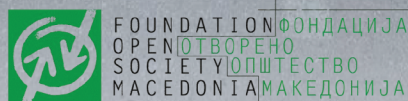




# COMPARATIVE REPORT ON PUBLIC PROCUREMENT IN THE WESTERN BALKANS 2024



September 2024



This report is developed as part of the project “Balkan Tender Watch” implemented by the Center for Civil Communications and the Balkan Tender Watch Coalition and financially supported by the Foundation Open Society – Macedonia.

Balkan Tender Watch is a regional coalition of civil society organizations dedicated to combating corruption in public procurement in the Western Balkans



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## OVERVIEW

This is the eighth annual comparative report on public procurement in the Western Balkans developed by the Balkan Tender Watch, a regional coalition of civil society organizations working on fight against corruption in public procurement.

Public procurement in the Western Balkans accounts for over €14 billion annually. The previous [report](#), published in December 2023, revealed that 33% of this spending—approximately €4.7 billion—occurs under high risk of corruption. The potential impact of such amount of money being spent in honest and efficient manner speaks of itself.

This year's report underwent some changes. The first section remains consistent with previous comparative reports, offering an overview of the state-of-affairs and trends in public procurement across WB countries in 2023, along with comparisons to prior years. This provides a comprehensive view of the volume and structure of public procurement, both at the level of individual countries and the region as a whole. The comparison highlights shifts and trends in procurement practices.

In 2023, the share of public procurement in the region's GDP increased to 9.5%, up from 8.8% in 2022. Additionally, public procurement's share in budget expenditure also rose, averaging 27.7% in 2023, compared to 25.7% in 2022, with Serbia reaching a record share of 41%.

Competition in public procurement declined across most Western Balkan countries in 2023, with the exception of Albania. The average number of bids per tender dropped from 2.92 to 2.81, with 38% of tenders regionally receiving only one bid.

There has been progress in reducing use of negotiating procedures, but concerns persist in Kosovo, Albania, and Bosnia and Herzegovina. In 2023, an average of 18.7% of public procurement procedures were cancelled across the Western Balkans.

An average of 8.2% of procedures were subject to complaints. However, only about one-third of these complaints were upheld (31.4%), a significant decrease from the previous year's 41.4% acceptance rate.

The report's second section focuses on current public procurement challenges identified by civil society organizations within the Balkan Tender Watch coalition. It highlights the most pressing issues in each country and briefly discusses them. As in previous reports, particular attention is given to corruption risks, serving as renewed call for action by authorities and stakeholders.

In parallel to steady rise in the value of public procurement in the Western Balkans, competition has been deteriorating. This issue is particularly pronounced in Bosnia and Herzegovina, Serbia, and North Macedonia, where the number of bids per tender has been steadily declining over recent years. In all three countries, on average, there are now fewer than three bids per tender. Consequently, the annual thematic reports for these countries highlight the issue of low competition in public tenders as significant concern.

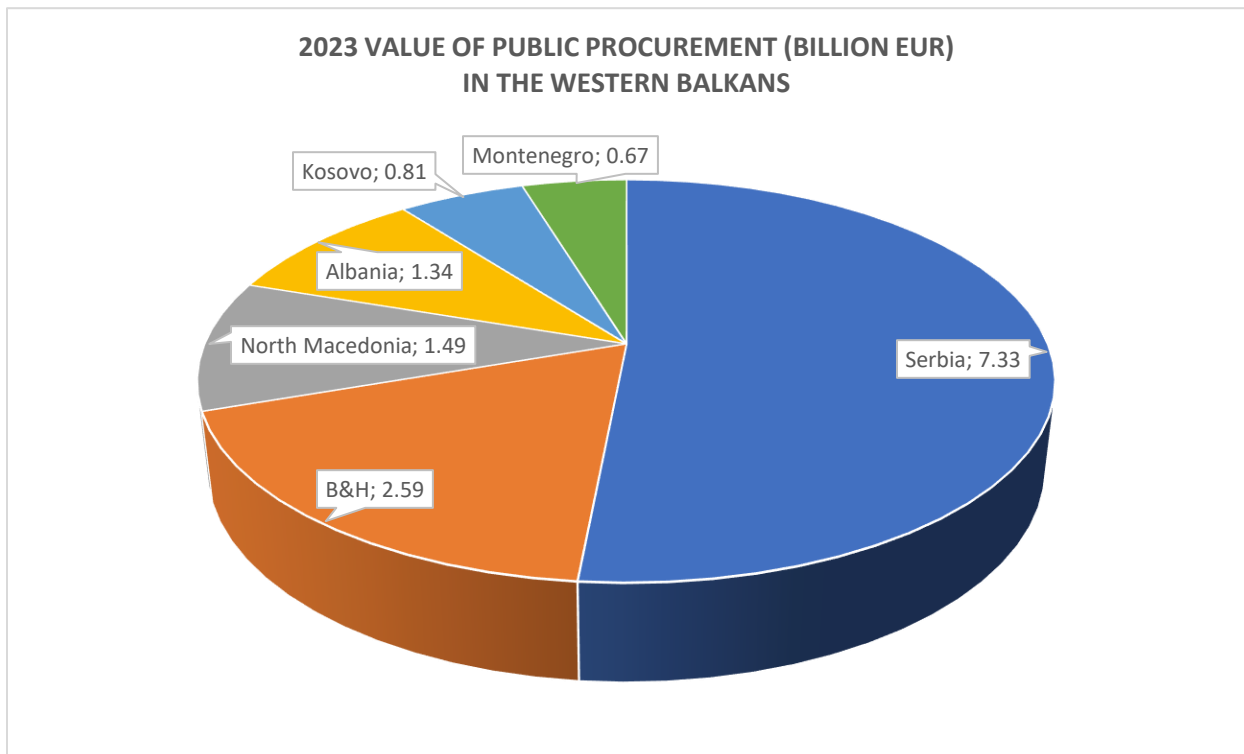
In the case of Kosovo, the thematic report underlines the risks associated with framework contracts based on unit prices, which create numerous opportunities for abuse. For Montenegro, the report emphasizes the limited capacity of relevant institutions to detect and address corruption and conflict of interests in public procurement. Similarly, the thematic report for Albania addresses concerns surrounding the lack of effective system for prevention of corruption in public procurement.

## PUBLIC PROCUREMENT IN THE WESTERN BALKANS AT A GLANCE

### ANNUAL VALUE OF PUBLIC PROCUREMENT

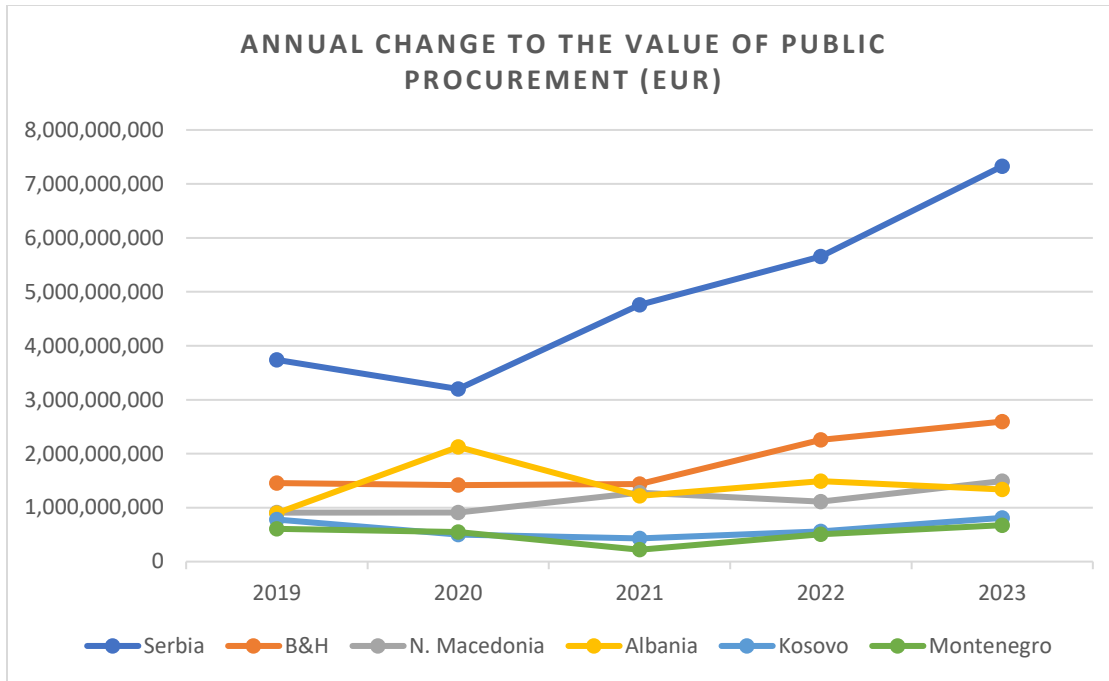
In 2023, the total value of public procurement across the six WB countries reached a record €14.2 billion, marking an 23% increase from 2022, when the total first surpassed €10 billion, reaching €11.6 billion.

Serbia leads the list of highest procurement value with €7.33 billion, followed by Bosnia and Herzegovina with €2.59 billion. North Macedonia ranked third with a record €1.49 billion, while Albania followed with €1.34 billion. Kosovo and Montenegro recorded values below one billion, i.e. €810 million and €675 million, respectively.

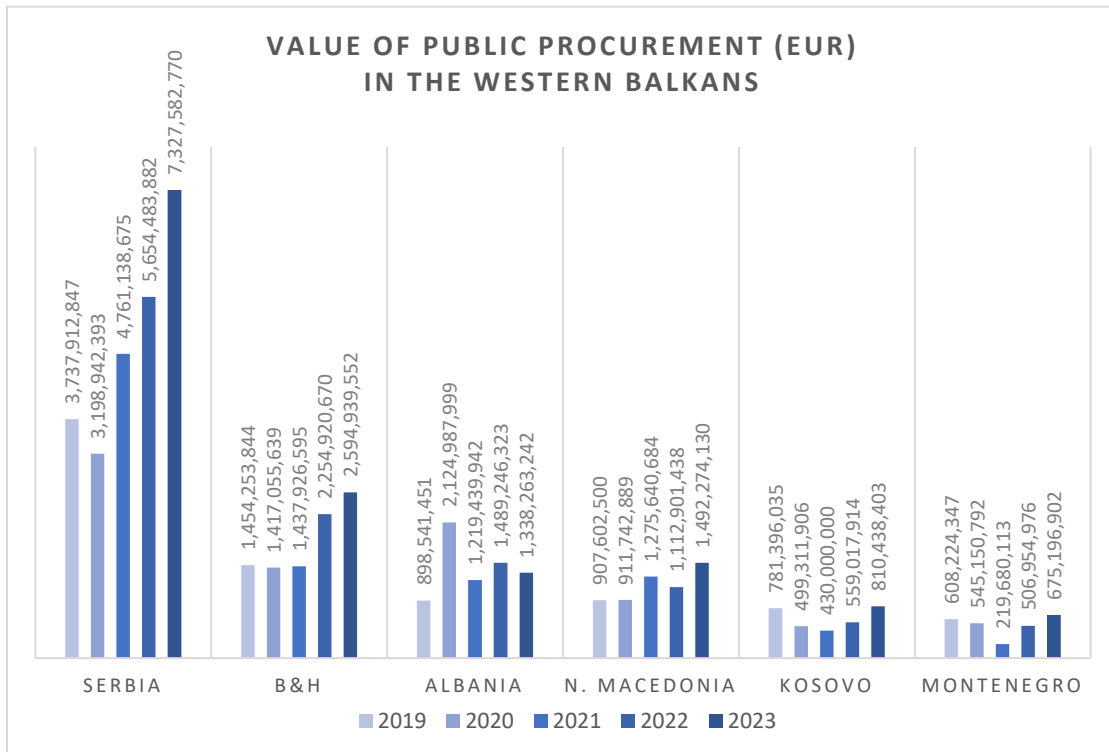


Despite the overall 23% regional growth, Albania saw a decline in public procurement value by 10%. In contrast, other four countries experienced significant increases, with Kosovo seeing the largest jump by 45%. North Macedonia, Montenegro, and Serbia also saw substantial growth, by 34%, 33%, and 30%, respectively. The value of public procurement in Bosnia and Herzegovina grew by 15% annually.

