

PUBLIC PROCUREMENT AGENCY



**ANNUAL
REPORT**

2009

Introduction

This report has been drawn up pursuant to Article 19 (2), item 12 of Public Procurement Law (hereinafter: 'PPL'). It contains the outputs and results achieved by the Public Procurement Agency (hereinafter: 'PPA' or 'the Agency') and update on the essential indicators characterizing the public procurement system in Bulgaria throughout 2009.

General information

Public Procurement System

The PPA is part of an overall system comprising complex public relationships which arise in connection with the public contract planning and preparation, opening and conducting of procurement procedures, their subsequent award and review, as well as the relevant control and methodology. A characteristic feature of this system is its openness and its working mechanism depends on the quality and smooth operation of the other related systems. This is because of two main reasons:

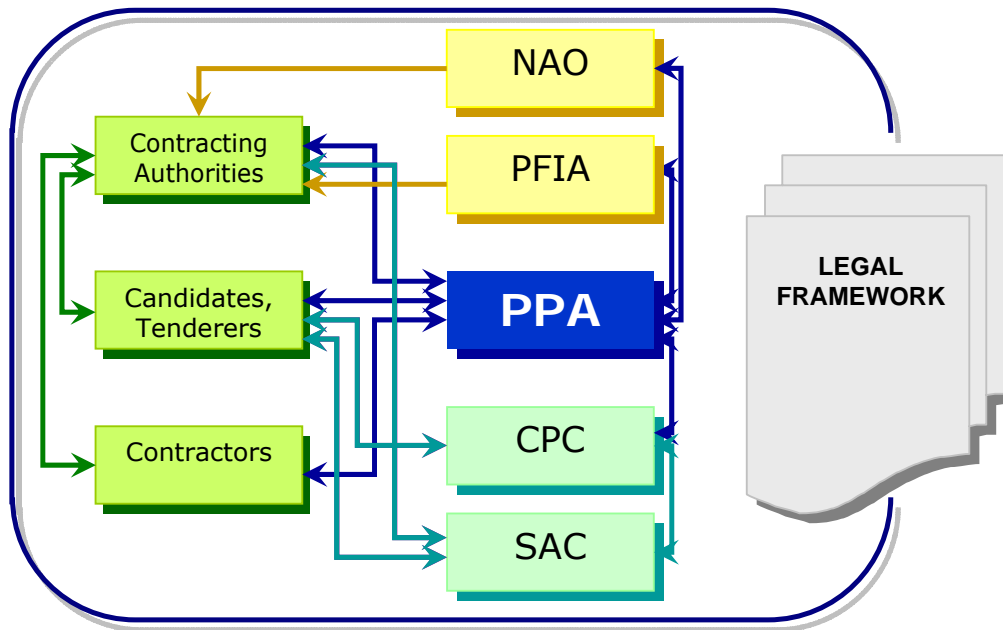
First, public contracts are extremely diverse in their subject-matter: The Common Procurement Vocabulary contains more than 8 000 codes describing the supplies, works or services forming the subject-matter of the public contract. It means that when awarding and implementing the public contract, the contracting authorities, tenderers and contractors should apply and take into account various legislative acts and additional requirements.

Second, the public procurement system is directly linked to the relevant European Union (EU) directives and regulations, which Bulgaria, as a Member State of the EU, has to observe.

These assumptions lead towards the conclusion that the results of the system operation have to be observed within the context of the current economic environment, the general state of the legal framework in Bulgaria and the commitments it has undertaken as a Member State of the EU. The results are also influenced by the state policy in the sectors of infrastructure building, defense, security, health, education, etc. The activities related to these sectors are carried-out by public procurement, through which a considerable volume of relationships between various subjects is regulated.

The public procurement system, in turn, is of key importance for the management of budget funds. Its proper functioning has a direct impact on the effectiveness of public funds spending by the state. The specific indicators that characterize this system are basis for undertaking further actions targeting specific results.

The flowchart below gives the full picture of the authorities and persons directly involved in carrying out award procedures and subsequently conclude the public contracts.



This flowchart reveals the role of the PPA as a key player who in practice interacts with all the other authorities and stakeholders. In discharging its duties, the PPA is a decisive factor for carrying-out a dynamic and fruitful public procurement policy. However, the accomplishment of these duties supposes also the smooth interaction and harmonization of activities with the following institutions:

- National Audit Office of Bulgaria (NAO), the authority which is entrusted the control of contracting authorities, that spend the public funds;
- Public Financial Inspection Agency (PFIA), the authority which is assigned the execution of administrative-criminal liability under the PPL;
- Commission for Protection of Competition (CPC), the authority which is assigned the review at first instance the procedures for the award of public contracts;
- Supreme Administrative Court (SAC), a jurisdiction competent to review at second instance the procedures for the award of public contracts.

The competent authorities, as well as the other public procurement subjects bear their own obligations and liabilities, stipulated in the relevant national legislation which encompasses:

- The Public Procurement Law (PPL);
- The Rules for the Implementation of the Public Procurement Law (RIPPL);
- The Ordinance on the Award of Small Public Contracts (OASPC);
- The Ordinance on the Award of Special Public Contracts;
- The Ordinance on Ex-ante Control over Procedures for the Award of Public Contracts financed in whole or in part by EU funds

- The Ordinance on Carrying-out Urban Development and Investment Design Contests

The legal framework also encompasses all the European Commission Regulations that directly apply and regulate the applicable thresholds for the procedures for the award of public contracts, the standard forms for the publication of notices and the Common Procurement Vocabulary.

Public Procurement Agency: Tasks and Powers

The Public procurement Agency was established by the Council of Ministers Decree No 56 of 12.03.2004 as a legal body, having the status of an executive agency of the Minister of Economy, Energy and Tourism. The establishment of the PPA is an act, by which for the first time in Bulgaria a single administrative body is set-up and conferred clear-cut powers within the public procurement system.

The PPA is managed and represented by an Executive Director appointed by Minister of Economy, Energy and Tourism, following accordance by the Prime-Minister. The main tasks of PPA Executive Director are stipulated in Article 19 (2) of PPL and described in detail in the PPA Statutes. In performing his/her tasks, the Executive Director is supported and assisted by administration, which is split into general and specialized, according to their entrusted duties.

