



**PUBLIC
PROCUREMENT
AGENCY**

ANNUAL REPORT

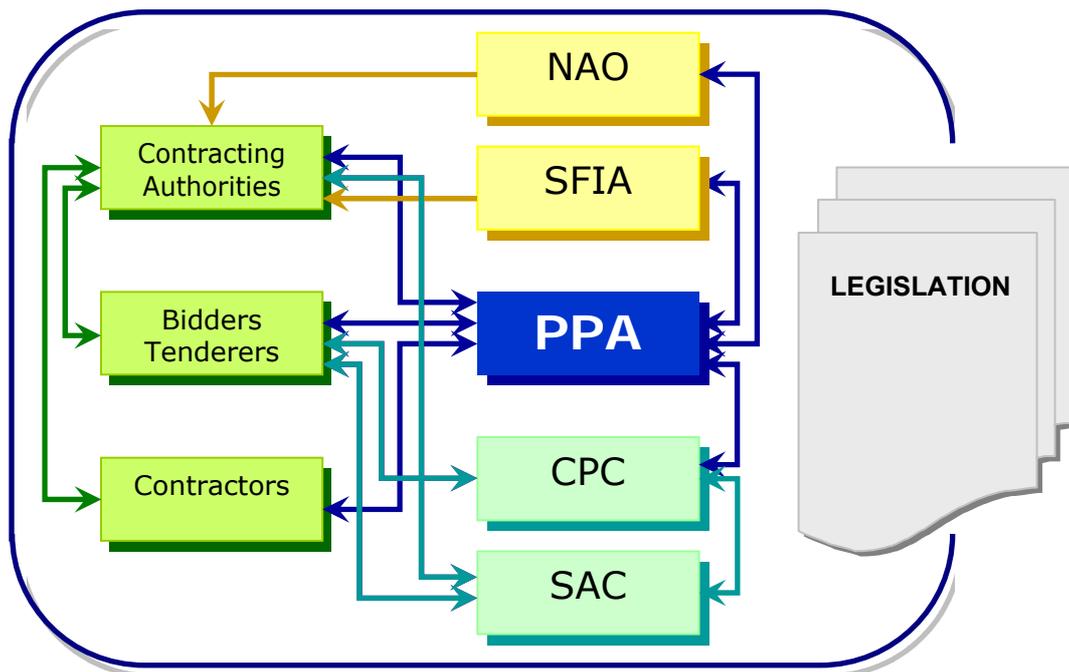
2012

INTRODUCTION

This report has been prepared on the grounds of Art. 19, Para 2, item 12 of the Public Procurement Act. It contains data and conclusions related to the activity of the Public Procurement Agency, the objectives for the next year, as well as information about the substantial indicators characterizing the public procurement system and market in Bulgaria in 2012.

● Public procurement system

The public procurement system should be viewed as the sum of the legislative framework, the authorities responsible for the application of the public procurement rules, as well as the relations among all parties related to the conducting of procedures, the implementation of contracts, the remedy and control on the contracting authority's activities. A characteristic feature of the system is its open nature, since it is significantly influenced by the overall economic environment. In terms of the legislative framework, it is also dependent on the commitments pursuant from Bulgaria's membership in the European Union. And the effective application of the legislation requires the correct actions of a wide circle of stakeholders. Such are first of all almost four thousand contracting authorities in the country, as well as the bodies responsible for methodology, ex-ante and ex-post control, and remedy procedures.



A central position among these bodies is held by the Public Procurement Agency /AOP/. It is the main source of initiatives for the implementation of policies in the field of public procurement, by means of the functions assigned to it. As an administration at the Minister of the Economy, Energy and Tourism, PPA interacts with the following bodies responsible for specific aspects in the area of public procurement:

- National Audit Office of the Republic of Bulgaria (NAO) – an independent body for ex-post control on the activities of contracting authorities spending public funds;

- State Financial Inspection Agency (SFIA) – a body of the executive power responsible for ex-post control of contracting authorities' activities;
- Competition Protection Commission (CPC) – a body responsible for the appeal of public procurement procedures as a first instance;
- Supreme Administrative Court (SAC) – a judicial body responsible for the appeal of public procurement procedures as a second instance;

The main expression of the policy conducted in the area of public procurement is the package of legislative acts which cover all issues related to the conducting, control and remedy of procedures. Most of these acts have transposed the applicable European directives, based on which the foundations of the national legal framework have been built. In 2012, substantial changes were made to the structure of the legislative base. In the beginning of the reporting period, the framework included:

- Public Procurement Act (PPA);
- Regulations on the application of the Public Procurement Act (RAPP);
- Ordinance on small public procurements (OSPP), repealed with a Resolution by the Council of Ministers No 38 dated 23.02.2012;
- Ordinance on special public procurements (OSPP);
- Ordinance on the provision of ex-ante control on public procurement procedures fully or partially funded by EU funds, repealed with a Resolution by the Council of Ministers No 38 dated 23.02.2012;
- Ordinance on conducting competitions for urban development and investment designs;

To the legislative base should be added the directly applied Regulations of the European Commission, which determine the applicable thresholds for the award of public procurements, the standard forms for publishing notices and information, as well as the Common Procurement Glossary, which aims to standardize the approach in determining the object of public procurements.

There are also aspects related to the control and appeal of public procurements in the Act on the National Audit Office, the Act on the State Financial Inspection and the Competition Protection Act.

Public Procurement Agency

● Structure and composition

The Public Procurement Agency was established by a Resolution by the Council of Ministers (CM) No 56 dated 12.03.2004 as a legal entity with the status of an executive agency at the Minister of the Economy, Energy, and Tourism. Its establishment laid the foundation of an independent administrative structure with clearly delineated rights in the public procurement system. The act for its establishment was also in reply to a specific requirement related to the conditions for the country's accession to the European Union. Under it, the implementation of a sustainable policy in the field of public procurement and the fulfillments of the commitments for harmonization of the legislation make it necessary

to establish a separate authority responsible for reaching the above aims. It is a commitment that is still being fulfilled, since the Directives are not static and require ongoing harmonization with the national legislative framework.

The Agency assists the Minister of Economy, Energy and Tourism in performing the state policy in the field of public procurements. It is a legal entity with budget support seated in the city of Sofia and is a secondary drawer of budget credits. PPA is fully supported by the state budget; it does not generate revenues on its own, and all services are provided free of charge. The administration is headed and represented by an Executive Director appointed by the Minister of Economy, Energy and Tourism, after the approval of the Prime Minister.

PPA's responsibilities and functions are focused on the provision of lawfulness in the award of public procurement contracts, as well as on the application of a horizontal community policy related to the efficient spending of public funds, including EU funds, in observance of the principles of publicity, transparency and loyal competition. The Agency is responsible for the preparation of draft legislative acts, the development of methodologies, as well as ex-ante control on the lawfulness of public procurements.

The main functions of the Executive Director are regulated in Art. 19, Para 2 of the Public Procurement Act and are developed in detail in the Internal Regulations of the PPA. When exercising their rights, the Agency's head is assisted by administration, whose functions are distributed among one general and two specialized directorates.

- General administration

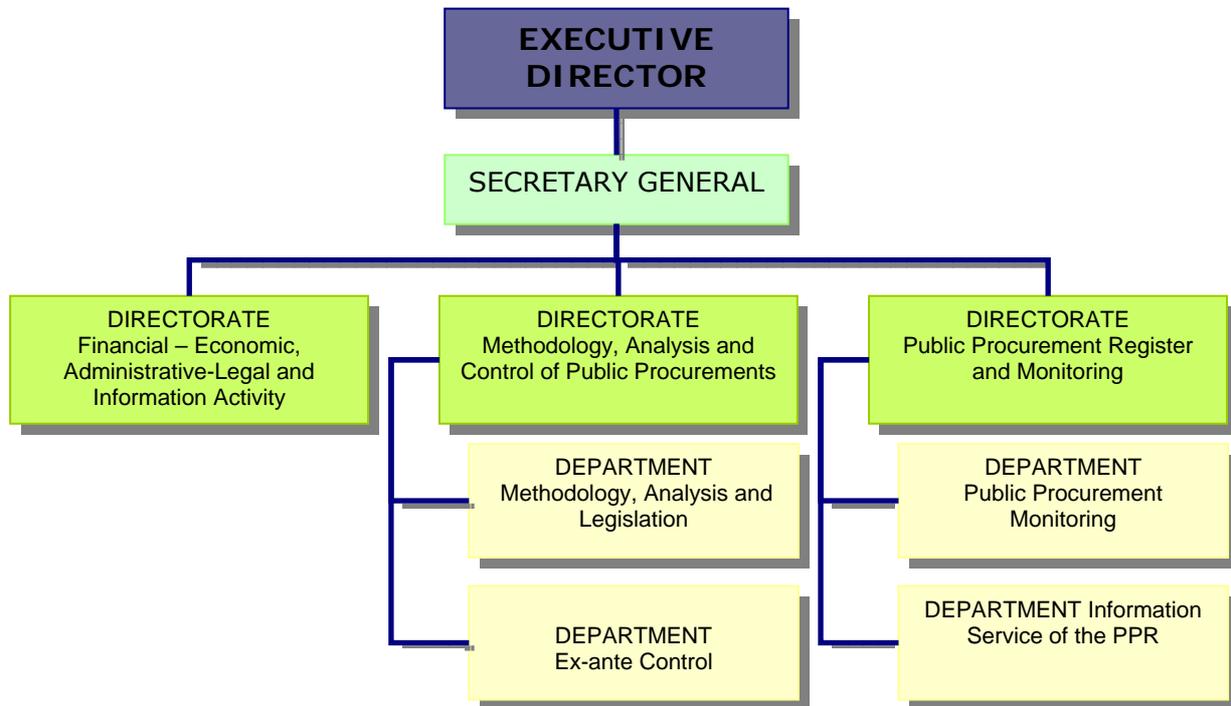
Directorate Financial-economic, administrative-legal and information activity – performs financial accounting and reporting activity; ensures the budget implementation; performs ex-ante control on the lawfulness in public funds spending; provides technical assistance to the activity of the Executive Director and the specialized administration, as well as the administrative service activities to citizens and legal entities.

- Specialized administration

Directorate Methodology, Analysis and Control of Public Procurements – prepares methodological instructions; summarizes and analyzes the practice of the application of the PPA; participates in the development of draft acts; performs ex-ante control on public procurement procedures specified in the act; participates in the working groups and meetings of the Consultation Committee and the Governmental Expert Group on public procurement at the European Commission.

Directorate Public Procurement Register and Monitoring– builds and maintains a Public Procurement Register (PPR) and Public Procurement Portal; monitors the information subject to submission to the PPR; studies and introduces the best practices in awarding e-procurements.

