

ADAPTING TO CLIMATE CHANGE BY PREVENTING CORRUPTION IN PUBLIC PROCUREMENTS



REPORT
from the monitoring and research of
environment-related public procurements
to detect corruption risks

PROJECT:

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Skopje, December 2022

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Report from the monitoring and research of environment-related public procurements to detect corruption risks

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KEY FINDINGS

The key findings elaborated below are based on the analysis of data related to public procurements implemented in the Republic of North Macedonia in the period from 01.07.2021 to 30.06.2022, thorough analysis of the selected sample of tender procedures that are related to environmental protection or can be assessed as contributing to environmental protection, analysis of relevant conclusions adopted by the Government of RNM, and summary of ongoing trends and processes in the European Union and across the world.

- ✎ There are almost no so-called green or sustainable public procurements in the country, although it has been more than three years from the entry in effect of the new Law on Public Procurements (aligned with the most recent EU Directives) which suggests due consideration of the public procurement's impact on the environment.
- ✎ The Government and its institutions do not comply with recommendations and conclusions adopted at governmental sessions and aimed at implementing measures that should ensure positive environmental effects through public procurements.
- ✎ Although, at its session held in December 2019, the Government adopted a decision for procurement of drinking water in glass bottles instead of plastic packaging, the research shows that, in the practice, around 90% of drinking water is still procured in plastic bottles. On the other hand, around 1.3 million litres of water are procured every year, in total value of approximately 460,000 EUR.
- ✎ The monitoring observed complete ignorance of the principle on preventing so-called disloyal green competition. In spite of the conclusion adopted by the Government in December 2019, not a single tender procedure of the Government and line ministries organized in 2021 and 2022 has requested bidding companies to demonstrate implementation of their extended producer responsibility (EPR) related to waste management.
- ✎ Throughout the one-year monitoring period, the state institutions at central and local level have procured 93,864 toners, in cumulative value of 3.1 million EUR. Not a single of these tender procedures has requested bidding companies to demonstrate implementation of their extended producer responsibility (EPR) related to waste management.
- ✎ In 2021, the Government adopted a conclusion for procurement of "ecological vehicles", but that has not prevented it to continue procuring diesel-fuelled vehicles, including 45 vehicles taken under leasing for the needs of line ministers and other high-ranking officials. Among the total of 206 vehicles (passenger, freight and commercial) bought in the monitoring period (01.07.2021-30.06.2022), only 6 vehicles (3%) are hybrid (petrol and electric engine), and another 6 vehicles (3%) have combined engine (petrol and LPG).
- ✎ One basic product that could demonstrate commitment to environmental care is recycled print paper. However, the analysis shows that only one among 1,400 institutions registered in the system of public procurement has organized a tender procedure for procurement of recycled print paper, but without success.
- ✎ Ecological characteristic or eco-labels for products are not used as criteria for selection of the most favourable bid. Their absence is noted also in monitored tender procedures that can be assessed as relevant for environmental protection. In this context, it should be noted that monitored public procurements for cleaning products have also failed to request eco-labels for products being procured.

- Care for the environment in tender procedures generally starts and ends with sporadic requirements for bidding companies to demonstrate implementation of environmental management standards. Based on the randomly selected sample of 226 tender procedures implemented during the one-year monitoring period, the analysis shows that environmental management standards were requested in only 5% of tender procedures.
- As many as 62% of monitored tender procedures do not include any elaboration of public procurement needs, which is an obligation from the Law on Public Procurements and is especially important for this type of procurements that are more specific in terms of environmental protection. However, even in the case of tender procedures that include elaboration of public procurement need, the justification provided is usually brief and superficial.
- The institutions do not have documented evidence on the manner in which they have calculated the estimated value of their tender procedures. A series of problematic situations were observed in the monitoring sample, ranging from change of the bidder's price to match the institution's budget, through change of the estimated value without adequate decision and contract award at prices that are higher than those bided, to acceptance of bids for development of environmental protection studies at the price of only 6,900 MKD per study.
- Tender procedures related to environmental protection are marked by lower competition compared to other public procurements in the country. In that, all procurement procedures presented with one bid each have resulted in contract award. On the other hand, in the case of tender procedures presented with higher number of bids, the monitoring observes increased rejection of bids, and even tender annulment.
- The right to discretionary proceeding related to use of eco-labels in public procurements, implementation of environmental protection standards and enforcement of the Government's recommendation provides fertile ground for external influences and, accordingly, for corruption.

METHODOLOGY REMARKS

Contrary to many countries in the world that have already recognized the value of so-called green public procurements as instrument for pursuing environmental policies, in North Macedonia these "green" procurements are not even discussed. On the account of the absence of clear policies and guidelines, there are diametrically opposed practices among institutions.

The right to discretionary proceeding in terms of implementation of environmental protection standards most certainly provides fertile ground for external influences and, accordingly, for corruption. At the same time, having in mind the limited resources disposed by the state, especially in respect to environment protection, it is of particular importance to, first, observe how environment-related public procurements are implemented and, second, to determine whether their implementation is in line with the Law on Public Procurements and whether these procurements are affected by serious corruptive influences.

The situation imposed the need for in-depth monitoring of these public procurements and for conducting thorough research that would serve as basis for initiating argument-based debate in the country aimed at improving the current state-of-play.

Significant portion of findings are based on the analysis of data for all public procurements implemented in the monitoring period that covers two calendar years, i.e. from 01.07.2021 to 30.06.2022.

The in-depth analysis was conducted on selected sample of environment-related public procurements and those considered to contribute towards environmental protection. Based on the previously developed methodology, the first step was to map corruption in public procurements by using previously developed indicators that cover all three stages of public procurement, i.e. public procurement planning, public procurement implementation and contract performance.

The monitoring sample of public procurements and the monitoring period were defined on the basis of preliminary research conducted for the purpose of this project and on the organization's previous experience with monitoring public procurements.

Data for monitored tender procedures were collected from the Electronic Public Procurement System, official websites of relevant institutions, and directly from contracting authorities, by using the instrument provided by the Law on Free Access to Public Information.

The selection of indicators to map corruption risks in public procurements was made with due consideration of corruption indicators used by CCC throughout its long-standing monitoring for mapping corruption risks in public procurements and specificities in the area of environment protection, as well as indicators based on the so-called system of red flags developed by the Bureau of Public Procurements, and internationally acknowledged indicators used to assess corruption in public procurements.

RESEARCH ON (NON)USE OF “GREEN” PROCUREMENTS IN NORTH MACEDONIA

➤ **There are almost no so-called green or sustainable public procurements in the country, although it has been more than three years from the entry into effect of the new Law on Public Procurements (aligned with the most recent EU Directives) which suggests due consideration of the public procurement's impact on the environment.**¹

Public institutions in the Republic of North Macedonia are major spenders of public funds. In 2021, these institutions have cumulatively spent 11% of GDP (Gross Domestic Product) on public procurements, which amounts to record-breaking 78.5 billion MKD (1.275 billion EUR).