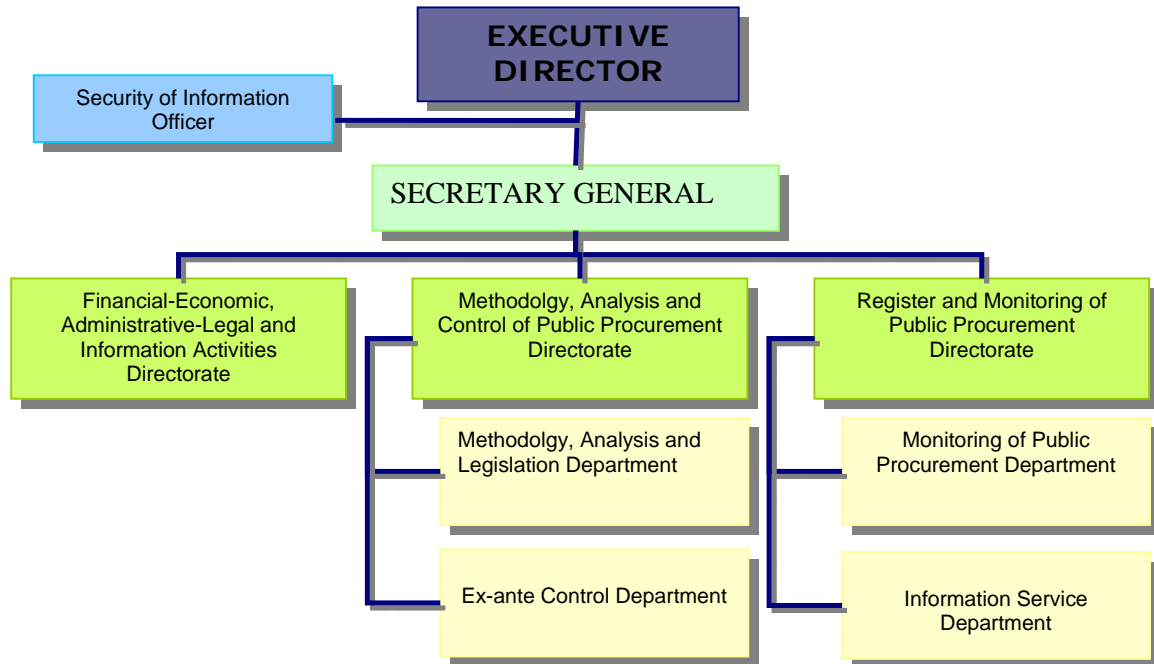
■ *General Administration*

- *Financial-Economic, Administrative-Legal and Informational Activities* Directorate which carries-out the financial-accounting and reporting tasks of the Agency, ensures its budget implementation and performs ex-ante control on conformity and lawfulness of budget expenditure, provides technical support to the activities of the Executive Director and the specialized administration and implements the administrative service the citizens and legal persons.

■ *Specialized Administration*

- *Methodology, Analysis and Control of Public Procurement* Directorate draws-up and provides methodological guidelines, summarizes and analyzes the application in practice of the PPL, contributes to the elaboration of draft regulations, performs ex-ante control of award procedures, participates in the work groups and meetings of the Advisory Committee for Public Contracts within the European Commission.
- *Register and Monitoring of Public Procurement* Directorate, creates and maintains the Public Procurement Register (PPR) and PPA website, monitors the information entered into the PPR, surveys and introduces the best e-Procurement practices .

The graphical representation of the organization and structure of the Agency and its integrant parts up to department-level may be illustrated in following organigram:



This structure aims to implement the tasks and powers legally entrusted to the PPA which may be summarized in the following main groups:

- Development of legislation.
- Providing methodological and technical assistance to all parties involved in public procurement and dissemination of good practices.
- Performing ex-ante control of procurement procedures and documents conformity and lawfulness.
- Organizing and participating into trainings.
- Ensuring the conformity with principles of openness and transparency.
- National and international cooperation.

In performing its tasks, the Agency determines the priority directions; the activities needed for their accomplishment and the respective time-limits and expected results.

The Agency objectives for 2009 may be summarized, as follows:

- Update of a public procurement legal framework.
- Uniformity of public procurement practice.
- Public procurement control with emphasis on further development of ex-ante control.
- Openness and transparency of information concerning the award of public contracts.

The development of the Agency over the mentioned period was also supported by the implementation of the project *Good Practices and Effective Partnership in the Field of Public Procurement*, financed under Operational Programme Administrative Capacity.

ACHIEVEMENT OF OBJECTIVES BY ACCOMPLISHING ASSIGNED TASKS AND DUTIES

Update of Public Procurement Legal Framework



As part of performing its tasks entrusted by law, in 2009, PPA elaborated the Draft Law Amending and Supplementing the Public Procurement Law (DLASPPL). The draft-law was developed mainly to meet the need to further enhance ex-ante control over procedures for the award of public contracts funded in whole or in part by EU funds. DLASPPL was promulgated in State Gazette No 24 of 31 March 2009. The proposed amendments encompass two aspects. First, extension of the scope of EU-funded public contracts falling within the scope of PPL and, second, precision of the award procedures which should undergo ex-ante control. The scope of ex-ante control itself is also extended, without prejudice to its objective that is to ensure lawful award of public contracts, in accordance with the rules and agreement for funding the respective project.

Over the period in question, on basis of Article 20a (9) of PPL, the Ordinance on Ex-ante Control over Award of Public Contracts Funded in whole or in part by EU Funds was adopted. This ordinance was adopted by the Council of Ministers Decree No 96 of 23.04.2009. It envisages the terms and procedures for performing ex-ante control, including the interaction between the PPA and the Managing Authorities and Intermediary Bodies of the Operational Programmes.

In 2009, the PPA issued its opinion concerning the following draft-legal acts:

- Draft for the Ordinance on the Award of Special Public Contracts;
- Draft Public-Private Partnership Law;
- Draft for Council of Ministers Decision No 835 of 2006 validating the List of Products, Services and Works whose supply, provision and execution should be awarded to specialized undertakings and co-operatives of disabled persons in accordance with PPL.