The region's cumulative procurement value in 2023 rose by 64% compared to the 2020 crisis year, when the total €8.7 billion. Serbia and Bosnia and Herzegovina were the only countries where procurement values have consistently increased from 2020 onwards.

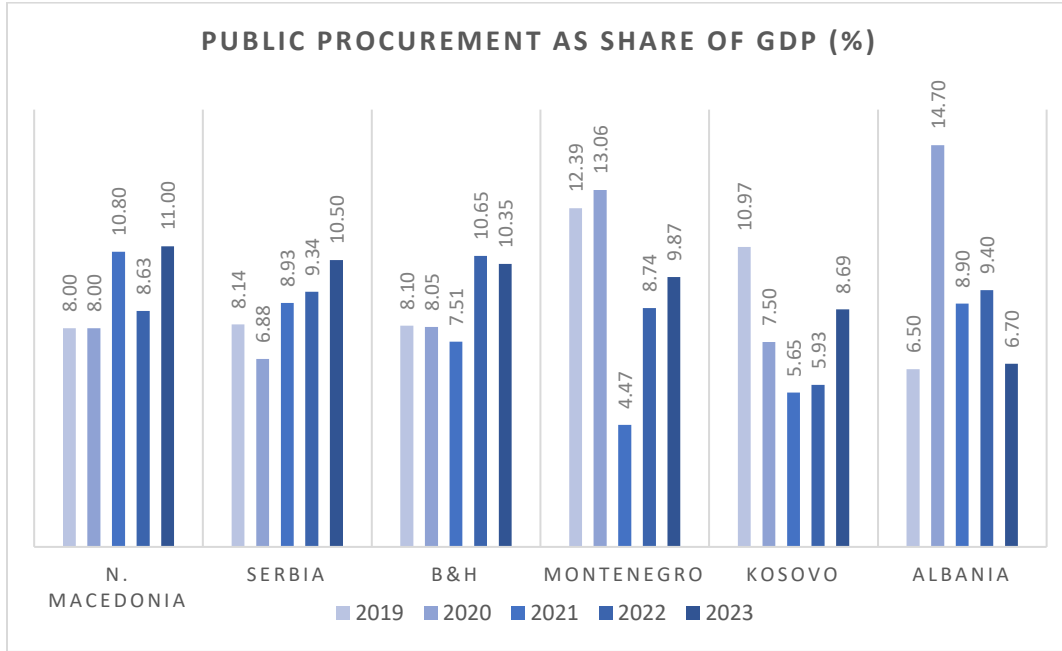


In 2023, five countries: Serbia, Bosnia and Herzegovina, North Macedonia, Kosovo and Montenegro all recorded their highest-ever procurement values. Albania's peak had occurred in 2020.

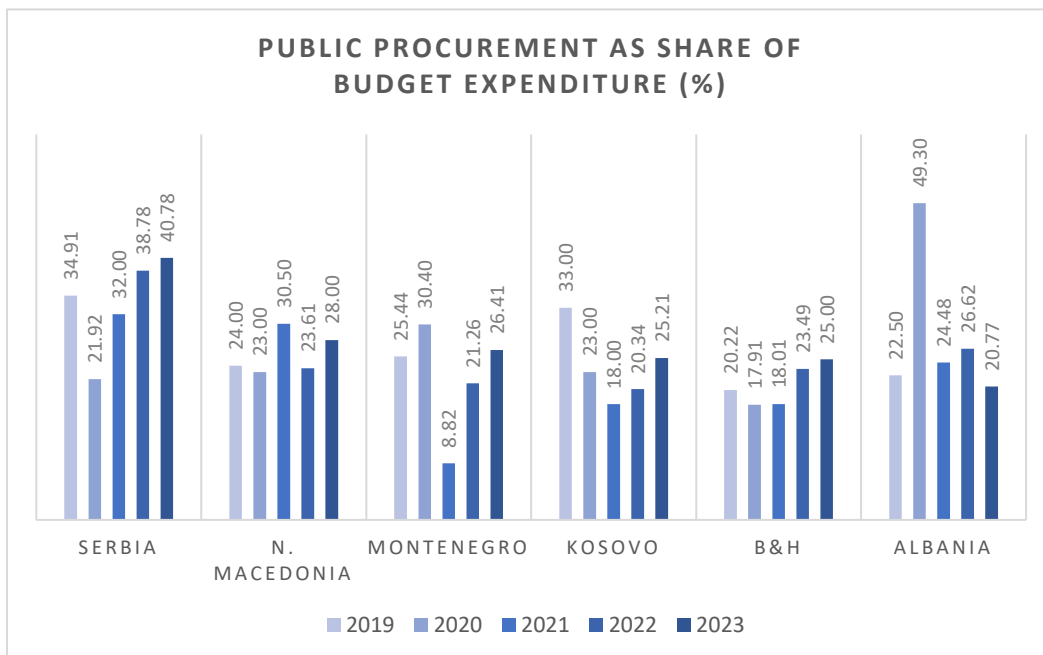


The share of public procurement in the region’s GDP also grew, averaging 9.52% in 2023, up from 8.8% in 2022. North Macedonia led with 11% of GDP, followed by Serbia at 10.5%. These two countries set new records for public procurement's share of GDP.

In contrast, three other countries saw lower shares, with past years holding their record-highs. Montenegro's share was 9.87%, with its 2020 peak, while Kosovo reached 8.69%, with 2019 as its record-breaking year. Albania's share dropped to 6.7%, with 2020 as the high point. Bosnia and Herzegovina's share rose to 10.35%, with 2022 being the peak year.

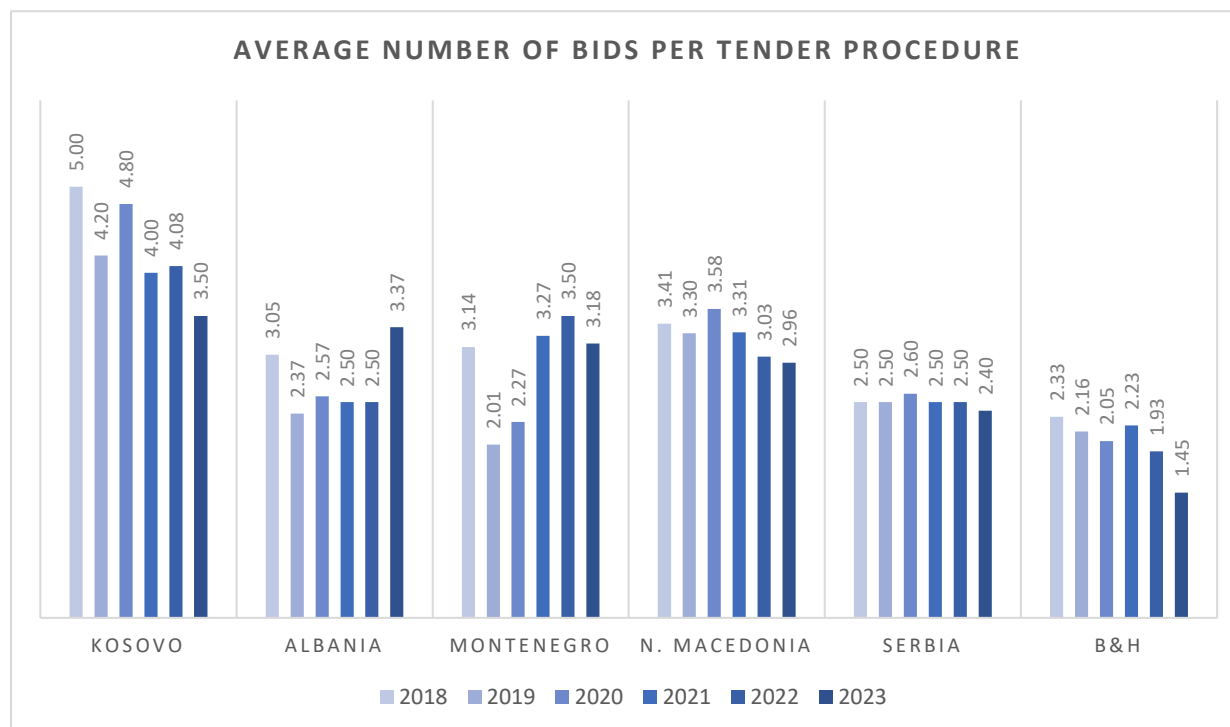


The share of public procurement in the country's budget expenditure also grew in 2023, averaging at 27.7%, compared to 25.7% in 2022. Serbia led with record 41%, followed by North Macedonia at 28% and Montenegro at 26%. Bosnia and Herzegovina and Albania saw shares of 25% and 21%, respectively. Serbia and Bosnia and Herzegovina were the only countries to set a new record in 2023, with the other countries having reached their peaks in previous years.



## INTENSITY OF COMPETITION IN PUBLIC PROCUREMENT

In 2023, competition in public procurement declined across most WB countries, with the exception of Albania, as measured by the average number of bids per tender. Regionally, the average number of bids dropped from 2.92 last year to 2.81 this year.



Despite this decline, Kosovo maintained its lead with an average of 3.5 bids per tender.

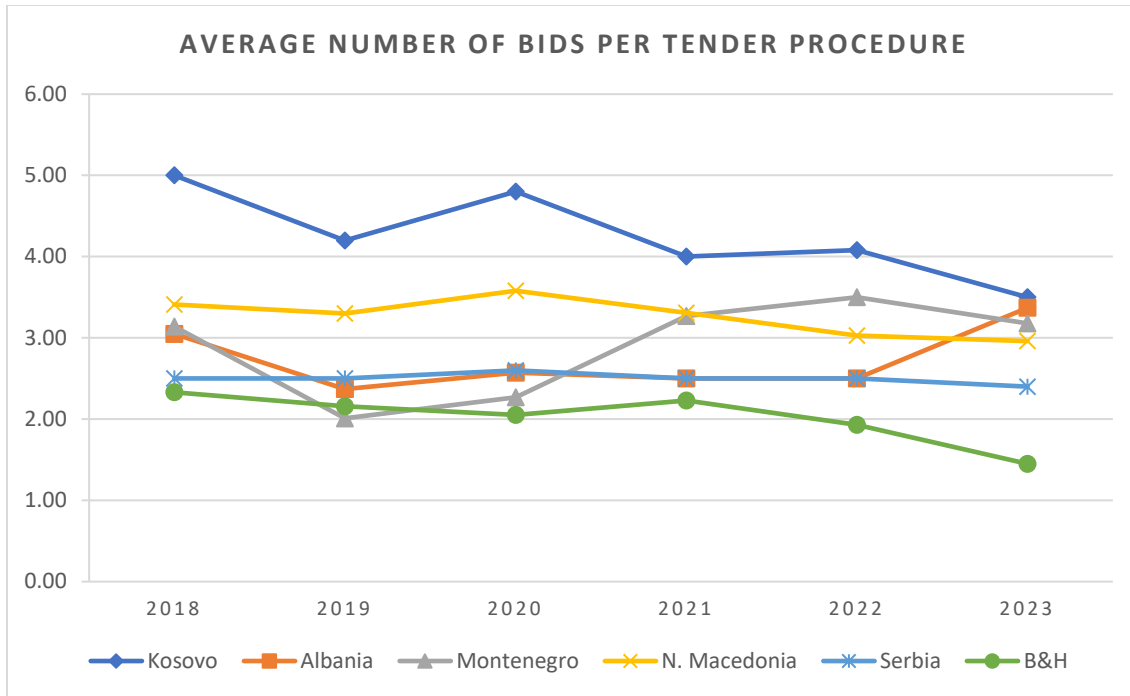
Albania, after years of stagnation, was the only country to see improvement in competition.

In contrast, Montenegro saw its first drop in competition over a period of five years.

North Macedonia experienced continuous decline for the fourth consecutive year, with the average falling below three bids per tender.