Contrary to many countries in the world which have already recognized the value of so-called green public procurements as instrument for pursuing environmental policies, in North Macedonia these “green” procurements are not even discussed. On the account of the absence of clear policies and guidelines, there are diametrically opposed practices among institutions. At the same time, the few regulations and guidelines that have been adopted for this purpose are not enforced.

The European Commission describes “green” public procurement as “a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life-cycle when compared to goods, services and works with the same primary function that would otherwise be procured.”¹

Similar definition is used in the United States, referring to “environmentally preferable purchasing” or “green purchasing” which is generally defined as “purchasing a product that has a lesser or reduced negative effect or increased positive effect on human health and the environment, when

¹ [Buying Green, A handbook on green public procurement, 3rd edition, European Union, 2016. Available at: https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf](https://ec.europa.eu/environment/gpp/pdf/Buying-Green-Handbook-3rd-Edition.pdf)

compared with competitive products that serve the same purpose”.²

In other words, a common feature of both definitions is that “green” public procurements are those that have lesser negative effect on the environment compared to “usual” procurements.

In the Republic of North Macedonia, the principles underlying public procurements, which are laid down in Article 3 of the Law on Public Procurements,³ decisively stipulate that “when implementing public procurements, the contracting authorities shall be obliged to comply with environmental protection obligations...” arising from national regulations and ratified international treaties and conventions.

Article 82 of LPP describes the method for development and elements of technical specifications, i.e. description of the characteristics of goods or services, and enlists that one method for setting technical specifications includes “...performance conditions or functional characteristics, as well as environmental protection requirements...”.

According to Article 83 of LPP, when procuring goods, services and works with specific ecological characteristics, the contacting authorities can request evidence thereof in the form of particular labels for implementation of such characteristics.

Furthermore, Article 87 of LPP stipulates that, when setting eligibility criteria for economic operators, together with the verification of reasons for exempting them tender procedures, the contracting authorities must also determine whether they have implemented environmental management standards in the cases where such standards are anticipated as part of relevant tender documents.

Furthermore, these environmental management standards are elaborated in Article 94 of LPP and include:

- eco-management and audit scheme (EMAS), or
- environmental management standards based on the relevant European or international standards confirmed by accreditation or compliance institutions or by relevant European or international accredited certification bodies.

It seems that the most important aspect is the legal possibility given under Article 99 of LPP, i.e. the criterion for selection of the most favourable bid, whereby the economically most favourable bid can be based on ecological aspects related to the procurement subject.

In the case of food procurements, the law gives special advantage to foodstuff produced with lesser burden on the environment during transport.

When the economically most favourable bid is defined on the basis of life-cycle costs of the product being purchased, Article 100 of LPP stipulates that the calculation of these costs may also include costs related to eliminating the environmental effect of goods, services or works throughout their life-cycle provided that such monetary value can be determined and verified and can include costs related to greenhouse gas emissions and other pollutants, as well as other costs related to climate change mitigation.

² Green Purchasing Guide, National Association of State Procurement Officials, 2009. Available at: [https://www.naspo.org/green-purchasing-guide/#:-:text=Environmentally%20Preferable%20Purchasing%20\(EPP\)%20or,that%20serve%20the%20same%20purpose.](https://www.naspo.org/green-purchasing-guide/#:-:text=Environmentally%20Preferable%20Purchasing%20(EPP)%20or,that%20serve%20the%20same%20purpose.)

³ Law on Public Procurements, Official Gazette of the Republic of North Macedonia no. 24 from 1 February 2019. Available at: <https://www.slvesnik.com.mk/issues/d547059a8e3847f39a5021fb8f9dc599.pdf>

Finally, Article 110 of LPP stipulates that “the contracting authorities shall reject the bid when it has been determined that it implies an uncommonly low price on the account of non-implementation of applicable obligations related to environmental protection...”.

The “green” procurements are integrated in two important strategy documents. In particular, the Bureau of Public Procurements’ Strategy for Promoting the System of Public Procurement in the Republic of North Macedonia for the period 2022-2026⁴ stipulates six strategy goals, one of which concerns “development of a system relevant to current requirements (“green” procurements, socially responsible procurements, innovative procurements, support for SMEs)”, with “environmentally responsible public procurements” being enlisted as one of the eight priority areas.

Under the first priority (public procurement policy), the new Public Finance Management Reform Programme 2022-2025⁵ refers to “socially responsible public procurements” where the main objective is to expand the strategy’s perspective of public procurements by means of awareness raising and knowledge building. Hence, the programme enlists that “successful implementation of strategic procurements requires identification and application of environmental possibilities at strategic and operational level, taking into account the models of specific procurements, sustainable development goals, green innovation and other governmental priorities”.

In the practice, no systemic measures are implemented to stimulate environmental protection through public procurements.

✎ **In December 2019, the Government decided not to use plastic packaging, but in the practice, around 90% of drinking water purchased by institutions is still packaged in plastic bottles. On annual level, procurements of drinking water are in the range of 1.3 million litres and account for around 460,000 EUR. The monitoring established complete disrespect for the institutions’ obligation to request relevant proof demonstrating implementation of the extended producer responsibility in respect to waste management for certain types of procurements.**

Although there is no systemic or another practical approach to use of “green” public procurements in the country, over the last several years, the Government has taken several steps in that direction – all without any significant success.

The first step was a decision taken by the Government not to use plastic packaging. At its 171st session held on 16 December 2019,⁶ the Government reconsidered an information prepared by the Ministry of Environment and Spatial Planning for eliminating single-use packaging and plastic by state administration bodies and adopted the following conclusions:

1. The Service for General and Common Affairs at the Government of the Republic of North Macedonia is tasked to discontinue procurement of water and other beverages in plastic packaging, as well as sugar mini-packages, plastic coffee spoons, plastic straws, plastic cups and single-use cutlery when organizing future tender procedures for the needs of the President of the Republic of North Macedonia, the Government of the Republic of North Macedonia, line ministries and bodies within their composition, the General Secretariat of the Government of the Republic of North Macedonia and other expert services at the Government of the Republic of North Macedonia, and the Constitutional Court of the Republic of North Macedonia. Instead

⁴ Strategy for Promoting the System of Public Procurements in the Republic of North Macedonia for the period 2022-2026, Bureau of Public Procurements. Available at: <https://www.bjn.gov.mk/wp-content/uploads/2022/03/Strategija-a.pdf>

⁵ Public Finance Management Reform Programme 2022-2025, Ministry of Finance. Available at: <https://finance.gov.mk/wp-content/uploads/2022/10/%D0%9F%D0%A4%D0%9C-%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0-2022-2025-MK-Strukturirana-za-Vlada-1.pdf>

