



Strategic Priorities of the Public Procurement Bureau for Further Development of the Public Procurement System in the Republic of Macedonia

2014 – 2018

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A - INTRODUCTION AND GOALS

Public procurement plays an important role for proper development of market economy and competition. The importance of having a sound and stable public procurement system may be concluded from the share of public procurement as part of the aggregate GDP of the country. So, in 2012, public contracts with a total value of approximately 56 billion Denars were awarded in the Republic of Macedonia, which is 12% of GDP.

Out of this reason, the basic goals that are to be achieved through the public procurement system are: transparency, accountability, non-discrimination, competition and other basic principles which further on remain the basis of the public procurement system, as well as innovation, sustainability, social and environmental considerations, energy efficiency etc. Transparency, free competition and legal certainty in the field of public procurement reduces business risk in the Republic of Macedonia, by which this field becomes attractive both for foreign business entities and investors, which will have significant effects in the future for the economic growth of the country.

This strategic document of the Public Procurement Bureau consists of chapters with goals, measures and activities. Measures are divided into three categories – short-term (up to 1 year), medium term (1 to 3 years) and long term (3 to 5 years). This document shall cover a period of 5 years, from 2014 to 2018.

Mission

The Public Procurement Bureau (hereinafter: PPB) has a mission to provide the Republic of Macedonia with a secure and safe public procurement system that will fulfill the requests for transparency, equal treatment, openness and which will be the official source for expert information and advices on the good practice concerning the public procurements. In order to achieve this, PPB will develop the capacities of its staff and it will continue fostering the positive relations with its colleagues, associates and the business community.

Goals

It is one of the goals of the Government of the Republic of Macedonia to create an efficient, professional and skilled public administration which will provide high-quality public services to the citizens and which will respond to all the challenges in the process of becoming a member of the European Union. Efficient public procurement is one of the fundamental prerequisites for achieving this goal. The process of planning and implementing the activities which will draw the field of public procurement as a whole nearer to the aforementioned goal has already begun. In the further development of the public procurement system, the following goals shall be covered:

- Professionalization of public procurement officers – that is a long-term process which is to result in greater efficiency of the public procurement system, less errors when carrying out procedures in practice and balanced

setting of requirements and criteria for the procedure, all to the end of achieving the best value for money during the whole life cycle of the subject matter of contract.

- Innovations - Public procurement, having a large share of public consumption, may be a strong instrument sparking innovations in terms of discovering new technologies which will be environment-friendly and more efficient in the use of energy, etc. Public procurement is part of the Innovation Strategy of the Republic of Macedonia 2012 - 2020.
- Full integration and coordination of the public procurement system. Integration process is evident in the existing trends for harmonization of the legal framework on concessions and PPPs and its adherence to the regulations governing public procurement. Crucial element is coordination of activities of the various institutions and harmonized approach to the public procurement system by all stakeholders in the country. The role of public procurement within contracting authorities has taken on a new importance - the result is to buy more smartly, spend less and collaborate with other contracting authorities in purchasing.

B - PRIORITIES

1. Legal framework

The public procurement legal framework in the Republic of Macedonia comprises the Law on Public Procurement with all by-laws arising from it. In addition, various other material regulations regulating different aspects of economy and law have a large influence, taking into consideration that public procurement is a multidisciplinary field which has points of contact with many other fields. In this context other regulations ought to be mentioned which regulate contract relations, as well as administrative law, criminal law and proceedings, regulations in the area of protection of competition and fight against corruption. In a broader sense, the legal framework encompasses also regulations on various aspects of the subject of procurement, such as construction regulations having an influence on contract award procedures in the field of construction works, etc.

Law on Public Procurement

The Law on Public Procurement was adopted at the end of 2007, and entered into force on 1 January 2008. In the past period several amendments and modifications were adopted. In the meantime all the by-laws envisaged by law were also adopted, by which the public procurement legal framework was rounded off in a timely fashion.

The goal of the Law on Public Procurement is to ensure competition between economic operators, equal treatment and non-discrimination, transparency and integrity in the contract awarding process and rational and efficient use of public funds in contract award procedures.

The Law encompasses all issues in the area of public procurement which relate to the manner of awarding contracts and contract award procedures, the competences of the Public Procurement Bureau as a competent state authority for monitoring the execution of public procurement, the competences of the State Appeals Commission and remedies in contract award procedures. In other words, subject of regulation of the Law on Public Procurement is the global public procurement policy, by means of setting up institutional conditions for higher objectivity, transparency and legality in managing public procurement, responsibility of competent authorities for implementation of contract award procedures and issues regarding remedies in contract award procedures.

The amendments and modifications to the Law on Public Procurement introduce several significant novelties in the use of the e-procurement system; mandatory certification of public procurement officers and other systemic measures.

However, there is room to further enhance the Law on Public Procurement by the new European regulations that are to be transposed therein, as for instance the Defence and

Security Procurement Directive etc. In addition, an analysis is necessary of some of the instruments introduced by the latest amendments and modifications to the law, such as negative references and the effect of mandatory electronic auctions.