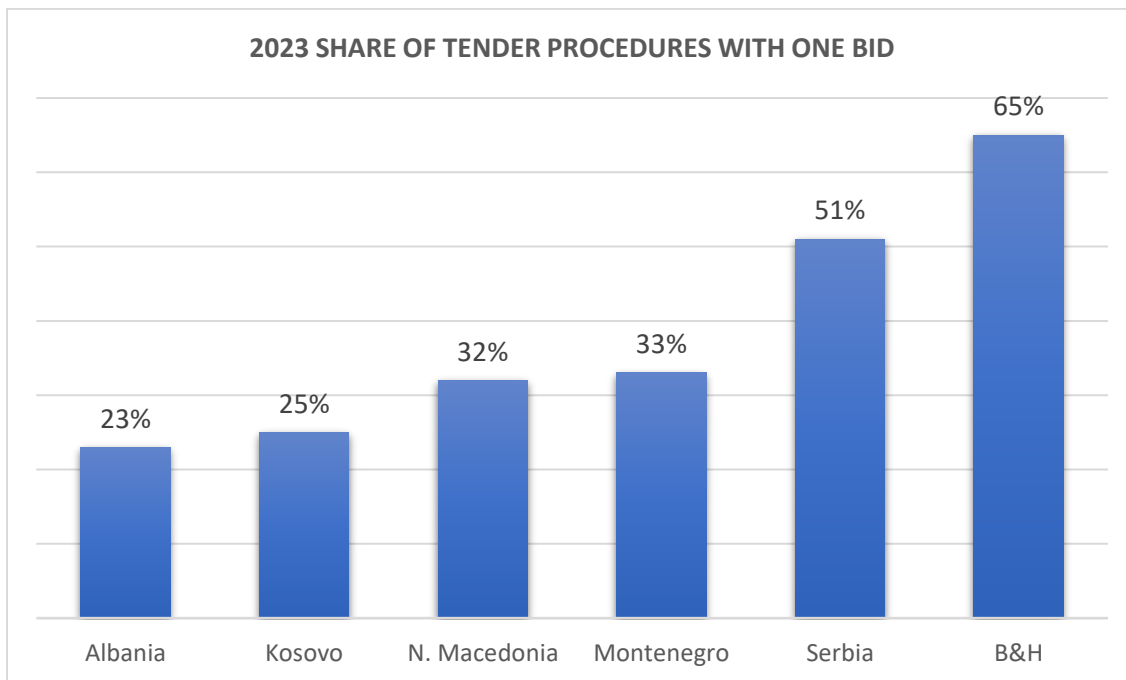
Similarly, Serbia has had consistently low competition, averaging between 2.4 and 2.6 bids per tender over the past six years.

Bosnia and Herzegovina remained in the worst position, with its average below two bids for the second year in a row, standing at just 1.45.



As regards the next indicator of competition, i.e. the share of tenders with only one bid, there has been no significant improvement compared to last year. At regional level, on average, 38% of tenders received just one bid. In 2022, 39% of tenders were presented with only one bid.

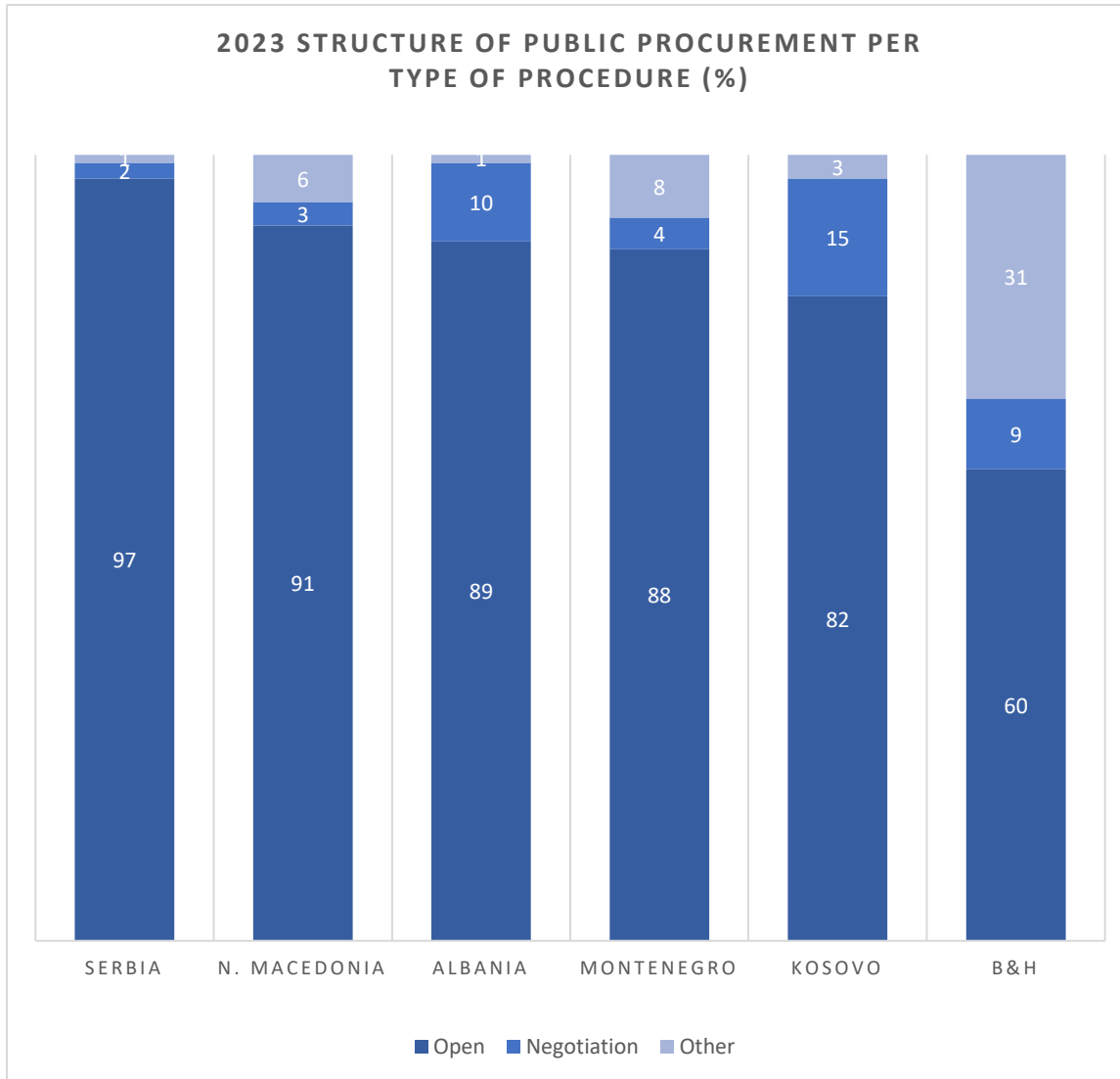
Albania has the lowest share, with 23% of tenders having one bid, while Bosnia and Herzegovina has the highest share of 65%, similar to last year. In Serbia, the situation remains concerning, with half of all tenders receiving just one bid.





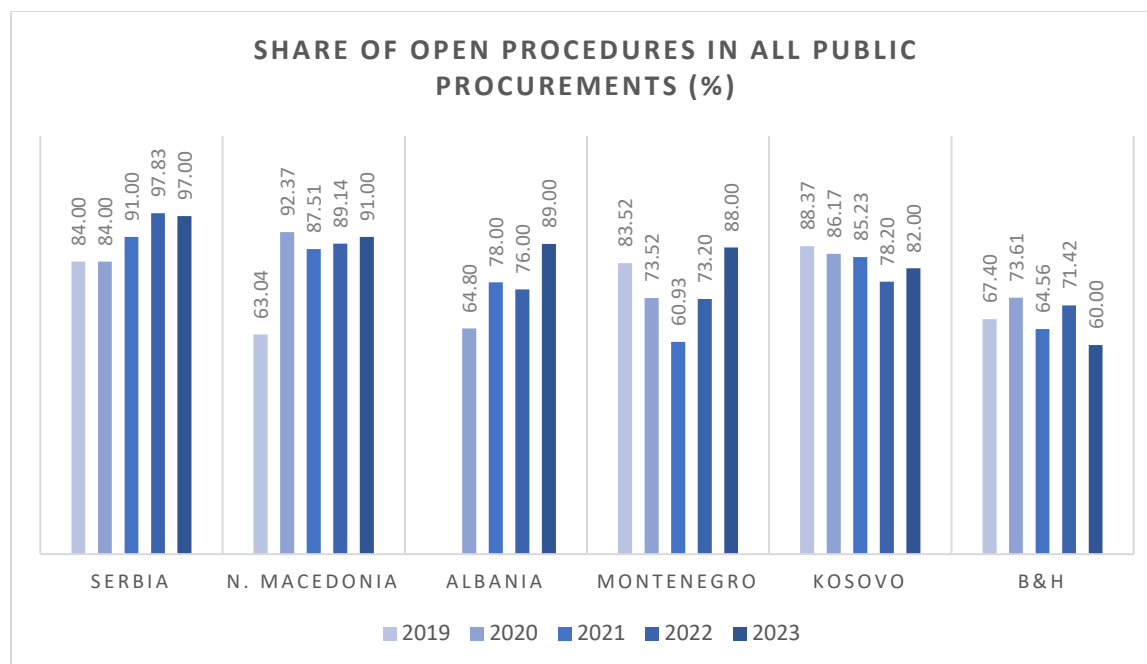
**SUBJECT AND PROCEDURE STRUCTURE OF PUBLIC PROCUREMENT**

On average, 85% of public procurement in the Western Balkans are conducted through open procedures, up from 81% in the previous year. In 2023, Bosnia and Herzegovina had the lowest share at 60%, while Serbia had the highest at 97%. Other countries fall in-between, with Kosovo at 82% and North Macedonia at 91%.



However, with the exception of Bosnia and Herzegovina, there was a significant rise in the value of open procedures from a few years ago when four of the six countries had rates between 61% and 65%.

There has been notable progress in reducing use of negotiation procedures. In 2023, these procedures accounted for 7.2% of the total procurement value, down from 10.8% in 2022. However, concerns remain in Kosovo, Albania, and Bosnia and Herzegovina, where the use of negotiation procedures still exceeds 9%, indicating persistent challenges in aligning with more competitive practices.

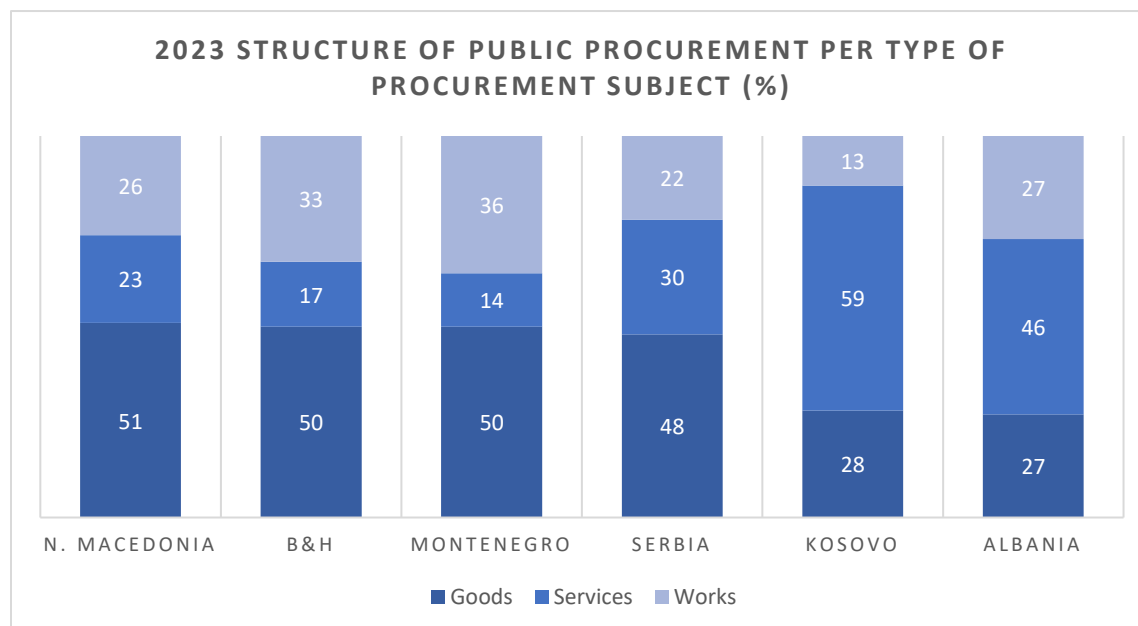


Excluding Kosovo and Albania, most procurement funds in the Western Balkans were spent on goods.

