



**SIGMA**

**Support for Improvement in Governance and Management**

A joint initiative of the OECD and the European Union, principally financed by the EU

## **ASSESSMENT**

**The former Yugoslav Republic of Macedonia**

**2010**

## **PUBLIC PROCUREMENT**

### ***Main Developments since Last Assessment***

Positive developments continue to take place in the practical implementation of the new Public Procurement Law (PPL) in the FYROM which came into effect at the start of 2008. In October 2008, the PPL was amended by the Law on Amendments and Modifications to the Law on Public Procurement, which has introduced some substantive changes. Minor amendments to the PPL are currently under preparation in order to harmonise the PPL with the newly amended Criminal Code. Some new pieces of secondary legislation (regarding training and electronic publication of procurement notices) were adopted during 2009. A comprehensive overhaul of the PPL is planned for late 2010, to finalise the harmonisation process and to take into account the experience of the two years of implementation.

Since September 2009, the Public Procurement Bureau (PPB) has been functioning as a separate legal body under the responsibility of the Ministry of Finance. The resources of the PPB have been slightly strengthened (two new experts were employed in 2009). Some revised and new guidelines, together with tender forms and contract documents, have also been published and are regularly used by contracting authorities, and are helping to further improve the public procurement system. The PPB has delivered extensive training on a range of procurement issues to the procurement community (the Training of Trainers programme was finalised in November 2009). An e-procurement system operated by the PPB has been significantly upgraded (January 2010).

The new independent State Appeals Commission (SAC) (established in November 2008) reached full operational capacity during 2009.

However, there has been no progress in the area of concessions and public-private partnerships (PPPs). The concessions law, adopted in 2008, has not proved successful (no projects have yet been awarded under the new law). Work on a new concessions/PPP law has started (in 2008), but the timeline for its adoption still remains unclear. The Ministry of Economy is supposed to submit a draft PPP/concessions Law to the Government in May 2010. The Parliament is expected to adopt the new Law during the summer.

The EU Delegation in Skopje has plans for significant IPA technical assistance for the PPB and the SAC (to be started at the end of 2010 and amounting to EUR 1 million and EUR 200,000 EUR respectively).

### ***Main Characteristics***

The PPL is practically fully compliant and harmonised with the new EC Public Procurement Directives. The PPL covers the classical and utilities sectors and all types of procurement (works, supplies and services), except for concessions. The rules concerning the utilities sector are provided in a separate chapter. The PPL also contains provisions for remedies and for the establishment and operation of the SAC and PPD. The exemptions allowed by the PPL for contracting authorities in the classical sector and for utilities are in line with EC rules. The new PPL implements all the new instruments regulated by the EC Directives (apart from dynamic purchasing systems), such as competitive dialogue, framework agreements, central purchasing bodies and electronic procurement.

Some provisions of the Directives are, however, not fully transposed (mostly those dealing with utilities and remedies). The rules for utilities do not reflect the more relaxed regime permitted under EC Directive 2004/17/EC, such as the freedom for utilities to decide which procurement procedure to use, flexibility on the award of contracts under framework agreements, the availability of periodic indicative notices, and qualification systems. FYROM should consider introducing a regime for utilities that is fully harmonised with Directive 2004/17/EC.

The PPB has supported the implementation of the PPL very well, through a range of activities including training, guidelines, standard form documents and day-to-day telephone and e-mail assistance. The PPB website (<http://javni-nabavki.finance.gov.mk>) is comprehensive and easily accessible. Electronic publishing of notices for contracts over the national threshold is obligatory and the system functions well. The e-procurement system (ESPP <https://e-nabavki.gov.mk>), upgraded recently (January 2010) with the assistance of the USAID e-Gov

project, not only handles all procurement notices but also enables contracting authorities and economic operators to publish and access all other tender documents, ask and answer questions during the tendering procedure, and submit and evaluate bids and conduct e-auctions. The PPB, in co-operation with the Law Faculty in Skopje and the USAID World Training, has established a Public Procurement Training Centre. A group of 48 trainers has been trained through the Training of Trainers programme, which ended in November 2009. The trainers will deliver courses to the public procurement community throughout the country, based on the manual elaborated by the PPB. The annual training plan, adopted by the PPB, is available on its website.