In graphic form, the Agency’s structure can be presented by the diagram below:



● **Main functions**

The thus established function aims to perform the rights regulated in the legislation. The rights on their part are related to the objectives (listed below) and can be summarized in the following main groups:

- Development of the legislation;
- Provision of methodology, assisting the public procurement subjects and spreading best practices;
- Exercising ex-ante control on the application of the legislation;
- Guaranteeing compliance with the publicity and transparency principles;
- Maintaining a Public Procurement Register;
- Performing monitoring of the information due for submission to the PPR;
- Internal and international cooperation.

● **Administrative capacity**

The total headcount at the Agency is 75 permanent positions, of which 56 are state servants and 19 are under labor contracts. These include 10 positions whose remuneration and benefits are provided for through the Technical Assistance Operational Programme. Besides the permanent position, PPA also employs three persons appointed by Resolution of the Council of Ministers No 66/1996 and two employees under the “Career Start” Programme.

In 2012, 13 competition procedures were conducted for the recruitment of 20 employees. As a result, 16 persons were appointed, 14 as state servants and 4 under labour contracts. 11 employees left the Agency in 2012. In fact, as at 31.12.2012, 59 permanent positions were taken.

According to their educational degree, the employees are distributed as follows: 53 with higher education and 6 with secondary education. According to the type of educational field: Legal science – 11; Economic science – 19; Technical science – 5; Information and communication science – 4; Humanitarian science – 10; Social science – 2; Pedagogical science – 2. According to age: between 21 and 30 years of age – 11; between 31 and 44 – 29; between 45 and 59 – 16; over 60 – 3.

In 2012, in relation to the Ordinance on the terms and conditions for appraising employees in the state administration, interim and annual meetings were held. All employees received the respective attestation annual appraisal. Work plans were also prepared for individual implementation in 2013.

● Aims

The following aims were envisaged for the Agency's functions in 2012:

- Provision of a methodology for the lawful application of the legislation in the area of public procurement and reinforcement of a unified practice of awarding public procurements;
- Internal and international cooperation;
- Development of new initiatives in the field of public procurement;
- Publicity and transparency of the information related to the award of public procurement;
- Public procurement monitoring and control;
- Development and elaboration of the legislative base by making rules more precise and simpler;
- Update of the public procurement legislation.

● Implementation of the PPA budget for 2012

On the grounds of Art. 34 of the State Budget Structure Act, the PPA's approved budget for 2012 was BGN 1 368 770. The total amount of the Agency's expenses as at 31.12.2013 was 1 281 973. The absorption of the Agency's costs as per the approved plan for the year was 93,66%.

The funds reported for salaries and staff remuneration amounted to BGN 750 511, and the funds for social securities from the employer and additional security and health security installments amounted to BGN 202 578.

The costs for the Agency's support as at 31.12.2013 amounted to BGN 279 422, and the capital expenses amounted to BGN 49 462.

PERFORMANCE OF THE FUNCTIONS AND TASKS

Legislative amendments

In 2012, active efforts were made in continuing the implementation of one of the most priority activities of the Public Procurement Agency – update of the legislative base.

● **Harmonization of the legislative base in accordance to the European Directives and Regulations**

In the beginning of the reporting period, in accordance with its rights, the Agency took part in discussions at the Parliamentary Commissions of the Draft Act on the amendment and supplement to the Public Procurement Act passed in the end of 2011.

It introduces the requirements of Directive 2009/81/EC, which settles the award of public procurements in the field of defense and security. The award rules envisaged in the draft law are applied for several groups of procurements. These include the supply of military equipment, as per EU's Common list of military equipment; the supply of equipment related to classified information; the public procurements for works and services directly related to military and special equipment; the public procurements for works and services for specific military aims, as well as public procurements for works and services related to classified information.

In view of the sensitive nature of these procurements, the contracting authorities are allowed to specify in the tender documentation special implementation conditions, in order to ensure the security of the classified information or supplies.

One of the peculiar features of Directive 2009/81/EC is the possibility for the contracting authorities to influence the choice of subcontractors by requiring the selected contractors to select their subcontractors on a competitive principle. In relation to that, the amendments preserve the overall principle for tenderers to be free to decide whether to use subcontractors and if yes – for what. Moreover, in accordance to the Directive, a possibility is envisaged for the contracting authority to oblige the tenderer selected as contractor, to select the subcontractors for all or some of the activities proposed for subcontracting, in observance of specific rules. Regarding these procurements, the currently existing terms and conditions for appeal to the Competition Protection Commission and the Supreme Administrative Court are preserved.

The draft was passed at second reading at the National Assembly in April and was in effect as of 1 May 2012. Thus the Republic of Bulgaria fulfilled its obligation as a member state to align the national public procurement legislation in accordance with the European legislation in the area.

● **Development of the legislative base in relation to conducting the state policy in the area**

In the beginning of the year, work commenced on the amendment and supplement to the Regulations for the application of the Act and the Internal Regulations of the PPA, in relation to the Act on the amendment and supplement to the Public Procurement Act, in effect as of 26.02.2012. The amendments in the above stated acts were passed by a Resolution by the Council of Ministers No 38 dated 23.02.2012.

The Resolution repealed the Ordinance of small public procurements and the Ordinance of ex-ante control on public procurements fully or partially funded by EU funds, since the matter settled in them was regulated in the PPA and the Regulations for its application.

The amendments to the bylaws developed and detailed the legislative base and provided conditions for an overall and consistent approach in conducting public procurement procedures.

● Other initiatives

Over the reporting period, the agency also prepared statements on 7 other draft legislative acts.

- Degree of the Council of Ministers on the amendment and supplement of DCM 112 on the establishment of a Central Public Procurement Body for the needs for the executive power authorities;
- Regulations for the activity for the Council for coordination in combating legal violations concerning the financial interests of the EU;
- Act on the amendment and supplement to the Act on small and medium-sized enterprises;
- Act on the Financial Inspection Commission;
- Decision of the Council of Ministers for the approval of a list of actions, deadlines and institutions responsible for the implementation of the preliminary conditions for the EU funds for the 2014 – 2020 programme period;
- Draft Act on the amendment and supplement to the Trade Act;
- Draft Act on the supplement to the PPA in relation to the need of solving the issue with the untimely payment or non-payment of liabilities to public procurement contractors to subcontractors.

Methodical assistance

Another important function of the Agency is devoted to the methodological assistance given to all subjects related to the award and performance of public procurement contracts. By means of this activity, the Agency applies a unified and non-contradictory practice regarding the application of the legislation. The performance of the methodological function comprises several main directions:

● Replies to written inquiries

This is the most frequently used approach for providing methodological assistance in the process of awarding public procurement contracts. This form of communication is preferred by the people, since through it they receive an official position on the questions asked.

The legislative amendments in 2012 explicably increased the need of methodological assistance to the participants in the public procurement process. As compared to the previous years, the written inquiries increased by 9%. 283 replies and statements were prepared, referring to a wide range of cases in the application of the provisions of the law and bylaws.

Many of the questions asked are related to the separate stages from the application of public procurement procedures for whose implementation EU funds are used. Quite

substantial is the proportion of inquiries related to various aspects of the performance of the public procurement contracts, the possibility for their amendment and termination.

The analysis of the inquiries received shows that the indicators from previous years regarding contracting authorities' activity were preserved. The biggest number of questions were asked by the administration of the central executive power bodies, followed by municipal mayors and utility contracting authorities. There are also frequent inquiries from tenderers, bidders and contractors of public procurements.

● Publications on the Public Procurement Portal

The inquiries received by the Agency are the also the source of feedback about the areas in which contracting authorities, bidders and tenderers most often have difficulties in the application of the legislation. That is why, when a given question is repeated, methodological instructions are prepared, directed to all customers, which are then published on the Public Procurement Portal so that they can be publicly accessible.

Following this procedure, nine methodological instructions were published in 2012. The first contained detailed instructions about the correct application of the new model for ex-ante control on procedures funded by EU funds, in effect as of 26.02.2012.

Two instructions are related to the award of public procurements by means of a public invitation – a new approach envisaged by the legislative amendments from February.

A detailed methodological instruction reviews the cases in which the new specimen "Information about the procedure status in case or a remedy procedure" should be sent, and provides information about its correct filling.

Instructions were issued about the terms and conditions for the award of public procurements for the provision of electronic communication services under the GSM and UMTS standards and the award of archaeological surveys in relation to the contracting authorities' investment activity.

The remaining instructions concern the value thresholds for the application of the simplified rules envisaged in the PPA, the shortening of the procedural terms in case of publishing preliminary notices and the admissibility of setting requirements to persons from the tenderer's teams to hold certificates in the area of identifying and prevention of irregularities and fraud.

In 2012, 3 practical instructions were also published. Two of them refer to the creation of the so-called 'authorized user' in the Public Procurement Register. The third one contains instructions related to the sending of a public invitation through the Public Procurement Portal. In addition, on 15.02.2013, a letter was sent to all contracting authorities in relation to the sending of public invitations.

● Direct consultations

Another preferred form for the provision of methodological and practical assistance to the public procurement subjects is the holding of direct consultations. This assistance approach allows a complex discussion of all facts and circumstances related to the case, especially in cases with higher complexity. Due to that, the interest in consultation meetings is very high.

Over the reporting period, over 200 consultations were held at the Agency with representatives of the central and local administration – ministries, agencies and municipalities, as well as utility contracting authorities, bidders and tenderers.

The object of the consultations with contracting authorities was the lawful application of the grounds for negotiation and the ex-ante control performed by PPA on public procurement procedures fully or partially funded by EU funds. Various specific cases were studied related to the selection criteria, the methodology for evaluation of the bids, the grounds for eliminating tenderers, the possibilities for contractual amendments, etc.

● **Hotline**

Another means for the provision of methodological support are the specialized phone lines maintained by the Agency for consultation on legislation-related issues, document specimens and the applied software for filling them, as well as for the information subject to submission to the PPR. The phone consultations are a possibility for receiving quick cooperation in the solution of arising issues that require urgent directions regarding the correct application of the legislative base and the by-laws. This makes this form of administrative service the most preferred and most frequently used one by all subjects related to the award of public procurements.

In 2012, around 3400 calls with requests for practical and methodological instructions were registered. The data review shows that around 1/3 of the inquiries come from municipalities, followed by hospitals, ministries and agencies. In most of the cases, several issues are discussed within one call.

In summary, regarding its methodological function, in 2012 the Agency provided methodological assistance in its various forms over 3700 times or between 14 and 15 times per day.

● **Organizing and conducting trainings**

The legislative amendments enforced in 2012 increase the interest and need of trainings to a wider group of people involved in the public procurement process. In reply to invitations sent by other institutions, the Agency's experts participated as lecturers in 9 trainings in total. At 7 of them, the amendments of the public procurement legislation enforced on 26.02.2012 were presented.