Over the past year, main efforts were focused on introducing into Bulgarian law of Directive 2007/66/EC of the European Parliament and the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts. The material scope of the Directive concerns the rules and procedures of review. By considering the weaknesses found in the national review procedures of Member States, this directive introduces requirements aimed at ensuring compliance with Community Law, as well as preventing conclusion and implementation of unlawful public contracts. It ensures effectiveness and speeds-up resolution of dispute and removal of irregularities in the relevant field.

It should be noted that some of the elements of the directive have been introduced at earlier stage into the Bulgarian review system. However, in order to achieve full

harmonization with Community law it is necessary to introduce all its provisions into PPL, in particular, the ones concerning some new and special grounds for rendering ineffective those public contracts that have been awarded in grave breach of the mandatory standstill period, the cases of unjustified application of the negotiated procedure without publication of a prior notice or PPL exemptions.

These circumstances led to the elaboration of the DLASPPL, which will transpose the compulsory requirements of the Directive. In the course of drafting, four versions were prepared providing different solutions. In addition, the draft law amends also other provisions of PPL, as to make clearer the legal framework, facilitate its application into practice and raise effectiveness of the relevant procedures.

The actual adoption and implementation of DLASPPL will be carried-out in 2010.

Development of Good Practices and Partnerships in the field of Public Procurement



Methodology

Since its launch, the provision of methodological guidance to all parties involved in public procurement is one of the main tasks accomplished by the Agency. This task aims to facilitate law enforcement, ensure its uniform application and compliance with main principles laid down in the relevant legislation. This task is performed in the following main ways:

■ *Answering written questions*

The main part of providing methodological guidance is instructing by means of answering written questions submitted to the Agency. Between 1 January and 31 December 2009 the Agency answered more than 300 requests for clarification and questions concerning the application of PPL and subordinate legal acts. The analysis shows that the largest part of questions corresponds to those submitted by municipalities' mayors, followed by heads of administrations of the executive power, hospitals and utilities. Questions by candidates, tenderers and contractors are also abundant, as well as those posted by procurement practitioners, such as consultants, experts, etc. Based on these data, we could draw up the founded conclusion that it is mainly the contracting authorities that address the Agency for methodological assistance on specific questions. In regard to the specific matter and subject, the trend of ascending complexity of the questions is noticed. More and more often the questions refer to concluded public contracts, options for their amendment, various issues on their implementation and termination. The questions concerning the award procedures of public contracts with EU funding also increase.

■ *Direct consultations*

In 2009 the interest towards direct consultations also grew significantly, the interested parties receive direct methodological help on how to apply public procurement legal framework. This form of assistance is run in extremely complex cases when it is difficult to clarify and describe in written all the facts and circumstances concerning the particular case.

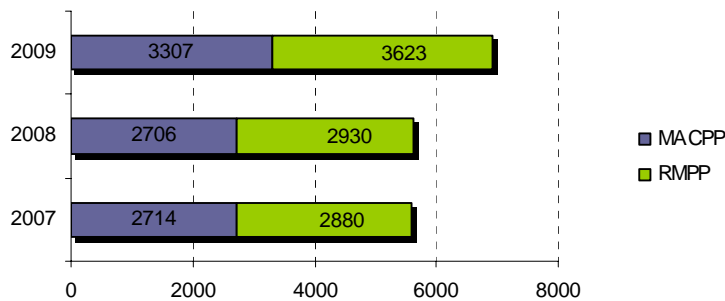
Over the reported period, the Agency provided 53 consultations, more often, upon request by local authorities (municipalities), followed by ministries. Contracting authorities expressed the largest interest and discussed in greatest extent the amendments of the legal framework, in particular, the introduction of certain bans (e.g. on mixing-up selection and award criteria when the option of economically most advantageous offer is used), as well as lawful application of the negotiated procedure and grounds thereof.

■ *Hot phone line*

The two hot phone lines maintained by the Agency are one of the main tools of methodological help and assistance to the actors in the award process. Two independent phone lines are maintained: one providing consultation on application of PPL and the other, on using the standard forms and the software applications for their filling-in.

In 2009, the total of 6,930 calls were received, of which 3,307 requesting methodological help and 3,623, practical instructions. The data analysis shows that the most numerous were the questions made by municipalities. Most of the calls contained several questions to be discussed.

The hot phone line is a fast way of solving problems faced by, so, it is often used to obtain the instructions needed. It may be noted that data for 2007 and 2008 are similar. However, in 2009, the popularity of hot phone lines grew and the number of calls rose considerably up. This dynamic process may be illustrated by the following chart:



Publications on PPA website

The PPA website publishes methodological instructions related to the most frequently asked questions as to how to apply the law. In 2009 there were seven such publications.

Two pieces of instruction concern the new functions of the Agency of conducting ex-ante control over award procedures. Since the assignment of this function in the beginning of 2009, the performance of such a control allowed to summarize the most frequently committed infringements and irregularities and compile instructions for contracting authorities in order to help them to understand and implement correctly the relevant law. The first piece of instruction covers the negotiated procedure without prior publication of a notice based on Article 90 (1) of PPL. The second piece of instruction concerns draft tender documentation as part of the award of public contracts with EU funding.

■ *Practical Handbook on Public Procurement*

In June 2009 the *Practical Handbook on Public Procurement* was issued. This handbook has three parts. The first part contains short practice-oriented texts aimed to assist public procurement actors. The second part contains flowcharts and diagrams elaborated by PPA experts to illustrate the procurement process. They also aim to ensure correct understanding of the relevant subject by contracting authorities. Their advantage is that they can be used apart, as supporting documents summarizing the requirements laid down in different parts of the legal texts. The third part contains one of the most exhaustive explanations on how public purchasers should draw-up their internal rules on procurement organization, scheduling and planning.



Organisation and arrangement of trainings

In 2009 the Agency responded to training needs of all types of public procurement actors and carried out, alone or in collaboration with other entities, several trainings on public procurement. Some of the trainings were aimed at clarifying the new elements in the relevant legislation, others tried to acquaint experts of various administrative units with important practical aspects of law implementation, and the third type of trainings aimed to support operational work of experts directly involved in contract award.

Considering the complexity of the rules on effective management of EU funds, in the beginning of 2009, following invitation by the Ministry of Finance, PPA provided five of its own experts to take part as speakers in a workshop on practical implementation of the rules on the award of public contracts with EU-funding. This event helped to increase competence of experts of Managing Authorities and Intermediary Bodies of Operational Programmes 2007-2013 and exchange good practices between the main units of the system.