The total value of the procurement market in FYROM amounts to EUR 776 million (12 % of GDP), and the government and other public institutions are the main trading partners for many businesses.

The establishment of the SAC at the end of 2008 was a positive step in addressing concerns about the operation of the remedies system. During 2009, the SAC became fully equipped, it moved to new premises (May), hired support staff (five new employees). However, because of financial difficulties and cuts in public expenditures, it has not yet reached the planned full staffing level (19). In 2009, the SAC received 1,044 cases (960 appeals, 34 requests for continuation of the procedure, 34 requests for cancellation), of which 996 were resolved. Of the 960 appeals received, 429 were refused, 249 accepted, 151 rejected, and 105 withdrawn. As of October 2009, a new SAC website (<http://www.dkzjn.gov.mk>) provides access to information on the public procurement review system and the work of the SAC (including the texts of all decisions taken).

The other main area of serious concern is the lack of positive developments in the PPP and concessions Law. Legislation on concessions and PPPs remains unsatisfactory, and several amendments to the concessions law will be needed to bring it in line with EU requirements. For the law to be successfully implemented in practice, clear and strong leadership will be needed. A centre of expertise is also needed to support contracting authorities in preparing projects, conducting contract award procedures, and preparing contract management for PPPs and concessions. In its 2008 assessment, SIGMA pointed out the need for significant modifications to the then newly adopted Concessions Law if it is to comply with EU requirements and good international practice. However, the Concessions Law, which falls under the responsibility of the Ministry of Economy, has still not been amended.

### ***Reform Capacity***

The Public Procurement Bureau (PPB) has certainly proven its ability, skills and capacity to develop the public procurement system, although for some of its work it has received external assistance. The PPB's work is of high quality, dynamic and highly appreciated by the procurement community.

However, the PPB will need adequate resources for the further and extensive strengthening of its central capacity. Support for implementing the Public Procurement Law (PPL) and for introducing new business models — such as central purchasing, framework agreements, and e-procurement — will continue to be major challenges in the coming years and will require the PPB's full attention and commitment. The PPB will also require continuing government support, especially in terms of resources and stability.

The newly established SAC has proved to be a mature institution that copes well with its obligations.

The same positive picture still does not apply to the Ministry of Economy's work on concessions/PPP. Work on the preparation of a new PPP/concession law, which started in 2008, has not yet produced concrete results (the draft is expected to be submitted to the Government in May 2010). Stronger leadership is needed for drafting and then implementing the new concessions/PPP Law. Further efforts will shortly be needed to build institutional capacity — ideally by creating a centre of expertise.

**PROCUREMENT/CONCESSIONS STATISTICS for 2009<sup>i</sup>**

A. Number of contracting entities <sup>ii</sup>		
<b>Central government</b>	<b>104</b>	
<b>Regional and local authorities</b>	<b>93</b>	
<b>Other (bodies governed by public law)</b>	<b>710</b>	
<b>Utilities</b>	<b>60</b>	
<b>Total number of contracting entities</b>	<b>967</b>	
B1. Awarded <sup>iii</sup> public contracts/Contracting entities	<b>Total (estimated) value (Mio EURO)</b>	<b>Total number<sup>iv</sup></b>
Central government	238.8	1087
Regional and local authorities	38.3	642
Other (bodies governed by public law)	310.9	5445
Utilities	128.3	792
Total public contracts awarded	716.3	7966
B2. Awarded concessions/Contracting entities	<b>n/a</b>	<b>n/a</b>
Central Government		
Regional and local authorities		
Other (bodies governed by public law)		
Utilities		
<b>Total concessions awarded</b>		
C1. Awarded public contracts above the EU thresholds <sup>v</sup>	<b>n/a</b>	<b>n/a</b>
Works <sup>vi</sup>		
Services <sup>vii</sup>		
Goods <sup>viii</sup>		
Mixed contracts		
Total public contracts above the EU thresholds		
C2. Awarded concessions above the EU thresholds	<b>n/a</b>	<b>n/a</b>
Works <sup>ix</sup>		
Services <sup>x</sup>		
Other		
Total concessions above the EU thresholds		
D. Procurement methods used <sup>xi</sup> (above the national thresholds <sup>xii</sup> )		
Open procedure	535.2	6909
Restricted procedure	126.0	37
Negotiated procedure with prior publication of a notice	27.3	75
Negotiated procedure without prior publication of a notice <sup>xiii</sup>	22.9	865
Other procedures (competitive dialogue, etc)	4.9	80
D1. Low- value procurement ( <i>estimated</i> )	59.4	14823
<b>E. Participation rate (average number of submitted tenders)</b>		
Works	/	4
Services	/	3
Goods	/	5