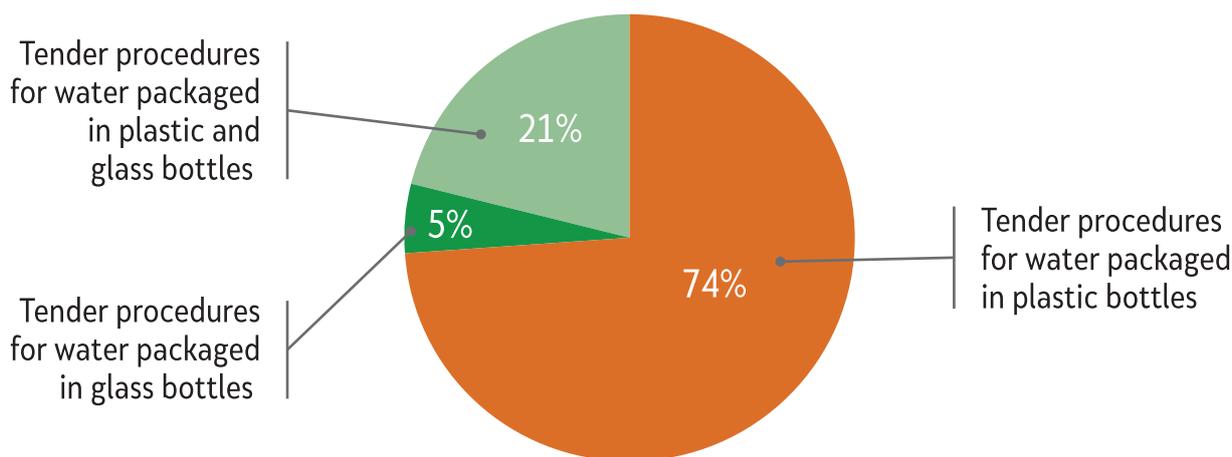
⁶ Minutes and other information from the government’s sessions are available on this link: <https://vlada.mk/sednica/171>

of water packaged in plastic bottles, this service should organize public procurements of water in glass bottles, sugar mini-packages should be replaced with bulk sugar served in adequate multiuse bowls, and they should use metal instead of single-use plastic coffee spoons, as well as avoid procurement of plastic straws and plastic cups, except for field activities, i.e. outside the institutions.

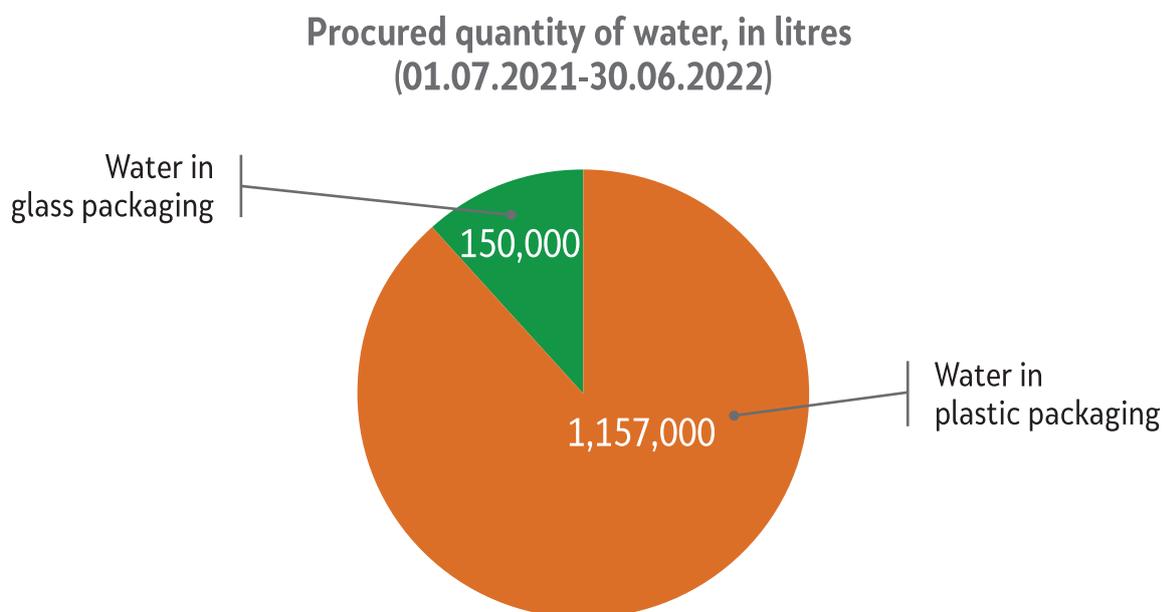
2. When announcing future procurement notices, the Service for General and Common Affairs at the Government of the Republic of North Macedonia and all ministries and bodies within their composition, secretariates and other expert services at the Government of the Republic of North Macedonia that organize direct procurements of above-enlisted products must define contract-awarding requirements whereby the public procurement would not be awarded unless the bidding company demonstrates, at least in the current year, full implementation of the extended producer responsibility in compliance with the regulations on special waste management and submit, together with their bid, mandatory “proof on exemption from payment of fees for waste packaging management” or “proof on contract signed for assuming responsibility for waste equipment management that is exempted from payment of fees for waste equipment management” or “proof on exemption from payment of fees for waste batteries and accumulators management”.

Processing and analysis of all data available in the Electronic Public Procurement System show that only few institutions have complied with the Government’s decision to discontinue procurement of drinking water in plastic packaging. A total of 43 tender procedures for procurement of drinking water have been organized in the period from 1 July 2021 to 30 June 2022. Among them, 32 tender procedures procured water in plastic packaging, while 9 procedures were organized for procurement of water in plastic and glass bottles, and 2 tender procedures (Ministry of Defence and Public Revenue Office) procured water packaged only in glass bottles.

**Breakdown of tender procedures according to the type of packaging
(01.07.2021-30.06.2022)**



In the case of 5 from the total number of tender procedures, the institutions have not indicated planned quantities, not even as indicative value, which is certainly not a good practice, but is the reality. Hence, according to the quantity enlisted in 38 tender procedures it could be assessed that a total of 1.2 million litres of water have been procured (more than 1.1 million litres of drinking water is purchased in plastic packaging and around 82 thousand litres in glass packaging). These quantities do not include the procurement of the Service for General and Common Affairs at the Government of RNM (SOZR) whose tender procedure for water packaged in glass and plastic bottles is one of the biggest procurements in the monitoring period, but the framework contract does not provide a reference to the indicative quantity. In order to obtain as realistic image as possible about the actual quantity of water purchased and the ratio between water packaging types, an estimate was used for the quantity purchased by SOZR, based on the tender procedure this institution has organized in 2020 where the relevant quantity was indicated. Thus, when adding SOZR's quantity (68,500 litres of water in glass bottles and 28,500 litres of water in plastic bottles) to previously given values, the calculation arrives to orientational quantity that is close the actual one. It can be established that 89% of all water quantity purchased (1,157,000 litres) are in plastic packaging and only 11% (150,000 litres) are in glass bottles. The size of procured water quantity is best evidenced by the fact that these contracts account for 28 million MKD, i.e. 458,000 EUR.