At a special working meeting with the information security officers, the new terms and conditions for the award of public procurements in the area of defense and security were reviewed, in relation to the legislative amendments in effect as of 01.05.2012.

A PPA expert delivered a lecture at a specialized seminar related to green public procurements.

Over the reporting period, at the Training Centre of the Public Procurement Agency, a two-day training was held on "PPA amendments in effect as of 26.02.2012. Practical skills in work with the Public Procurement Portal and the specialized Form Editor software". The participants in the training were representatives of the State Commission for Information Security, the Commission for the Prevention and Identification of Conflict of Interest, the Dossier Commission, etc. The participants were informed about the legislative amendments, the specific features of the work with the Form Editor and the new document specimens used after the enforcement of the PPA amendments.

The analysis of what was achieved regarding the methodological functions demonstrates a decrease in the quantity aspect of the separate indicators. The legislative amendments from 2012 have a direct effect on this result, and more specifically the increased scope of the two types of ex-ante control performed by the Agency. This made it necessary to involve the administrative capacity to service these functions, viewed as priority ones in terms of their purpose – directly related to increasing law compliance in opening public procurement procedures.

Control on public procurements

Ex-ante control as a function of the PPA was introduced on 1 January 2009. In view of limiting the cases of unlawful and non-transparent spending of public funds, the legislative amendments in effect as of 01.01.2009 expanded the rights of the Executive Director of the PPA. The Agency was assigned the performance of ex-ante control on the most significant public procurement procedures funded with EU funds, and on the negotiated procedures without a notice, launched by contracting authorities under Art. 7, items 1-4 of the PPA.

● Ex-ante control on public procurements funded by EU funds

In its nature, this control differs significantly from the ex-post control performed by the National Audit Office and the State Financial Inspection Agency, which is mainly sanctioning in nature. The control performed by the PPA, does not aim punishment, but prevention. By means of this mechanism, the contracting authorities are provided with methodological assistance for the early elimination of omissions and errors at the preparatory stage of the procedures and for their legal launch.

The analysis of the results from the performance of this function over the years since its introduction has shown a significant improvement in the understanding and application of the public procurement legislation.

The good results from the control have also been registered in EC's reports regarding Bulgaria's progress on the cooperation and verification mechanism. In order to enhance the efficiency of the control, the Commission recommends the introduction of a feedback mechanism to monitor the implementation of the instructions of the ex-ante control bodies.

Under the initial control model, the Agency's role accompanies the control functions of the Managing Authorities of the Operational Programmes. The control was exercised at a single stage, and the draft documentation for opening and conducting the procedure was checked.

Under the model introduced on 26.02.2012, the institution responsible for controlling the procedure's lawfulness is only the Public Procurement Agency.

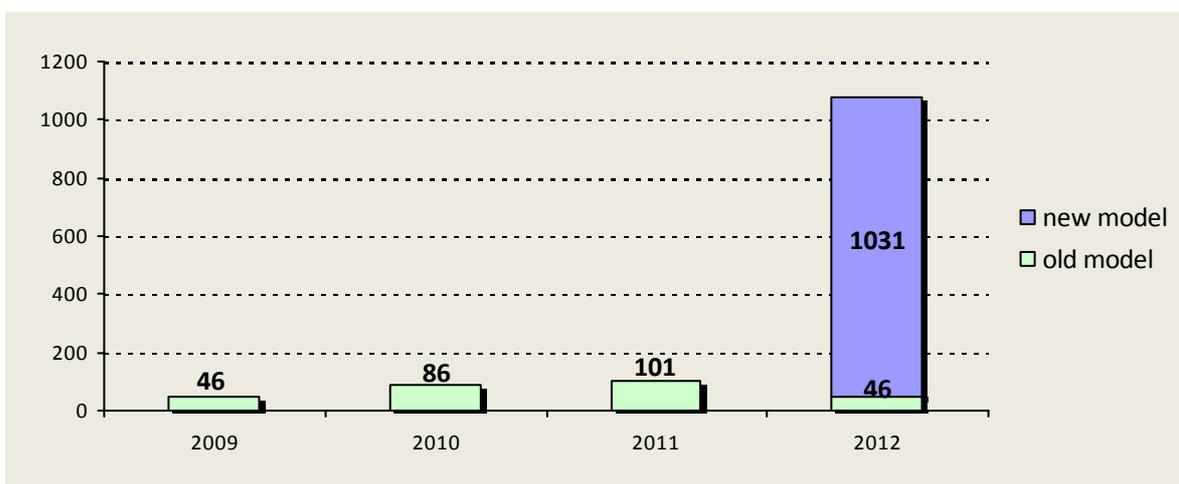
With respect to the public procurements' value, the scope of control is still limited – not all procedures launched to implement grant agreements are checked. Nevertheless, as compared to the previous model, there has been a substantial increase of the number of procedures checked, by legislatively lowering the thresholds above which the public procurements are subject to control. For works, control is performed for values above BGN 2 640 000 (around 1 350 000 евро) excluding VAT. For supplies and services, control is exercised on the procedures whose value exceeds the thresholds determined with a

Regulation of the European Commission, which vary depending on the type of contracting authority (on average around EUR 240 000 or BGN 470 000). The document scope of the control under the new model is limited to the most sensitive and substantial elements of the tender documentation – the requirements to the tenderers, which should be contained in the notice for the public procurement, and the methodology for the evaluation of the bids. For the procedures for which specific circumstances are required for their application, the contracting authorities’ motives stated in the decision for opening the procedure are also subject to control.

The second substantial amendment is moving from one-stage to two-stage control. At the first stage, the draft documents are again checked. At the second stage, a compliance assessment is made of already published documents with the legislative requirements and PPA’s recommendations. Thus feedback is provided, which also meets the recommendation in EC’s report.

In order to exercise control, a strict organization was developed and introduced that guarantees the correct conducting of the process and compliance with the terms envisaged. The information exchange between the agency and the contracting authority is only performed by e-mail with electronic signature. This ensures speed in the sending and receiving of documents. The specialized Form Editor software that PPA provides to contracting authorities free of charge, includes a number of validation rules to assist them – for instance such that guarantee the fullness of the documents needed to perform the control.

In 2012, PPA received 1076 correspondence files for ex-ante control under Art. 19, Para 2, item 22 of the PPA. As compared to the previous three years, the 2012 data demonstrate a significant growth of the incoming documents – over 4.5 times more documents as compare to all received in 2009-2011.



Among the factors that influence the registered increase, the following may be pointed out:

- the determined lower value thresholds of the public procurements subject to mandatory ex-ante control, due to which more procedures were covered as compared to the previous period;
- the introduced two-stage model, under which two correspondence files are processed for each procedure;

- The increased number of projects under the Operational Programmes approved for funding, which leads to an increase of the volume of the public procurements through which the project activities are implemented.



Of all documents received for control, the biggest proportion is that of procurements funded under Environment OP – 34%. Most of them are for the construction and/ or engineering of wastewater treatment plants and/ or sewerage collectors, reconstruction and rehabilitation of the WSS network. For the implementation of the above listed activities, usually significant financial sums are disbursed, due to which most of the procedures checked were published in the Official Journal.

The data shows that second are public procurements for projects under Regional Development OP – 24%, followed by those funded by Agricultural Areas Development OP – 13%, and Human Resource Development – 11%. Approximately the same is the distribution of public procurements under Transport OP and Administrative Capacity OP – around 6%. It needs to be pointed out that the most significant and complex projects funded under Transport OP were awarded over the previous five years, due to which in the reporting period there was a significant decrease of public procurements funded under this OP. The smallest proportion is that of the procurements subject to control and funded by Competitiveness and Technical Assistance Ops.

Most active among the contracting authorities were the municipalities with 591 procedures, followed by the ministries – 216, the agencies – 164, and the organizations governed by public law – 72. This distribution reflects the profile of beneficiaries under the individual Operational Programmes and corresponds to the progress of each of them.

From the perspective of the public procurement object, there is no change in the distribution of data as compared to 2011, and again the biggest proportion is that of service procedures – 551, followed by works procedures – 340, and supplies – 185.

The role and importance of this type of control function of the agency and in particular in its new form may be unequivocally and objectively assessed by the following results from the activity.

In the reporting 2012, PPA processed a total of 1010 correspondence files, of which:

- 56 nos. – on procedures subject to ex-ante control under the provisions in effect until 25.02.2012 (including 16 received in the previous 2011);

- 954 nos. – on procedures subject to ex-ante control under the provisions in effect as of 26.02.2012 (458 nos. at the first stage, 370 at the second stage, 122 returned to the contracting authorities after a review and after it was found that the necessary prerequisites needed for performing ex-ante control are not present, as well as 4 correspondence files which were not subject to ex-ante control due to the contracting authority's refusal).

As a result of the large volume of draft public procurement notices checked, the most frequent errors in preparing the procedures can be delineated, including:

- formal meeting of the contracting authority's obligation to submit specific information type and content, which under Art. 25, Para 2 of the PPA is an obligatory part of the public procurement notice. The information requested is not entered in the respective field in the notice, or it is stated by means of reference to conditions in the documentation and/ or the draft contract (for instance, quality and volume of the public procurement; payment scheme and conditions);

- numerous documents are required to prove compliance with the minimum requirements of the contracting authority to evaluate the economic and financial condition (Art. 50 PPA) and the technical capacities and professional qualification of the tenderers (Art. 51 PPA), and only some of them are sufficient to verify the tenderer's capacity to perform the object of the public procurement;

- public procurement notices are used taken from previous procedures with a similar object, which include conditions and requirements not applicable to the object of the specific public procurement;

- errors are made in the shortening of terms which depend on the moment of opening the procedure, due to which upon the check the draft documents cannot be found.

Unlike previous years, when the contracting authorities' errors were the result of not knowing, understanding and correctly applying the PPA provisions, in the reporting period the contracting authorities' omissions are due to underestimating the importance of the information entered in the public procurement notice.

Regarding the checked draft methodologies for evaluation using the economically most advantageous offer criterion, the most frequent errors are due to the large number of sub-indicators that form the technical evaluation. In many cases these sub-indicators are overlapping and measure one and the same quality of the bid, for instance "organization of work" and "methodology and approach"; "implementation deadline" and "schedule". This stimulates the preparation of bids similar in content and quality, which after all only differ in terms of price. Another disadvantage of the evaluation methodologies are the evaluation scales, which often contain conclusions only to assign a maximum number of points, but none about the interim results and the minimum evaluation that a given bid may have. Continuing is the practice to envisage evaluation "from – to" in the evaluation scale for one and the same conclusion regarding the respective sub-indicator.