Bylaws

The public procurement system, apart from the Law on Public Procurement, is additionally regulated by various by-laws:

- Decision on the Indicative List of Contracting Authorities
- Decree on the Common Procurement Vocabulary
- Decree on the Services Subject to Public Contracts
- Decree on the Types of Construction Activities Subject to Public Works Contracts
- Rulebook on the Manner of Use of the Electronic System for Public Procurement
- Rulebook on the Form, Contents and Manner of Preparation of the Annual Public Procurement Plan
- Rulebook on the Manner of Estimating the Value of Public Contracts
- Rulebook on the Contents of Tender Documentation
- Rulebook on the Opening of Tenders and on the Form of Minutes from the Tender Opening Session
- Rulebook on the Form and Contents of the Procedure Outcome Report
- Rulebook on the Form and Contents of the Contract Notice, the Procedure Cancellation Notice and the Form of Taking Records of Simplified Competitive Procedures
- Rulebook on the Form and Contents of Contract Notices and Contract Award Notices
- Code of Conduct in Public Procurement
- Fee Book on the Amount of Fees for Use of the Electronic System for Public Procurement
- Rulebook on the Form and Contents of the Notice to Candidates, i.e. Tenderers, on Decisions with Reference to the Conducted Pre-qualification, the Award of a Public Contract, the Conclusion of a Framework Agreement or Cancellation of the Contract Award Procedure
- Rulebook on the Education Programme in Public Procurement, Train-the-Trainers Programme, on the Form and Contents of the Certificate on Passed Exam for Procurement Officers and Trainers, as well as on the Amount of the Fee Paid by Education Participants, and

- Rulebook on the Form and Contents of the Notice Form for the Establishment of a Qualification System.

Law on Concessions and Public Private Partnership

The Law on Concessions and Public Private Partnerships regulates the awarding of concessions for goods of general interest and contracts establishing public private partnership, the remedies for each person that has or had an interest in obtaining such a contract and that had risked or has a risk to be damaged in the procedure for awarding such contracts, as well as other issues regarding the concessions for goods of general interest and contracts establishing public private partnership.

The objective of this Law is to enable engagement in financing concessions for goods of general interest and contracts establishing public private partnership based on the principles of equality, transparency, non-discrimination, proportionality, mutual recognition, environmental protection and efficiency of the procedure for concluding contracts for concession for goods of general interest and contracts establishing a public private partnership, as well as quality and efficient realization of the works and services from the concluded concession contracts and contracts establishing a public private partnership.

The current position of concessions separated from the public procurement system has proven to be a shortcoming taking into account that public services and works concession contracts are part of the public procurement system on EU level, as well as the fact that they are part of Chapter 5 - public procurement. Out of these reasons, the coordination between the competent bodies should be improved and the possibility for integration of the two systems should be considered in longer term.

Other laws

Apart from the abovementioned laws, the legal framework encompasses other laws related to the public procurement system. Among them the following may be underlined:

1. Budget Law and laws on executing budgets;
2. Law on Public Debt;
3. Law on Prevention of Corruption;
4. Law on Prevention of Conflict of Interest;
5. Criminal Code of the Republic of Macedonia;
6. Law on Protection of Competition;
7. Law on Public Enterprises;
8. Law on State Audit and

9. Contract Law.

Approximation with EU law

EU public procurement law, as everywhere in the world, is dynamic and is constantly being enhanced. The Republic of Macedonia, as a future EU member country, will accept the novelties arising from EU law and from good international practice. This includes transposition of already adopted directives related to the public procurement system, as well as of new directives that are announced by the EU.

In 2011, SIGMA prepared a detailed comparative analysis (Peer Review) of the public procurement system in the Republic of Macedonia. These Peer Review's findings were encouraging, and they will help immensely to identify areas where additional work is necessary so as to reach European standards and to implement European public procurement law and practices.

The Republic of Macedonia should transpose the Defense and Security Procurement Directive 2009/81/EC. Taking into account that this Directive is meant for a limited number of users, the best way of adoption seems to be a separate law. Intensive cooperation will be necessary with the institutions conducting such procurement procedures, and especially with the Ministry of Defense and the Ministry of Internal Affairs.

In addition, Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles should be transposed. In the process of transposition of this Directive, intensive cooperation will be necessary with the Ministry of Environment and Spatial Planning.

Taking into consideration that the Remedies Directive 66/2007/EC has not been fully transposed (scope of the ineffectiveness and deadlines), further analysis of LPP is needed in order to make its subsequent relevant amendment. Close cooperation with the State Appeals Commission is envisaged.

Within the process of preparation of the Republic of Macedonia for the start of the accession negotiations for EU membership, the Republic of Macedonia formed working groups for each chapter, including Chapter 5 which covers public procurement and concessions. Head of this Chapter is the Public Procurement Bureau. The Bureau, furthermore, participates in the meetings of the Advisory Committee on Public Procurement and its working groups, where current situations are discussed with regard to public procurement in member countries, as well as new legislative initiatives on the level of EU.