## F. A list of 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

	Name of Contracting Authority	Main Activity	Annual procurement
1.	Public Enterprise for Management of Residential and Commercial Properties	General public services	83.0 mil eur
2.	Ministry of Education and Science	Education	75.7 mil eur
3.	fyROM Power Plants	Utilities	63.7 mil eur
4.	Agency for State Roads	General public services	44.8 mil eur
5.	General and administrative matters division - Government of fyROM	General public services	28.5 mil eur
6.	Ministry of Information Society	General public services	26.6 mil eur
7.	Ministry of Culture	Sport and culture	25.2 mil eur
8.	EVN fyROM	Utilities/Private JSC	23.1 mil eur
9.	Directorate for Technological Industrial Development Zones	General public services	16.7 mil eur
10.	PE fyROM Forests	General public services	16.4 mil eur

G. A list of 10 biggest public contracts/concessions awarded and/or advertised in 2009 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

	Subject of contract	Name of CA	Contractor	Value (eur)	Time of exec.
1.	Construction and equipment of 145 school sport halls	Ministry of education and science	Granit AD	68.7 mil	3 years
2.	Construction of part of the national stadium and additional fields	Public Enterprise for Management of Residential and Commercial Properties	Beton AD - Skopje	58.8 mil	4 years
3.	Construction of new buildings for Constitutional court and State Archives of FYROM	General and administrative matters division - Government of FYROM	Granit AD	24.8 mil	2.3 years
4.	Purchase of lap-tops for students and teachers	Ministry of Information Society	CT Computers Belgrade and CT Computers Skopje	11.7 mil	n/a
5.	Construction works - East Industrial Zone	Public Enterprise for Management of Residential and Commercial Properties	Mavrovo Inzenering	11.2 mil	1.6 years
6.	Supply of equipment and installation for project Old Theatre	Ministry of Culture	Svetlost teatar Belgrade	11.1 mil	n/a
7.	Supply of oil	Public Transport Enterprise - Skopje	Makpetrol AD Skopje	10.0 mil	2 years
8.	Construction of regional road	Agency for State Roads	Beton AD - Skopje	8.2 mil	1.5 years
9.	Excavating and transport services for coal	FYROM Power Plants	Group of bidders	8.0 mil	1 year
10.	Supply of oil and oil derivates	Thermal Power Plant - Negotino	OKTA AD - Skopje	7.8 mil	1 year

<sup>i</sup> Statistics should cover contracts awarded in the period 1 January 2009 – 31 December 2009

<sup>ii</sup> As for 31 December 2009

<sup>iii</sup> Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

<sup>iv</sup> Please indicate whether the data include the low value contracts

<sup>v</sup> Please indicate whether the data include contracts awarded by the utilities sector

<sup>vi</sup> above 5.150.000€

<sup>vii</sup> above 137.000€ for public institutions, 412.000€ for utilities

<sup>viii</sup> above 137.000€ for public institutions, 412.000€ for utilities

<sup>ix</sup> above 5.150.000€

<sup>x</sup> above 137.000€

<sup>xi</sup> Both for public contracts and concessions

<sup>xii</sup> Including contracts above EU thresholds

<sup>xiii</sup> Including single-source procurement