to the enforcement of the PPL and implementation of public procurement procedures

All municipalities expressed their remarks or made proposals aimed to improve the current legal framework that governs implementation of public procurement procedures. Almost all municipalities claimed that up to date they have rarely or never implemented any of the more complicated procedures, such as the procedure with competitive dialogue or framework agreement. The proposals include shorter deadlines for implementing the simple procedures, which are the most common procedures implemented by the municipalities.

For many of the interviewed municipal employees responsible for public procurements one of the biggest problems in the past implementation of the relatively new Public Procurement Law is the organization of so-called complicated public procurement procedures. In that, they primarily referred to procedures with competitive dialog and framework agreement. The municipalities that have never implemented these types of procedures provided three justifications thereof. First, the procedure is complicated and they are uncertain of their abilities to implement such procedures in full. Second, they have not implemented these procedures because the municipality's procurement needs did not require a more complicated procedure because of the procurement's nature, type and circumstances. Third, these types of procedures require longer time period for organization and implementation, which the municipalities do not have. Therefore, in general, they implement simpler procedures, such as the procedure with direct negotiations with or without previously announced call for bids, as well as the open procedure.

In this context, it should be noted that in the course of 2010, most frequently used procurement procedures were the ones that imply collection of bids without previously announced call for bids and they account for 62% of all procedures implemented (Chart 3). Following are the bid-collection procedures with previously announced call for bids, which account for 25%, while the remaining types of procedures have significantly low share in the total number of procurements, i.e. open procedures account for 12%, limited procedures account for 0.5% and open calls for design proposals account for 0.1% of all procedures. In summary, the bid-collection procedures account for 87% and other procedures account for 13% of all procurements implemented.

Chart 3: Shares of separate types of procedures implemented by the municipalities (according to the number of procedures)



The situation remains the same even if only the so-called open procedures (that do not include bid-collection procedures without previously announced call) are analysed. The bid-collection procedures with previously announced call for bids account for 63%, open procedures account for 35%, limited procedures account for 1% and open calls for design proposals account for 0.3% of the total number of procurements implemented. In that, it should be noted that all limited procedures were implemented only by one municipality from the research sample. The same is true for the open calls. 14% of municipalities did not implement any open procedure in the course of 2010.

Due to the fact that most of municipalities' remarks concerned the implementation of e-auctions and e-procurements, these procedures are analysed separately (see page 36). The remarks mainly concerned the reasons that prevent municipalities to implement these procedures or failure to implement them within the law-stipulated contract value or number. Most remarks concerned the practical problems in implementation thereof, especially in the implementation of e-auctions.

Almost all remarks put forward by the municipalities and related to the companies that participate in public procurement were focused on their insufficient knowledge of the Law and lack of sufficient staff and technical capacity to participate in the procedures. Some municipalities said that they spend a lot of time and staff resources on tender development, whereas later they receive only one or two bids, and in some cases they do not receive any bid at all. They identified the problem thereof in the companies and their ability to - as they say - prepare quality bids.

Other municipalities, especially the large municipalities, complained on the inability to implement emergency procurements of higher values. In that, they indicated examples where they were faced with unforeseen problems, which - given the municipality's size- are a major obstacle. Moreover, due to the inability to implement emergency procurements of higher values, the municipalities were forced to comply with the long deadlines in order to implement procurement procedures needed in order to address the problems they are faced with. On the basis of the above-given reasons, some municipalities required the law-stipulated amount that governs implementation of so-called small procurements to be increased rather than reduced. They emphasized that in terms of municipal competences, local developments are a "living matter" and characterized by certain dynamics and that municipal administrations cannot always respond to these needs, in particular due to the limits and restrictions stipulated by provisions contained in the Public Procurement Law and related to certain types of procurements.

Certain underdeveloped and usually rural municipalities indicated that they are unable to pursue shorter deadlines in their procurement procedures because they are faced with problems related to collection of documents that confirm the ability of the most favourable bidder. Examples were indicated wherein they were unable to submit the notifications to the most favourable bidders and request them

to provide documents to confirm the bidder's ability. In practice this triggered another problem. Namely, certain economic operators – faced with problems as regards the submission of additional documents – provided them as early as the bid-submission stage.. However, such practices on the part of bidding companies were interpreted as pre-arranged tender procedure by their competitors, i.e., they believe that the economic operator who submitted these documents attached to the bid knew in advance that it would be selected and submitted the documents in order to save time later, once the bid-evaluation procedure is complete.

Some municipalities believe that the amount of bank guarantees required from bidding companies is an additional burden that increases the bid's final price, because the companies include the guarantee's amount in the price bided, which makes the procurement more expensive. They said that this practice was common among big companies.

The various proposals put forward by public procurement officers from the municipalities include also suggestions to further shorten deadlines and to simplify the procedures, especially for the already simplified public procurement procedures. Proposals were made also in regard to enabling them greater flexibility to adapt procurement procedures to the municipality's needs. These proposals were made both from small and largemunicipalities. Small municipalities requested stricter rules that would protect their employees responsible for public procurements from erroneous (conscious or unconscious) actions taken by other municipal employees involved in public procurements. On the other hand, largemunicipalities requested exemptions in the relevant legislation that would “untie their hands”and enable them more appropriate and timely response to local communities' needs and problems as they emerge.

In this context, the general impression obtained is that implementation of public procurementsdiffers between small and largemunicipalities. Probably due to theirgreater experience, largemunicipalities seem to be more compliant with and knowledgeable of the legislation in effect, whereas small municipalities seem to implement public procurements with a slight fear of errors and possible consequences therefrom. Hence, for them it is easier and less painful to implement only small procurements that are dominant in these municipalities.