The amendments in the public procurement legal acts, effective as of 1 January 2009, were presented to the parties concerned in the following training events:

- *Public procurement legal framework: New moments and practical implementation* – held in the town of Haskovo, target audience: municipalities;
- *Bulgarian public procurement legal framework: New moments and practical implementation. Hungarian experience in the award of EU-funded public contracts* – held in the town of Tryavna, target audience – central government administrations;
- *Public procurement legal framework: New moments and practical implementation* – held in the town of Sandanski.

PPA also took part in a workshop arranged by the Technical Assistance and Information Exchange instrument managed by the Directorate-General Enlargement of the European Commission (TAIEX) and Municipality of Pleven. As part of the workshop, one expert of the Agency participated in training on PPL Implementation aiming to increase knowledge and skills of municipality experts involved in the award of municipality contracts.

The practical implementation of PPL was the focus of three workshops held by PPA in collaboration with the Institute of Public Administration and European Integration. PPA speakers presented to the experts from central and local authorities important moments in application of public procurement legislation. Special emphasis was put on the

conclusions based on the ex-ante control performed by PPA, in order to avoid future irregularities and infringements during the award procedure.

By the trainings in 2009, PPA furthered-on its successful collaboration with institutions of the Legislative and Executive branches. PPA speakers took part in the following events:

- "Training of National Assembly administration employees on the new moments in public procurement regulatory framework and practical aspects of the award of public contracts", arranged by the National Assembly of Republic of Bulgaria
- Workshop on "Current problems of application of Public Procurement Law and subordinate legal acts: theory and practice", arranged by the Supreme Cassation Court

PPA speakers have also been invited to participate in many other workshops and trainings organized by public and business entities. Although the demand far exceeded the limited human resources available, efforts were made to ensure PPA speakers' participation in the trainings. PPA staff members took part as speakers in seminars arranged by institutions, such as the University of National and World Economy, Union of Jurists, to name some of them and got recognition for their high professional competence.

Over the last year PPA continued its practice to organize practical trainings in PPA training room, to improve the skills of working with the Public Procurement Portal, specialized software "Forms Editor" as well as TED, the online version of the 'Supplement to the Official Journal of the European Union', dedicated to European public procurement. This category included the following events:

- Training on Practical Skills in Working with the specialized Forms Editor software and Public Procurement Portal, organized for Bulgarian Posts PLC
- Training on Good Practices and irregularities committed in public procurement. Practical Skills in Working with the specialized Forms Editor software and Public Procurement Portal, organized for the National Revenue Agency

In 2009, over 15 trainings were carried out by PPA alone or jointly with other institutions and over 600 trainees from a wide range of public and private bodies were trained. These figures not only reflect the professional level of PPA experts, but also reveal their significant potential for future development in fulfilling this task.



Green Public Procurement

In line with EU policy of sustainable development and including environmental requirements into public procurement, in 2009, PPA actively focused on dissemination of Green Public Procurement (GPP), an approach, aimed at selecting products and services which were elaborated by taking into account environmental considerations. GPP is defined as *a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured.*

By GPP promotion, materials and energy are saved, costs are cut, by taking into consideration the complete life-cycle of products, real incentives for the development of

environmental technologies are created (in particular, public contracts for computers, energy efficient buildings, public transport, etc.), waste and pollution are reduced.

PPA actively participated in the initiatives of the European Commission aimed at promoting GPP. One of these initiatives is a comprehensive project led by DG Environment of the European Commission, specifically designed for experts from Member States from the leading national institutions involved in GPP. The project is implemented by the International Training Centre of the International Labour Organization in Turin, Italy. After training of the Bulgarian experts, a commitment was undertaken to arrange national workshop to disseminate and raise awareness on green public procurement.

This workshop was held on 17 November 2009 under the heading *Lead the Change*. The main promoter of the event was the PPA. This was the first national event on GPP and attracted a wide interest; over 90 contracting authorities from the central government administration, business and media representatives and bodies governed by public law attended the event. DG Environment and International Training Centre of the International Labor Organization representatives showed the participants how GPP may contribute to the protection of the environment and fostering of innovations. The main thematic modules were focused on the legal framework and GPP toolkit, current initiatives of the European Commission in this area and the existing good practices. A dialogue was established between GPP stakeholders which is a clear indicator of workshop message was delivered and understood by its participants.

As part of the dissemination of EU GPP policies initiative amongst wide range of persons, the Public Procurement Portal published the "Buying Green" Handbook of the European Commission

The future activities to encourage public purchasers to buy energy efficient products include development of guidelines that should help them to buy such products. The Agency is also spreading the initiative by organizing and participating in seminars clarifying GPP legal framework. Within its competence, the PPA will also contribute to the forthcoming co-ordination between national administrations entrusted to implement GPP policy in Bulgaria, envisaging drawing-up of the first National GPP Action Plan.



Control of Public Procurement Procedures

In order to limit unlawful and non-transparent public spending, the recent amendments, effective as of 1 January 2009, expanded the powers of PPA's Executive Director. The Agency was assigned the task to perform ex-ante control over the most significant procedures for the award of public contracts with EU funding and negotiated procedures without prior publication of a notice, held by contracting authorities under Article 7, items 1-4 of PPL.

■ Ex-ante control over procedures for the award of EU-funded public contracts

Bulgaria's accession to the European Union entailed a considerable increase in volume of funds spent by means of public contracts. According to a check in the Public Procurement Register, between 2007 and 2009 the number of award procedures with EU funding comprised a significant share of the total. In 2007, they accounted for 380, in 2008 their number rose to 1,081, and over the reported 2009, their number totaled 707. This put on the agenda the need of smooth interaction between the Agency and the Managing

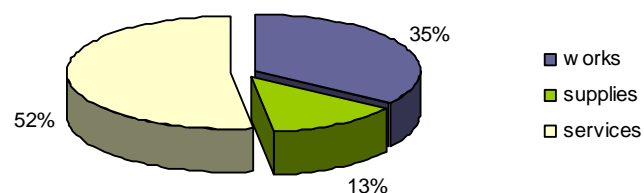
Authorities and Intermediate Bodies of the Operational Programmes, as to prevent contracting authorities from acting in bad faith and ensure lawful award procedures.