Of all 370 launched procedures for which the second stage of control was performed, for only 29 the PPA reports do not contain remarks. The interpretations of these low results

may vary, but by all means the responsibility of the contracting authority is crucial, and should by no means be taken from the bodies with control functions.

Despite the omissions listed above, it is important to point out that the exercising of ex-ante control enhances the expert knowledge and capacity of the contracting authority's officials who are involved in the planning, preparation and announcement of the public procurements. Based on the statements issued and the recommendations made to eliminate discrepancies, the experts acquire sustainable knowledge about the application of the public procurement legislation. There are visible efforts to eliminate the omissions identified within short time. It can be seen from the content of the public procurement notices and the evaluation methodologies that there is exchange of experience and information between the contracting authorities who are beneficiaries under one and the same OP, which facilitates the intolerance of already identified vicious practices.

Another indicator of the control effectiveness is the practice of appealing against procedures. According to CPC data, out of all 370 procedures subject to control and launched from 26.02.2012 till the end of the reporting period – 31.12.2012, in only 17 cases an appeal was submitted against the decision for opening, which was subject to control by PPA. This is 4.5% of the total number of procedures. Unlawfulness of the decision was found in 7 of the cases, i.e. in less than 2% of the checked procedures the decision for opening was successfully appealed against.

The substantial effect of the ex-ante control is that there is a decrease in the grounds for imposing financial corrections in relation to identified discrepancies about the conditions under which the public procurement procedure was prepared and launched. This fact has an undoubted positive effect on all subjects in the process, since the award of a public procurement within the planned deadlines and in view of the project implementation deadlines, the commitments are fulfilled, including the financial ones, which builds trust between contracting authorities and contractors.

It can definitely be stated that the PPA provides consistent cooperation for the building of contracting authorities' reliable administrative capacity, whose experience and knowledge will contribute for the successful start of the OPs in the next financial period - 2014 – 2020.

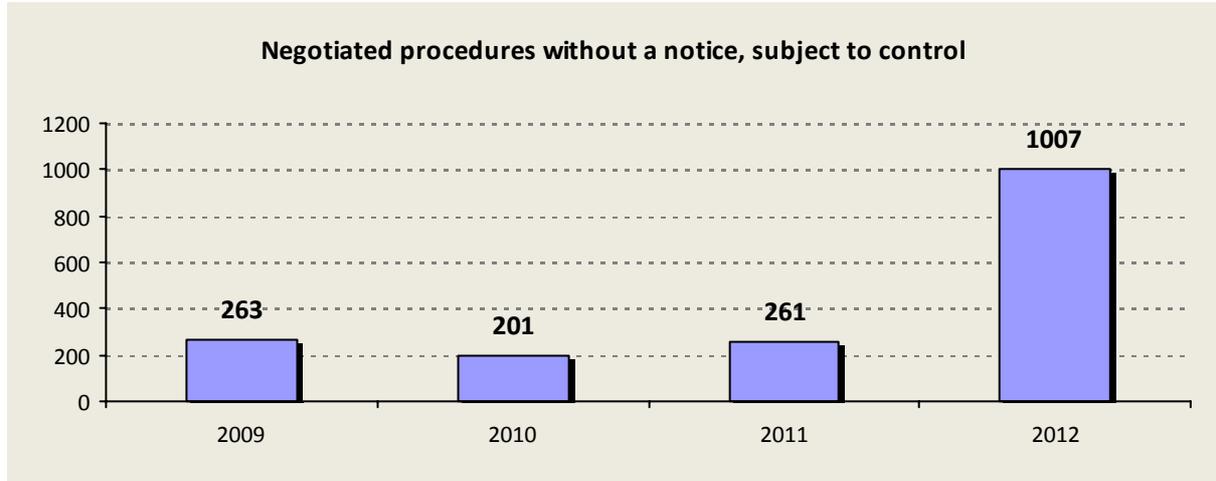
When reporting the results for the ex-ante control activities, what needs to also be registered are the quality changes that occur in the attitude towards public funds management. It can be claimed that the new form of control forms higher professional responsibility in the preparation of public procurement procedures, which on its part is an expression of the recognized public obligation for effective and efficient spending of public funds.

● **Control on negotiated procedures without a notice**

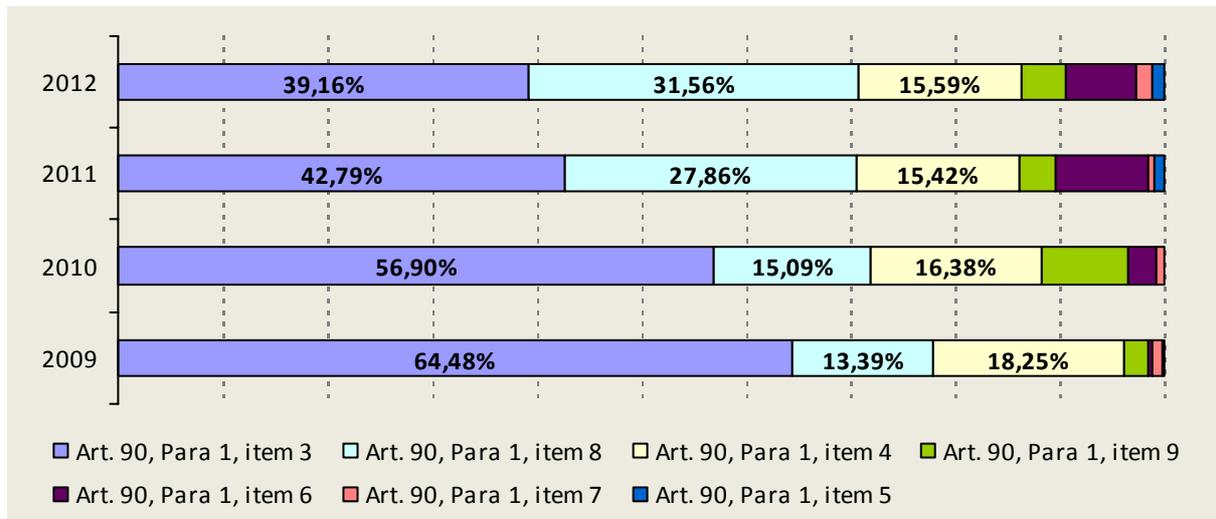
The 2012 legislative amendments also significantly expanded the scope of the other type of control performed by the PPA – on the lawfulness of the negotiated procedures without a notice conducted by classic contracting authorities. Following the repeal of the Ordinance on small public procurements, subject to control are all procedures launched on the grounds of Art. 90, Para 1, items 3-9 of the PPA, irrespective of their value.

In 2012, 1007 negotiated procedures without a notice were launched, which on the grounds of Art. 19, Para 1, item 24 of the PPA are subject to preliminary control. As it can

be seen from the graph below, this is a substantial increase as compared to previous three years – by 323% on average.



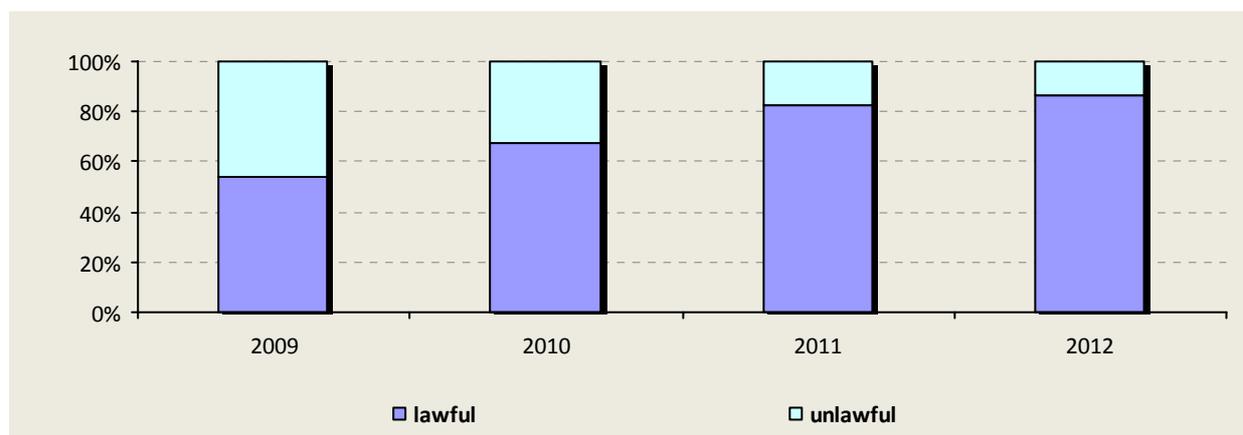
The detailed distribution of the procedures according to the legal grounds used by the contracting authorities can be seen on the diagram below:



As it can be seen from the graph, the data about the most frequent grounds demonstrate a reduction of the proportion of procedures with grounds under item 3 and respectively an increase of the proportion of those under item 8. After the gradual slight drop from 2009 to 2011 in the procedure with grounds Art. 90, Para 1, item 4 of the PPA, over the last two years their proportion has remained almost unchanged.

In 2012, statements were prepared on the lawfulness of 865 procedures.

The graph below demonstrates a sustainable trend of reduction of the proportion of procedures for which the Agency’s statement is firmly that the use of the respective grounds is completely unlawful or doubt of unlawfulness is expressed.



In 2012, the biggest proportion of lawful procedure was that of procedures based on Art. 90, Para 1, item 3 of the PPA – 93,62%. The application of the provision requires the presence of copyright, other intellectual property rights or exclusive rights acquired under a law or administrative act. In most cases this is related to facts and circumstances which are objectively subject to checks and whose implementation is regulated by a special legislative act (for instance the Act on Copyright and similar rights, the Enethy Act, the Territory Development Act, etc.). This specificity facilitates the correct application of the grounds under Art. 90, Para 1, item 3 of the law.

Comparatively high are the results regarding the lawful application of the grounds under Art. 90, Para 1, items 4 and 8 of the PPA – respectively 57.28% and 64.95%, but they cannot yet be considered satisfactory.

In view of the above, it can be concluded that the performance of ex-ante control achieves the main aim of the prevention approach adopted, namely: enhancing the lawfulness of awards by limiting negotiated procedures without a notice without any legal grounds. Here again, the contracting authority’s responsibility should not be ignored. In accordance to Art. 50, Para 6 of the Regulations for the application of the Act, PPA’s statement is not binding for the Contracting Authority. Irrespective of PPA’s statement, the contracting authority may conclude a contract if they believe they have irrefutable proof of the lawfulness of the choice of procedure.