As regards procurement of **refreshments** in the one-year monitoring period, a total of 375 tender procedures were organized for procurement of non-alcoholic beverages and most of them concerned carbonated drinks in plastic packaging.

In the case of **sugar procurements**, the monitoring observes a trend whereby sugar is procured in packaging of 900 grams to 1 kilogram, but some institutions still purchase sugar in mini packages of 3 to 5 grams.

- ✎ **The principle on preventing disloyal green competition is not enforced in public procurements. Not a single tender procedure of the Government or line ministries has requested bidding companies to demonstrate implementation of the extended producer responsibility (EPR), i.e. to ensure they do not procure goods from producers which do not comply with the extended responsibility and therefore offer lower prices compared to other producers offering products of same quality and characteristics that do implement their EPR obligations.**

In reference to the second conclusion adopted by the Government of RNM at its session held on 16 December 2019, i.e. to request tender participants to provide proof on waste management, the research shows that the Government, line ministries and the government's secretariats have not organized a single procurement procedure in which they have requested companies to provide such proof.

Namely, all line ministries, the General Secretariat, the Secretariat for European Affairs, the Secretariat for Legislation and the Service for General and Common Affairs were addressed with freedom of information requests inquiring about the number of public procurement procedures implemented in 2021 and 2022 where they have requested bidding companies to present three types of proof (all related to item 169 in the minutes from 171st session of the Government of RNM held on 16.12.2019), those being: proof on exemption from payment of fees for waste packaging management, proof on contract signed contract for waste equipment treatment that provides basis for exemption from payment of fees for waste equipment management and proof on exemption from payment of fees for waste batteries and accumulators management. All 20 institutions have not requested such proof in any of their public procurement procedures. Some institutions asked for details about the Government's conclusions, which undoubtedly indicates to the fact that they are not even familiar with these obligations.

However, the information from the Ministry of Environment and Spatial Planning communicated to the Government and elaborating the principle on preventing disloyal green competition does not include a precisely defined list of products for which procurement procedures should request proof on implementation of the extended producer responsibility.

For illustration purposes, the information enlists that when a line ministry procures printers for their own needs they should require bidding companies to possess "proof on contract signed for assuming an obligation for waste equipment treatment that serves as basis for exemption from payment of fees for waste equipment management".

In spite of that, as indicated earlier, even the tender procedures for procurement of printers have not requested bidding companies to provide such proof. Having in mind the dominant trend among ministries and other state institutions to rent printers and other multifunctional devices, concerns are raised also with procurement of extremely high quantities of toner which is considered electronic waste that pollutes the environment and has negative effect on human health.

Analysis of all data available in EPPS shows that a total of 567 tender procedures were organized for procurement of 93,864 toners in the monitoring period (01.07.2021 - 30.06.2022). In that, 300 institutions have organized tender procedures for toners in cumulative value of 191 million MKD, i.e. 3.1 million EUR. None of these tender procedures have requested bidding companies to provide proof on extended producer responsibility that would include an obligation for companies selling toner to provide guidelines on waste management after toners are used.

Otherwise, the Law on Extended Producer Responsibility for Special Waste Management⁷ defines that "extended producer responsibility" is a sum of rules and procedures for producers which, by the nature of their business activity, market products whose use creates waste that falls under special waste regime and therefore additionally burdens the environment and activates an obligation for financing and implementing additional measures for product care in the post-consumption phase, as well as management measures, in particular those that relate to establishment and organization of system for collecting, reusing, processing and recycling special waste created by their products.

⁷ Law on Extended Producer Responsibility for Special Waste Management, Official Gazette of RNM no. 215 from 16 September 2021. Available at: <https://www.svesnik.com.mk/issues/37c051846aa647c69e0123c-8c3d46789.pdf>

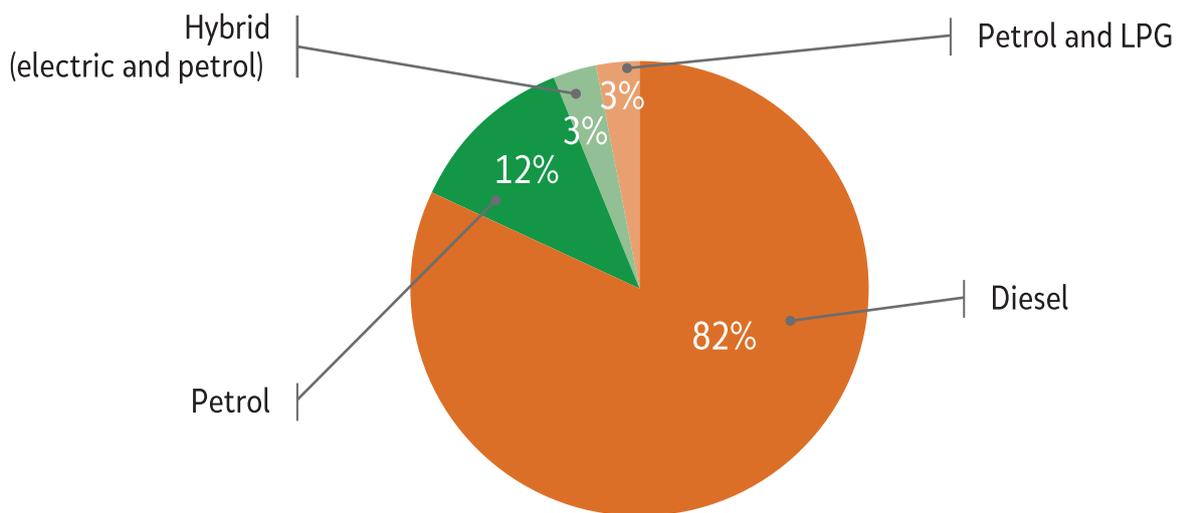
➤ In 2021, the Government adopted a conclusion for procurement of “ecological vehicles”, but shortly afterwards procured 45 diesel-fuelled vehicles. According to data from contracts signed and available in the Electronic Public Procurement System, among the total of 206 vehicles (passenger, freight and commercial) bought during the one-year monitoring period, only 6 vehicles (3%) are hybrid (petrol and electric engine) and another 6 vehicles (3%) have combined engine (petrol and LPG).

Furthermore, at its 83rd session held on 29 June 2021, the Government adopted a conclusion and recommended state administration bodies to ensure that, as part of their future vehicle procurements, a number of vehicles procured are electric, hybrid or low-emission vehicles, with additional recommendation for local governments and the judicial system to follow this example as well. At the same session, the head of SOZR informed government members about the state-of-play in terms of ongoing procurement of vehicles for state institutions through SOZR and established that overall supply of vehicles in the country is low and that the next supply of electric vehicles could be expected by mid-2022.