National public procurement legislation is aligned with the corresponding EU legislation, so the current legal framework provides solid basis for correct spending of funds granted by the European Union. The rules are clear, transparent and exhaustive, but in order to achieve optimal results they should be well known in dept and strictly observed. In this context, as a result of PPL amendments, in force as of 1 January 2009, the PPA joined the authorities performing control of award procedures with EU funding. The Agency was involved in ex-ante control over procedures for the award of public contracts co-financed by EU funds, which is performed by the Managing Authority of the respective Operational Programme, and this involvement is limited to ensure compliance with national public procurement legislation in the course of preparing the launch of the respective award procedure. The check by the Agency is mandatory when the award procedure is held as part of a project approved for EU funding and follows the rules laid down in the relevant law. The control is focused on award procedures concerning contracts of high value and interest of wide range of persons.

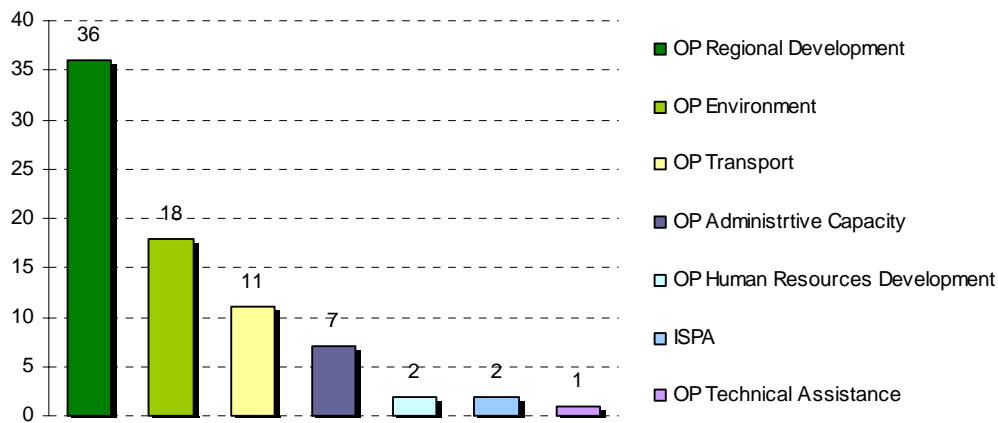
PPA contribution to the ex-ante control over award of public contracts with EU funding, is expressed in providing special knowledge in the field of public procurement. As a specialized methodological body, the Agency draws-up a report on compliance of tender documentation with public procurement regulatory requirements, prior to the opening of the award procedure.

Over the reported 2009, PPA received 75 draft tender documentations, of which 46 passed ex-ante control. The remainders were not checked, as the estimated value of the respective public contract was below the determined thresholds, or the award procedures were already opened, or the projects were approved for financing before the amendments in question had entered into force.

Depending on the object, more than half of the checked award procedures corresponded to public services, followed by public works and public supplies contracts.



As illustrated on the chart below, according to the financing programme, the largest number of checked draft tender documents corresponded to public contracts held as part of projects financed by Operational Programme Regional Development, followed by projects financed by Operational Programmes Environment and Transport.



Over the first year of performing ex-ante control, the existing need of its introduction was confirmed. It should be noticed that none of the checked documents fully complied with the legal requirements. All the cases contained certain omissions and inconsistencies with PPL, so PPA recommended their respective removal. 'It must be found that award procedures are prepared in a way which is inconsistent with separate provisions, which in practice corrupts the idea that the award of public contracts was exercised in compliance with the main principles of law and puts competitors in a disadvantageous position. Based on the checked tender procedures, the most common mistakes were established. These are:

- determining conditions without taking into consideration the subject-matter and complexity of the public contract;
- mixing up selection and award criteria;
- subjective (immeasurable) award criteria.

These findings show that the performance of ex-ante control introduced a working mechanism of detecting the weak points of the system and helped contracting authorities to correct their mistakes in the course of drafting the tender documentation and preparing the award. This type of control allows to achieve the set objectives in the best possible way, as it contributes to finding the right way for preliminary correction of the mistakes, removal of incompleteness and omissions, as to ensure correct and lawful spending of EU funds. This conclusion is based on the finding that when preparing and submitting for ex-ante control to PPA new tender documentation the same contracting authority had tried to avoid past mistakes and omissions detected on previous checks by PPA.

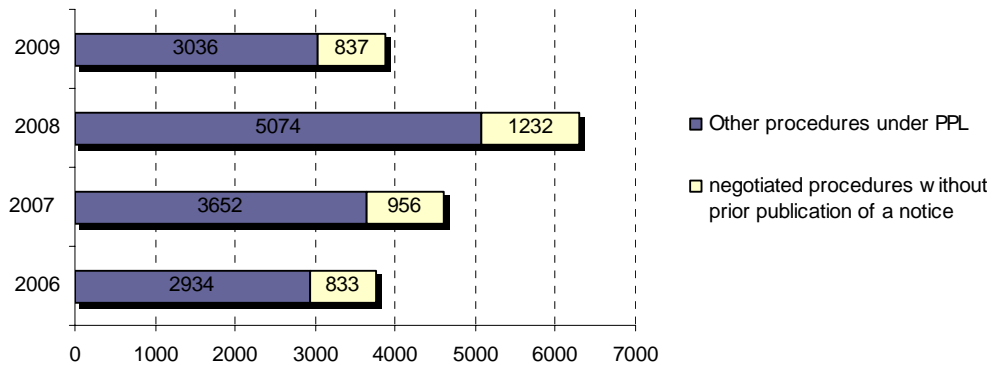
The main effect of ex-ante control is to prevent conclusion of contracts which might otherwise entail returning of disbursed funds due to infringement of rules for their absorption.

These outcomes give room to consider expansion of this function, based on the fact that ex-ante control may have positive impact on the overall understanding of the award process by contracting authorities.

■ *Control over negotiated procedures without prior publication of a notice*

This type of award procedure is characterized by the lowest implication of the rules laid down on PPL. This is the reason why type of awarding a public contract is regulated as an exception. The cases in which it is allowed to handle negotiation are described exhaustively in PPL and concern the existence of particular circumstances that should have objectively arisen prior to the moment of launching the award procedure.