On average, 46% of procurement funds go to goods, down from 51% last year. North Macedonia leads with 51%, while Albania has the lowest rate of 27%.

Services account for 28% of all procurement, with Kosovo leading at 59% and Montenegro at 14%.

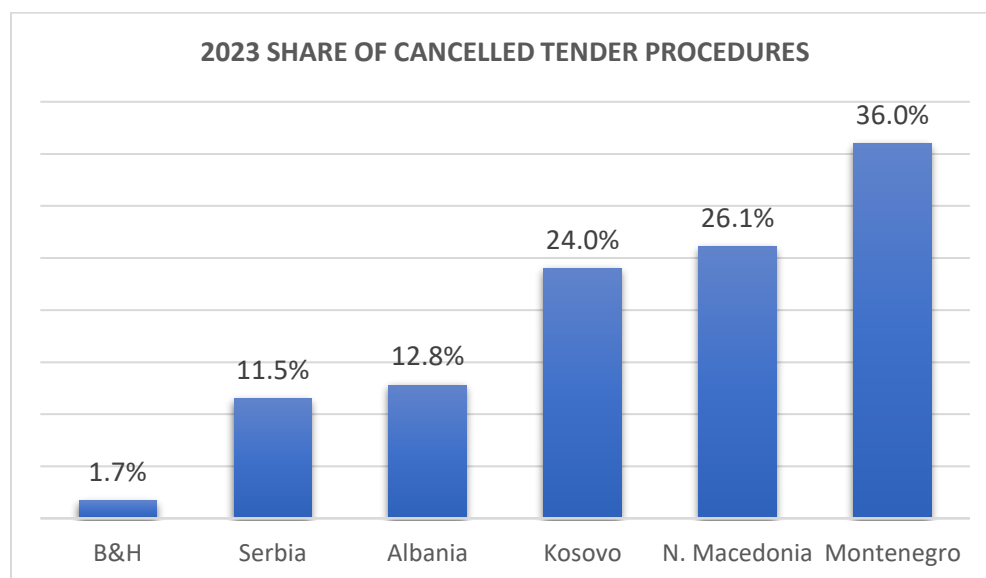
Works represent 26% of public spending, with Montenegro at 36% and Kosovo at 13%.



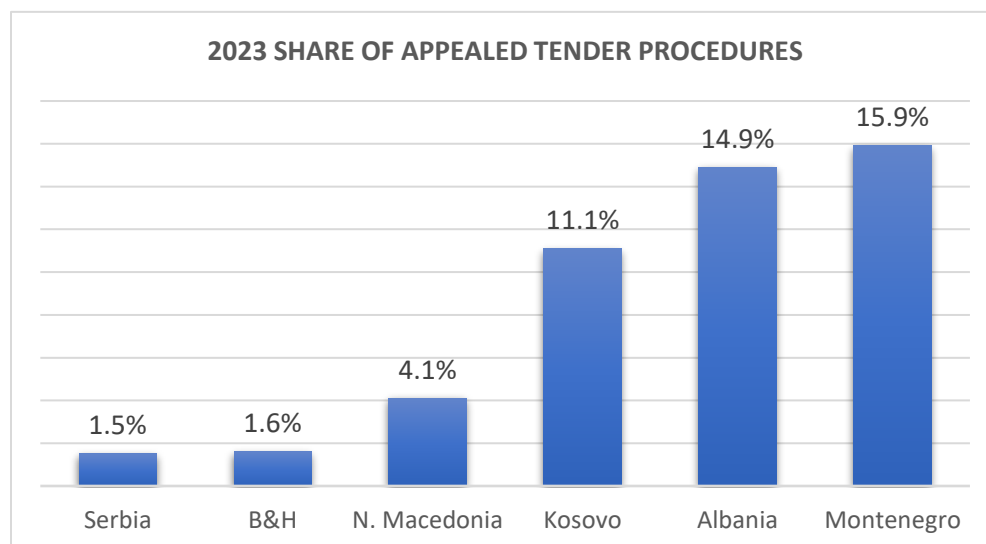
## OTHER CONSIDERATIONS IN PUBLIC PROCUREMENT PRACTICES

In 2023, an average of 18.7% of public procurement procedures in the Western Balkans were cancelled.

This rate is notably high in Montenegro, where 36% of tenders were cancelled, surpassing North Macedonia, which had previously held the top position for tender cancellations. Bosnia and Herzegovina recorded the lowest cancellation rate at 1.7%. While Albania significantly reduced its cancellation rate in 2023, Montenegro's cancellations doubled compared to the previous year.

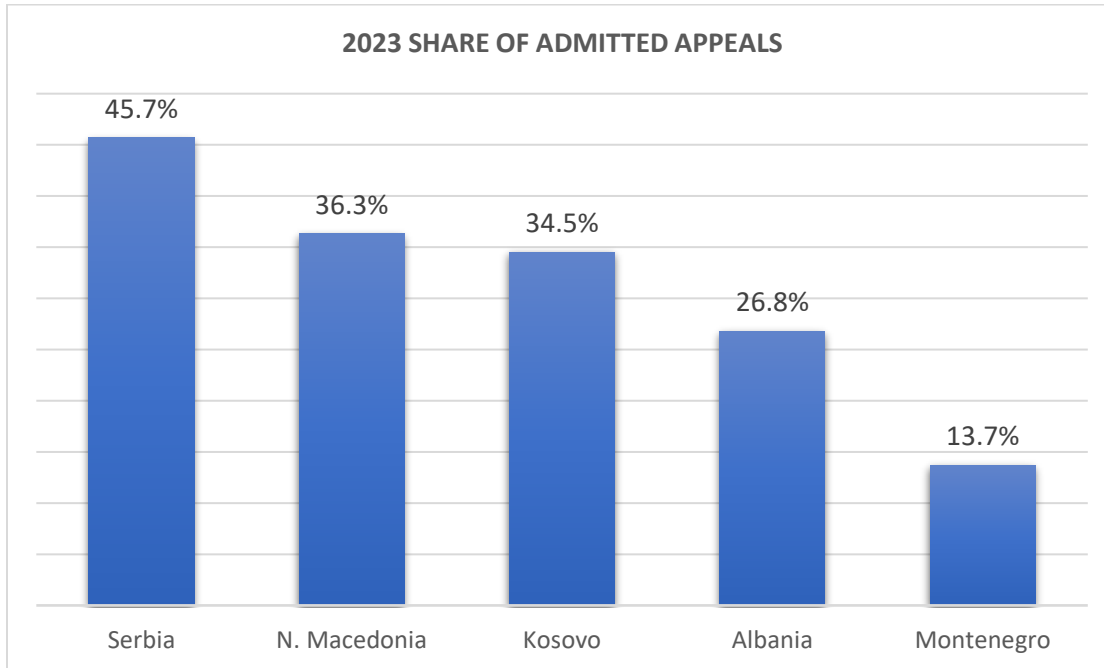


Regarding complaints as mechanism for safeguarding the rights of bidders and combating corruption, an average of 8.2% of public procurement procedures were subject to complaints. Montenegro leads in terms of use of this tool, with 16% of tenders being appealed, while Serbia has the lowest rate, with only 1.5% of tenders facing complaints.



On average, only about one-third of complaints filed by economic operators are admitted (31.4%), marking a significant decline from 41.4% admission rate observed the previous year. This decrease is evident across all countries in the region. No data were provided for Bosnia and Herzegovina.

Serbia has the highest admission rate, with 45.7% of complaints being upheld, while Montenegro has the lowest at just 13.7%. In Montenegro, the admission rate has halved from 2022 to 2023. Albania also experienced a notable decline, with the admission rate falling from 43.2% in 2022 to 26.8% in 2023.



## COUNTRY THEMATIC REPORTS

### ALBANIA: LACK OF EFFECTIVE SYSTEM FOR PREVENTION OF CORRUPTION IN PUBLIC PROCUREMENT

In 2022, Albania's public procurement market represented about 9.4% of GDP compared to 10.7% in 2021, 9.4% in 2020, and 4.8% in 2019. Increases in 2020/2021 were largely driven by post-earthquake reconstruction efforts (Nov 2019 and onwards) and decline in GDP due to COVID-19 economic impact.

Albania has a central electronic public procurement portal where tender and contract notices, as well as other important information and guidance are published. Use of the portal is mandatory, including for low-value procurements. The procurement forecast register is prepared and posted online. Still, SAI reported 64 irregularities, with an estimated loss to the state budget of around €3.1 million, while PPA imposed fines on 102 employees and proposed disciplinary measures for 145 employees.

To develop an effective system for prevention of corruption in public procurement, Albania should focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalisation.

Based on PPA's reports, there are no data on corruption cases in 2022. After a request for information, PPA informed that *"there have been no cases of reports to the prosecutor's office by PPA for the year 2022"*.

As the General Directorate of Anticorruption's 2022 report is not published yet, its response to the FOI request was the same, indicating that: *"From verifications carried out, it results that, for the year 2022, no criminal charges have been filed in the field of procurement by the General Directorate of Anticorruption"*.

After all these reports, requests and media consultations, it could be concluded that public authorities hesitate to send corruption cases to the competent authorities, attempting to hide behind law-mandated targets and leaving this responsibility to the media or CSOs.

Furthermore, when exceptions to application of the new Law on Public Procurement which entered into force in 2020 were discussed, more results were also expected in fighting corruption but, as evident, the result is the same or even worse, amounting to zero.

Again, the European Commission's 2023 Progress Report for Albania notes that: *"In terms of developing an effective system for prevention of corruption in public procurement, Albania should focus on further strengthening the functioning of the overall system to increase competition, compliance and professionalisation. Albania has laid a good foundation by significantly improving transparency through its comprehensive electronic procurement and e-appeals system, and in terms of giving participants access to redress by developing its review system."*

#### **Identified Corruption Risks: Stages of the Public Procurement Cycle Are Plagued with Corruption Risks**

Based on monitoring of public procurement procedures, it could be concluded that each stage of the public procurement cycle is plagued with corruption risks.

Although the new legislation on public procurement in Albania was further aligned with the *acquis communautaire* in 2020, the European Commission's 2023 Report on Albania's public procurement gives the idea that progress is not satisfactory compared to past years.

The Supreme Audit Institution identified significant risks throughout the public procurement cycle, with persistent inefficiencies, lack of control, risks from inadequate qualifications, licenses and other criteria required, and irregularities leading to financial losses. Moreover, issues like “negotiation procedures without procurement notice”, discrepancies in fund calculations, and insufficient legal knowledge among procurement personnel contribute to a risk-laden landscape. The assessment reveals shortcomings in project implementation, including deviations from situational volumes, technical deficiencies, and discrepancies between initial estimates and project volumes. The risk of corruption looms large, evident in the reluctance of public authorities to report cases and lack of criminal charges filed by anticorruption bodies.

There is a need to strengthen the overall system, emphasizing competition, compliance, and professionalization, underscoring the need to address these identified risks comprehensively for a more robust and transparent public procurement environment in Albania.

Most common red flags for corruption are lack of transparency (inconsistent distribution of information to bidders), inadequate choice of procurement procedure, unjustified use of noncompetitive procedure, unclear evaluation criteria, too narrow or too broad contract specifications, etc.

Open Data Albania, a CSO that bases its activity on promoting transparency through data, analysed the top 100 tenders with highest contract value in 2022. According to these data, 39 of the tenders were organized as limited procedures, implying high risk to competition.

According to Open Data, economic efficiency in bidding for these 100 tenders is deteriorating; *“None of the tenders has guaranteed an offer less than 95% of the fund limit value. Even the main part has this level of 99.9%”*.

Eight out of the ten highest value contracts in 2022 result in *red flag* risks for procedural irregularities and competition issues. Among them, the Albanian Road Authority (ARA) held the three main tenders in 2022.

Expansion of a national road (Phase 1) is the tender with the highest value in 2022. The contracting authority is the Albania Road Authority. The contract winner was announced with 4 competitors that have presented the lowest bids being disqualified during the evaluation of 6 economic operators participating in the overall competition.