The results reported justify the need of continuing this activity. Moreover, it needs to be pointed out that the possibility for public assess and the extremely wide scope of facts, circumstances and evidence commented on and analyzed during the inspection allow the contracting authorities as early as the stage before opening the procedure to have the information needed regarding similar factual justifications of the negotiations commenced by other contracting authorities, as well as the specific findings of the PPA on already checked negotiations. This indirectly reinforces the Agency’s methodological function.

The main problem related to the performance of ex-ante control on the negotiated procedures is the impossibility to process the incoming correspondence files on time. As a whole, the reason for that is the insufficient administrative capacity. This fact is combined with specificities pursuant from the nature of the award and budgeting process. For instance, the public procurement procedures are influenced by the availability of funds provided to contracting authorities at the end of the year, when the state budget

parameters become clear. The occurrence of natural disasters (for instance, earthquakes, floods, etc.) also results in peak numbers, depending on the occurrence of events or the seasonal nature of some processes (spring full water combined with downpours and other similar events). The availability of numerous works contracts accompanying the absorption of funds under the OPs corresponds to an increase in the number of procedures whose ground is Art. 90, Para 1, item 8 of the PPA, which is an objective consequence of the fact that these contracts are complex in nature and very often additional activities need to be assigned for the complete project implementation. As a result of these factors, there is unequal distribution of the procedures launched. In combination with the insufficient administrative capacity, in the resulting situation the possibilities for a reaction and quick processing of the correspondence files received are limited, due to which there is an objective delay in the control process.

Remedy and control

The Executive Director of the Public Procurement Agency also has a number of other rights which aim to protect public interest. As at the beginning of the reporting period, they were:

- Informing the competent authorities to exercise control on the compliance with the law;
- In case of receiving a signal, the Agency may appeal before the Competition Protection Commission decisions for the opening of procedures whose notices contain conditions or requirements rendering preference or unjustified limitation of the participation of persons in the public procurements;
- Summarizing the practice of the control authorities and the authorities responsible for the appeal of public procurements, so that the legislation can adequately meet the public expectations.

● Appeal before the Competition Protection Commission

The amendments to PPA dated 26.02.2012 repealed the right of the Agency's Executive Director in case of a signal received to appeal before the Competition Protection Commission the discriminatory conditions and requirements contained in the public procurement notice. Until the legislative amendments, the number of signals and appeals received over the year was 52.

As a result of the received appeals and signals, the Agency submitted three complaints to the CPS against contracting authorities' decisions for opening procedures, which had approved notices containing conditions or requirements giving advantage or in an unjustified manner limiting the participation of persons on the public procurements. The more significant violations that served as grounds for informing the appeal bodies were unjustified high requirements for the economic and financial condition of the tenderers and their staff, the requirement for the provision of the documents not related to the object of the specific procurement, etc.

In two of the cases the CPC identified lack of appeal, due to the termination of the procedure on the part of the contracting authority, and terminated the initiated proceedings. The third complaint was reviewed, and the contracting authority's decision was repealed as unlawful. The contracting authority appealed before the SAC, and the

court left in effect the CPC decision, by means of which the appeal was closed in favor of the PPA.

After the repeal of the right, in some of the cases of received signals about violations, a reply was sent to the senders with a motivated refusal to take actions. However, those complaints for which it was decided violations were present, the respective recommendations were sent to the contracting authorities.

In the cases for which it was found that there are substantial doubts of violations of the law found at the stage of conducting the procedures, the latter were forwarded to the SFIA for ex-post control.

● **Summarizing the practice of the control activity performed and the appeal of public procurement procedures**

The collection and summary of the practice of the control activity performed and the appeal of public procurement procedures are activities that support both the methodological and the legislative function. Over the reporting period, 321 audit reports were received, which contain information about over 1900 procedures checked. However, the violations found by the control authorities are in procedures conducted before the legislative amendments in the field of public procurement, in effect as of 2012. In view of that, the effect of these amendments is to be studied in the analysis of the reports to be received during the next reporting period at the earliest. In the practice of procedure remedies there has been a permanent trend of reduction of the percentage of effectively appealed procedures as compared to the number of admitted complaints.

INTERNAL AND INTERNATIONAL COOPERATION

● **Interaction with other authorities**

The Public Procurement Agency has proven itself as a sought-after partner for interaction with other authorities in holding discussions, participation in working groups and round tables to provide cooperation when commenting on public procurement – related issues.

● **Working groups**

Over the year, PPA was represented in the composition of various inter-body working groups, in which it participated in its capacity as administration responsible for the management of the public procurement system in the Republic of Bulgaria. Experts from the Agency participated in working groups at an inter-institutional level for the preparation of various legislative acts and other documents.

- Working group for the preparation of an Ordinance under Art. 13, Para 3 of the PPA;
- Working group for the development of the partnership contract of the Republic of Bulgaria;
- Report on the Plan in relation to the Council for coordination in combatting legal violations concerning the financial interests of the EU;
- "Assessment of the integration of the horizontal principles in the management, monitoring and implementation of Transport OP 2007 – 2013";

- Reviewing case studies within the financial corrections group;
- Review of the text about the common risk position on the Regulation for the amendment of Regulation 1083/2006 EC
- Unification of the control sheets of the OP's Managing Authorities;
- Standardization of the tender documentation for works, supplies and services in the Transport sector when performing the JASPERS project;
- Development of Regional Development OP 2014-2020;
- Development of a draft of the updated Strategy for the provision of equal possibilities to disadvantaged persons 2008-2015;
- Drafting an Act on management of the EU funds.

Over the reporting period, the experts have participated in 32 working group meetings.

● Round tables

PPA actively cooperates with the representatives of various organizations in order to improve the conditions for participation in public procurement procedures. Over the reporting period, the agency participated in a round table on "Modernization of the public procurements" with representatives of the Constructions Chamber of Bulgaria, the Managing Authorities of the Operational Programmes, the National Association of Municipalities in the Republic of Bulgaria, etc. The object of the discussions is the problems in the absorption of EU funds.

● Monitoring Committees

Experts from the Public Procurement Agency are included as members and observers in the Observation Committee of the National Reference Framework and the Operational Programmes Transport, Environment, Administrative Capacity, Development of the competitiveness of the Bulgarian economy 2007 – 2013 and Human Resource Development.

● Tripartite meetings

Particularly beneficial for the public procurement system is the cooperation between the Public Procurement Agency and the Authorities responsible for control under the Public Procurement Act – the National Audit Office and the State Financial Inspection Agency, established by means of a tripartite agreement. Over the reporting period, seven coordination procedures were held to express a common position on issues on which in the practice of application of the public procurement legislation there are unclarities and contradictions.

The PPA amendments in effect as of 01.05.2012 envisage a special procedure for the approval of methodological instructions by the PPA control authorities. The instructions issued in accordance with these terms, are binding for application in their practice. Such an approach defends the interest of contracting authorities, since it guarantees the equal application of the law by the three bodies.

Over the reporting period, one of the preliminary approval procedures was completed with a methodological instruction issued and published on the Public Procurement Portal on the

topic of “Application of Art. 4, item 4 of the Public Procurement Act, in the assigning of field archeological surveys in relation to contracting authorities’ investment activities”.

● International activity

Upon performing its rights, the Public Procurement Agency cooperates actively with the European Commission and a number of international organizations. This cooperation is usually performed in the form of participation in bilateral meetings, working groups and conferences, dialogue with institutions with EU member states and implementing projects with international involvement.

A prominent position in PPA’s international activity is held by its interaction with the European Commission. Since the beginning of 2012 regular working meetings have been held at the Council of the EU, at which discussions are made of the proposal for the passing of new public procurement legislation, approved in December 2011 by the European Commission. To review the acts, a public procurement working group has been formed at the Council of the EU, which includes two PPA experts. Over the reporting period, they participated in 23 meetings.

Besides, PPA was represented at a meeting of the Economy and Statistics working group at the Internal Market and Services Directorate General at the EC and at two meetings of the Public Procurement Consultation Committee.

In view of the prominence of the information and communication technologies to achieve the aims of the European policies in the area, and in view of the Agency’s functions to maintain the Public Procurement Register, one of the significant directions in PPA’s international activity is cooperation in the field of e-procurement. The Agency was represented at two meetings of the e-procurement working group at the EC and at three international forums related to electronic award – a conference on the issued related to the benefits of electronic award and the possibilities for reducing costs; a high-level conference on “E-procurements – challenges and opportunities”, as well as an international seminar on e-procurement, whose aim was to present best practices, to determine suitable indicators to measure e-procurement, etc.

PUBLICITY AND TRANSPARENCY OF THE INFORMATION RELATED TO THE AWARD OF PUBLIC PROCUREMENT CONTRACTS

● Public Procurement Portal

The portal is a centralized information system which provides access to data about all aspects of the public procurements, systematized in separate topic areas and focused on the specific interests of the main groups of users. It is updated on a daily basis. It is accessible in Bulgarian and English and is adapted for use by handicapped persons.

The Public Procurement Portal presents the organization and activity of the PPA, the legislation and practice in the area, as well as useful references to other internet resources. The portal provides updated information in accordance to the amendments to the Bulgarian and European legislation and the approved best practices. The aim is to achieve bigger publicity and transparency on the issues related to public procurements, as well as to provide the respective methodological assistance to the persons involved in this process.

Through the portal, the Form Editor software is provided free of charge.

The Public Procurement Portal allows contracting authorities to manage and edit their subpages with individual information, the condition being that they should be authorized PPR users. In the Contracting Authority’s Presentation window each organization may provide various information about its activity, including presentations, pictures, useful references, and others. This helps contracting authorities which do not have the funds or possibility to establish and maintain their webpages, as well as those which want to further popularize their functions and activity.

Through the portal, the Agency carries out surveys on various topics related to the public procurement practices, thus establishing feedback with the portal’s users. In 2012, 4 surveys were carried out on the following topics:

- Do you think it would be useful to publish on the PPR information about contracts that do not fall into the law’s scope of application?
- What is the average number of the cases in which your organization gathers 3 price offers as per the provisions of Art. 2, Para 1 of the OSPP?
- Do you think it is a good idea to repeal the OSPP and include the respective provisions into the PPA?
- To tenders in PPA procedures: do you approve of the replacement of the evidence documents submitted on hard copy for each procedure (declarations, certificates, turnover reports, licenses, etc.) with their electronic available, accessible through the Public Procurement Portal?