Namely, small municipalities from the research sample have implemented as high as 77% of all procurements by means of bid-collection procedure without previously announced call for bids, 15% of all procurements by means of bid-collection procedure with previously announced call for bids, and only 8% of all procurements by means of open procedures. This means that 92% of all procurements were implemented by means of bid-collection procedure and 8% of them by means of open procedure.

As for the largemunicipalities, open procedures accounted for 15% of all procurements, limited procedures were implemented in 0.8%, bid-collection procedure with previously announced call for bids accounted for 23%, and bid-collection procedure without previously announced call for bids accounted for 61% of all procurements. Bid-collection procedures with or without previously announced calls for bids,together,account for 84% of all procurements implemented by these municipalities.

Medium municipalities have almost identical ratio between open procedures and bid-collection procedures. Notably, they implemented as high as 77% of all procurements by means of bid-collection procedure without previously announced call for bids, 16 % of all procurements were implemented by bid-collection procedure with previously announced call for bids and only 7% by means of open procedure. In summary, 93% of all procurements were implemented under a bid-collection procedure and open procedureswere organized for 7% of all public procurements.

This provides the conclusion that only a handful of largemunicipalities implement open procedures, whereas small and medium municipalities predominantly (92% and 93% respectively) use simplified bid-collection procedures without previously announced call for bids (77% of all procurements) and with previously announced call for bids (15% and 16%, respectively).

As regards to the number of bidders per open procedure, the research showed that in the course

of 2010 an average number of 3.6 bidders participated in the open calls for public procurements announced by the research-targeted municipalities.

This part of the research, i.e., this part of the interviews included questions for the interviewees in regard to their relation with the Bureau of Public Procurements; how often do they request assistance from the BPP and what are the most common reasons thereof. Almost all municipalities were unanimous in stating that they frequently address the BPP for assistance in resolving certain issues, dilemmas, doubts and problems that have emerged in relation to implementing public procurement procedures. They emphasized that employees at the BPP are not easily accessible due to their busy schedules, but once they get in touch with them, problems and dilemmas are resolved with their assistance. It should be noted that small and underdeveloped municipalities more often address the BPP with requests for assistance, in particular for problems related to their attempts to work on the EPPS. These municipalities indicated that these problems were usually related to their insufficient knowledge of IT, out-dated computers they dispose with and the unstable Internet connection in the municipalities.

In some municipalities, the interviewed officers - although not addressed with a specific question - indicated the training sessions they had benefited from. Representatives from small municipalities emphasized the need for a more individualized approach during the training, as well as hands-on practice and one-on-one exercises. According to them, this was needed because the training sessions are attended by high number of trainees and sometimes they might think that they have acquired the relevant skills, but once they return to their job positions they were faced with many problems. In their opinion, training sessions should be organized for smaller groups and should provide the possibility for individual work and practice.

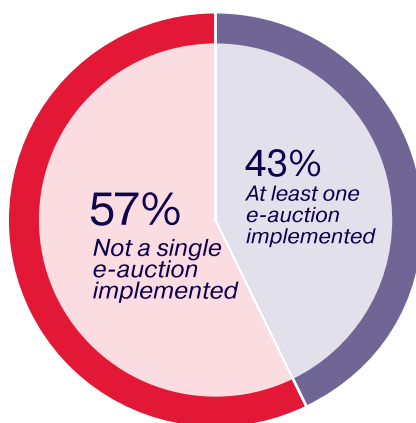
E-auctions and e-procurements

In 2010, only a small number of municipalities complied with the law-stipulated obligation to use e-auctions for at least 30% of the estimated value of planned public procurement procedures. Half of the municipalities did not implement any e-auctions, and those that did, encountered a series of problems. Implementation of the so-called full electronic procedures was occasional and almost experimental in nature.

In 2010, implementation of e-auctions and e-procurements (full electronic procedures) in the municipalities was difficult, irregular and often considered as an experiment. 43% of municipalities from the sample implemented e-auctions, while the remaining 57% did not implement a single e-auction in the course of the year (Chart 4).

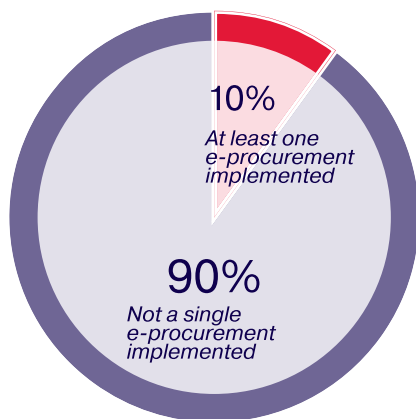
The value of procurements implemented by means of e-auctions accounts for only 6.6% of the value of all procurements. This figure is far from the law-stipulated obligation set for the year 2010, which was higher for the year 2011, while in 2012 all procurements will have to be concluded with e-auctions. It should be noted that although the present research targeted public procurements implemented in 2010 and was carried out in 2011 in order to analyse the municipalities' performance for an entire year, the situation in 2011 did not improve, at least not according to the statements provided by employees responsible for public procurements.

Chart 4: E-auctions implemented by municipalities in 2010



As regards the so-called e-procurements, i.e., implementation of public procurements by electronic means, only 10% of municipalities researched have implemented at least one e-procurement in 2010 (Chart 5).