The second highest-value contract is another tender of the Albanian Road Authority, worth ALL2.165 billion and won by ANK. It concerned construction of a national road (Lot 2). This tender is also marked by a *red flag* due to disqualification of all competing operators except the winner.

The third highest-value is the contract related to “Traffic Monitoring Centre”, won by the union of operators led by MC Networking in cooperation with Intera Elektronik Sanayi ve Ticaret Anonim Sirk and Gjoka Konstruksion, worth ALL2.12 billion, VAT excluded. Likewise, this contract has ARA as the contracting authority and also has *red flag* as a sign of irregularities.

Construction of the National Theatre (Phase I) is ranked fourth according to its value. This tender was developed by the Municipality of Tirana. The winning bid amounted to ALL1.84 billion and was awarded under procedure where all operators were disqualified, except the winner - Agi Kons in cooperation with BE-IS.

In fifth place is the contract for supply of oxygen and gas for medical use, with the Ministry of Health as the contracting authority, won by the *Union of Economic Operators GTS shpk* and *Messer Albagaz* with a successful bid of ALL1.62 billion, VAT excluded. The tender shows competition problems (*red flags*) due to lack of competition, i.e. single bidder.

### **Lack of Transparency: Public Trust Undermined and Corruption Encouraged**

Although the European Commission' 2023 Progress Report for Albania stressed that the country has laid a good foundation by significantly improving transparency through its comprehensive electronic procurement and e-appeals system, access to information through requests by journalists or researchers is still hard to achieve.

Less than 20% of the authorities fully responded to our FOI requests, with most of them failing to provide critical documents such as: procurement orders, market analysis and contracts signed. This reflects a systemic reluctance to comply with transparency obligations, despite the legal requirements.

Authorities often fail to publish signed contracts, invoices or reports confirming successful completion of procurements. This lack of post-procurement transparency prevents verification of whether public funds are being used properly.

While the authorities publish procurement plans, these are often inconsistent with actual practices, and deviations from these plans are not transparently justified. Once contracts are awarded, little information is made available regarding contract execution or work of evaluation committees. This further obscures the procurement process and raises concerns about the fairness of evaluations.

In many cases, legal action is required to obtain procurement information. In most cases, administrative complaints or even lawsuits before the administrative court have to be launched due to unresponsiveness of public authorities. Although some eventually comply, others continue to withhold information, demonstrating the difficulty of enforcing transparency laws.

The lack of transparency in procurement undermines public trust and encourages corruption. It also discourages fair competition, as businesses perceive the procurement process as biased or manipulated. Additionally, Albania's EU integration efforts are jeopardized by these shortcomings, as procurement reform is a key requirement for alignment with EU standards.

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## BOSNIA AND HERZEGOVINA: OVERCOMING LOW COMPETITION IN BIH'S PUBLIC PROCUREMENT

The public procurement system in Bosnia and Herzegovina (BiH)) could be a cornerstone of the nation's economic framework, facilitating acquisition of essential goods, services and works for public services and infrastructure development. Several key indicators highlight the state of BiH's public procurement system in 2023. The total value of public procurement for the year amounted to €2,594,939,551.60, while the average share of public procurement in GDP stood at 10.35%. Additionally, the share of public procurement in budgetary expenditure was 25%.

Despite its importance, the system faces a significant challenge - low competition. This issue has profound implications on efficiency, transparency and value for money in public spending. This policy brief delves into the problem of competition, examining key indicators and proposing strategic measures to enhance competitive dynamics in BiH's public procurement system.

### Indicators of Competition

Competition indicators are crucial metrics that provide insights into the health and effectiveness of the public procurement system. In BiH, several key indicators highlight the challenges to competition within the public procurement market. The average number of bids per tender is a direct measure of competition. A higher number of bids typically indicates a more competitive environment, leading to better pricing and quality. Unfortunately, this number has been steadily declining, from an average of 2.54 bids per tender in 2016 to 1.45 in 2023. This downward trend suggests a reduction in supplier interest and engagement in public procurement processes.

Another significant indicator is the proportion of single-bid tenders. A high proportion of tenders receiving only one bid points to limited competition, which can lead to higher prices and potentially lower quality outcomes. In 2023, 65.35% of all tenders received only one bid, up from 41.66% in 2016. This increase underscores the growing challenge of attracting multiple bidders to public tenders.

The participation of foreign bidders is another critical indicator, as their involvement can significantly enhance competition by introducing new players and driving innovation. However, foreign bidder participation in BiH's public procurement has decreased, with their share dropping from 7.47% in 2016 to just 3.34% in 2022. This decline reflects both market barriers and possibly the perception of unfavourable procurement environment.

Lack of competition is a corruption risk indicating there is something wrong with the tender itself. The disinterest of bidders in submitting bids for often very lucrative government procurements speaks of the very low level of trust that bidders have in the public procurement system. Also, the small number of bids leads to higher prices or lower quality of goods or services procured. According to previous legal provisions (up to 2014), most procedures required at least three valid bids to be collected for the process to be completed. This led to many procurement procedures being cancelled because a sufficient number of valid bids were not collected. The current legal provision allows contracting authorities to complete the procedure, i.e., award the contract, even if only one valid bid is received. It is alarming that in BiH, during the period 2015-2023, the average number of bids in procurement procedures for goods (characterized by highest number of bidders) stood at 2 or less. While this has been noted in a large number of processed cases, given that it does not constitute a violation of the law, in the most recently audited periods the audit institutions have not particularly highlighted this risk.



## Analysing the Decline of Competition

The decline of competition in BiH's public procurement system can be attributed to several interrelated factors. One major factor is the complex regulatory environment. The public procurement framework in BiH is highly complex, comprised of one primary law (PPL) and 20 subordinate regulations. This intricate legal structure is challenging for suppliers, especially small and medium-sized enterprises (SMEs), to navigate. The extensive documentation and procedural requirements deter many potential bidders from participating.

Economic constraints also play a significant role. BiH's economy is relatively small, with a limited number of suppliers capable of meeting the requirements of public tenders. This inherent limitation reduces the pool of potential bidders, thereby affecting competition. Concerns about corruption and collusion among bidders further undermine fair competition. Such practices lead to an uneven playing field, discouraging genuine competition and driving away potential suppliers. Additionally, market barriers to entry for foreign suppliers and SMEs exacerbate the competition problem. High entry costs, stringent qualification criteria, and lack of support for smaller enterprises make it difficult for these groups to compete effectively.

A significant concern in Bosnia and Herzegovina's public procurement system is the pervasive presence of corruption and favouritism. Findings from a 2020 survey conducted under the project "*Da javne nabavke budu javne*<sup>1</sup>" reveal alarming perceptions among stakeholders. According to the survey, 88% of respondents believe that corruption is highly prevalent in public procurement. An identical percentage of respondents also think that favouritism towards certain bidders is a well-established practice in BiH. Survey participants often cited analysis of tender documentation as the primary method for identifying favouritism. These findings underscore the urgent need for measures to enhance fairness in the procurement process, as widespread corruption and favouritism significantly undermine the integrity and efficiency of public procurement.

## Implications of Low Competition

Low competition in public procurement has several adverse implications.

Limited competition often leads to higher prices for goods, services and works, as there is less pressure on suppliers to offer competitive bids. When there are fewer bidders, suppliers may not feel compelled to lower their prices, knowing they face minimal competition. This lack of competitive bidding can result in public authorities paying more than necessary for procurements, directly impacting the budget and reducing the funds available for other essential public services.

Moreover, with fewer bidders, there is a risk that quality of goods and services procured may not meet the required standards. The competitive pressure to deliver superior quality is reduced in a market with limited players, which can lead to complacency among suppliers. Without the threat of losing a contract to a competitor, suppliers might not invest in improving their offerings, resulting in subpar products or services being delivered. This can have a detrimental effect on the public sector's ability to provide high-quality services to its citizens.

A less competitive environment is also more susceptible to corrupt practices. With fewer participants, there is less oversight and scrutiny, creating opportunities for collusion and corruption. Suppliers and procurement officials may engage in unethical practices, such as bid-rigging or favouritism, knowing that

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<sup>1</sup> Funded by the Open Society Fund Bosnia and Hercegovina

there is lower risk of being caught due to the limited number of competitors. This undermines the integrity of the procurement process and erodes public trust in government institutions.

Combined, these factors result in inefficient use of public funds. Higher costs, lower quality, and increased risk of corruption all contribute to a system where public money is not spent effectively. This inefficiency undermines the overall effectiveness of public procurement, as the intended benefits of competitive bidding – such as cost savings, improved quality, and transparency – are not fully attained. In the long term, this can hinder economic development, as resources are not allocated optimally, and the public sector's ability to drive growth and innovation is compromised.

### **Strategic Measures for Improvement**

To address the challenges of low competition, several strategic measures are recommended. Simplifying the regulatory framework is a key step. Streamlining legal and administrative requirements can make the procurement process more accessible, particularly for SMEs. This includes simplifying procedures and reducing documentation requirements, as well as standardizing forms and processes to minimize complexity. These actions are intended to encourage broader participation by reducing bureaucratic hurdles and costs associated with compliance.

Enhancing transparency and digitalization is another crucial strategy. Full implementation and upgrades to the e-procurement system can significantly improve transparency and reduce opportunities for corruption. This involves real-time tracking of procurement processes, enabling electronic submission of bids, and adopting digital evaluation processes. These measures aim to make procurement more efficient and attractive to suppliers by increasing visibility and accountability.

The Public Procurement Agency worked on upgrading the information system with modules for electronic submission of bids by bidders, electronic bid opening, electronic bid evaluation, and electronic generation and publication of decisions on procurement procedure completion. However, due to technical and legal issues related to electronic signatures, no subsidiary regulation was issued to enable deployment of the aforementioned modules into production and, as a result, they have not been launched. Additionally, there is no capability for electronic verification of personal qualifications (e-Dossier module) from other institutional databases (e.g., data on paid direct and indirect taxes, absence of final conviction for criminal offense, etc.). An analysis has already shown that most authorities have some form of electronic records, which is the first prerequisite for interoperability. However, there is lack of computerization of all registers used in public procurement.

Promoting market engagement is essential for improving competition. Regular market analyses and targeted outreach activities can help identify potential suppliers and encourage their participation. This includes conducting regular market analyses to understand supply capabilities and organizing outreach activities to connect with potential suppliers. Engaging with business associations and conducting supplier training can further help overcome market barriers and enhance supplier capabilities. Collaborating with business associations to reach more suppliers and offering training programs to help suppliers understand procurement processes can build capacity among suppliers, particularly SMEs, making them more competitive.

Supporting SMEs and foreign bidders through financial incentives, technical assistance and training programs is another key measure. Reducing entry barriers for foreign bidders can also increase competition. Providing these forms of support can enhance the ability of SMEs and foreign bidders to compete effectively in the procurement process.

Strengthening institutional capacity is also vital for effective procurement management. Ensuring that key institutions like the Public Procurement Agency and the Procurement Review Body have adequate resources and trained personnel to oversee and manage the procurement process effectively is crucial. Professionalization of procurement officials can further enhance their capability to handle complex procurement procedures.

Finally, establishing a robust monitoring and evaluation system to track progress and impact of implemented measures on competition in public procurement is essential. Regular reporting can ensure transparency and accountability, fostering a more competitive environment.

## KOSOVO: FRAMEWORK CONTRACTS WITH UNIT PRICES

Framework contracts with unit prices are awarded using a price-scoring procedure. Price scoring is used in public procurement cases where the contracting authority (CA) “does not know” the quantity of items to be ordered and, for this reason, the quantity of each item in the price list is set at “1”. This allows the contracting authority to conduct a procurement procedure without knowing the quantities to be ordered.

According to A01 Regulation No.001/2022 on Public Procurement, the Public Procurement Regulatory Commission (PPRC) has defined the framework contract with unit prices as:

*54.15 Whenever the contracting authority does not know the indicative quantities or unit price contracts, the CA must determine the weights based on the importance of each “service category” or each “item” in order for the contracting authority to determine what is the lowest bid. In these cases, the threshold or ceiling plus/minus thirty per cent (30%) is not applicable, such as car maintenance, generator maintenance, etc. In these cases, the public opening of bids reads the total weighted price which serves only for the purpose of evaluating the bids while the contract relates to unit prices and can be realized up to the estimated value.*

Another Article 27.14<sup>2</sup> states:

*27.14 The only function of the weighted total price is to determine the lowest-priced contract, but the payment is always based on the offered prices. The total weighted price is indicated during the bid opening process.*

Hence, the keyword in these definitions is “when the contracting authority does not know the indicative quantities”. In this case, the contracting authority itself decides it does not know the quantities, even where it is possible to know them. This opens possibility for misuse of this procedure, as described in this report.