EU announced more thorough reform of the public procurement regulations by adopting new legislative package by the end of 2013. This package shall replace the existing basic directives of 2004. Thus, harmonization of Macedonian public procurement legislation with that of the EU is planned on longer term.

National public procurement framework

The Republic of Macedonia will also constantly improve its national public procurement system by solutions which do not only arise from EU Public Procurement law, but also from good domestic and international practice.

Strengthening the concessions and PPP system is necessary so that the business community may be provided with additional investment opportunities and which will, as a consequence, have an increase in budget revenues and multifold positive economic effects.

Moreover, rationalization and simplification of required documentation for participation in contract award procedures is necessary. Out of this reason, various opportunities and alternatives should be deliberated upon so as to achieve this goal. This may include reduction of the number of documents, enhancing the functionality of the economic operator's profile where required documents for participation will be maintained electronically, electronic connection of ESPP with the respective registries of the Central Registry of the Republic of Macedonia (reaching interoperability of both systems), etc.

The experience until now has shown that there is a lack of certain rules in terms of the phase of execution of public contracts. Contracting authorities need certain guidelines how to manage concluded contracts, who should be the one having this function within the contracting authority, how they should handle risks arising from the contract execution, how they should behave with procurement contractors, whether and to what extent they may amend the contract conditions, etc. An analysis of foreign experience in this field is needed in order to prepare clear guidelines to tackle this issue.

In this context, PPB will analyze the issue of setting standard contract conditions of public contracts taking into account foreign experience, especially with regard to construction works. Further consultations are needed with the representatives of the chambers of commerce.

2. Institutional framework

The institutional public procurement framework in the Republic of Macedonia encompasses several institutions and bodies which can be classified in two groups: institutions with key competence in public procurement and institutions which, in addition to other activities, have competence tackling public procurement. The first group comprises the following:

- Public Procurement Bureau; and
- State Appeals Commission;

The second group includes:

- Ministry of Finance;
- Ministry of Economy;
- State Audit Office;
- State Commission for Prevention of Corruption;
- Commission for Protection of Competition;
- Ministry of Justice;
- Administrative Court and Higher Administrative Court.

The goal of this document within the institutional public procurement and concessions framework is to enhance cooperation among the entities having powers in this field, as well as to strengthen their individual capacities and powers.

Apart from the aforementioned institutions, a significant role in the public procurement system play also the courts of first instance, the Public Prosecutor's Offices, the State Ombudsman's Office and the units of public internal financial control within contracting authorities. Taking into consideration that in order to reach complete regulation of the public procurement system, amendments are necessary to some regulations which are under the competence of other institutions, it is obvious that coordination in the operation of institutions is of key importance for a successful functioning of the public procurement system.

Public Procurement Bureau

The Public Procurement Bureau, as the most important institution, within its powers manages the public procurement system by giving proposals for the adoption of legal and other acts in the field of public procurement, by monitoring and analyzing the enforcement of the Law and other public procurement regulations, by organizing public procurement education, maintaining and developing the Electronic System for Public Procurement, coordinating international cooperation in the field of public procurement and by means of other powers stipulated by law. The Bureau plays a significant role in the country's EU accession process and the obligations arising from this process, i.e. transposition of relevant EU regulations on public procurement in the national legislation. This is of key importance in the coordination of activities under Chapter 5 from the National Programme for Adoption of the Acquis (NPAA). At the same time, the Bureau is the head of the public procurement working group, which should prepare the negotiation positions for Chapter 5 in the forthcoming period. In the broader context of international relations, as well as learning from the experiences of the international community, the Law determines various obligations of the Bureau, especially with regard to collecting and evaluating best practices of other countries and their transfer in the Republic of Macedonia.

Furthermore, a goal of the Bureau is the proper functioning of the public procurement system by means of initiating amendments to laws and by-laws so as to improve the

public procurement system, providing opinions regarding the provisions and the enforcement of the Law, advising and assisting contracting authorities and economic operators.

The Public Procurement Bureau is also a central body into which all data flow regarding conducted contract award procedures on national level. With this competence, the Bureau directly stimulates transparency and competition, since it makes these data available to all interested stakeholders without any restrictions. More precisely, on ESPP all notices are published, as well as the records of concluded public procurement contracts. These data are a strong instrument for the preparation of detailed statistical reports and their analysis, which on the other hand is used for the determination of further measures for promotion of the public procurement system.

In this regard it is of importance to continuously strengthen the capacities of PPB. This means more precisely that not only the number of employed people should be increased but mainly the individual skills of the employed people need to be improved and continuously held up to date, as well as policies to be developed for retaining the existing trained and professional staff.

Continuous promotion of advanced means of communication to facilitate the access of contracting authorities as well as economic operators to PPBs information is necessary.