Chart 5: E-procurements implemented by municipalities in 2010



The problem is more serious knowing that 90% of municipalities that have never implemented e-procurements claimed that they do not have the conditions required (technical or staff resources), or the bidding companies lack such capacities. Those are the two most common justifications offered by the municipalities for failure to implementing e-auctions and e-procurements. In some cases, the main problem is identified in the poor technical equipment, i.e., computers, scanners, electronic signatures, etc., they dispose with. Other municipalities complained on the quality of Internet connections, while a third group thereof transferred the blame to companies, i.e., the companies' lack of staff or technical equipment to participate in e-auctions and e-procurements.

Nevertheless, the general impression obtained from the interviews with municipal employees responsible for public procurements is that in the municipalities that do not implement e-auctions and e-procurements the responsible officers are not prepared to implement them and therefore they demonstrate certain inactiveness towards securing quality technical and technology means to pursue implementation of e-auctions and e-procurements. Some municipalities admitted this situation.

Significant share of interviewees who are directly involved in implementing public procurements said that they are uncertain of whether they know how to implement e-auction and e-procurement and claimed that as time passes by they forget what they have learned in training.

In some municipalities, the interviewees indicated the Mayors as the main culprits, notably by claiming that Mayors lack initiative, desire and determination to start implementing e-auctions and e-procurements. Interviewees from only 5% of municipalities indicated that they are aware and knowledge of such procurements and that they implement them in regular and unhindered manner. However, it must be noted that this share includes large municipalities, whose relevant budgets are significant and which dispose with relevant technical equipment and adequate staff. Interviewees from all other municipalities indicated certain problems as reasons for non-implementation of these procurements. To make matters worse, inactiveness and underperformance in terms of e-auctions and non-implementation of e-procurements was also noted in regard to large municipalities as well and despite the well-developed business environments and appropriate staff and technical equipment at both municipal administrations and companies. Therefore these factors cannot be considered as obstacle to implementation of e-auctions and e-procurements in these municipalities.

Otherwise, the municipalities that do implement e-auctions indicated series of problems they have faced in the process. In their opinion, the most common problem with implementing e-auctions is the fact that they are not conducive to obtaining satisfactory quality of goods, services and works being procured. This is due to the fact that large number of municipalities failed to develop relevant tender documents in a manner that would guarantee that bidding companies offer the goods, services and works with required quality prior to organizing the e-auction as the final stage of the procurement procedure.

Another problem, as indicated by the interviewees, is the bid's price. Opinions were expressed that in situations when only one bidder appears in the tender procedure, the price attained is quite high, which is contrary to the main goal for organizing e-auctions, i.e., to reduce the prices bided. Notably, they explained that in cases when only one bidder submits an offer, the initial price is set higher due to the anticipated downward bidding in the final stage (e-auction). Because there are no other bidders in the procurement procedure the e-auction does not take place and thus this price remains as the final, the public procurement procedure is considered to be successful and the contract is signed with the single bidder that participated therein.

Series of other problems were indicated as well, but it seems they could be resolved with the amended legal provisions that will enter into effect in 2012. However, it remains to be seen whether this will be true in practice. Some municipalities requested the setting of the price's low threshold, notably because cases were noted where the price has been reduced by 80% during the e-auction, following which the first-ranked company refused to sign the procurement contract.

Having this in mind, greater attention should be paid to this issue, in particular knowing that as of 2012 the law stipulates an obligation to organize e-auctions in 100% of procurement procedures implemented. All interviewed officers from the municipalities that did not comply with the law-stipulated obligation on implementing certain number or percentage of public procurement procedures by means of e-auctions were aware of the violations made to the Law, but do not fear possible sanctions. Some of them said this is due to the fact that the Law does not stipulate sanctions, others indicated that many institutions pursue so called "tacit" violation to the Law, while a third group of interviewees claimed that they work directly under the Mayor who is aware of the non-compliance with the Law and does not take actions to correct the matters.

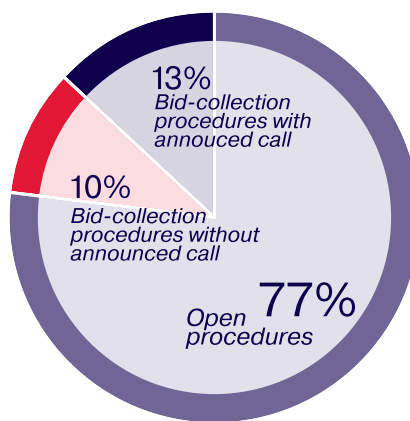
Small procurements

Small procurements are the most numerous procedures implemented by all municipalities, and they account for one-fourth of funds spent on all public procurements. In 2010, all analysed municipalities in average implemented 38 procurements whose value did not exceed 5,000 EUR. Small procurements are particularly common for small and medium municipalities, but large municipalities implemented as many as 187 small procurements in the course of 2010. One-fourth of municipalities did not submit notifications on small procurements to the EPPS, and another fourth of them submitted notifications beyond the legally stipulated deadline.

The analysis of so-called small procurements includes the procurements implemented in the course of 2010 and whose value does not exceed 5,000 EUR and organized as bid-collection procedure without previously announced call for bids, as well as procurements in the amount of 5,000 to 20,000 EUR for goods and procurements in the amount of up to 50,000 EUR for performance of works and organized as bid-collection procedure with previously announced call for bids. It should be noted that these procurements are very important for the municipalities considering the fact that they account for 87% of the total number of procurements or 23% of the total value of procurements. The relevant shares for these procedures vary among the municipalities. They are significantly higher in small and underdeveloped municipalities and on the contrary, the share of open procedures is higher among largemunicipalities.