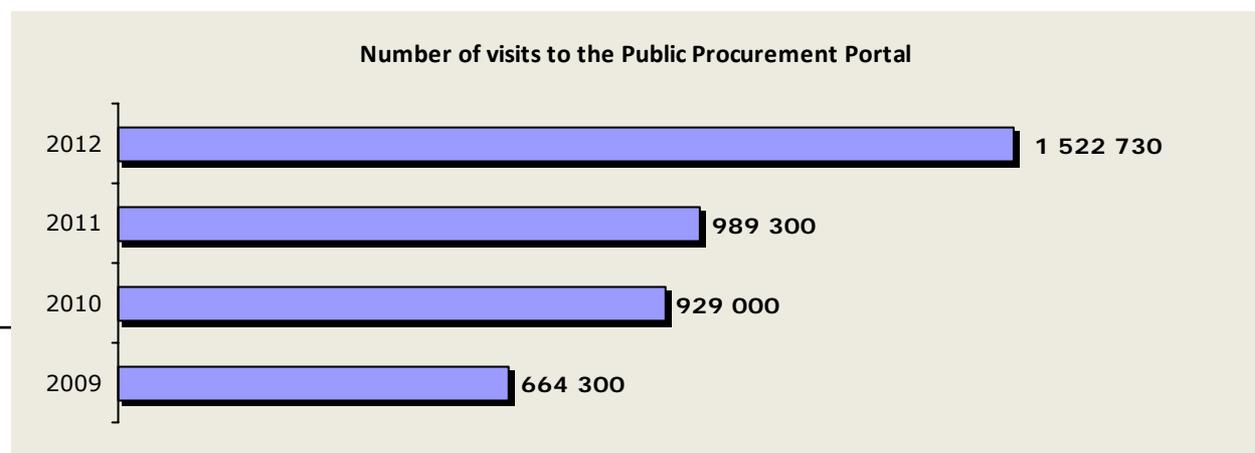
In reply, over 900 opinions on the questions asked were registered.

The portal publishes the decisions and rulings of the appeal bodies on appeals against contracting authorities’ acts. Over the reporting period, 90 decisions and rulings of the CPS were published and 61 of the SAC.

In accordance to one of their rights, the Agency’s Executive Director, with the cooperation of professional associations and organizations in the respective sector, maintains a list of external experts whom the contracting authorities may use in the preparation and conducting of public procurement procedures. As at the end of 2012, 2964 persons were registered in it. Of them, 664 experts were proposed by 54 organizations, and the rest were registered based on individual applications.

8 news were published, concerning various initiatives, events and activities performed by the Agency.

The assistance for the use of the portal’s e-services has been enriched by three videos which demonstrate how a document is edited after a refusal for publication, how specimen and electronic subscription are created and how a public invitation is withdrawn. On the first page of the portal there is a banner focusing users’ attention on the possibility for



electronic subscription and specimen.

The graph demonstrates a sustainable increase over the years in the interest towards the Public Procurement Portal. In 2012, over 1.5 million visits were registered, which is over 400 per day on average. The increase was 53.9% as compared to the previous year. This huge leap is also due to a PPA amendment dated 26.02.2012 related to the terms and conditions for awarding procurements at a lower value and the contracting authorities' obligation to ensure publicity for this award.

The data presented lead to the general conclusion that the Public Procurement Portal is assessed by users as a useful and reliable source of information.

● Public Procurement Register

One of the Agency's main functions is the maintenance of a Public Procurement Register. The Register is an electronic database with information about all launched public procurements and the results from their award, including information about their implementation. It is the main instrument to guarantee compliance with the publicity and transparency principles that provide for loyal and fair competition when awarding public procurement contracts. Access to information in the register is free of charge and is performed by means of the Public Procurement Portal.

Various document specimens are used for awarding a public procurement. For filling them, special Form Editor software has been developed. There is a possibility for the contracting authority to authorize their employees to fill in the information in the approved specimens, to sign them with a universal electronic signature and send them to the PPA. These are the so-called "authorized users" of the PPR. For them, the Agency provides two mechanisms for the automatic entering of documents in the PPR:

- By filling online specimens in the Public Procurement Portal;
- By using the Form Editor application that allows the automatic entering of documents in the register's database.

In this form of communication, the contracting authorities send the information subject to publication only in electronic form under the E-document and E-signature Act, without submission on hard copy.

The authorized users may also use the free e-Sender service, by means of which the Agency officially forwards the public procurement notices for publication in the Official Journal (OJ) of the European Union. The number of contracting authorities who used this service in 2012 was 468. The number of documents forwarded for publication in the EU OJ was 6031. The increase as compared to the previous years is almost two times, which is indicative of the increased popularity of this electronic service.

What is presented above is the first stage of the overall process of e-procurement – e-notice.

Another e-service is the possibility to receive documentation for participation in the public procurement procedure and exchange questions and answers between the contracting authority and stakeholders electronically. The submission of e-documentation is the next stage of the e-procurement process and one of the methods for introducing and adopting

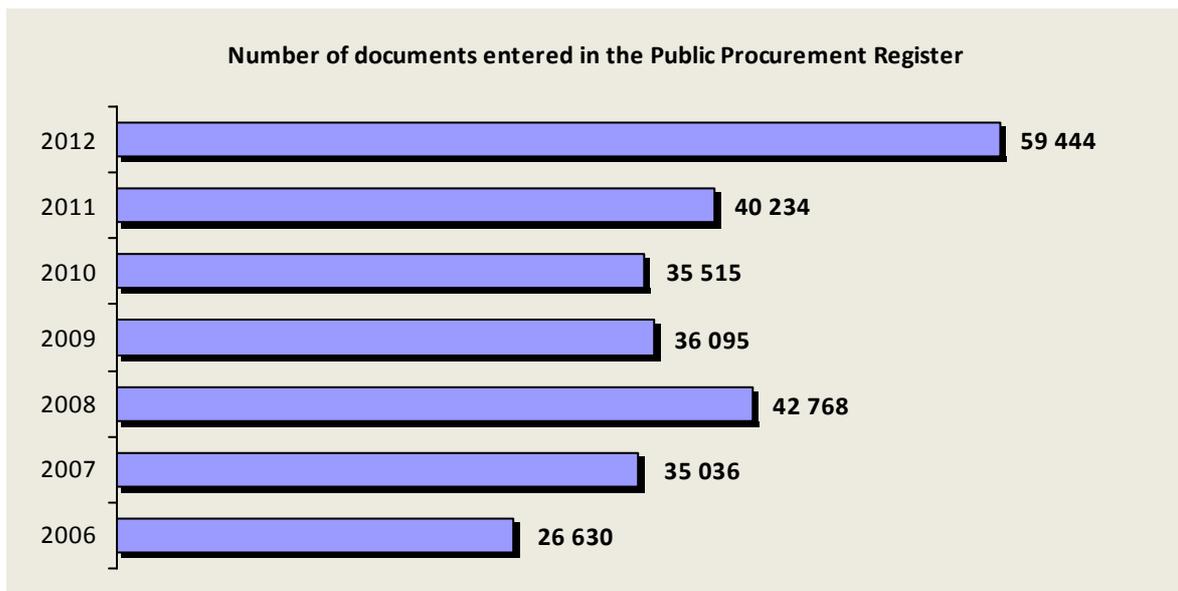
the electronic form of communication between tenderers and contracting authorities. In 2012, the documentation in 3012 procedures was submitted electronically, which is 31,5% more as compared to 2011, when 238 documentations were published. This result shows that there is growing interest in the service, as the benefits of using it are registered. PPA's efforts are focused in making this option popular, since it accelerates the process of ward and facilitates the information exchange between the subjects in the public procurement process.

One of the important functionalities of the register is the quick and detailed search in the database. By the detailed search, users may use a combination of criteria as a model that can be used several times. Each person may subscribe to receive automatic notification by e-mail about documents published on the PPR that meet the set criteria. The data shows that as at the end of 2012, 12278 search models were registered and 9859 applications for e-subscription were submitted, which are performed on a daily basis.

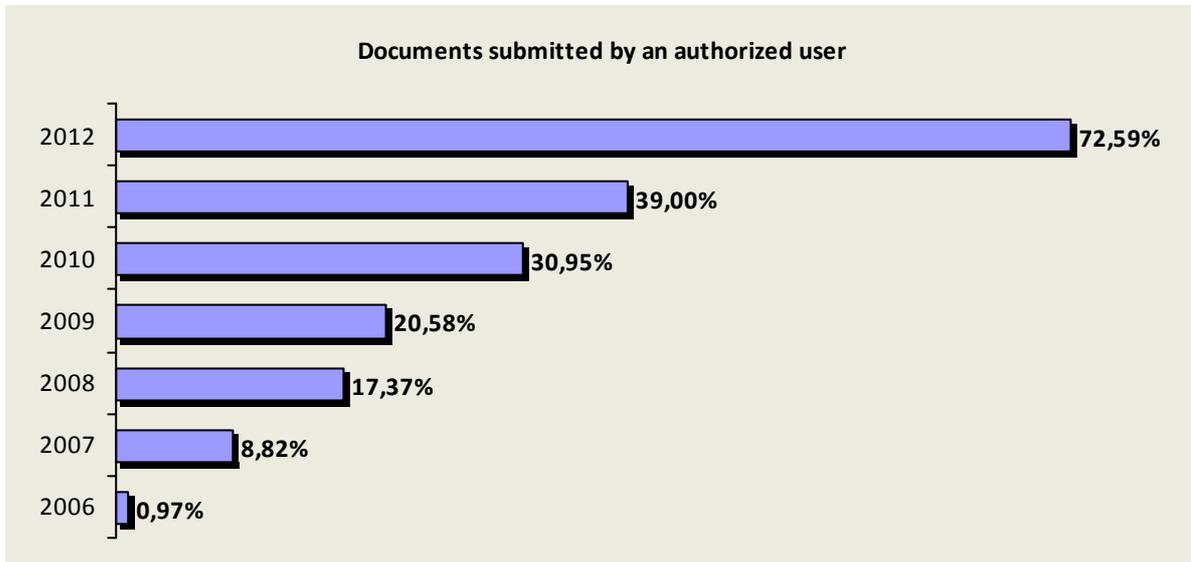
Irrespective of the fact that the main purpose of the PPR is to provide information to the stakeholders, it is also a reliable source of statistical data, based on which monitoring is carried out of the public procurement market. By means of the PPR, PPA guarantees meeting the country's obligation to provide annual statistical reports to the European Commission. The information entered in the register assists the activity of the control authorities in relation to procedures and contracts subject to inspection. In 2012, 67 specialized reports were prepared and submitted for the purposes of the inspecting and investigation authorities (National Audit Office, SFIA, Sofia Regional Court, prosecution, the State National Security Agency, MI, etc.) and such for needs of contracting authorities.

The above presentation illustrates the importance of the register for the functioning of the public procurement system, hence one of PPA's main tasks – maintaining the register in an excellent technical condition, so that the information is available to the users at any time.

In 2012, 59 444 documents were entered (including 10 523 public invitations), which is 47,7% more as compared to 2011.