State Appeals Commission

The State Appeals Commission is competent to resolve appeals in public procurement contract award procedures stipulated by the Law on Public Procurement, as well as appeals in contract award procedures for concessions and public private partnership as regulated by law. The State Appeals Commission is an autonomous state authority with the capacity of a legal entity which provides legal remedies on the grounds of the principles of legality, efficiency, cost-effectiveness and contradiction of procedure, all with a view to contributing to the strengthening of the overall public procurement system, by means of high-quality and transparent operation. The mission of the State Appeals Commission is to ensure fast, objective and efficient legal remedies in public procurement contract award procedures, as well as contract award procedures for concessions and public private partnership. This mission is accomplished by the State Appeals Commission by means of, above all, implementation of the Law on Public Procurement, whereby it is confirmed that it is realistically and practically achievable, maintaining the pace with contemporary needs and reform flows in the Republic of Macedonia. As a result of the aforementioned, it is necessary for the State Appeals Commission to continuously strengthen, develop and maintain the human resources.

Ministry of Finance

The Ministry of Finance is a body of the state administration, within which composition, among other institutions, is also the Public Procurement Bureau, pursuant to the Law on Organization and Operation of State Administration Bodies (“Official Gazette of the Republic of Macedonia” No. 58/00, 44/02, 82/08 and 51/2011).

The significance of the Ministry of Finance for the public procurement system is not only seen through its role in creating and executing the budget, but also the fact that the Ministry is the proposer of legislation in the field of public procurement. Thus, even though the Public Procurement Bureau has the lead role in the practical preparation of regulations, the Ministry is the proposing party before the Government of the Republic of Macedonia.

Ministry of Economy

The Ministry of Economy, as a competent institution pursuant to the law in the field of public private partnership, manages the development of the public private partnership system by means of preparing proposals for the adoption of legal and other acts and their amendments in the area of public private partnership, by monitoring, analyzing and providing expert assistance and opinion in terms of conducting the procedures. The Ministry of Economy plays a significant role in the process of drawing the country nearer to the EU and the obligations arising from this process, that is to say, implementation of relevant EU concession and public private partnership regulations in national legislation, and in this regard it monitors, analyses and examines current European and global trends, knowledge and experiences in this area.

State Audit Office

The State Audit Office (SAO) is the supreme audit institution in the Republic of Macedonia, whose goal is to timely and objectively notify the Assembly of the Republic of Macedonia, the Government and other holders of public functions of findings from conducted audits.

SAO conducts regularity audit and performance audit. When regularity auditing, among other things, audit teams also inspect and assess the use of funds in accordance with legal regulations. In these frames inspection is carried out as to the manner of planning, conducting and enforcing public procurement procedures conducted in the period under audit.

State Commission for Prevention of Corruption

The State Commission for Prevention of Corruption pursues its legal powers in preventing corruption and conflict of interest within the laws and by means of tools it has on its disposal, working at the same time in terms of prevention and in terms of

repression of socially harmful behavior which is a compound part of corruption as a social problem.

Appreciating the substantial importance of inter-institutional cooperation as a precondition for efficient fight against corruption, the State Commission for Prevention of Corruption in 2007 signed a Protocol of Cooperation with 17 institutions with powers in the field of prevention of corruption and conflict of interest, which has proven to be a useful tool for fast exchange of information and documents, thereby contributing to updating the activities of involved institutions, and which on the other hand ensures strengthening the immediate cooperation by means of joint operations on specific and more complex cases of corruption, mutual expert assistance and joint action in amending regulations under the competence of the respective institutions. The Public Procurement Bureau is also a signatory to this Protocol.

Within the cooperation established under this Memorandum, Public Procurement Bureau actively participated in the preparation of the State Anti-Corruption Commission Programmes on Prevention of Corruption and Conflicts of Interest.

Commission for Protection of Competition

The Commission for Protection of Competition is responsible for the implementation of the Law on Protection of Competition. The Commission is an independent state authority in the capacity of legal entity, independent in its operations and in reaching decisions within the competences stipulated by law.

Main competences of the Commission for Protection of Competition are controlling the application of provisions and regulations adopted on the basis of the Law on Protection of Competition, monitoring and analyzing market conditions to the extent necessary for development of free and efficient competition, conducting procedures and reaching decisions in accordance with legal provisions.

Ministry of Justice

The Ministry of Justice as a state administration body has the powers to develop policies, prepare and propose laws and other regulations in the field of the judiciary, as well as to monitor the implementation of regulations in the areas it bears competences.

From the perspective of public procurement, the Ministry of Justice is important because of the fact that it is the proposing party of several related key legal regulations, such as the Contract Law, laws in the field of prevention of corruption, laws regulating the judicial system, and especially courts settling administrative matters, etc.

Administrative Court and Higher Administrative Court

The Administrative Court, as one of the holders of the judicial power in the court system of the Republic of Macedonia, which exercises its judicial power on the whole territory of the Republic of Macedonia, was established in accordance with the Law on Courts (“Official Gazette of the Republic of Macedonia” No.58/06), and began functioning on 5.12.2007.