In summary, 77% of the value of all public procurements implemented by the analysed municipalities in the course of 2010 (Chart 6) were spent by means of open procedures, 10% were spent by means of bid-collection procedure without previously announced call for bids, i.e., as procurements in the value of 500 to 5,000 EUR, and 13% were spent by means of bid-collection procedure with previously announced call for bids, i.e., for procurements in the value of 5,000 to 20,000 EUR, or procurements in the value of up to 50,000 EUR for performance of works.

Chart 6: Share of separate types of procedures implemented by municipalities (according to the procurement's value)



As regards the type of municipalities according to their size, small procurements account for significant shares – in terms of their value and the number of procedures implemented – of all procedures organized by **small municipalities**. In terms of the value, the so-called small procurements in the value of up to 5,000 EUR account for 30% of all procurements, procurements in the value of 5,000 to 20,000 EUR, or 50,000 EUR for performance of works account for 29% of all procurements and open and limited procedures account for 41% of all procurements.

According to their share in the total number of procurements, the bid-collection procedure were used in 93% of the total number of procurements, whereas open procedures account for 7%. This is why small procurements are of great importance for the municipalities. It should be noted that procurements in the value up to 5,000 EUR account for 79% of the total number of procurements implemented by small municipalities.

The situation is different among **mediummunicipalities**, where in terms of the funds spent on procurements open procedures account for 60%, whereas bid-collection procedures without previously announced call for bids account for 17% and bid-collection procedures with previously

announced call for bids account for the remaining 23%. According to the number of procurements, the situation is identical with the one recorded in regard to small procurements, i.e., 92% of all procurements were implemented by means of bid-collection procedures (77% without and 15% with announced call for bids), and the remaining 8% were implemented by means of open procedure.

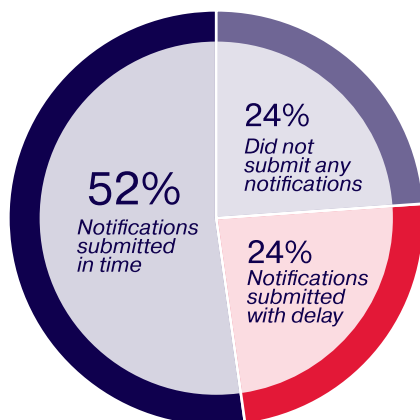
According to procurements' value, 82% of all procurements implemented by **large municipalities** were organized as open and limited procedures, and the remaining 18% were organized as bid-collection procedures (7% without and 11% with previously announced call for bids). When analysing the procedures according to their number, dominant are the small procurements and they account for 83% (63% without announced call and 20% with announced call), while the open and limited procedures account for only 17% of the total number of procurements.

As regards the average value and number of procurements in the course of 2010 the analysed municipalities in average implemented 38 procurements in the value of up to 5,000 EUR, 10 procurements in the value of 5,000 to 20,000 EUR and 4.5 procurements in the value of 50,000 EUR for performance of works. The average value per procurement from the first group (up to 5,000 EUR) accounted for 3,661EUR, while the average value per procurement from the second group (up to 20,000 EUR) accounted for 17,522 EUR. The average amount per procurement related to performance of works (up to 50,000 EUR) accounted for only 1,292 EUR. It should be noted that this amount does not refer to the overall procurement on performance of works, but rather to annexes made to previously signed contracts.

Interesting is to note that the number of small procurements in the value of up to 5,000 EUR varies from one procurement implemented by one municipality to as much as 187 procurements implemented by another municipality. Moreover, the number of small procurements was marked by a significant increase in the second half of the year compared to the first six months.

Although they are legally obliged and may be sanctioned with inability to use the EPPS in future for failure to submit **notifications on small procurements** within the legally stipulated deadline, high number of municipalities violate the Law in this regard (Chart 7).

Chart 7: Submission of notifications on small procurements



Namely, as many as one-fourth of municipalities (24%) did not submit any notifications on small procurements, and another fourth (24%) of them submitted the notifications beyond the legally stipulated deadline, where the average delay was 1.5 months.

Contracts signed by means of bid-collection procedure without previously announced call for bids

One fourth of the municipalities (all of them large municipalities) signed these contracts. 3.2% of the total funds intended for public procurements were spent by means of direct negotiations. The average value of procurements implemented by using this procedure is 35,757 EUR, and the most common reason indicated for the use of such procedures was that these procurements concerned supplementary works or services that cannot be technically or economically separated from the basic agreement without causing additional problems for the contracting authority.

Value of contracts signed by means of direct negotiations without previously announced call for bids accounts for 3.2% of the total value of procurements implemented by the research-targeted municipalities. In other words, this share of funds was spent on public procurements by means of direct negotiations procedure, which is considered to be non-transparent.

This type of procedures was used by one-fourth of municipalities, i.e., 24% of municipalities. Interesting to note is that all municipalities from the research sample who implemented these procedures are large municipalities. In 2010, the average number of procurements implemented by means of this procedure was 4.2 per municipality. The lowest number of direct negotiation procedures without previously announced call for bids was 1, and the highest was 13 per individual municipality.

The average value per procurement implemented by means of direct negotiations without previously announced call for bids was 35,757 EUR. The individual values per procurement range from 1,995 EUR to 252,033 EUR.