Less than a month later, on 21 July 2021, through SOZR, the Government procured 45 vehicles under operational leasing, all of which are “diesel-fuelled” and without any environmental protection requirements in tender documents and technical specifications.

According to data from contracts signed and available in the Electronic Public Procurement System, among the total of 206 vehicles (passenger, freight and commercial) procured in the monitoring period, only 6 vehicles (3%) are hybrid (petrol and electric engine) and another 6 vehicles (3%) have combined engine (petrol and LPG). All other vehicles are diesel or petrol-fuelled. In that, 82% of them use diesel fuel and 12% use petrol fuel.

Breakdown of newly procured vehicles per engine type



➤ **One basic product that could demonstrate commitment to environmental care is recycled print paper. However, the analysis shows that only one among 1,400 institutions registered in the system of public procurement has organized tender procedure for recycled print paper, but without success.**

A total of 884 procurement procedures for print paper have been organized in the monitoring period. Literally only one of these procurement procedures was organized for recycled print paper. This tender procedure was organized by the public utility enterprise *Water Supply and Sewage - Skopje*, which requested 1,500 reams of recycled print paper with following specifications: recycled premium copy paper A4 (210*297mm) – weight: 70gr/m², minimum 1/500, whiteness 70% - 80%. However, the tender procedure was not presented with any bids and this procurement lot was annulled. This is the second failed attempt on the part of the public utility enterprise to procure recycled paper.

The second isolated example related to procurement of recycled paper did not request print paper, but paper handtowels, and was organized by the public health institution *Healthcare Centre - Kumanovo*. It is a matter of successive procurement of hygiene products which included a procurement lot for recycled paper handtowels, packaged in stacks, with individual width of minimum 20 cm to maximum 22 cm, and individual length of minimum 22 cm to maximum 25 cm, and minimum 200 to 250 paper sheets per stack.

These are literally the only examples of recycled paper procurements found in the Electronic Public Procurement System. On the other hand, the monitoring effort observed another public procurement (organized by PHI Specialized Hospital for Nephrology - Struga) that explicitly requested toilet and paper handtowels to be made of non-recycled material and have 100% cellulose content.

Here it should be noted that, when referring to recycled paper, public procurements in some countries do not necessarily request 100% recycled materials, but at least 30%, and sometimes include a requirement for non-chlorine processed paper or paper produced with use of renewable energy.

➤ **Ecological characteristics or eco-labels of products are not used as criteria for selection of the most favourable bid. Their absence is noted in monitored tender procedures that can be assessed as relevant to environmental protection.**

According to the Law on Public Procurements, the quality of procurements can also be assessed in terms of their ecological characteristics and eco-labels. In the practice, however, this legal possibility is not exercised and there are rarely any tender procedures where the quality of procurement subjects is evaluated against ecological aspects and their environmental impact.

Among total of 22,625 tender procedures organized in the monitoring period (1 July 2021 - 30 June 2022), as many as 21,317 procurements, accounting for 94.22% of all public procurements, used “lowest price” as the selection criterion. The criterion “best price-quality ratio” was used in 1,303 tender procedures (5.76%), while 5 tender procedures (0.02%) used the selection criterion defined as “life-cycle costs”.

Analysis of data from the Electronic Public Procurement System shows that the criterion “best price-quality ratio” was mainly used for procurement of services, such as software development, project documents, supervision of construction works, audit of financial operations, consulting services, translation, etc. Given the nature of such procurements, it is understandable that the quality of these procurements is not evaluated in terms of their ecological characteristics.

The non-existing practice for using the product’s ecological characteristics or eco-labels as criteria for selection of the most favourable bid is confirmed with the monitored sample of tender procedures.

It was established that “lowest price” is the dominant selection criterion used even in public procurements that are relevant for or have an impact on the environment. In the case of tender procedures that use “best price-quality ratio” as the selection criterion, dominant are elements that do not include any reference to the environment, but mainly concern previous experience of bidding companies or, in the best case, refer to qualifications and experience of the team to be engaged for contract performance. Literally none of the monitored tender procedures applied any ecological characteristics or labels.

In this context, it is important to underline the monitored public procurements for **cleaning products** where the monitoring established absence of eco-label requirements for products procured. Technical specifications provide a brief description of the product’s purpose and size, for example: glass surface cleaning product, perfumed, with spaying pump, from 500 ml to 1 litre; PH-neutral manual dishwashing product, antibacterial, packaging of 0.3 to 1.0 litre; litter bags, PVC, size from 90 to 120 litres, minimum 10 bags per packaging, etc. An exemption thereof are two procurement procedures that requested recycled paper handtowels and biodegradable litter bags.

Most certainly, this practice should raise concerns when considered against the high number of such public procurement contracts. According to data from the Electronic Public Procurement System, as many as 757 contracts have been signed for procurement of cleaning products or services in the monitoring period (01.07.2021 - 30.06.2022).

Even the biggest tender procedure for cleaning services and ongoing maintenance of state administration buildings, in the value of 420 million MKD, i.e. around 7.7 million EUR, has clearly defined obligations for the economic operators, but did not refer to the quality of products to be used and, accordingly, to their ecological characteristics. In that, the tender procedure only referred to the fact that, for the purpose of performing requested services, the bidding company should secure necessary cleaning products, materials and work equipment. The only parameter defined in line with environmental protection concerned the requirement for biodegradable litter bags in compliance with the Law on Environmental Protection.

According to Article 99, paragraph (10) of the Law on Public Procurements, in the case of food procurements, the criteria for selection of the most favourable bid also include giving advantage to bidding companies when it has been established that they create lesser burden on the environment in respect to transport of food. Analysis of data from EPPS leads to the conclusion that this legal possibility is still not enforced by contracting authorities.

Ecological aspects of public procurements can be indirectly located in tender procedures for services related to **protection against mosquitos** where the bidding companies are required to use ecological substances. In that, the eco-label requested from bidding companies concerns submission of relevant decision for market placement of substances for destroying mosquitos that would be used for disinsectants, issued by the Ministry of Health in compliance with the Law on Chemicals and the Law on General Administrative Procedure. Hence, it is evident that the quality of such ecological substances and their impact on the environment should be controlled by means of decisions issued by the Bureau of Medicines at the Ministry of Health.

- **Care for the environment in tender procedures generally starts and ends with sporadic requirements for bidding companies to demonstrate implementation of environmental management standard. Based on the randomly selected sample of 226 tender procedures implemented during the one-year monitoring period, the analysis shows that environmental management standards have been requested in only 5% of tender procedures.**

According to Article 87 of the Law on Public Procurements, when determining the eligibility of companies for tender participation, the institutions are allowed to request bidders to have implemented quality assurance and environmental management standards stipulated in Articles 93 and 94 of the LPP, as follows: eco-management and audit scheme (EMAS) or environment management standards based on relevant European or international standards confirmed by accreditation or compliance institutions or by relevant European or international accredited bodies for certification.