The Administrative Court, with the goal of provision of court protection of rights and legal interests of physical and legal entities and for the purpose of ensuring legality, decides in administrative disputes upon the legality of acts of state administration bodies, the Government, other state authorities, municipalities and the City of Skopje, organizations established by law and legal and other entities in exercising official powers (holders of official powers and competences), when deciding upon rights and obligations in individual administrative matters, as well as in acts adopted in misdemeanor procedures.

In accordance with the Law on Administrative Disputes, the Higher Administrative Court decides upon appeals against the decisions of the Administrative Court adopted as a first instance. It provides for the second instance of the procedure. In this way, it also fulfills the constitutional guarantee of having a right to appeal each decision before a court of law.

The Higher Administrative Court is a newly established court, which pursuant to the Law on Courts (“Official Gazette of the Republic of Macedonia” No.58/06, 35/08 and 150/2010) is established and exercises its judicial power on the whole territory of the Republic of Macedonia.

3. E-procurement

The strategic importance of electronic procurement (e-procurement) can be summed up on the achievable performance impacts or benefits from:

- Procedural simplification,
- Increased competition,
- Larger savings in terms of human and financial resources.

Following the strategic commitments of the Government of the Republic of Macedonia directed at increase in the use of information technologies in the operation of state administration bodies, ESPP was set up and running in 2006 as an application for electronic submission of tenders. At the beginning it was used only by several contracting authorities as a pilot project, but in the course of time its scope was extended to all contracting authorities. After the adoption of the existing Law on Public Procurement, in 2008 the web information system which was prepared by the Bureau for publication of contract notices and contract award notices became also operational, by which the use of information technologies in public procurement was increased. At the same time, ESPP was upgraded by an e-auctions module. In the year of 2010, these

two systems were integrated into a unique integrated ESPP which presented a significant step forward. The Government was committed to increase the use of e-auctions after which it was intervened in the law and a gradual mandatory use of auctions was introduced in all procedures, where possible.

In the course of 2012, taking into account the data on conducted auctions, it may be concluded that in the Republic of Macedonia 13% average savings were realized or Denar 2,680,501,017.00 in absolute terms, or over EUR 43 million calculated as difference between the initial price at the e-auction (lowest price of all tenders previously evaluated) and the final price at the e-auction, i.e. the value of the concluded contract with auctions having the criterion lowest price, whereas with auctions having the criterion economically most advantageous tender calculated as the difference between their own initial price and the price after the auction of the tenderer with the most advantageous tender¹.

The e-procurement platform in the Republic of Macedonia is already a very advanced and complex system. ESPP is a user-friendly web based procurement platform that covers all phases of the pre-awarding phase (e-notice, e-access, e-tenders, incl. e-signature, e-evaluation, e-auction, e-selection). It is an advanced procurement platform that is well implemented and provides user friendly functionalities that support the users. As the notices are structured after the European standards, it will be easy to extend them to be fully compliant.²

Enhancement of the practices of use of ESPP

The practice shows that the electronic availability of tender documentation provides for significant benefits, both for the economic operators and for the contracting authorities. Economic operators have a simple and fast access to tender documents in electronic form, whereas contracting authorities must not spend human resources and time to send the tender documentation to interested economic operators. Out of these reasons, the goal is to increase the use of the possibility provided by ESPP for uploading and downloading the tender documentation.

Taking into consideration the trends of conducting electronic procedures, as well as the benefits of their implementation, with regard to both contracting authorities and economic operators, it will be deliberated upon the possibility to introduce gradual mandatory use of electronic procedures.

Analysis of effects and savings resulting from the implementation of electronic procedures, availability of tender documentation, submission of electronic tenders, as well as analysis of the usefulness and benefits from introducing new tools and upgrade to the electronic system for public procurement.

¹ PPB 2011 Annual Report.

² Final Report Component 5, Act. 5.1. “Analysis of existing e-procurement platform” 2012

Enhancing ESPP's security and stability

Hardware and software upgrades to ESPP. In the course of the forthcoming period, in terms of developing the Electronic System for Public Procurement, it is envisaged to realize the setup of the system on the other side as well, in order to increase reliability and stability of ESPP. This means that it is necessary to host the system in a cloud. Thereby, higher redundancy of the system itself would be achieved and world standards and norms would be adhered to for this type of dynamic applications. After taking the source code, an audit will be conducted to the code by an independent company and a simulation will be carried out so as to set the application in a virtual environment. It is foreseen to also conduct a security audit to ESPP whereby potential weaknesses and omissions would be detected with regard to the application's security.

With regard to the purchase of hardware equipment, procurement of a data storage and maintenance system is foreseen which will increase security in storing data which is kept in the system. Apart from the data storage system, procurement of an external data backup device will also be conducted where data will be backed up and stored on a safe location. Depending on the increase in the use of the system and improvement and increase of the performance of the application itself, at a certain moment it will be also necessary to replace the old hardware infrastructure with a new one (above all, change of servers and the network infrastructure by means of which servers communicate with each other).