In its annual reports, PPRC does not report the number of contracts signed using this type of procedure. However, using publicly available data, FOL Movement has calculated the number of contracts awarded in 2023 using this procedure compared to total contracts signed in 2023. In 2023, there were 10,183 contracts signed. Of them at least 352 contracts were signed using the unit price procedure. The numbers can be higher because data was obtained by downloading all contracts awarded to Excel spreadsheet and then using formulas to calculate them. It resulted in establishment that 3.46% of contracts were signed using this procedure. However, in terms of contract value, these procedures account for €83 million or 10.24% of the value of all contracts (€810 million). This means that CAs are using this procedure for higher-value contracts. The average value of contracts with unit prices amounts to €236,000 compared to €79,587 for all contracts.

During the contract execution phase, orders are made contingent on emerging needs. Some items are not ordered at all. The price list is divided into several categories and each of them is given a certain weight in the total of 100%. Price-scoring only serves to evaluate bids, as the contract is implemented according to unit prices. Since the quantities of items in scored-price tenders are set at “1”, this allows companies to bid low prices for positions they deem unlikely to be ordered and higher prices for positions they deem likely to be ordered. The lowest weighted price therefore does not necessarily mean it will be the cheapest price bid. On the contrary, when participating in common, unscored tenders where quantities are set for each item, economic operators must bid comparable to market prices, as each position must be ordered.

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<sup>2</sup> [A01 Regulation No.001\\_2022 on Public Procurement.pdf \(rks-gov.net\)](#)

Since some items have extremely low prices, this leads to a situation where almost all framework contracts with unit prices have abnormally low prices as defined by the Public Procurement Law.

Whenever prices are abnormally low, suspicions of abuse arise. It is not expected that a profit-oriented company will bid abnormally low prices and consequently operate at a loss. In weighted-price tenders, institutions could not order a particular product at all. This is exactly the point where economic operators think they can cash in. They bid extremely low prices for positions that they think are less likely to be ordered and higher prices for those positions they think are more likely to be ordered. Certainly, this is a risk for companies as their forecast may turn out to be wrong and the contracting authority will order products that have abnormally low prices. However, companies tend to have inside information knowing which positions will be ordered. Whether economic operators had colluded with CAs becomes known only during contract implementation and attention is paid by third parties (NGOs, the media, competing companies, etc.).

### Case Study

On January 28<sup>th</sup>, 2021, under a price-scoring procedure, the Municipality of Prizren entered into contract with the consortium *Eurovia & Daut Gashi B.I.* for the tender “Gravel Supply for Unpaved Roads in the Municipality of Prizren”. The total price per unit was tied to €16.48. The contract is a framework contract with unit prices, in duration of 36 months. The tender’s estimated value was set at €1.5 million. A distinctive feature of this procedure is that the limit of plus/minus 30% of the contract value cannot be applied, but the contract is implemented if there are funds projected for this tender. Rules governing framework contracts do not specify the minimum number of orders, which means that all funds projected will not be necessarily spent.

Under this contract, the scored price is €2.96, while the unscored price is €16.48. The incredibly low value of the scored and unscored prices in a €1.5 million tender is quite telling about this procurement activity. Where there is a significant difference between the scored and unscored price, prices per unit are exceptionally low.

Among the total of 30 items enlisted in the Bill of Quantities, the awardee consortium bided a price of €0.04 for as many as 19 items. Items bided at this price include:

- < supply with concrete pipes (10 items);
- < transportation of machinery necessary for performance of works (excavator, bulldozer);
- < opening and cleaning of drainage canals and transportation of soil to the landfill;
- < supply with concrete C25/30.

There are also items with extremely low prices compared to market prices:

- supply with broken stone (or gravel) (five positions) – €0.24 per m<sup>3</sup>;
- excavation and road planning – €0.24 per m<sup>3</sup>.

Out of 30 items, only three have unit prices higher than €1. The municipality has not required any clarifications from the company on how it is possible to implement the contract at such prices.

From the contract signing until July 8<sup>th</sup>, 2021, the Municipality of Prizren has paid two invoices in the amount of €99,998.45 (€50,868.45 and €49,130.00, respectively). Regarding the first invoice, the municipality placed an order for performance of works on four different roads. Orders were made for several types of gravel (€0.24 per m<sup>3</sup>), transportation thereof (€8.02 per m<sup>3</sup>), and laying, planning, and compacting broken stone (€1.18 per m<sup>3</sup>). In contracts of other institutions, these three items usually appear merged into a single item. The approach to compiling the Bill of Quantities by the municipality means that, for any order of gravel from items A1 to A5, transportation (C4) and paving and compacting

(C6) must be ordered too. In business terms, however, the language “supply with broken stone” in positions A1-A5 implies that transportation is included as well. Breakdown into separate items has produced the effect of the tender being deemed to have attained abnormally low prices. However, when the prices of all three items above are added up, it turns out that the municipality has paid a remarkably high price for this service:

- A3 – supply with broken stone fr. 0-31.5 mm – €0.24 per m<sup>3</sup>;
- C4 – transportation of materials to the designated site – €8.02 per m<sup>3</sup>;
- C6 – laying, planning, and compacting broken stone to required compaction – € 1.18 per m<sup>3</sup>.

The three items together amount to a price of €9.44 per m<sup>3</sup>. D+ looked at contracts of other institutions where prices are significantly lower:

- [Municipality of Shtime](#), under its “Laying Gravel on Agricultural Roads” tender, for the position “supply and processing of buffer layer (60MN/m<sup>2</sup>) of crushed limestone 0-63mm with thickness of t=15cm” paid **€2 per m<sup>3</sup>**;
- [Municipality of Vushtrri](#), under its “Construction of 4th Tier Gravel Road” tender, for the position “supply, transportation, laying, and compacting of crushed limestone buffer layer 0-60mm with thickness t=15cm” paid **€3 per m<sup>3</sup>**;
- [Municipality of Lipjan](#), under its “Asphalting of Alleys in Konjuh and Graveling of Road in Branesh” tender, for the position “supply, transportation, laying, and compacting of broken limestone buffer layer 0-31.5mm” paid **€4 per m<sup>3</sup>**;
- [Municipality of Lipjan](#) in its “Graveling of 4th Tier Roads in the Municipality of Lipjan” tender for the “Supply, planning, and compacting of stone-based material with diameter 0-31.5 mm” position paid **EUR 3.67 per m<sup>3</sup>**.
- [Municipality of Fushë Kosovë](#), under its “Supply of Gravel for Road Pavement” tender, for the position “supply of gravel with diameter 0.31, laying with grader and compacting with 10–12-ton roller” paid **€3.75 per m<sup>3</sup>**.

All the examples above from four different municipalities show that they have paid between €2 and €4 for the same service which the Municipality of Prizren paid at a rate of €9.24. Description of works in all five cases analysed above is the same: “supply, plan, transport and compact broken stone.” Hence, under this contract, the Municipality of Prizren will pay about three times more compared to other municipalities, especially given that the contract value is about fifteen times higher than the contract values of the other four municipalities. In cases where tender value is higher, price per unit should be lower due to the large quantity to be ordered.

Under the second invoice, the Municipality of Prizren paid €49,131.50. Notably, for works conducted on the road designated *TA in the direction of Arbëria Petrol – Part I*, the economic operator billed the municipality €21,450.12. However, the economic operator billed this amount only for transportation of materials (C4) and site clearing (C5). So, while the municipality paid for transportation, it has not received the gravel supply. The transportation position is under category C in the Bill of Quantities, with the description *Gravel Services*. This means that transportation is valid only for gravel.

TA SH.P.K.  
Kujtim Matëse  
Kujtim Matëse  
Kujtim Matëse

e pa asfaltuara në Komunën e Prizrenit

	Njësia Matëse	Sasia	Çmimi njësi pa TVSH	TVSH-ja 18 %	Çmimi njësi me TVSH	Totali pa TVSH	TVSH	Totali me TVSH-€
	m <sup>3</sup>	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m <sup>3</sup>	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m <sup>3</sup>	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m <sup>3</sup>	1.0	0.20	18.00	0.24	0.20	0.04	0.24
	m <sup>3</sup>	1.0	0.20	18.00	0.24	0.20	0.04	0.24

	Njësia Matëse	Sasia	Çmimi njësi pa TVSH	TVSH-ja 18 %	Çmimi njësi me TVSH	Totali pa TVSH	TVSH	Totali me TVSH-€
	m <sup>1</sup>	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m <sup>1</sup>	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m <sup>1</sup>	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m <sup>1</sup>	1.0	0.03	18.00	0.04	0.03	0.01	0.04
	m <sup>1</sup>	1.0	0.03	18.00	0.04	0.03	0.01	0.04

Punimet e realizuara nga TA ne drejtim te Arberia Petrolit pjesa I-rë ( a )

Punimet nga data 08-13.04.2021		Data: 20.05.2021
Sasia e realizuar	Çmimi njësi me TVSH	Totali me TVSH-€
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
0.00	0.24	0.00
<b>TOTALI ME TVSH A :</b>		-

Sasia e realizuar	Çmimi njësi me TVSH	Totali me TVSH-€
0.00	0.04	0.00
0.00	0.04	0.00
0.00	0.04	0.00
0.00	0.04	0.00
0.00	0.04	0.00

Figure 1: Invoice of items ordered for works designated as TA in the direction of Arbëria Petrol. The quantity ordered for gravel supply is 0.00

In another part of the invoice, for works performed in Krusha e Vogël, Vlashne, and culverts on Muradem Street, the municipality paid €3,984.20. The municipality had ordered 88 m<sup>3</sup> supply of gravel, but the economic operator billed the municipality for transportation of 446 m<sup>3</sup> of gravel. In this situation, there were no other products ordered that need transportation. This is further evidenced by position C6, which concerns paving and compacting of gravel: quantity of 88 m<sup>3</sup>. It was exactly the most expensive position from the Bill of Quantities being paid more than the real quantity. The municipality paid €3,576.92, while it should have paid €705.76 (88 \* 8.02), and thus incurred municipal budget losses to the tune of €2,871.16.

These two invoices corroborate the suspicion that application of the price-scoring procedure has greater potential for misuse. Two parts of the invoice did not include any order for supply of gravel and this could have happened because of the exceptionally low price (€0.24), while another part enlisted an increased quantity for the highest-priced position. At only about 6.7% of contract implementation, the Municipality of Prizren has already caused harm to its budget in the amount of €24,321.28.

Seeking to avoid the possibility of misuse, the Municipality of Prizren should not use the price-scoring procedure in the future. Where possible, it should forecast the quantity of products needed to perform the works. In this tender, it was possible to give an indicative quantity of products, which would have allowed the municipality to use the limit of plus 30% in case it needed additional supplies. This would have made it impossible for the economic operator to bill expensive positions to the municipality all the time and the contract would have been automatically terminated when the plus 30% limit was exceeded.

Framework contracts with unit prices can be used to abuse the budget of CAs more than any other procedure. Lack of defined quantities is not a valid reason to use this type of contracts. Contracting authorities can use data from previous contracts, historical prices, and prices collected by the Kosovo Statistics Agency to determine indicative quantities. Only then it would be possible to use framework contracts with the limit of plus/minus 30% of contract value. This means that if indicative quantities are provided, CAs can order up to 30% more per item (or 30% less). This allows CAs to have some flexibility if quantities are not calculated correctly.



## MONTENEGRO: THE NECESSITY OF STRENGTHENING THE CAPACITY OF INSTITUTIONS TO DETECT AND PROCESS CORRUPTION IN PUBLIC PROCUREMENT

Despite significant legislative improvements, public procurement in Montenegro is still an area that needs serious work on improvement: starting from planning and preparation of public procurement plans by contracting authorities to long duration of the public procurement process and monitoring execution of public procurement contract signed to necessity of strengthening the capacity of institutions to prevent, detect and process corruption in this field.