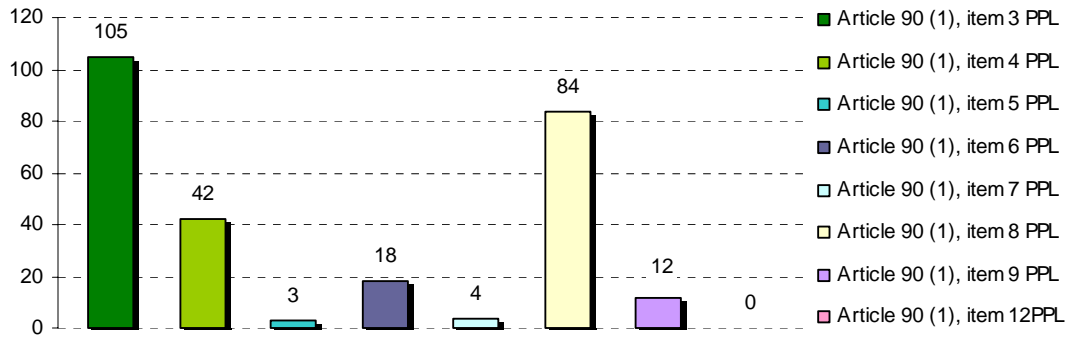
The chart given below shows that negotiated procedures without prior publication of a notice have been occupying a considerable share of public procurement market over the last few years.



They range between 19 and 22 % of the total number of public procurements held under the PPL. In the common case, their opening is based on needs that do not allow conducting of an open award procedure accessible to any interested economic operator. No matter their grounds, the figures revealed that more than 1/5 of the large transactions by contracting authorities were carried out in relatively transparent and restricted accessibility. The surveillance of practice in other EU Member States showed that negotiated procedures without prior publication of a notice occupied considerably lower number of the total procedures. This was interpreted as a signal of need of greater control, so in the beginning of 2009, PPA started to perform control over the most sensitive grounds for applying the negotiated procedure without prior publication of a notice. The control focuses on award procedures held by contracting authorities under Article 7, items 1-4 of PPL or the so-called 'classical' or Public Sector contracting authorities. The subject of control are the grounds to use this type of award procedure that are exposed in the decision for its launching and the evidence submitted thereof. The check is aimed at verifying objectiveness of the grounds and how far they fulfill the mandatory requirements set by the law.

During 2009, some 268 negotiated procedures without prior publication of a notice, due to be checked by PPA, were opened. The highest share corresponded to the award of public services contracts (52 %), followed by supplies (28 %) and works (20 %).

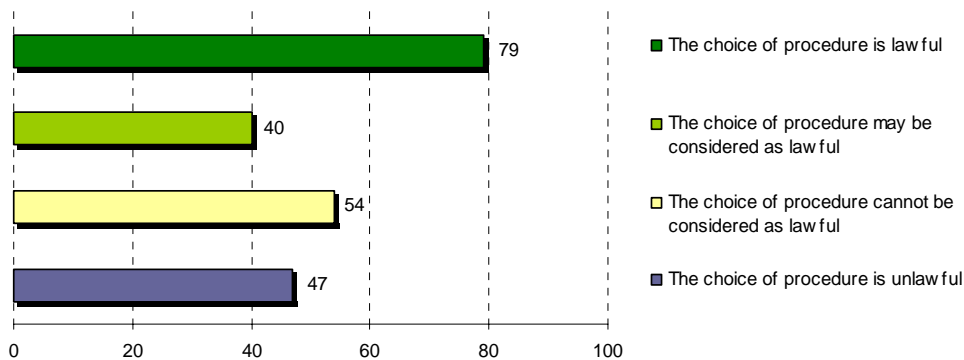
According to the legal basis used by the contracting authority for opening the award procedure, the corresponding proportion may be seen by the following chart:



The chart shows that nearly half of the procedures subject to control in question were opened based on Article 90 (1), item 3 of PPL. The lawful application of this provision is related to the existence of authorship or other intellectual property rights or exclusive rights acquired under legal or administrative act. Only 41 % of the checked cases presented correct choice of the legal basis. Several weaknesses and omissions in justifying and providing the necessary evidence were found in the remainder.

Second ranked the negotiated procedures without prior publication of a notice for the award of additional works or services to the contractor of the original contract (Article 90 (1), item 8 of PPL). In order to open such a procedure, unforeseen circumstances arisen after the conclusion of the main contract that entail the need to award the additional works, supplies or services should be there. It is also required to have two conditions fulfilled: the additional award may not be separated from the subject-matter of the main contract or that they are vital for the implementation of the main contract, as well as their value should not exceed 50 % of main contract value. The analysis of the procedures opened on basis of Article 90 (1), item 8 of PPL showed that this option of conducting negotiated procedure without prior publication of a notice is not well understood by contracting authorities. This conclusion arises from the fact that only 12 % of the checked cases were considered lawful. In the remainder of the cases several weaknesses and inconsistencies with law were found, the gravest being trying to represent as unforeseen the circumstances that might have been foreseen by contracting authorities even at stage of awarding the main contract.

During the reported period, the Agency adopted opinions on 220 negotiated procedures without prior publication of a notice. All the PPA opinions concerning lawful application of this type of procedure are publicly available and accessible on PPA website. The following chart reveals their essence:



This chart illustrates that lawfulness was doubtless in less than half of the checked cases. The Agency assumed that in 35 % of the cases, the use of negotiated procedure without prior publication of notice was fully justified. In the remainder 65 % of the checked cases the grounds and evidence submitted by the contracting authority were not complete or not enough to assume a positive opinion, or certain level of infringement of public procurement law was found.

As a result of the control by PPA and not adopting positive opinion, 32 negotiated procedures without prior publication of a notice were terminated. It means that, despite its non-binding nature, some 23% of the contracting authorities conformed to the opinion of the Agency. In another 96 checked cases in which lawfulness was not undoubtedly proven, it was subsequently found that the contract was concluded. Pursuant to Article 50 (6) of RIPPL, in connection with Article 123 (1) of PPL, these award procedures were submitted to the National Audit Office (NAO) and Public Financial Inspection Agency (PFIA) for ex-post control. At the end of 2009, seven such ex-post controls were performed. Unlawfulness was confirmed in three of them.