IT security audit. It is necessary to ensure a high level of quality, security and a high level of availability of ESPP. This activity should be conducted after ESPP is upgraded, but also later.

Introduction of new e-procurement tools

Dynamic purchasing system (DPS)/ e-catalogues (post-award). Dynamic purchasing systems and electronic catalogues are an optional tool foreseen by EU Public Procurement Directives. They could be rather useful in centralizing certain segments of the public procurement system, i.e. introducing central purchasing on a certain level or scope of procurement. Taking into account the aforementioned, the introduction of these tools will depend to a large extent on the policies and the degree of centralization.

E-invoicing/ e-payment. This is the final stage of the public procurement process and, consequently, it should be implemented in ESPP after all previous steps are taken. This measure should be thought about in the long-term.

Necessary steps:

- Analysis of existing transactions
- Cost- Effectiveness of measures
- Implementation from technical and financial perspective.

4. Certification and training

Rounding up the legal framework is just the first step in achieving the goals of an efficient public procurement system. However, Public Procurement Bureau did not allow for the Republic of Macedonia to make the mistake many other countries did and to stop there. On the contrary, at the very beginning of its establishment, the Bureau recognized the need to undertake a series of systemic measures to ensure proper application of the regulations, since without proper institutional and operational support, legal norms might never be put into practice. Therefore, in 2010 already, the Bureau started carrying out Public Procurement Education Programme, after having organized a comprehensive train-the trainer programme and certified around 50 trainers in cooperation with the USAID the previous year. Both the Programme and the whole concept of the training were continuously developed and adjusted to the needs and, in 2011, Government of the Republic of Macedonia accepted the Bureau's proposal to introduce comprehensive and mandatory certification of public procurement officers, which started to be implemented in 2012. The goal set - professionalization and strengthening expert staff in the field of public procurement - plays an important role in improving efficiency of the overall public procurement system in the Republic of Macedonia. Still, professionalization and strengthening of the capacity of specialized expert staff is not only limited to training and research of the needs for professional specialization, but also achieving this function provides for a much broader approach and challenge. The goal of professionalization is by means of training and professional specialization of procurement officers to improve the implementation of the public procurement legislation.

To the end of acquiring new experience and boosting the international cooperation in the field of education, the Bureau took part in the realization of the IPA Regional Training Project in Western Balkans and Turkey, funded by the EU. The Project produced a whole set of materials that were localized and translated into Macedonian language, while the trainer modules were attended by 20 persons from the Republic of Macedonia, together with representatives from the other participating countries. The Bureau also represented Republic of Macedonia in the Project Steering Committee. The Project was completed in June 2013.

The certification programme is regulated by the Education Programme Rulebook. The Rulebook also contains provisions about the train the trainer's program and the form and content of certificates. To accomplish full professionalization and skillfulness of procurement officers, officials and contracting authorities, a structure of qualifications has been prepared for public procurement officers. Benefits of the program are the establishment of clear and unique qualification and certification standards. Main target groups of the training and certification programme are the following:

1. Trainers, high-level experts and PPB staff
2. Contracting authorities and officials
3. Economic Operators

Depending on the target groups, the education is based on the following three levels:

Specialized programme for trainers in the public procurement system, high-level experts and PPB Staff

The goal of this specialized programme is to obtain highly skilled and professional trainers who will conduct education in public procurement for contracting authorities and economic operators. The Bureau, that is, the Training Academy, will decide upon the need for conducting education according to this specialized programme, depending on the number of trainers on the list of trainers.

Training programme for procurement officers in contracting authorities

The Law on Public Procurement introduces the obligation for mandatory certification of procurement officers in contracting authorities. This is done with the purpose of increasing the capacities for application of the Law in the public sector and of decreasing errors when conducting contract award procedures.

Training for economic operators in coordination with the chambers of commerce, specialized programs for tenderers

Specialized trainings shall be organized for economic operators in accordance with the training programme for economic operators. With these entities, certification is not mandatory, but the goal is still to leave room for economic operators, by means of these trainings, to strengthen their capacities for participation in contract award procedures. Chambers of commerce may also take part in this process.

Establishment of the Public Procurement Training Academy and annual assessment of the education program

It is planned that the professional education and certification is organized and implemented by a Public Procurement Training Academy, which will be established as an organizational unit of the Bureau. The establishment of this organizational unit will facilitate the logistical organization of trainings and full focus of the persons employed by the Academy in accomplishing its basic activity; otherwise the PPB resources allocated on other activities would have to take over.

This Academy could cooperate closely with the academic and scientific community in Macedonia. Benefits from such cooperation could be higher influence of public procurement topics on university level in order to recruit qualified staff in public procurement, better public visibility and a sustainable business model to finance the Academy. In addition, a contribution of having cooperation with a higher education

institution would be the use of scholarly and research papers. The Bureau could become actively involved in certain scholarly and research projects related to public procurement.