Reasons indicated for the implementation of these procedures are various (Table 2). The most common reason indicated in as many as 43% of public procurements reads as follows: “supplementary works or services that **cannot be technically or economically separated from the basic agreement** without causing additional problems for the contracting authority”. The second most frequently used reason (indicated for 19% of procurements) reads: “the contracting authority must make supplementary procurements from the company with which the initial contract was signed **due to partial replacement or extension** to existing goods or installations, whereby the change of contractor would result in the purchase of materials with different technical specifications and thus cause incompatibility with or disproportional technical difficulties in the operation and maintenance of the initial procurement”. Equal shares of 14% of all direct procurements made were justified with the following two reasons: “**emergency procurements**” and “**protection of exclusive rights**”. For 5% of all procedures, the justification provided concerned “**the failure to obtain single bid in an open procedure**” and for another 5% of procurements the reason indicated was the fact that “**the procurement is implemented following the open call for design proposals**”.

Reason	Share
Supplementary works or services that cannot be technically or economically separated from the basic agreement...	43%
Partial replacement or extension to existing goods or installations...	19%
Emergency procurements ...	14%
Protection of exclusive rights...	14%
Failure to obtain single bid on the open procedure...	5%
Procurement is implemented following the open call for design proposals...	5%

Table 2: Reasons for implementing direct negotiations procedure without previously announced call for bids

Annulment of public procurement procedures

9% of all public procurements procedures implemented in the course of 2010 were annulled. Most frequently indicated reasons for tender annulments were “significant shortcomings in the tender documents” or “failure to obtain single acceptable bid”. Procedure annulment was noted in 43% of municipalities targeted with the research.

Although it is lower compared to the usual shares recorded in regard to the total number of public procurements implemented in the country, the share of annulled public procurements recorded among municipalities is still relatively high. In 2010, 9% of calls for public procurements announced by the municipalities from the research sample were annulled. This means that every 11th public procurement procedure was annulled.

Procedures were annulled in 43% of municipalities analysed. As regards the municipalities' size, the highest number of annulled procedures was noted among large municipalities, followed by medium municipalities. The lowest number of annulled procedures per municipality is one, and the highest number of annulled procedures per municipality is 12, which accounts for 27% of the total number of calls for public procurements announced by the municipality in question for the entire year.

As regards the reasons for procedure annulment (Table 3), in 26% of all cases the municipalities indicated that they have annulled the procurement procedure due to “significant shortcomings in the tender documents”, while in 23% of cases they said it was due to “failure to obtain single acceptable bid”. Equal shares of 13% of procedures annulled were result of “changes in the contracting authority’s procurement needs, due to unpredictable and objective circumstances” and “annulment decision taken by the State Commission on Public Procurement Appeals”. “Failure to obtain a single bid” was the reason for annulment of 10% of procedures, while 6% of procedures were annulled because “the number of bidding companies was lower than the minimum number required for public procurement contract awarding, as stipulated under the PPL”. Equal shares of 3% of procedures annulled were a result of “unpredictable changes to the contracting authority’s budget”, “inability of the contracting authority to select the most favourable bid due to significant violations to Article 210 of the PPL”, and “prices and conditions offered by bidders were less favourable than the actual market prices and conditions”.

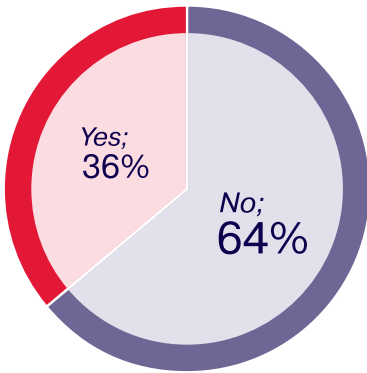
Reason	Share
Significant shortcomings in the tender documents	26%
Failure to obtain single acceptable bid	23%
Change in contracting authorities' procurement needs, due to unpredictable and objective circumstances	13%
Annulment decision taken by the State Commission on Public Procurement Appeals	13%
Failure to obtain single bid	10%
Number of bidding companies lower than the minimum number for public procurement contract awarding, as stipulated under PPL	6%
Unpredictable changes to the contracting authority's budget	3%
Due to significant violations to Article 210 of the PPL	3%
Bidders offered prices and conditions that are less favourable than the actual market prices or terms and conditions	3%

Table 3: Reasons for procedure annulment

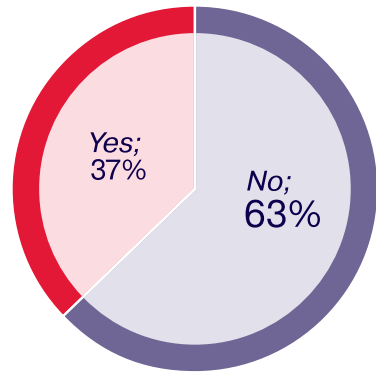
Results from the survey conducted with companies that participate in municipalities' public procurements

By assessing the municipal performance in implementation of public procurements with an average assessment of 3, more than half of surveyed companies believe that the main problems they encounter in public procurements implemented by municipalities are selection criteria, issues related to payment of receivables, imprecise tender documents and technical specifications, and subjective point-allocation to bids.

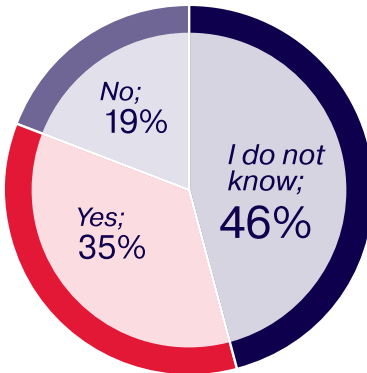
Are you familiar with municipalities' annual public procurement plans?