As a result of the ex-ante control over negotiated procedures without prior publication of a notice the following conclusion may be drawn up:

Undoubtedly, in some cases the negotiation without prior publication of a notice is the only possibility to award the contract.

The high level of incorrect application of this type of procedure was noticed, which rose concern on the proportion between lawful negotiated procedures without prior publication of a notice and those in which there are reasonable grounds to suspect the procedure was unlawful or unlawfulness was established.

The reasons for incorrect application of this type of procedure were obvious misunderstanding of the largest number of grounds provided for its use, as well as inertia and irregularities accumulated during previous awards.

Based on the results of the control over negotiated procedures without prior publication of a notice, may be concluded that it has a positive impact on Bulgarian public procurement market. It may be affirmed, that the control is a way to limit unlawful and non-transparent expenditure of public funds and proliferation of corrupt practices.

However, the ex-ante control is expected to have visible effect in the forthcoming year, when it will be verified whether and how far the opinions of the Agency had improved understanding of the legal framework and changed contract award policy.

Other activities, part of PPA tasks

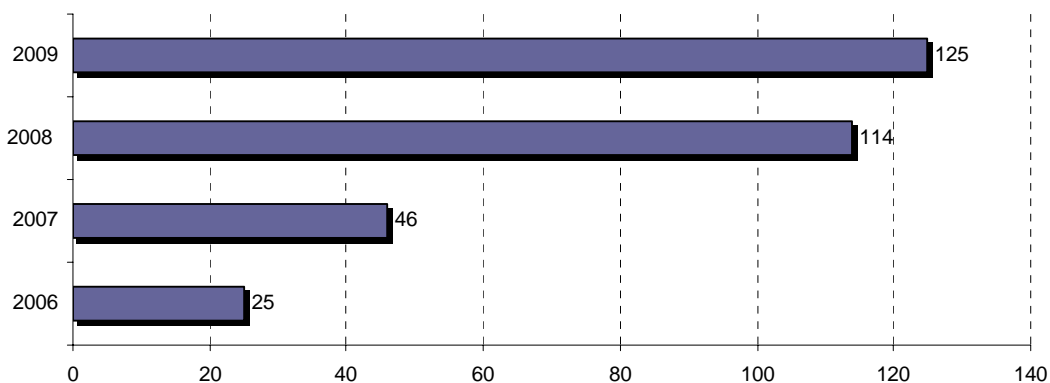
Apart from the commented above, there are also other tasks of the Executive Director of PPA envisaged in PPL, which, above all aim to protect public interest. These tasks of the Executive Director are namely:

- addresses the competent authorities calling them to exercise control over compliance with law;
- upon a received claim, lodges an appeal to the Commission for Protection of Competition against decisions for opening award procedures, approving prior notices, containing terms or requirements, which groundlessly favor or restrict participation in the award procedure;
- in case of violation of the law, brings an action in the court seeking to declare ineffective the public procurement contract;
- follows-up and monitors practice of control and review authorities, in order to align legal framework to public expectations.

Claims and address to control authorities

The persons who submit claims to PPA are mainly those interested in participating in the award procedure, but this possibility is limited as a result of certain actions of the contracting authority. Traditionally, the submitted claims seek review of the decision opening the award procedure. Another group of claims are submitted by candidates or tenderers that are directly interested in the outcome of a particular award procedure. In 2009, the Agency received 125 claims for review.

Number of claims received



The analysis compares data from 2009 and previous years and indicates significant and sharp rise of activity of businesses which are every time stricter in their surveillance of the law and more and more frequently counteract in defense of their rights.

In accomplishing its tasks, the Executive Director of PPA requested the contracting authorities to submit their opinion on the allegations of the claimant concerning the respective procurement. In 12 cases, after receiving PPA request for opinion, the contracting authority terminated the award procedure.

As a result of the claims received, the Executive Director of PPA exercised 16 times its power under Article 19 (2), item 3 of PPL, by appealing to the CPC a decision taken by a contracting authority. Out of this total, in 10 cases, the contracting authority had terminated the award procedure, after getting informed on the appeal submitted by PPA. All the rulings of CPC were taken in favor of PPA, and only one was attacked by the contracting authority at higher instance.

The cases in which it was adopted that the allegations in the claim were groundless or no sufficient data for committed infringement were available, a reply to the claimant was sent. If the referred facts led to the conclusion of infringement of the law, but not enough conditions to apply the power under Article 19 (2), item 3 of PPL was there, the claim was subsequently forwarded to the PFIA for further check. Such signals accounted for 27 of the total received. In most of the cases the PPA also issued an opinion containing the respective recommendations to the contracting authority.

Apart from the forwarded for review documents based on a submitted claim, PPA forwarded for check by the supervising bodies another 278 award procedure, which were notified and conducted under the alleviated regime of the Ordinance on the Award of Small Public Contracts, although the value of the concluded contract net of VAT exceeded the thresholds stipulated thereof.

On its behalf, in accordance with the provisions of the PPL and the current agreements between the institutions, the PFIA and NAO submitted to PPA information on the results of the control they performed. In 2009, the Agency received a total of 426 reports on conducted inspections and audits of public contract awards, which contained the information on the areas and provisions which were most frequently violated by contracting authorities intentionally or accidentally. The reports contained data at which stages of the award the highest number of weaknesses were committed. The analysis revealed that the highest number of infringements was committed at initial and final stages of the award. In general, the infringements may be grouped as follows:

- groundless division of the public procurement;
- incompleteness of the notice and/or tender documentation;
- infringement concerning release of guarantee;
- non-submission of mandatory documents at stage of contract conclusion;
- failing to send information on a concluded contract;

The cases of unlawful amendment of the concluded contract were not rare.

The nature of the violated provisions shows that along with technical deficiencies, contracting authorities also committed essential infringements related to the choice of

type of procedure and incorrect application of the relevant value thresholds, which may indicate both their negligent act and ignorance of the relevant law.

The study of these practices was useful to make an adequate assessment concerning the conduct of trainings and taking measures for improvement of the relevant legal framework.