The establishment of this Academy within the PPB's organizational structure would enable PPB to carry out its legal competencies related to the organization of public procurement training efficiently and in an optimal manner.

Strengthening the capacities and knowledge by concessions and PPP guidelines and manuals and elaboration and implementation of a specific training program

In view of the new legal framework on concessions and public-private partnerships, preparation of a Guideline for Concessions and a Guideline for Public-Private Partnerships is planned. Apart from that, a special training program will be elaborated and implemented in cooperation with the Ministry of Economy.

5. Strengthening competition

Competition in public contracts can be strengthened mainly by these institutions:

- Public Procurement Bureau,
- State Appeals Commission,
- State Audit Office,
- Commission for Prevention of Corruption.

Public Procurement Bureau

PPB can contribute with exchange of information and techniques on how to detect cartels in public procurement cases in cooperation with the Commission for Protection of Competition.

Furthermore, the PPB should analyze the annual reports of the State Appeals Commission and make necessary amendments to the Law on Public Procurement to strengthen the competition aspect.

Also, a guideline should be issued for economic operators on how to complain against illegal behavior of contracting authorities in such cases.

State Appeals Commission

The State Appeals Commission by its function in the public procurement system has the goal of eliminating illicit restrictions of free competition in the whole process of conducting public procurement, and in the sense of disproportionate requirements and conditions set in tender documentations for qualification of economic operators in procedures, further on, defining technical specifications for the benefit of one or a group of economic operators, etc. In its annual report, the State Appeals Commission regularly states its remarks and suggestions for further improvement and upgrade of the public procurement system in the Republic of Macedonia.

Strengthening the material and staff conditions is necessary for more efficient operation of the State Appeals Commission taking into account its competences in the area of legal remedies in contract award procedures for public procurement, concessions and public private partnership. This means increase of staff so that the State Appeals Commission could work continuously on the newly assigned competences. For that purpose, increase of the budget is necessary in the part devoted to education in the field of concessions and public private partnership.

State Audit Office

The State Audit Office should focus on detecting obstacles in awarding procedures after the conclusion of the contract. In relevant cases they should inform the State Commission for Protection of Competition as soon as possible.

Commission for Protection of Competition

The Commission should further analyze its own experience (with the pharmaceutical industry) or foreign successful experience of how to combat cartels in this field. Using the PPB database for getting the evidence might be useful. Furthermore, the Commission, in cooperation with the Public Procurement Bureau, should issue a guideline on detecting cases of collusion in public procurement.

6. Remedies

The State Appeals Commission was established with a view to resolving appeals in contract award procedures for public procurement, concessions and public private partnership, that is to say, to improving the overall public procurement system in the Republic of Macedonia and ensuring efficient remedy system. Contract award procedures are based on a complex and strict legal procedure. As a result of this complexity of procedures and especially its connection with the process of spending public funds, for the development of the public procurement system it is of crucial importance the whole process of decision-making of the State Appeals Commission to last as short as possible.

Legal remedies in contract award procedures, respecting the fundamental procedural principles, are fast, especially as a result of the suspense character of the appeal, that is to say, the inability to execute the decision for awarding the public contract until a decision is reached by the State Appeals Commission.

The operation of the State Appeals Commission upon the appeal lodged in contract award procedures is transparent, that is, participants in procedures do not doubt at any moment its objectivity and legality. This is achieved by means of providing inspection in the documentation of ongoing cases, publication of received appeals, detailed explanation of all reasons for the adoption of the decision and publication of decisions of the State Appeals Commission. The decisions of the State Appeals Commission are subject to review by the Administrative Court of the Republic of Macedonia, and against the decisions of the Administrative Court, protection is also possible before the Higher Administrative Court.

Measures regarding the State Appeals Commission

The State Appeals Commission currently operates with a large number of appeals lodged in contract award procedures. Since 2012, the competences of the State Appeals Commission have been also broadened by the latest amendment and modification to the Law on Public Procurement i.e. it has been assigned with the competence to decide upon appeals in contract award procedures in the field of concessions and PPP, as well as to decide upon already concluded public contracts in certain cases, in accordance with the Remedies Directive 2007/66/EC.

So that SAC would decide more efficiently and could react upon the challenges arising from new competences, the following should be provided:

Strengthening the capacities. So as to have a stable, proper and functional system of remedies, one must provide the necessary knowledge, material and human resources.

Transparency of decisions made. The State Appeals Commission takes into consideration that one of the most important elements in remedies is certainty and rule of law, which is provided by making decisions which are consistent with previous ones.

For that purpose, it is indispensable for the State Appeals Commission to prepare web supported tools for searching through the contents of adopted decisions and other decisions, which will ensure that the necessary information is found in a fast and simple manner by contracting authorities and economic operators. SAC will further continue with the publication of short summaries of its decisions which will regularly publish on its website. Since the beginning of its operation, the State Appeals Commission and the Public Procurement Bureau have had identical stances towards the application of the Law, and such practice should continue in future as well. This will provide for better coordination of the Commission itself when deciding upon the appeals and greater consistency of its decisions.