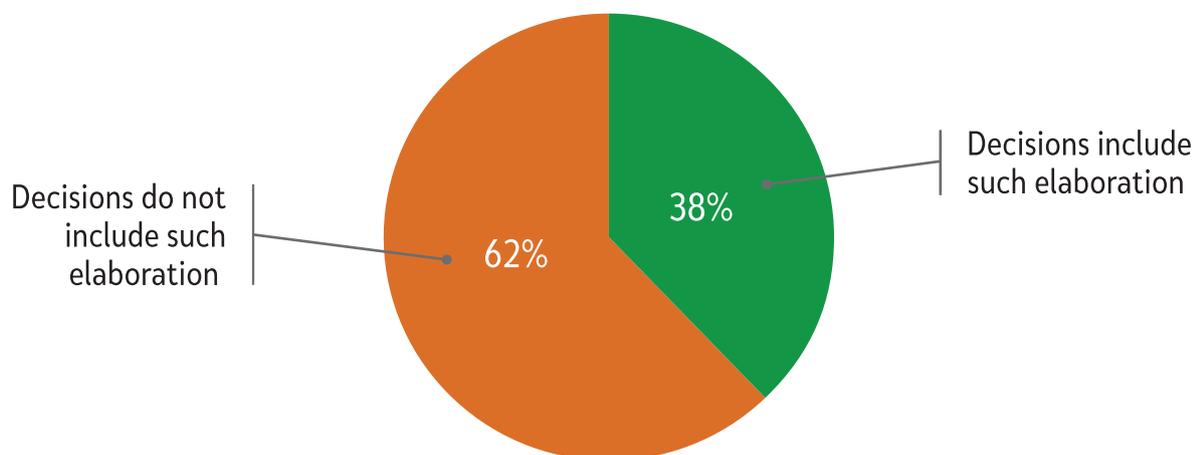
Based on the randomly selected sample of 226 tender procedures implemented in the period 01.07.2021 - 30.06.2022, it can be concluded that environmental management standards (MKS EN ISO 14001:2015 or equivalent) have been requested in only 5% of tender procedures. These standards were required in tender procedures of higher value, i.e. those implemented as simplified open procedures or open procedures, which means tender procedures whose value exceeds 10,000 EUR for goods and services and 20,000 EUR for construction works. Analysed in terms of procurement subjects, environmental management standards are generally required in the case of services and construction works. In the case of works, public procurements mainly concern construction of atmospheric water drainage systems, construction activities, reconstruction of buildings, manufacture and installation of urban equipment, etc. In the case of services, ecological standards are requested in tender procedures for procurement of expert and technical supervision, maintenance of recycling machines, servicing air-conditioners, maintenance of chimneys.

In general, it could be concluded that the institutions at central and local level do not have a unified approach to use of environmental management standards.

- **As many as 62% of monitored tender procedures do not include any elaboration of public procurement needs, which is an obligation from the Law on Public Procurements and is especially important for this type of public procurements that are more specific in terms of environmental protection. However, even in the case of tender procedures that include an elaboration of public procurement needs, the justification provided is usually brief and superficial. On the account of this approach, it remains unclear how, for example, the municipalities were selected for development of the so-called Cadastre of Air Polluters by the Ministry of Environment and Spatial Planning, or the schools where the Government will finance replacement of existing non-environmental heating systems.**

The Law on Public Procurements (Article 77, paragraph 3) is decisive and stipulates that the public procurement decision should include an elaboration of procurement needs. However, this obligation was implemented by slightly more than one-third of monitored procurements.

Elaboration of public procurement needs



In that, thorough elaboration of public procurement needs that allows broader insight in the procurement subject and sense of the tender procedure to be implemented are rarely found. Dominant are brief elaborations that provide basic information of the relevant procurement. Such is the example of the procurement for development of the Cadastre of Air Polluters, which includes a brief explanation of the purpose of such cadastres, but not the method for selection of six from total of 80 municipalities where these cadastres will be set up and if this effort will be pursued in the long-term, including whether the process will continue to expand or end with these six cadastres.

On the other hand, as many as 62% of monitored tender procedures do not include any elaboration of relevant procurement needs. Even the public procurement decision of the General Secretariat at the Government of RNM for procurement of equipment to replace the existing non-environmental heating systems in public buildings concerning implementation of measures from the programme on preventing air pollution did not include such elaboration. In that, the elaboration for this procurement is especially important on the account of the fact that it is implemented by the central government and concerns institutions (primary and secondary schools) which are under competences of local governments. Hence, it remains unclear why the Government is purchasing environmentally friendly heating systems for some schools, while other schools or municipalities are doing that on their own. Additional confusion is created by the fact that this type of tender procedures was implemented independently in the period from September 2019 to November 2021, accounting for 4 tender procedures in total. Moreover, all such tender procedures were marked by higher number of annulled lots compared to contracts signed, making it unclear what has happened with schools covered by plans for replacement of non-environmental heating systems by the Government for which contracts were not signed on the account of tender annulment.

- **The institutions do not have documented evidence on the manner in which they have calculated the estimated value of their tender procedures. A series of problematic situations were observed in the monitoring sample, ranging from change of the bidder's price to match the institution's budget, through change of the estimated value without adequate decision and contract award at prices higher than those bided, to acceptance of bids for development of environmental protection studies at the price of only 6,900 MKD per study.**

All monitored procurement procedure did not provide a document that would indicate the manner in which the tender's estimated value was calculated. The absence of market research for the purpose of actual estimation of costs is especially worrying when this piece of information is put in the context of low competition among companies. Except for the risk of awarding contracts at prices that are higher than actual prices, this monitoring effort noted several examples that are indicative to illegal proceedings on the part of institutions in respect to estimated values of their tender procedures and bids received.

For example, in the procurement procedure organized by one municipality for development of the three-year energy efficient programme, the public procurement decision and the procurement notice included an estimated value of 169,492 MKD without VAT. This tender procedure was presented with one bid in the value of 250,000 MKD without VAT, which is by 47% higher than planned funds. Having in mind that only one bid was presented, the contracting authority did not have an opportunity to organize electronic auction and the bidder could not change the value of its bid. The possibility to accept a bid whose value is higher than the procurement's estimated value is anticipated in the Law on Public Procurements (Article 77, paragraph 5), but in such cases the contracting authorities must change their public procurement decision and secure the additional funds needed for contract performance provided that, after having conducted an analysis, it is established that contract award at such price is more cost-effective than repeating the procurement procedure and that the bided price does not exceed the value threshold stipulated for the relevant type of procurement procedure in this law. Taking this legal provision into consideration, it could be established that this procurement is plagued with serious omissions. First, the contracting authority has not adopted a new public procurement decision with new, higher estimated value and, second, the bided price which did not include VAT was treated as price that includes VAT. The contract was signed in the amount of 250,000 MKD, VAT included.