Frequent changes to public procurement implementation plans several times during the year has become the rule rather than exception. Large number of state-owned companies, local self-governments and institutions have not even submitted a plan for implementation of public procurement for the year 2023, although they are required by law.<sup>3</sup> As regards recommendations related to the public procurement cycle, the first thing that needs to be improved is adequate and proper planning on the part of contracting authorities, which is stipulated by law as possibility but not an obligation, as well as introduction of an obligation for conducting market research before development of procurement plans. Duration of public procurement procedures, averaging at 77 days, is not efficient. The long duration causes spending of public money and burdens the administrative capacity of public administration bodies, as well as business entities. The law stipulates control over implementation PP contracts.<sup>4</sup> Insights in the electronic system of public procurement show that this provision is not consistently followed and that the form of reports to be submitted is not detailed.

### Corruption and Conflict of Interests

This year's report on implementation of public procurement in Montenegro notes that, in 2023, the Directorate for Public Procurement Policy has not received any reports about possible corrupt practices and existence of conflict of interests.<sup>5</sup> It is necessary to strengthen the capacity of institutions to detect and process corruption in this area and specific technical knowledge required to deal with this complex topic to motivate people within the system to report suspicions of corruption.<sup>6</sup>

#### Case Study: Director of APC Illegally Appropriated the Official BMW

This case study analyses the procurement of official vehicle for the needs of the Agency for Prevention of Corruption (APC), which was obtained suspiciously and later illegally used by the institution's director, and illustrates how the law is violated even by those who should have led by example.

- § Official vehicle for the needs of APC was acquired under tender procedure that favoured purchase of a specific BMW model and make.
- § APC's director made a shady decision by which she assigned the new BMW to herself for 24-hour use.

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<sup>3</sup> Article 84 of PPL, available at: <https://ujn.gov.me/zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019-003-23-od-10-01-2023-011-23-od-27-01-2023-preciscen-tekst/>

<sup>4</sup> Article 152 of PPL, available at: <https://ujn.gov.me/zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019-003-23-od-10-01-2023-011-23-od-27-01-2023-preciscen-tekst/>

<sup>5</sup> 2023 Report on PP in Montenegro, available on: <https://www.gov.me/dokumenta/1243d93c-493e-42c2-ad4e-ab8dc461e93e>

<sup>6</sup> <https://www.mans.co.me/en/?p=8442> <https://www.mans.co.me/en/?p=9100>

- § Official license plates (PG CGL48) were replaced by civilian (PG KT033), making the use of the BMW in question less conspicuous outside working hours.

APC bought this vehicle in March 2022 at a price of €35,000, under a public procurement procedure in which the company *Voli-Motors*, official importer of BMW vehicles for Montenegro, was the only bidder.

Data from tender documents raise suspicion that well before completion of the procurement procedure, APC knew which vehicle their director wanted to drive. Thus, the bid submitted by *Voli-Motors* was identical in technical details to requirements set by APC in tender documents, which most often happens when the vehicle model is selected before the tender. Once the vehicle was thus purchased, APC's director assigned it to herself for permanent use (24 hours) although, according to the Government Regulation on Use of Vehicles Owned by Montenegro, she did not have the right to do so.<sup>7</sup> The prosecutor's office is investigating the case upon criminal complaint filed by NGO MANS.<sup>8</sup>

### Prosecution

It must be said that introduction of abuse related to public procurement in the Criminal Code of Montenegro as criminal offense accounts for some progress this year.<sup>9</sup> Thus far, criminal liability for corruption in PP has not been addressed and properly tackled by the prosecutor's office in Montenegro. In the last eight years, there was not a single verdict related to abuse in connection with PP.<sup>10</sup> Over the years, a negligible number of investigations have been launched, most of which were later dismissed and some are still pending.<sup>11</sup> Corrupt acts in the field of PP are difficult to prove. Often, several people are involved in the process, both on the part of contracting authorities and on the part of bidders. Therefore, it is very important to strengthen the integrity of officials working on public procurement.

### Recommendations

To improve detection and processing of corruption in this field, it is necessary to apply a systematic approach in terms of teamwork, specialization, training and cooperation at all levels. The Anti-Corruption Agency, Public Procurement Inspection, Commission for Public Procurement Control, Public Procurement Directorate and Ministry of Justice, as well as the Tax Administration, should be networked with the Electronic Public Procurement System to allow better control and introduce monitoring of public procurement processes in ex-officio capacity.

Individual integrity should be strengthened and stricter penal provisions should be introduced for authorized persons conducting actions related to public procurement procedures on behalf of the contracting authority. In addition to misdemeanour provisions, sanctions in the form of ban for performing work in the field of PP would certainly have an effect in this respect, as well as obligation to sanction bidding companies in cases of poor contract performance.

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<sup>7</sup> Available at: <https://www.mans.co.me/en/?p=9348>

<sup>8</sup> See more at: <https://www.mans.co.me/en/?p=9342>

<sup>9</sup> Abuse related to public procurement, Article 272c of the Criminal Code of Montenegro

<sup>10</sup> See more at: <https://media.institut-alternativa.org/2024/09/Brief-Korupcija-u-javnim-nabavkama-%E2%80%93-krivicna-ne-odgovornost.pdf>

<sup>11</sup> See more at: <https://institut-alternativa.org/izostaje-krivicna-odgovornost-za-korupciju-u-javnim-nabavkama-krivicno-djelo-zloupotreba-u-javnim-nabavkama-tesko-dokazivo/>

There is a need for more transparency in implementation of simple procurements, i.e. direct contracts, including an obligation for these procedures to be implemented through the electronic system and define an annual threshold for contracting authorities in terms of the total amount of funds that could be spent under such procedures and the total number of such procedures that could be carried out. In Montenegro, more than €64 million have been spent under these procedures during 2023.<sup>12</sup> The State Auditing Institution of Montenegro stated that implementation of simple procurements in the public sector is not carried out in accordance with laws and by-laws.<sup>13</sup>

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<sup>12</sup> The exact amount was €64,609,541.01.

<sup>13</sup> <https://dri.co.me/actuality/dri-sprovođenje-jednostavnih-nabavki-u-javnom-sektoru-ne-vrši-se-uskladu-sa-zakonskim-i-podzakonskim-aktima>

## **NORTH MACEDONIA: LOW COMPETITION IN PUBLIC PROCUREMENT AS A VICIOUS CYCLE OF CHALLENGES**

The issue of insufficient competition in public procurement in North Macedonia is longstanding and deeply embedded within the system. It stands at the centre of a vicious cycle of problems, simultaneously a consequence of other issues and a catalyst for further challenges. This situation has persisted for as long as public procurement exist in the country. While not a new problem, the situation has worsened in recent years, especially as competition continues to decline.

In the last three years, public procurement competition has dropped, reaching a new low in 2023. For the first time since 2016, the average number of bids per tender fell below the critical threshold of three, hitting an alarming 2.96. This is even lower than in 2016, when this figure stood at 2.97. The decline in competition presents a critical challenge to the procurement system, which has already faced criticism for its inefficiency.

What makes this situation particularly concerning is that more than 30% of all public procurement procedures in the country are conducted with only one bid. This represents an enormous amount of public spending, with half a billion euros being awarded through single-bid tenders. Even more troubling is that this figure increases by additional €100 million annually. Although nearly all these single-bid procedures—98% of them—are conducted through competitive, open procedures with public announcements, the lack of multiple bids suggests deeply-rooted problems in the system.

This lack of competition is further exacerbated by concentration of procurement awards among a small number of companies. In 2023, only ten companies were awarded 23% of the total value of public procurement contracts in the country.

Out of 71,228 active businesses in North Macedonia, only 6,229—approximately 8.7%—are registered on the Electronic Public Procurement System, which facilitates participation in public tenders. This indicates that only a small fraction of the country's businesses is actively involved in public procurement, limiting competition and creating a marketplace dominated by few players.

There are several key reasons behind the low level of competition in public procurement.

One of the most significant is corruption. Tenders are often rigged in advance, with companies knowing that the winner is predetermined. This discourages other companies from submitting bids, as they believe the process is futile. Bid-rigging between companies is also common, manifesting in various forms and patterns. Some companies collude, agreeing their behaviour during the bidding process, thus undermining fair competition.

Irregular and late payments by government institutions further deter companies from participating in tenders. Many companies, especially smaller ones, cannot afford to wait long periods to receive payment, which discourages them from submitting bids in future tenders. This situation leads to a vicious cycle where companies with outstanding payments feel compelled to keep bidding in hopes of staying close to the institutions and eventually receiving their money. Moreover, a general distrust in the procurement system, including doubts about fair and equal treatment of bidders, further reduces competition. Companies are hesitant to participate in a system they perceive as corrupt or biased.

The consequences of low competition in public procurement are severe. High prices and low-quality goods or services are common results, leading to inefficient use of public funds. When there is little competition, the few remaining bidders can dictate prices, knowing they face little opposition. This creates an environment of irrational spending where the government pays more than necessary for substandard

goods or services. Over time, the market becomes dependent on a limited number of bidders who are either the only ones willing to participate or the only ones capable of meeting the specific, often restrictive, conditions set in tenders.

Addressing the issue of low competition in public procurement requires a multi-faceted approach. One of the most critical steps is the fight against corruption. Ensuring a fair and transparent procurement process is essential for rebuilding trust in the system. It is equally important to involve as many companies as possible in the procurement market. Business associations, along with contracting authorities and government institutions at both central and local level, must work together to promote greater participation in public tenders. These associations can play a vital role in educating businesses about the benefits of participating in public procurement and advocating for fair competition.

### **The State of Competition Through Numbers**

One of the most alarming indicators of worsening competition in public procurement is the declining average number of bids per tender. This trend had begun in 2021, leading to the low figure of 2.96 bids per tender in 2023. Simultaneously, other indicators of low competition have worsened as well.

Every third tender is presented with only one bid, with the share of single-bid tenders continuously increasing over the last three years. The share of public procurement procedures with only one bid rose from 26% to 31.6% in just three years. This demonstrates that significant portion of public procurement procedures lack genuine competition. Conversely, the share of tenders with three or more bids, which is typically considered a sign of healthy competition, has decreased. In 2021, 50% of tenders had three or more bids, but by 2023, this figure had fallen to 42%. Only tenders with two bids showed a slight increase, from 21% to 22%. These trends highlight the growing concentration of public procurement awards among a small number of companies and lack of interest from other businesses.

Financial implications of this lack of competition are substantial. The value of single-bid tenders exceeds half a billion euros per year, putting public funds at risk of abuse. Open procedures, which account for the largest tenders, dominate the single-bid category, with 73% of such tenders being open procedures. Despite the theoretically open and competitive nature of these tenders, lack of multiple bids suggests a deeper problem in the procurement process.

Another troubling indicator of low competition is disproportionate concentration of procurement awards among a few companies. In 2023, ten companies alone were awarded contracts worth €288 million, which accounts for 23% of the total annual value of public procurement in North Macedonia. The top 20 companies, meanwhile, shared 35% of the public procurement market. This concentration limits opportunities for smaller or new companies to enter the market, perpetuating the dominance of a few large players.

### **Causes of Low Competition**

There are numerous examples of how public procurement practices in North Macedonia limit competition<sup>14</sup>. Discriminatory conditions are often set for participation in tenders, favouring certain companies, as well as technical specifications being manipulated to favour one bidder over others.

Unequal treatment of participants during the evaluation phase is another common problem, with submitted bids being frequently rejected. In 2023, 13% of all bids were rejected during the evaluation

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<sup>14</sup> For detailed reports on monitoring of public procurement in the country, visit: <https://tinyurl.com/2w4c2d2d>)

process. In 9% of tenders with two or more bids, all but one bid was rejected, effectively turning these tenders into single-bid procedures. Furthermore, in 7% of tenders, all bids were rejected outright.

Another issue is leakage of insider information from contracting authorities to certain companies, giving them an unfair advantage. This includes information about the tender's estimated value, quantities to be purchased, and the procurement's urgency. These practices undermine fairness of the procurement process and discourage other companies from participating.