PPA is registering constant and sustainable growth in the number of documents sent by using e-signature. In 2012, 77.61% of all documents published, including public invitations, were directly entered in the database of the register by the so-called



authorized users. For the aims of the comparative analysis on this indicator, the number of public invitations should be excluded. For them, publishing by using e-signature is the only possibility, i.e. 100% of the documents for procurements using this approach are digitally signed. Irrespective of that, it can be seen from the graph that the percentage of digitally signed documents in 2012 registered a significant growth as compared to the previous 2011. This result is viewed as an important prerequisite for the future development of the future stages of the e-procurement.

At the end of the reporting year, the register contains data about 4662 contracting authorities and 18257 contractors of public procurement contracts.

The development of the Public Procurement Register and the Public Procurement Portal in 2012 is mainly related to the new requirements of the two Acts on the amendment and supplement to the Public Procurement Act enforced in the period. In the PPR, a new database has been developed for public invitations, and a possibility has been envisaged for search by criteria. Access to the information about this type of documents is provided via the Public Procurement Portal. In relation to the PPA amendments from 2012, the contracting authorities were provided with new versions of the specialized Form Editor software. Changes were made in the combined Decision specimen, an a "Decision for amendment" section was included, as well as in the specimen "Declaration for voluntary ex-ante transparency". The set of documents for public procurement award is added with the applicable specimen of the notices in sector "Defence and security". Over the reporting period, information about 20 public procurements in this sector has been published in the PPR.

In March 2012 PPA was officially certified as e-sender by the Publications Service at the European Union for the specimen "Notice for additional information, information about an incomplete procedure or Corrigendum". In relation to that, the agency provides technical assistance when sending a Decision for the amendment or termination of a public procurement upon registration in PPR, automatically and officially forming the European Corrigendum specimen. The contracting authorities who have an e-signature may use the

E-sender service by stating their wish for PPA to send this information officially to be published in the Official Journal of the European Union. In 2012, 896 decisions for amendment were published in the PPR, 605 of which were officially forwarded to the Official Journal of the European Union.

In November 2012, the Agency was certified as a full-righted e-sender of the new specimens in the Defense and Security sector, as well as the specimens amended with Regulation No 842/2011.

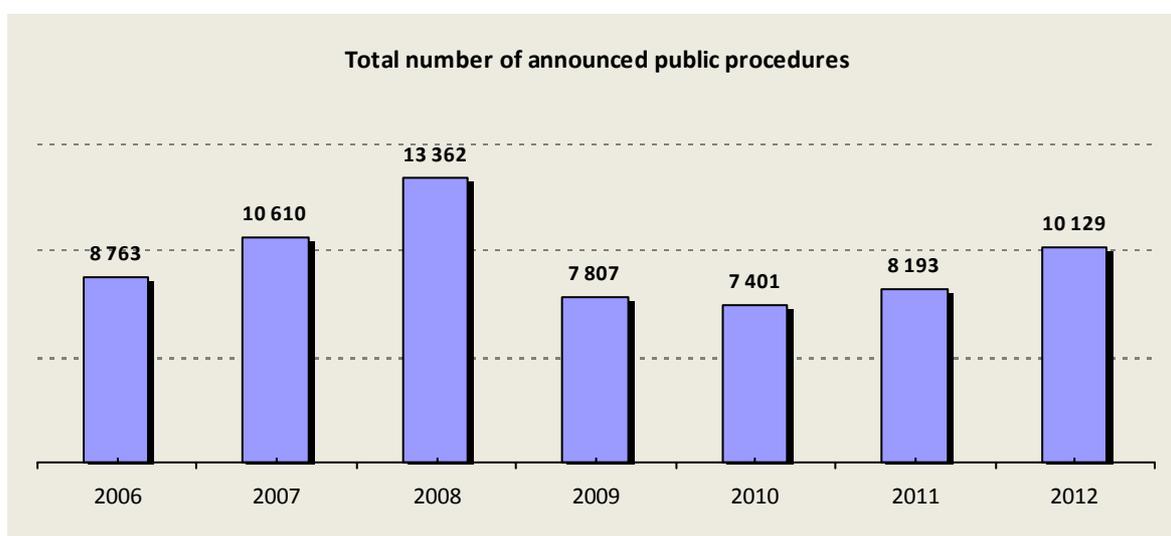
CONDITION OF THE PUBLIC PROCUREMENT MARKET IN BULGARIA

Public procurements are an instrument by means of which the state is expected to manage in an effective and transparent manner the spending of public funds, as well as the funds for activities of public prominence. This aim should be reached by the respective legislation and the work of the authorities responsible for its application, including the administrations of the contracting authorities.

The Public Procurement Agency is a national body whose functions include public procurement monitoring. In order to study the condition of the public procurement market, it is essential to know its characteristics and volume, as well as the data which describe it as a specific part of the common European market.

This report contains data about some of the main indicators monitored by the Agency which provide an idea about the condition of this market.

The first of the indicators surveyed refers to the market volume and dynamics.



The total number of public procurements launched in 2012 amounts to 10129 or 1936 more than in 2011. In percentage, the increase amounts to 23,6%.

Another indicator that registered an increase over the year is the number of concluded contracts.

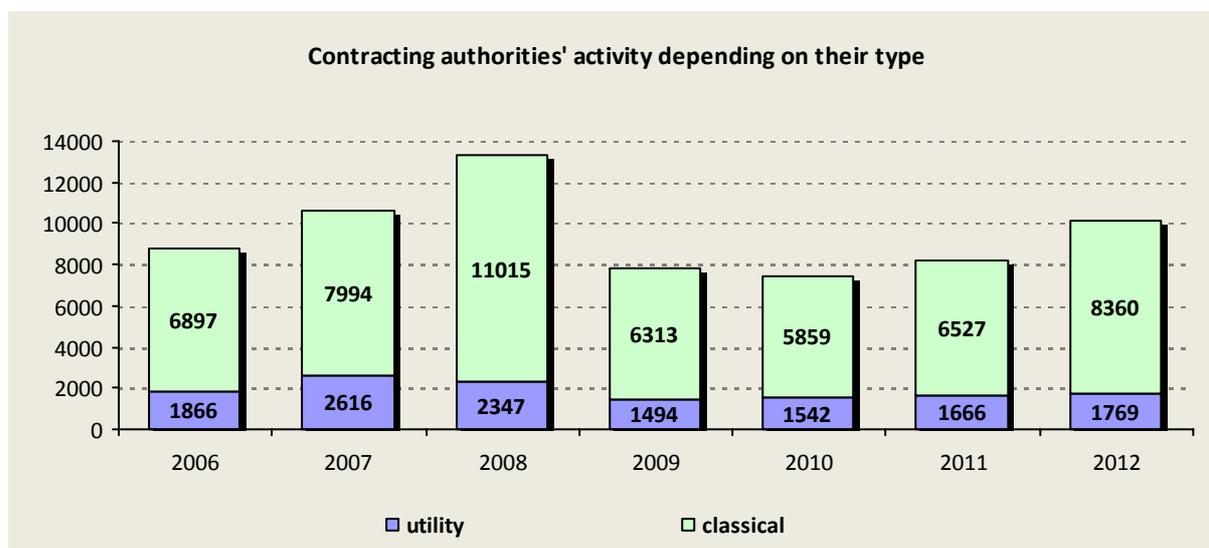
Total number of contracts		Currency	Value	
2012	2011		2012	2011
20 813	17 579	BGN	5 802 331 528	5 127 945 218
		EUR	85 903 064	332 717 155
		USD	3 253 877	3 670 127
		JPN	-	40 000 000

*The table also includes the contracts concluded in the exceptions from PPAs scope of application

The data shows that in 2012 a total of 20 813 public procurement contracts were concluded. In 2011, their number was 17 579. In this case the increase is by 3 234 contracts or 11.55%. The value of the contracts concluded over the year amounts to over BGN 5.97 billion. The average value per contract was 287 086 BGN as compared to 329 029 BGN in 2011. The contracts were concluded with 5 182 contractors. The latter from the circle of market subjects who directly form revenues at the expense of the budget (incl. EU funds). Indirectly however, the public procurement award influences the economic activity – subcontractors, suppliers, testing, certification and control organizations, etc.

An indicator of the activity of the contracting authorities depending on their type is the distribution of procedures between classic contracting authorities (under Art. 7, item 1-4 of the PPA) and utility contracting authorities (under Art. 7, item 5 and 6 of the PPA). While the classic contracting authorities are all those who spend budget funds, the utility contracting authorities include companies that perform activities of public prominence – such as water supply, electricity supply, transport network operation, etc.

The graph below shows the distribution of the public procurements launched by the two main groups of contracting authorities.



As compared to the previous year, in 2012 the classic contracting authorities increased the

number of procedures launched by 28.08%. In the sector contracting authorities, there is also an increase, by 6.18%. The ratio between the numbers of procedures launched by classic or utility contracting authorities is 83% to 17% in the benefit of classic ones. This is a natural result of the higher number of classic contracting authorities.

The table below presents the contracting authorities ranked based on the number of contracts concluded in 2012.

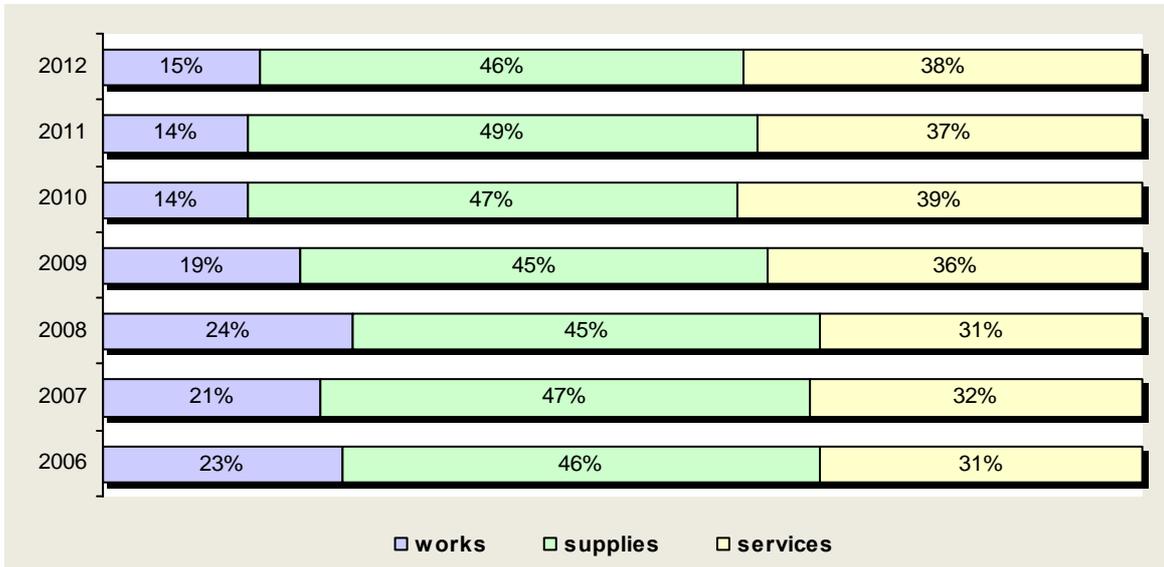
Contracting authority	Number of contracts
Multi-profile active treatment hospital Tokuda Hospital Sofia	1583
Specialized hospital for the active treatment of cardio-vascular diseases St. Ekaterina EAD	746
Lozenets Hospital – Sofia	629
Electro-energy system operator EAD	296
Maritsa Iztok Mines EAD – Radnevo	257
Kozloduy NPP EAD	248
Ministry of Health	230
Military Medical Academy	218
HPP Maritsa Iztok 2 EAD	203
State Enterprise National Company Railroad Infrastructure – Sofia	193

According to this ranking, the first positions are taken by hospitals. The big number of contracts concluded by these contracting authorities is influenced by the fact that the procedures conducted by these contracting authorities usually also include numerous lots.