Measures regarding the Administrative Court and the Higher Administrative Court

Specialized Council for Public Procurement Cases. Cases brought before the Administrative Court under Article 230 of the Law on Public Procurement have to be resolved in an urgent procedure. That solves the need to resolve disputes very quickly, but this measure does not solve the problem of consistent decision-making. One should take into consideration that for the sake of consistence of decision, the Administrative Court and the Higher Administrative Court should continue maintaining specialized councils which will decide upon public procurement cases.

Obligatory publication of judgments. As there is an obligation for SAC to publish all their decisions on their website, all court judgments need to be published on SAC's website as well. This includes the judgments of the Administrative Court and the Higher Administrative Court. The best solution would be if SAC manages its own registry of received and resolved appeals by SAC, resolved complaints before the Administrative Court and appeals before the Higher Administrative Court. This registry will be available on SAC's website, by which transparency and consistence of decision would be increased in review procedures. This will raise legal certainty in the public procurement system.

Specialized training for judges in the Administrative Court and the Higher Administrative Court. The Bureau, in cooperation with the Academy for Judges and Public Prosecutors, will organize specialized trainings on topics related to public procurement, for judges working on public procurement cases in the Administrative Court and in the Higher Administrative Court. The trainings will be practical and cases will be examined where different opinions exist on further actions thereof. This should contribute to deepening consistence of court decision and to enhanced practice as a whole.

7. Anti-corruption measures

The term corruption is often encountered in many spheres of life. Thereby, public procurement is identified as one of the areas most susceptible to corruption. With respect to public procurement, it affects efficiency of public spending and the quality of services provided by the public sector to the citizens, as well as the possibilities to improve quality of life. Corruption is also detrimental to the economic operators by increasing their costs and reducing their competitiveness on the medium- and the long-run. Hence, corruption deteriorates the business environment and the fair competition on the market.

Public procurement is the main way the Government operates and public funds are spent. Hence, public contracts are the driving force for implementation of public policies. Therefore, preventing and controlling corruption in public procurement are the key factor for improvement of efficiency of public policies.

When considering the term corruption and the measures for its prevention, one should not have the question of whether corruption exists, hence in public procurement, as a starting point, but rather to reduce it to some normal limits, since no country is absolutely immune to this phenomenon. More realistic approach would be to formulate measures that efficiently reduce the possibilities for corruptive actions in all cases where there is a possibility to adopt decisions at the detriment of public interest, and to the benefit of the private interest of official persons.

Electronic System for Public Procurement

The Electronic System for Public Procurement is the place where the data for detection of collusion in public procurement, detection of closed markets and detection of illegal division can be found. The State Commission for Prevention of Corruption, the State Commission for Protection of Competition, the Police, the Public Prosecutor's Office and PPB staff should work together in using this database.

Anticorruption clause

One of the measures how to tackle corruption and to raise awareness in public procurement is to oblige the contracting authority to have an anti-corruption clause in every contract signed after the public procurement procedure is conducted. As a consequence, any contract in which a person promises, offers or gives any illegal advantage to the representative or agent of a public sector body shall be deemed null and void.

Guidelines

The State Commission for Prevention of Corruption in cooperation with PPB should issue a guideline on prevention of corruption and conflict of interest for contracting authorities and how to award public contracts in a transparent, non-discriminatory way, avoiding conflict of interest.

C – CONCLUSION

With the share of public expenditures reaching around 12% of GDP, the state appears as an important economic factor in the Republic of Macedonia. Its activities, the number and the amount of monetary transactions largely affect the overall economic activities and society as a whole. In order to render this influence positively and stimulating, the interaction between the state and other sectors should be as efficient and fair as possible. This document is primarily characterized by dynamism and flexibility in its objectives and measures, which is necessary in order to take into account the complexity of all processes involved in the system of public procurement. Namely, the importance of legally regulating the field of public procurement in the Republic of Macedonia involves the process of harmonizing national legislation with the remaining part of the *acquis communautaire*, as complemented by the detailed methods of implementation and their proper use in practice on all levels, accompanied by raising the awareness about the reforms in process and communicating with the wider public about the foreseen novelties. Full implementation of the priorities will enable:

- realization of the basic principles of public procurement system: transparency, non-discrimination, competition and equality of treatment;
- improved competitiveness on the market of goods, services and works contracted by the state, including the award of concessions for works and services, and the promotion of PPP models;
- training and education for the purpose of enhancing the skills and competitiveness of employees, for the purpose of sustaining measurable progress in the performance of contract award procedures, the award of concessions and PPPs on all levels;
- the implementation of new technologies as support to various aspects of public procurement (e- procurement),
- mutual recognition and proportionality, for the purpose of boosting market competition;
- achievement of adequate legal protection in contract award procedures and in procedures awarding concessions and public-private partnerships.