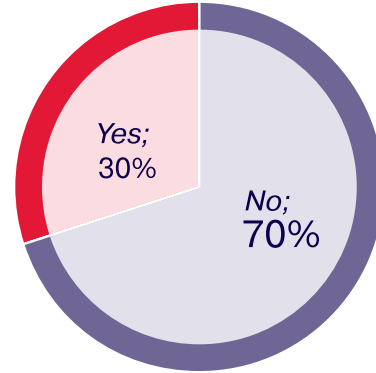
Have you ever seen or read an annual public procurement plan developed by a municipality?



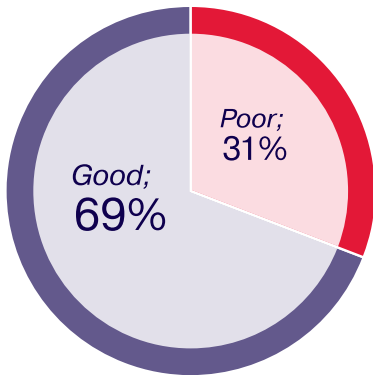
Are the municipalities' annual public procurement plans available/ public?



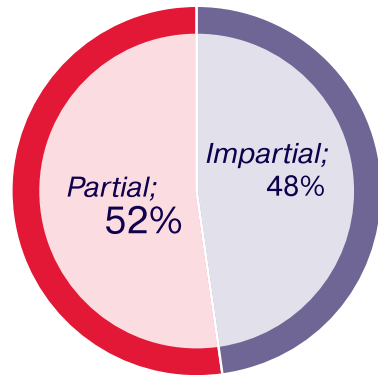
Do municipality send you requests for submission of bids on a regular basis?



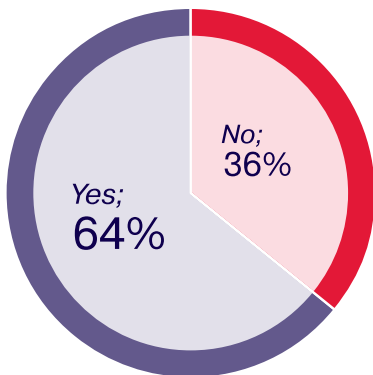
How do you assess the quality of tender documents for municipalities' public procurements?



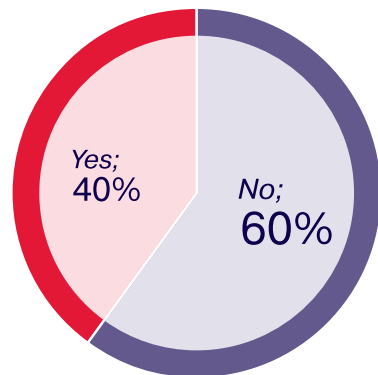
Tender documents for municipalities' public procurements are...?



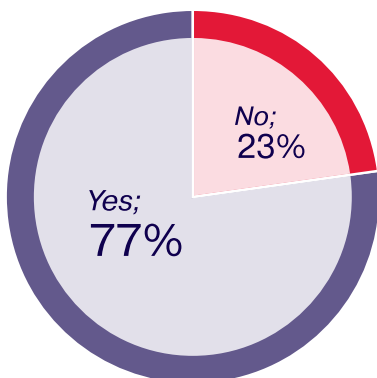
Are selection criteria conducive to malpractices, i.e., do they allow selection of a favoured certain company?



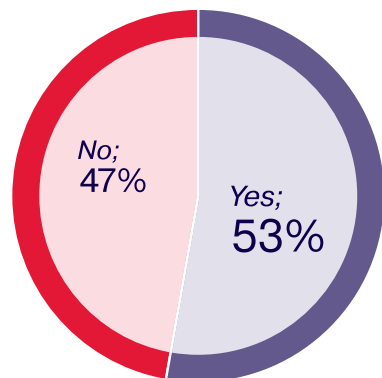
Do the eligibility criteria for economic operators discriminate?



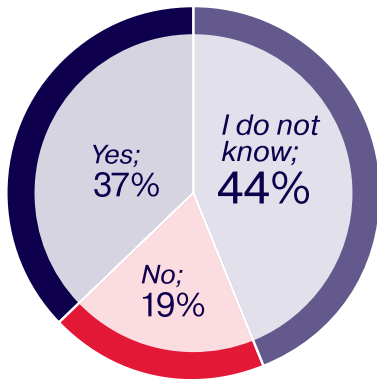
Do municipalities submit notifications on the decision to select the most favourable bid or annul the procedure within the legally-stipulated deadline of 3 days?



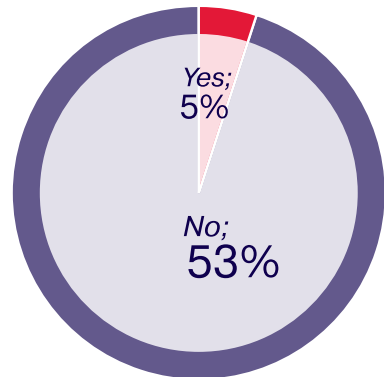
Do municipalities provide detailed rationale on the reasons behind the selection or annulment decision?



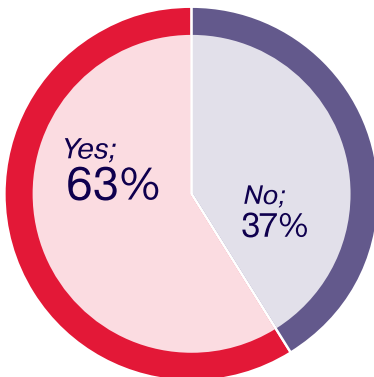
Are you given insight in public procurement documents kept at the municipality?