Depending on the total value of contracts concluded in 2012, the ten 'biggest' contracting authorities are:

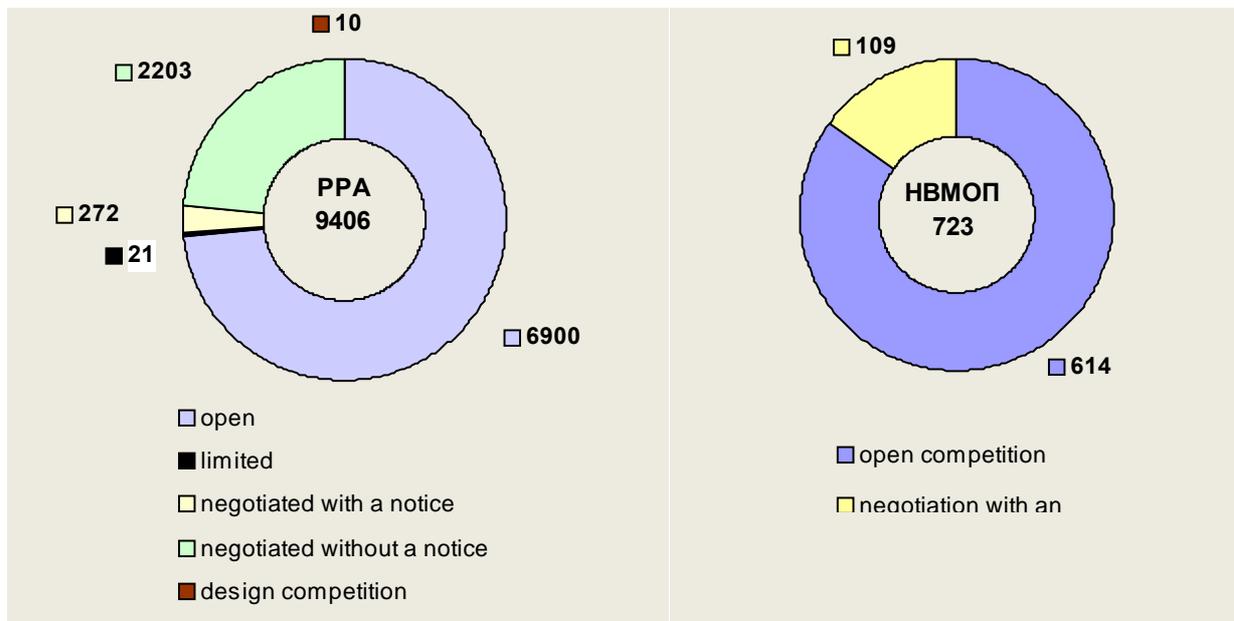
Contracting Authority	Total value of the concluded contracts in BGN
State Enterprise National Company Railroad Infrastructure – Sofia	489 489 427
Road Infrastructure Agency	337 737 761
Municipality of Varna	304 544 476
State Agency "State reserve and military reserves"	223 455 879
Metropoliten EAD – Sofia	165 978 874
Maritsa Iztok Mines EAD – Radnevo	165 254 413
HPP Maritsa Iztok 2 EAD	147 246 638
Municipality of Sofia	134 139 565
Municipality of Burgas	130 434 530
Sofia land transport EAD – Sofia "	117 355 806

The distribution of the number of procedures based on their object – works, services or supplies, provides an idea about the structure of the contracting authorities’ needs.



The presented distribution over the last 7 years shows preserved ratio between the works, services and supplies. Traditionally higher is the ratio of supplies, followed by services and construction.

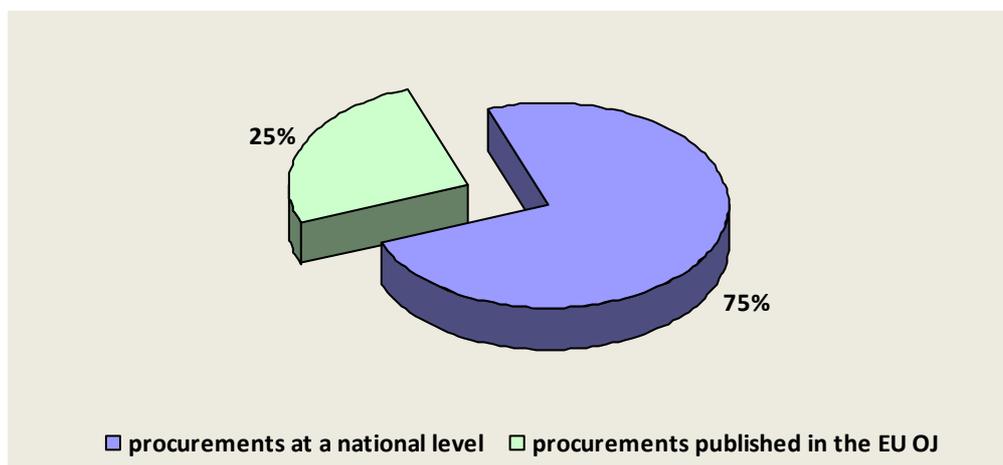
The next prominent indicator to be analyzed is the distribution of public procurements depending on the type of procedure selected within the applicable legislative act.



In the period of effect of the Ordinance on small public procurements until 25.02.2012, only 723 such procurements were launched. It can be seen from the graph that the trend over the years was preserved for the biggest proportion of the procedures that guarantee the principle of publicity upon award – open PPA procedure, respectively open competition

under the OSPP. They take up 74.2% of the total number of procedures.

Regarding the assessment of the prominence of the public procurement procedures launched in the country as compared to the common European market, data needs to be presented about the procedures also announced through the Official Journal of the European Union. These are the public procurements whose estimated value is above the thresholds under Art. 45a of the PPA.



In 2012, the Bulgarian contracting authorities launched a total of 2556 procedures on the European market, which, as it can be seen from the graph, comprises 25% of the total number of procedures. As compared to the previous year, the ratio is preserved, and the data support the conclusion that the contracting authorities have adopted the approach of consolidating public procurements.

CONCLUSIONS

Based on the data provided and the review of the activity of the Public Procurement Agency, some important conclusions can be made, which should be considered the base for the development of the administration's future objectives.

1. In 2012 PPA successfully performed its main functions. The decision to establish a specialized body to be responsible for the implementation of the national policy in the field and to provide interaction with the country's European partners, for the eight successive year, should be evaluated as a particularly positive one. It is the response to an identified need and facilitates the successful conducting of an overall and coordinated policy.

2. PPA's prominence will grow, in view of the expansion of the ex-ante control and the dynamic development of the public procurement system. The latter is also influenced by the fact that a number of initiatives are taken both on a national level and within the European Union. In the conditions of moderate optimism about the recovery of the economy, market and budget receivables, the state should be ready to react quickly in case of change of condition, including by tuning the public procurement system. It is namely PPA that is in the basis for reaction in such cases. Along with the above, in the European Union there is a process of renewing the directives in the field and align the rules in accordance to the new economic realities. The Agency not only needs to ensure the

introduction of these new rules in a national plan; as a representative of a member state it is responsible for providing options for positions defending the countries' interests.

3. The analysis of the performance of functions shows that the insufficient budget capacity and budget funds impact some of them. For instance, the provision of methodology and the performance of control require resources for the recruitment, training and retention of PPA specialists, as well as the possibility to develop more comprehensive programme for the training of employees responsible for awarding procurements at the ministries, agencies and municipalities. The current good results of the PPA are due to the team established and preserved through the years, whose core consists of employees who since the establishment of the Agency have specialized in studying, applying and developing the European and national legislation. Their retention is crucial in view of providing a high-quality administrative resource to meet the new challenges. The new functions make it necessary to create conditions for the retention of already trained new employees. The availability of a sustainable policy in relation to the staff, the provision of stability and conditions for staff's development is in the base of the expectations to deliver stable results. In view of that, the main risks over the next years will be related to preserving and developing the human resource under the conditions of restrictive budget. Without this resource the significant functions, like the ex-ante control and methodological activity, will suffer negative impact, and they can serve to provide conditions for the correct spending of billions of levs.

4. The public procurement register is already not only the main but also the only instrument by means of which the publicity principle is guaranteed. The PPR content is growing more and more complicated. This database is crucial for the entire state. Its maintenance and elaboration will be among PPA's priority tasks. Furthermore, it needs to be pointed out that the PPR maintenance is a process that requires the respective financial provision, in view of which also in this case the main risks are related to insufficient availabilities to ensure the high-quality operation and security of the register. The employees in the specialized PPA directorate are faced with the difficult task of ensuring the normal operation of the PPR in conditions of very limited financial resources.

CONCLUSION

Over the last 2012, PPA successfully faced the difficulties and dealt with most of the tasks set.

The aims and challenges for the next period have been clearly defined. The Agency will continue to aim at:

- Provision of efficiency of the public procurement system by means of the development and elaboration of the legislation and the provision of a methodology for its correct application;
- Finalization of the mechanisms for successful prevention of unlawful awards by means of the successful performance of the ex-ante control models;
- Development and upgrade of the systems guaranteeing publicity and transparency in the award of public procurement contracts;

- Elaboration and development of e-procurements in Bulgaria. Clarification of the model applicable for the country and preparation for the development of the respective information system;
- Encouraging the award of new products which have reduced environmental impact, and the development of new initiatives in the area of green public procurements;
- Active interaction with various organizations in the area of public procurements on national and international level. Survey of the best practices and initiatives in the field of public procurement;
- Development and reinforcement of the administrative capacity, including by means of implementing projects under the Technical Assistance Operational Programme.

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