A 2024 survey revealed that more than half of companies—51%—believe there is corruption in public procurement, up from 46% the previous year. Of those, 42% believe that corruption is often present, while 9% think it is always present.

Collusion between companies is another significant problem. Around 50% of companies admitted they agree their behaviour before the start of e-auctions, undermining the competitive process. Numerous examples exist of companies colluding on pricing and behaviour during procurement procedures, further eroding trust in the system.

Non-payment or delayed payment for completed tenders is another critical factor that reduces competition. Companies are often deterred from participating in future tenders if they face long delays in receiving payment for previous work. This leaves some companies with high claims continuously bidding in the hope of securing payment.

### **Case Study: Vehicle Procurement Tender Delayed for 2.5 Years Across 7 Procedures Due to Lack of Competition**

In November 2021, the Ministry of Interior announced a tender for purchase of 14 passenger and off-road vehicles under a donation agreement with the Czech Republic. However, the process was extended over 2.5 years and involved seven public procurement procedures due to insufficient competition. By April 2024, the final vehicle was procured, with total cost rising from initially planned €316,000 to €370,000.

In the first tender, only one bid was received for one of the five tender lots, with the remaining four being cancelled due to lack of acceptable bids. The second tender for cancelled lots was fully annulled due to lack of bids. The third tender received one bid for one lot, while the other three lots were yet again cancelled. The fourth tender was completely cancelled due to absence of valid bids.

The fifth tender involved two lots; one received a bid, while the other was cancelled. In the sixth tender, there were four lots; two received bids, but the other two were cancelled.

Finally, in the seventh tender—more than two years after the process began—two lots attracted two bids each. The tender concluded with each bidder being awarded one lot. It is important to note that throughout this period, tender documents were revised multiple times.

### **Recommendations**

All stakeholders have a role to play in increasing competition in public procurement.

The civil sector, media, and the State Audit Office have been crucial in exposing issues and calling for reform, but more involvement is needed from other stakeholders. Contracting authorities, regulatory bodies, and judicial institutions must take action to address problems in the procurement process. A clear and non-selective political will from both national and local authorities is essential.

Equally important is involvement of the business sector, which must take a stand against corruption and unfair practices. Business associations should promote zero tolerance for corruption, implement internal rules and compliance systems, and make adherence to these rules a condition for membership.

In conclusion, the issue of low competition in public procurement in North Macedonia is complex and multifaceted. It is driven by corruption, collusion, unfair practices, and lack of trust in the system. Addressing these challenges requires a concerted effort from all stakeholders, including government authorities, businesses, and civil society. By promoting transparency, fairness, and greater participation, North Macedonia can improve its public procurement system, reduce costs, and ensure better quality outcomes for its citizens.

## SERBIA: LOW LEVEL OF COMPETITION IN PUBLIC PROCUREMENT PROCEDURES

Among the numerous problems that exist in the public procurement (PP) system in Serbia (large number of exceptions to application of the Law on Public Procurement (PPL), existence of special laws that suspend application of PPL in the case of large infrastructure projects, absence of control over contract execution, etc.), low level of competition is certainly one of the most important.

Keeping in mind the essence of public procurement - best value for money - it is completely clear that this can only be achieved through participation of as many economic entities as possible in procurement of goods, services and works. Therefore, without competition, it is not possible to achieve the purpose of public procurement.

In Serbia, in the last 3 years (2021, 2022 and 2023), an average of 2.5 bids were submitted in public procurement procedures (2.4 in 2023 and 2.5 in the two years before). This information speaks of the fact that competition in Serbia is below the European average that stands at over 3 bids in public procurement procedures.

What, perhaps, is even more worrying is the number of procedures presented with only one bid. Namely, more than half of the total number of public procurement procedures in Serbia are single-bid procedures!

In 2021, one bid was submitted in 51% of procedures, in 2022 - 51.62%, and in 2023 - 51.6%.

Just as median earnings (earning received by more than half of the population of a country) gives a far more accurate picture of the population's purchasing power than the average earnings, data on single-bid procedures speak much more clearly about (non)existence of competition in public procurement than the average number of bids per tender.

In other words, competition in public procurement in Serbia is at such low level that it is almost non-existent.

Absence of competition can be the result of many factors.

One of the causes behind low level of competition is certainly low trust in the public procurement system, due to the fact that contracting authorities tend to favour certain bidders while business entities often engage in bid-rigging.

In recent years, market division has been one of the most common forms of bid-rigging in Serbia. Additionally, other forms of bid-fixing include fictitious bids, rotating bids or refraining from bid submission. Different bid-fixing techniques are not mutually exclusive and often occur together.

Restriction of competition by contracting authorities can also be done in many different ways: from setting specific criteria for qualitative selection of a business entity, through "drawing" of technical specifications for precisely specified bidders, to the way in which the procurement subject is created (whether it is divided into lots or not).

Below is the analysis of two glaring examples of limiting competition in public procurement in Serbia, noting there are many other similar examples.

### Case Study: Procurement of Digital X-Ray Machines for 15 Healthcare Institutions



In this case study, we analysed procurement of digital X-ray machines for 15 healthcare institutions in Serbia, carried out in the period 2018-2021. The total value of those purchases amounted to over €1.6 million.

Same technical specifications were requested in all procedures analysed which, more than obviously, favoured a specific bidder.

All observed procedures had an identical outcome: only the bid by this favoured bidder met all requirements (was the only acceptable bid), with the offered price in most cases being identical or very close to the estimated value (in some procedures it was even slightly higher).

Key technical specifications used by contracting authorities in all these procedures to favour the mentioned bidder were, in fact, related to specifications of an additional device that is not an integral part of the digital X-ray machine: dry thermal medical printer, a device used for printing X-ray films (images). In all 15 procedures, different contracting authorities requested that particular printer with the X-ray machine, with identical characteristics which, obviously, favoured this particular bidder.

Surprisingly (or not), the Republic Commission for Protection of Rights in Public Procurement Procedures tolerated such practice of the contracting authorities, although several requests for protection of the rights of various potential bidders were submitted in an attempt to point out to an absolute restriction of competition in the specific case.

In several of its decisions, the Republic Commission stated: *“The possibility of eventual market restrictions on certain goods in the manner indicated by the applicant in its claim, represents a real market environment in which the contracting authority has to conduct its public procurement procedures. Determining the responsibility for possible illegal restriction of competition on the market cannot be the subject of the procedure for protection of rights in an individual public procurement procedure. Also, challenging individual public procurement procedures cannot help determine whether any market participants violate regulations that ensure equality and competitiveness on the market. The Republic Commission further points out that, in this sense, other legal means are available to economic entities to exercise protection of their rights as market participants.”*

### **Case Study: Equipment for the Clinical Centre of Serbia**

In 2021, within the project “Reconstruction of Four Clinical Centres in Serbia”, the Ministry of Health conducted a public procurement procedure for equipment needed by the Clinical Centre of Serbia (KCS), estimated at RSD12 billion, without VAT. The subject of this procedure was procurement of as many as 602 items of various functions and purposes: from the most modern medical equipment (CT scanners, magnetic resonance devices, ultrasound devices...), through standard medical equipment (microscopes, wheelchairs, infusion stands...), to non-medical equipment (bar stools, bookcases, coffee grinders etc.).

The contracting authority, however, did not divide such a complex procurement subject into several lots, but shaped it as one whole. Therefore, the contracting authority significantly limited competition as bidders had to offer all goods required in order to be able to participate at all. As there is certainly no bidder that can offer all required goods or bidder that has a license to market all medical devices procured by the client in this particular case, and given that, on the market, vast majority of these items are offered by different bidders, the only logical conclusion is that the procurement in question should have been divided into lots. That would have almost certainly led to a larger number of bids and, consequently, to much more favourable bids. However, the contracting authority’s argument was that the decision on single procurement subject had been guided by the principle of the economies of scale and the expectation of cheaper offer, and that market research revealed a large number of potential bidders able to meet the

requirements and fulfil contractual obligations. The fact that the contracting authority had been wrong was certainly confirmed by the procedure's outcome: only one bid was submitted (by a group of nine bidders), in an amount slightly below the procurement's estimated value (RSD11,999,312,969.76 without VAT).

The inappropriately short deadline for bid submission in a procedure with such complex procurement subject certainly contributed to participation of only one bidder. Namely, the contracting authority determined the minimum law-stipulated deadline for bid submission – 35 days from the day when the procurement notice was published. In accordance with the Public Procurement Law, besides the fact that minimum deadlines should be respected when determining deadlines for bid submission, contracting authorities are obliged to make sure that these deadlines are adequate for preparation of acceptable bid, depending on the complexity of the case. In this particular case, an acceptable bid could have been submitted only by bidders that had received information in advance about the procurement in question or that had already participated in similar procedures, so they would be somewhat prepared. However, procedures with similarly-formed procurement subject, if any, are not very common. Therefore, the contracting authority further restricted competition by setting an inadequately short deadline.

Moreover, attempting to justify the unique procurement subject and the minimum deadline for bid submission, the contracting authority mostly referred to the need to equip KCS quickly and completely with the best possible equipment that any tertiary health institution must have. We believe that, after so many decades of waiting for reconstruction of KCS building and countless delays in completion of works, several months of delay caused by division of the procurement subject into lots (taking into account the time to review and evaluate more bids, and to eventually complete initiated protection procedures), would certainly not have been a problem, especially taking into account that such procedure would definitely result in equipment of better quality, at a lower price.

### **Conclusion**

Examples elaborated above perfectly illustrate why competition in Serbia is low or almost non-existent. When this problem is combined with non-application of PPL, i.e. existence of laws that suspend the Public Procurement Law for the most important and valuable (infrastructural) projects (Law on Special Procedures for Realization of the International Specialized Exhibition EXPO Belgrade 2027 and provisions under the Law on Use of Renewable Energy Sources ), it is completely clear that the situation in the field of public procurement in Serbia is really worrying.

Finally, we should remember and reiterate that the Republic of Serbia has opened Chapter 5: Public Procurement back in December 2016 as part of its EU accession negotiations, but eight years later it still does not meet the criteria for temporary closure. Despite the fact that forecasts at the time regarding closure of this chapter were highly optimistic, unfortunately, it seems that today Serbia may be further away from meeting aforementioned criteria than it was eight years ago.

## ABOUT THE 'BALKAN TENDER WATCH' COALITION

Balkan Tender Watch is a regional anticorruption coalition of civil society organizations established in 2012 around the idea of narrowing space for corruption in public procurement by means of:

- < identifying spots in the public procurement cycle vulnerable to corruption;
- < exposing corrupt practices in monitored public procurement cases;
- < proposing and advocating policy solutions that would contribute to decreased corruption in public procurement in the Western Balkans.

Current members of the coalition are the Center for Civil Communications - CCC (North Macedonia), Network for Affirmation of NGO Sector - MANS (Montenegro), Center for Applied European Studies - CPES (Serbia), Enterprise Development Agency - EDA (Bosnia and Herzegovina), FOL Movement (Kosovo) and Respublica Centre (Albania).

From the very beginning in 2012, the coalition is increasing the Western Balkans civil society impact on anticorruption policies and practices across the public procurement cycle. The Balkan Tender Watch strongly believes that the EU integration process has to be used as strong transformative framework for WB countries. Also, it believes that reforms should go beyond the minimum *acquis* requirements and lay down firm foundation for Europeanisation of all countries in the WB region.

Since 2012, the coalition has conducted numerous analyses of legal and institutional frameworks that regulate public procurement in WB countries. This endeavour implied monitoring of significant number of public procurement cases to actively control legality, efficiency and effectiveness of public spending.

Coalition members are particularly proud of the two unique tools developed, i.e. the benchmarking tool that enables detection of spots and areas within public procurement systems vulnerable to corruption and the Manual on Monitoring and Control of Public Procurement Purposefulness.

In the course of past years, in addition to producing many comparative analyses, shadow reports, policy and media briefs, the coalition provided training and mentorship to more than 50 civil society actors (NGOs and media) from the WB region in order to share knowledge, boost their capacity and empower them to actively engage in monitoring of public procurement and public finances in general. At the same time, active 'field' work with grassroots civil society actors enabled us to establish a broad and stable anticorruption network.

Visit our website: <https://www.balkantenderwatch.eu/>