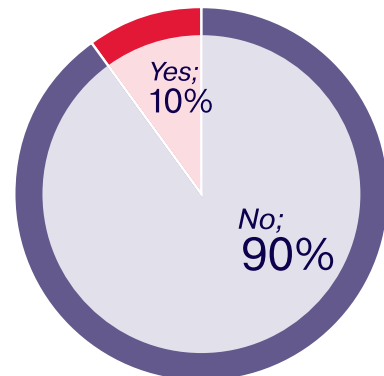
Have you ever witnessed a case where a member of the municipal public procurements commission was involved in conflict of interests?



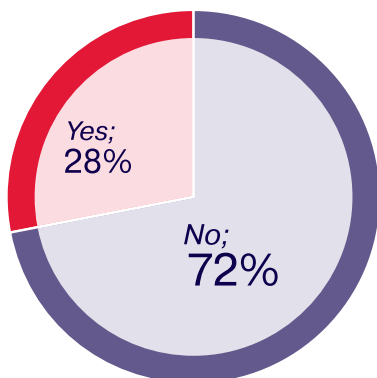
Do you think that public procurements implemented by municipalities are previously 'arranged'?



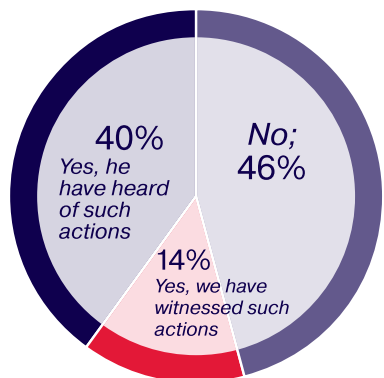
Do you think the public/ citizens have enough information on public procurements implemented by municipalities?



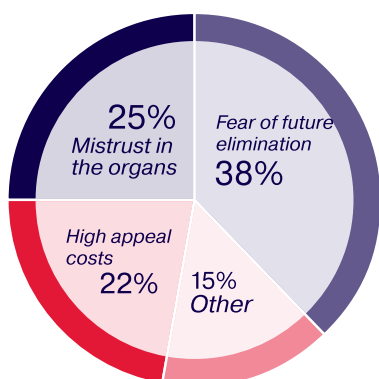
Have you ever lodged an appeal against a decision taken by a municipal public procurements commission?



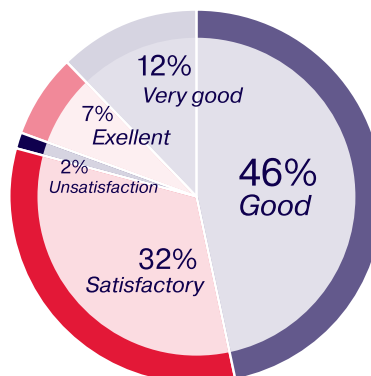
Do you think that there is corruption in municipalities' public procurements?



What is the reason for not lodging appeals against decisions taken by public procurements commissions in front of the SCPPA?



How do you assess the overall public procurement process in the municipalities?



What are the main problems you have encounter in public procurement procedures implemented by municipalities? (multiple answers are possible)

Selection criteria	60%
Problems related to payment	36%
Imprecise technical documents and technical specifications	31%
Subjective point-allocation and favouring of certain companies	29%
High amount set for the bank guarantee	20%
Unrealistic and unfeasible eligibility criteria for bidding companies	18%
Unjustified rejection of appeals lodged	16%
Lack of detailed rationale for the selection decisions	13%
Long period for selection decision taking	9%
Delayed realization of contracts signed	9%
Other problems	9%

Conclusions and Recommendations

The general impression gained from the research on municipal performance in the field of public procurements is that the Mayors have the final say in all aspects and stages of these procedures, starting from the selection of companies that will be addressed with requests for submission of bids, determining the selection criteria for the open procedures, all the way to interfering in the organizational set-up of public procurements and the municipality's approach towards public procurements. Thus, municipal employees responsible for public procurements act only as enforcers of decisions usually taken by the Mayors and heads of sectors or departments competent to implement public procurements.

One of the main conclusions inferred from research results is that there are no municipalities that implement public procurements in the same manner, same treatment and same interpretation of the provisions contained in the Law. These differences concern also the organisational structure, the commissions' composition, selection criteria, diligent record keeping and regular updating of documents related to public procurements, approach pursued in regard to developing annual public procurement plans, attempts made to increased competition in public procurements, technical equipment and staff resources needed to implement public procurements, etc. This raises the need for **unifying the public procurement process, at least in regard to organisational and administrative aspects, which will contribute to decreasing the dependence of public procurement outcomes on the individual will of certain municipal employees.**

As indicated in the general impression, the research showed that the greatest influence over public procurements and their treatment in the municipality comes from the head of the institution, i.e., the Mayor. Although the reasons behind many problems associated with implementation of public procurements can be located also with the officers responsible for their implementation, a significant portion of problems are created by the Mayors themselves. According to municipal employees, additional problems are created by the fact that on one hand the Mayors are deeply involved in public procurements, but, on the other hand, they have little knowledge of the Law and its enforcement. Hence, an important recommendation would be **to deliver specialized training or at least information sessions on public procurements for the municipal mayors, and in some municipalities to include also other employees tasked with implementation of public procurements who have not benefited from previous training or education (usually these are the municipal secretaries, heads of sectors or departments).**

Another conclusion inferred and the related recommendation concerns the insufficient knowledge on public procurements among public procurement officers, especially in small municipalities. This does not refer only to the Public Procurement Law and its enforcement, but also to knowledge and skills related to IT and computer literacy. Most problems related to implementation of public procurements

in the municipalities and detected with the research activities were justified with insufficient knowledge of the legislation in effect, as well as low level of IT and Internet literacy. Assistance requests made to the Bureau of Public Procurement usually concern the abovementioned issues. Taking into consideration that all public procurement officers attended different training sessions, they recommended **organization of specialized training, with smaller groups of participants and more hands-on exercises, in particular targeting their IT skills and work with the EPPS.** In essence, this recommendation concerns municipal employees from small, rural and underdeveloped municipalities.