Also, bid higher than the estimated value was noted in the monitored tender procedure for procurement of energy efficient montage buildings/containers comprised of two lots. The problem occurred with the second, smaller in value, procurement lot, which was intended for manufacture, transport and placement of two pergolas for ATM machines. In particular, the estimated value for this procurement lot was set in the amount of 500,000 MKD without VAT. However, the single bidding company offered a price of 585,280 MKD without VAT. The public procurement commission found a solution by establishing that the bidder, when completing the field for bid price, has indicated the price with VAT instead of the price without VAT which, in the commission's opinion, accounted to arithmetic error, after which the bidding company was asked to submit a statement of correction for the observed arithmetic error. This action on the part of the public procurement commission is disputable because, according to the Law on Public Procurements and the Rulebook on the Method for Correction of Arithmetic Errors, entering values with calculated tax is not qualified as arithmetic error, but is considered to be incorrect bid.

The estimated value of the public procurement for replacement of existing non-environmental with environmentally friendly heating system at one primary school amounted to 1,425,000 MKD without VAT. This tender procedure was presented with one bid in the value of 1,367,625 MKD without VAT. The school signed the contract under the estimated value, i.e. in the amount that is higher than the bided price by 57,375 MKD.

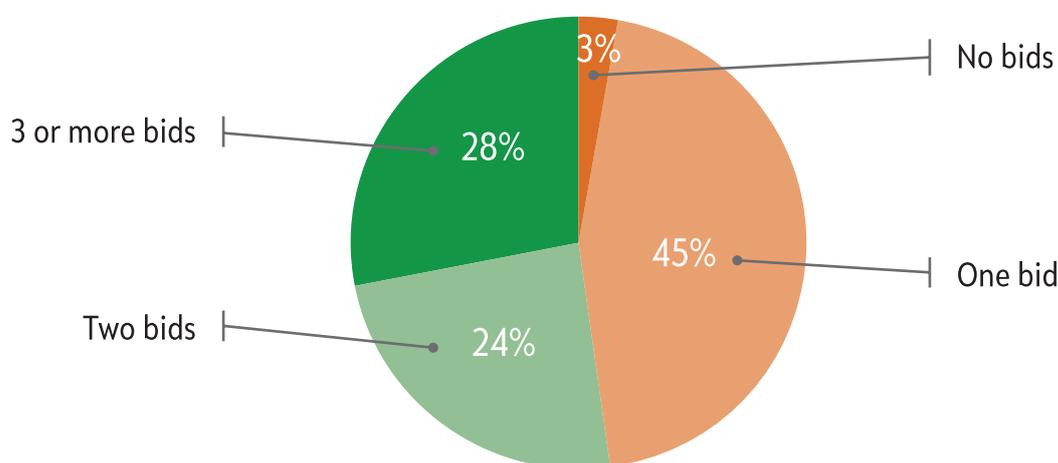
The next example from the monitored public procurements does not include illegal actions, but is still indicative of a systemic weakness and common perception of tenders as pure formality,

without deeper engagement in the procurement subject's essence and nature. It is a matter of the procurement organized for services related to development of environmental protection studies for the needs of one municipality. The only eligibility criterion for tender participation implied a proof on passed qualifications exam for obtaining the status of expert for environmental impact assessment issued by the Ministry of Environment and Spatial Planning, for at least one person. A total of 4 bidders participated in this tender procedure, of which 3 were companies and 1 was natural person (environmental protection inspector employed at another municipality). After the organized electronic auction and significant price reduction, the bid priced at 6,900 MKD per study submitted by the natural person was selected as the most favourable one. This casts a shadow of doubt about the contracting authority's care for the quality of environmental protection studies and the effect thereof on the environment.

➤ **Tender procedures related to environment protection are marked by lower competition compared to other public procurements in the country. In that, all procurement procedures presented with one bid each have resulted in contract award. On the other hand, in the case of tender procedures presented with higher number of bids, the monitoring observes increased rejection of bids, and even tender annulment.**

The average number of bids per tender procedure calculated for the monitoring sample stands at only 2.1 bids and is significantly below the average calculated for all public procurements in the country, which was 3.1 bids per tender procedure in 2021. Another indicator of low competition is seen in the fact that as many as 45% of tender procedures were presented with one bid each. Satisfactory competition is recorded with only 28% of monitored tender procedures.

Competition in monitored tender procedures



Most tender procedures presented with only one bid have defined high eligibility criteria for tender participation or have used selection criteria for most favourable bid that are based on vast experience of bidding companies, while some tender procedures applied a combination of these two approaches. This practice has prevented competition in significant portion of monitored public procurements and has provided basis for favouring certain companies. Several examples from the monitored tender procedures can be elaborated as arguments in support of this finding.

The procurement procedure for 6 recycling machines for plastic, contactless cards and equipment required the bidding companies to demonstrate successful installation of at least 25 devices of same or similar type in the last 3 years, successful implementation of at least 2 fully functional systems of same or similar type to the procurement subject in the last 3 years for at least 2 different clients,

employment or engagement of technical staff for the contract duration, i.e. at least 2 experts with minimum 15 years of experience in implementation of at least 3 domestic and/or international projects in the field of electronic financial transactions. When these conditions from the tender documents are combined with the criterion for selection of the most favourable bid wherein as many as 25 points are assigned for device functionality, 15 points are assigned to the demo machine design, and 15 points are assigned to delivery deadline, the space for competition among companies is narrowed beyond any objective assessment. This tender procedure was presented with one bid and the contract was signed with the only bidding company in the value of 8,162,053 MKD, i.e. 132,716 EUR.

Limiting competition through use of selection criteria was noted in the monitored tender procedure for development of energy efficiency programme where as many as 40 from total of 100 points were assigned to bid quality, which is exclusively connected to the bidder's previous experience. Namely, bidding companies had to submit a list of services provided for development of energy efficiency programmes in the last 3 years and copies of certificates (issued by the institutions) on quality development of such programmes in the last 3 years. In that, each certificate was assigned 5 points each, with the maximum number of points awarded to the company with 8 certificates on previously developed energy efficiency programmes. The tender procedure was presented with only one bid and the contract was signed with the single bidder in the value of 250,000 MKD, i.e. 4,065 EUR.

Another example of tender procedure where eligibility criteria for bidding companies and selection criteria for the most favourable bid have led to limited competition is identified in the monitored public procurement for replacement of exiting non-environmental with environmentally friendly heating system at one primary school, in estimated value of 1,681,500 MKD, i.e. 27,341 EUR. Tender documents for this procedure enlisted that economic operators should have previous experience with performance of at least 3 gas-fuelled boilers in the last 5 years, to have at least 2 machine engineers with B construction certificate in machine engineering and to comply with three quality standards (ISO 9001: 2015 – Quality Management System, OHSAS 18001: 2007 – Safety and Health at Work Management System, and ISO 14001:2015 – Environmental Management Standard). Moreover, this procedure has assigned 40 from total of 100 points to quality, which was subject of evaluation on the basis of previous experience. More specifically, companies had to submit a list of previously performed services, issued by the institutions, for quality development of energy efficiency programmes in the last 3 years, whereby each certificate was assigned 5 points. This tender procedure was presented with one bid and the contract was signed with the single bidding company.

The public procurement procedure for development of the Cadastre of Air Polluters on the territory of 6 municipalities in the country provides another example of a tender procedure that limits participation of more companies. Elements of the selection criterion for the most favourable bid included quality (60 points) and price (40 points). Sub-elements of the quality criterion included experience, i.e. number of implemented projects for development of air polluter cadastres (20 points), number of implemented projects for establishment of geo-oriented relay bases in the field of environment (20 points) and experience in monitoring air polluting substances (20 points). Only one bidder participated in the tender procedure and was awarded the contract in the value of 3,492,800 MKD, i.e. 56,793 EUR. Evident is that this tender procedure put the focus on finding a company with extensive experience which is uncommon for a small market like the one in our country. Moreover, a company's previous experience does not mean that the same will engage its most experienced employees for contract performance, especially if that is not required in tender documents.

Contrary to tender procedure presented with one bid and resulting in contract award to the only bidding company, the institutions have proved to be more thorough and critical when examining documents presented by several bidders. Hence, the tender procedure for development of

infrastructure urban planning project, project design and environmental impact assessment study for construction of major gas pipeline was presented with 3 bids. However, the public procurement commission has established formal shortcomings with all three bids in respect to electronic signatures and digital certificates attached to documents submitted and proceeded with annulling the tender procedure. Dissatisfied with such decision, one company has lodged an appeal before the State Commission on Public Procurement Appeals (SCPPA). The appeal was approved and SCPPA took a decision that the tender annulment decision is not in compliance with the Law on Public Procurements, whereby it should be revoked and the contracting authority should perform new evaluation of bids received.

Furthermore, the public procurement related to integrated plastic recycling system resulted in rejection of one from the two bids received on the account that documents provided for demonstration of technical capacity and other certificates from the Central Register of RNM are older than 6 months, while the other company was assessed as ineligible because it has submitted two contracts for business and technical cooperation with two individuals that are not employed, but engaged by that company. Although this procurement procedure was not appealed before SCPPA, the decision on exempting the second bidding company is disputable because the tender documents enlisted that bidding companies should dispose with or have engaged technical staff for contract duration as follows: at least 2 experts with 15 years of experience in implementation of at least 3 domestic and/or international projects in the field of electronic financial transactions.

Exemption of bidding companies is noted in the monitored tender procedure for reconstruction of street lighting through procurement and implementation of smart LED lights and procurement of software as a service (SaaS) for smart lighting, in the value of 105,000,000 MKD or 1.7 million EUR. In that, the company that offered lower price was exempted due to inadequately signed or non-submitted statements that are not part of the financial and technical bid, which means that the contracting authority could have acted according to Article 109, paragraph (2) of LPP which stipulates that “when verifying completeness and validity of documents on the bidding company’s eligibility for tender participation and when evaluating bids, the commission may request bidders to clarify or to complete their documents, unless it is a matter of significant deviations from documents requested. The commission must not create advantage for certain economic operator by relying on requested clarifications and additions”.

PUBLIC PROCUREMENTS THAT COULD BE ORGANIZED AS GREEN BASED ON EXPERIENCES IN THE WORLD

Utilizing the purchase power of money that are spent annually for procurement of goods, services and works of lesser impact on the environment, “green” procurements could make a significant contribution to sustainability, especially because they are also called “sustainable” procurements. In particular, “green” procurements can ensure financial savings when due consideration is made of the product’s life-cycle costs, not only its purchase price.

The European Commission has developed the Handbook on Green Public Procurement, which provides an overview of possibilities for implementation of green public procurements in line with the 2014 EU Directives that are enforceable in our country as well and are integrated in the Law on Public Procurements adopted in 2019.

Examples of such “green” public procurements include:

- energy efficient devices (computers, air-conditioners and the like);
- low energy buildings;
- recycled paper;
- cleaning services that use ecological products;
- electric or hybrid vehicles or low-emission vehicles;
- electricity from renewable sources; etc.

Most EU member states have national plans on public procurements where they have enlisted products whose procurements must be “green” or have set a share of total public procurements that must be “green”, i.e. must include “green” elements.

In the United States, the National Association of State Procurement Officials has developed the so-called Green Purchasing Guide which enlists opportunities that are “ripe” for jumpstarting green procurement:

- **recycled content products** (for example: office paper and envelopes, packaging, plastic lumber, traffic cones, re-refined motor oil, antifreeze, toner cartridges);
- **energy efficient products** (for example: copiers, printers, other office equipment, computers, lighting (including traffic lights), appliances, air-conditioners, heating and ventilation equipment, etc.);
- **eco cleaning products** (for example, those that meet certain standards that is clearly marked on their packaging);
- **green computers and office equipment** (in addition to energy efficiency of operation, it is important to take into consideration the environmental effect created by each phase of the product’s life, from extraction of raw materials and the quantity of energy and water used for their production, to end-of-life handling and disposal of hazardous materials in certain components);

- **environmentally preferable paper** (for example, recycled content paper, office paper and envelopes, post-consumption fully recycled content paper, chlorine-free processed paper, or post-consumption recycled paper to the maximum extent possible, non-recycled content derived from sustainably managed renewable resources, as well as strategies for reducing paper consumption and printing by default both-page setting on printers, increasing page margins and discouraging print in general, and use of chlorine-free processed paper (PCF) to the maximum extent possible for publications and other prints);
- **ink** (for example, using water or vegetable-based lithographic ink for printing to the maximum extent possible and reducing or eliminating use of colour printing where possible);
- **services** (for example, printing, landscaping, pest control, etc.)

Some countries have designed common methodology for their institutions to calculate the life-cycle costs of products they are procuring.

In other countries, for example, new buildings constructed by state institutions must be zero or nearly-zero energy buildings or must meet energy needs on their own.

Many countries have predefined joint criteria on environmental protection which the institutions must take into consideration when procuring certain, more specific or common goods, services and works. To jumpstart this practice, these procurements are organized in sectors with great impact on the environment, such as construction of buildings; procurement of food, beverages and catering services, vehicles and energy-use products (computers, machines, printers, etc.)

In Australia, for example, there are simple guides how to procure certain products “green”, i.e. what are the minimum characteristics of products that should be requested in this type of procurements, what labels should they bear, what is the benefit of such procurements and similar practical advice.