Another group of problems faced by the municipalities when implementing public procurements is related to the contents of tender documents and technical specifications for goods being procured. In that, one should have in mind that municipalities no longer procure only basic and standard products and services, but more sophisticated products and services, and even performance of works. Thus, all interviewed municipal employees responsible for public procurements acknowledged the fact that they and other employees from different sectors and departments who hold specific knowledge on products, services and works being procured are not necessarily experienced in developing technical specifications. The municipalities procure different products, services and works with individual specifics and different characteristics. Therefore, the development of relevant technical specifications requires technical knowledge and education, whereas the public procurement officers usually have legal or economic education background. Despite the fact that these employees are usually assisted by employees from sectors and departments that have submitted the request for public procurement, they are not necessarily knowledgeable of all technical details and characteristics related to each type of products, services and works being procured. Hence, the need **to encourage the municipalities to more frequently engage outsourced experts in developing the relevant technical specifications**, notably because the municipalities, and especially the small municipalities, do not dispose with such experts, in particular knowing that imprecise technical specifications create problems in the implementation of public procurements.

The difficulties faced by municipalities in implementing e-auctions and e-procurements provide for an important research finding. Up to present, the municipalities failed to comply with their legal obligations on the number or the value of e-auctions and e-procurements to be implemented. The main reason thereof is the lack of staff and technical capacities, although an actual problem – as emphasized by the municipalities - is the companies' unpreparedness to participate in e-auctions and e-procurements. Therefore, inevitable is the conclusion that from 1st January 2012 the municipalities will not implement all public procurements with e-auctions, as stipulated in the Public Procurement Law. This problem is additionally complicated with the fact that all procedures should end with e-auctions, including the bid-collection procedures without previously announced call for bids, which are the most numerous procedures implemented by municipalities. This problem negatively affects competition between companies in local level public procurements, which is primarily due to companies' unpreparedness to participate in e-auctions and e-procurements.

On the account of the problem's gravity, municipalities are **recommended to closely monitor implementation of e-auctions and e-procurements and to timely react** in order to be able to fully comply with the Law and to organize e-auctions for all procurements. However, should they determine that it is impossible to organize e-auctions as the final stage of all procurement, the municipalities must undertake all adequate measures with a view to enable unhindered implementation of procurement procedures despite the fact that they would not end with e-auctions.

Another conclusion inferred from the research results indicates that municipalities lack responsibility for complying with the legal provisions that stipulate transparency of public procurements and regular submission of information to the EPPS, as well as awareness that public procurements imply public spending and therefore must be organized in transparent and accountable manner. In that, it should be stressed that transparency of public procurements is particularly important for the citizens, NGOs, media and the public in general. Hence the recommendation to **undertake legal measures and pursue best practices with a view to raise awareness among municipal employees on the**

need for increased openness, transparency and accountability in public procurements, which would ultimately lead to decrease in malpractices and corruptive behaviour. One possible solution to this problem would be to introduce and deliver topic-based workshops and training for municipal employees responsible for public procurements, in particular as regards the general principles of good management, transparency, accountability and responsibility.

Having in mind the emphasized characteristics of municipalities, in particular those related to their attitude towards and manner of implementing public procurements, as well as the specifics of municipalities as governing bodies, in the future the legislators must make due consideration of possible adjustments in the rules that govern public procurements in order to address municipalities' needs. If municipalities are faced with a series of problems in implementing public procurements one can most certainly expect that these problems are more distressing among small contracting authorities (kindergartens, libraries, museums, etc.). Thus the recommendation **to reconsider the possibility for introducing centralized procurements for small contracting authorities, but only for the purpose of overcoming problems that are related to contracting authority's size (lack of staff and technical equipment). In that, special attention should be paid to analysing and testing risks from increased corruption, as indicated by different global analyses, and related to grouped procurements.**

Ultimately, this leads to the recommendation that the Bureau of Public Procurements is the most competent institution to stimulate and make proposals on changes with the aim to improve the public procurement process among municipalities. The Bureau is the institution that is most knowledgeable of developments and events that occur at municipalities, partly due to their requests for assistance, and partly due to the training it delivers for municipal employees responsible for public procurements. Nevertheless, even the municipalities can initiate such activities, at least in regard to matters that result in major problems that affect the implementation of public procurements. Initiatives for changes can also be raised by the companies that participate in public procurement procedures, individually or through their guild associations or chambers of commerce, in particular because research results showed that in general the companies are dissatisfied with the manner in which procedures are implemented on the level of municipalities.

The fact that statements provided by public procurement officers, research findings and remarks put forward by bidding companies in local level procurements point to identical problems or areas speaks that weaknesses and shortfalls identified require additional and serious actions and measures aimed to improve the overall process in the municipalities. This will certainly lead to improved system of public procurements in the country as well.