CPC and SAC case-law

One of the most important systems ensuring protection of public interest is the system for review of decisions, acts and failures to act of contracting authorities. The review system provides a real possibility for each and every candidate or tenderer to seek protection of its legal interest and thus to highest extent is introduced the right of public control by society over the actions taken by contracting authorities. That is why it is essential to ensure its proper development and effective functioning.

The PPA has taken the commitment to monitor the effectiveness of the review system. The PPA is expected to propose adequate measures and possibilities for improvement, including ensuring that the order laid down in the applicable European Directives has been studied and proposed for introduction and implementation into national law. In this aspect, the data of review procedures are important in order to properly focus the efforts on specific areas needing improvement.

Under the current Bulgarian legislation, the lawfulness of any decision, act or failure to act of the contracting authority during the award procedure until the conclusion of the contract or framework agreement is subject to review before the Commission for Protection of Competition (CPC). Rulings and orders of the CPC may be appealed to a three-member panel of Supreme Administrative Court (SAC) and the decision is final.

According to data from the CPC Public Register, in 2009, 783 applications generated review proceedings, which was slightly more than 10% of the total number of opened award procedures. Out of these rulings, the ones proving that the actions taken by contracting authority were unlawful equaled 2.8% of the total.

During 2009, in conformity with Article 5 (1), item 14 of PPL Implementation Rules, the PPA received 58 copies of the effective orders and judgments of SAC, made as a result of appeal of the decision of CPC. In 54 of the cases SAC upheld the respective decision or order of CPC. In comparative plan, in recent years data on review procedures appear as follows:

	2007		2008		2009.	
Number of conducted review procedures	10 610	*	13 362	*	7 807	*
Number of admitted applications	523	4.93%	652	4.88%	783	10.04%
Decisions in favor of the contracting authority	220	2.07%	520	3.89%	566	7.25%
Number of applications upheld	303	2.86%	132	0.99%	217	2.78%

Interim measures imposed	35	0.33%	20	0.15%	19	0.24%
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* percentage of the total number of proceedings

These data provided the legal basis for drawing-up the following main conclusions: review system has a growing popularity as a way to exercise citizens' rights. During global economic crisis, competitive struggle to win public contracts may be exacerbated. Businesses are showing less tolerance to breaches in public contract awards and attack a growing number of them. The latter is also an indicator of a better understanding of the mechanisms to respond when disagree with actions taken by contracting authorities. The tendency not to impose interim measures was kept flat which indicates that this effective tool was not used to the extent needed. In relative terms, the percentage of applications upheld equaled the level of 2007 following a serious decline in 2008 when it marked an absolute maximum in number of opened award procedures. That is, as noted above, the reduction in number of award procedures led to more proactive response to any weakness.

Having regard to the overall upgrade of the review system it will be interesting to follow-up the results at the end of 2010.

Openness and transparency of the information related the award of public contracts



Maintenance of Public Procurement Register (PPR)

One of the main tasks of the Agency is the maintenance of Public Procurement Register ('PPR' or 'the Register'). This is an electronic database containing the complete information on all the notified procedures for the award of public contracts and the results thereof, including the concluded contracts. The PPR is the main tool ensuring openness and transparency, which provide the conditions for loyal and fair competition in the award of public contracts. The access is free and may be performed through the Public Procurement Portal.

The Register uses several standard forms depending on the respective legal act regulating the award of the public contract and its estimated value. Their filling-in is helped by the specialized 'Form Editor' software product. It allows contracting authorities to authorize their employees to enter the information in the validated forms, to sign them with a Universal electronic signature and submit them to PPA. They are the so-called 'Authorized Users' of PPR. The Agency provides two mechanisms to the Authorized Users to automatically enter the documents into the PPR:

- by filling the on-line forms of the Public Procurement Portal;
- by using the 'Form Editor' software which allows to automatically enter the documents into the Register database.

This is the first stage of the overall process of e-procurement, the e-notification.

By this form of communication, the contracting authorities send in electronic way only the information due to be published under the Law on Electronic Documents and Electronic Signature, without submitting it in paper format. The obligation to submit to State Gazette the notices is dropped, as the electronic system automatically forwards it.

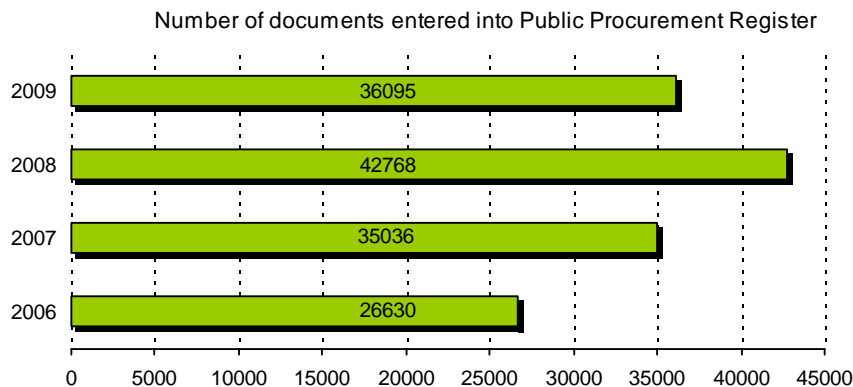
Autorised users may also use the free e-Sender service which allows PPA to forward procurement notices for publication into the Official Journal of the European Union (OJEU). The number of contracting authorities using this service equaled 131 in 2009, while the number of documents forwarded for publication into the OJEU totaled 1,254.

A new functionality introduced over the reported period is the option to receive the tender documents and clarifying questions and answers exchanged electronically by the Public Procurement Portal between the contracting authority and the parties interested to win the contract. The submission of electronic tenders is the next stage of electronic public procurement and is an important step for carrying out completely electronic communication between the participants in the award process.

Irrespective of the fact that the main objective of PPR is to provide information to interested parties, it is a reliable source of statistical information which enables the monitoring of public procurement market. PPR also allows the accomplishment of the task of the country to provide annual statistical report to the European Commission. The Register is used more and more widely by the control authorities under PPL, which derive information on the opened procurements or those subject to review and conclusion of the contract. Investigation bodies and prosecutors often turn to PPA with a request for preparation of reports from PPR data. Upon such requests The Agency elaborated 79 specific reports over the year. This illustrates the importance of one of the main tasks of PPA, to maintain the PPR in perfect technical condition, so that in each and every moment its information is available to users.

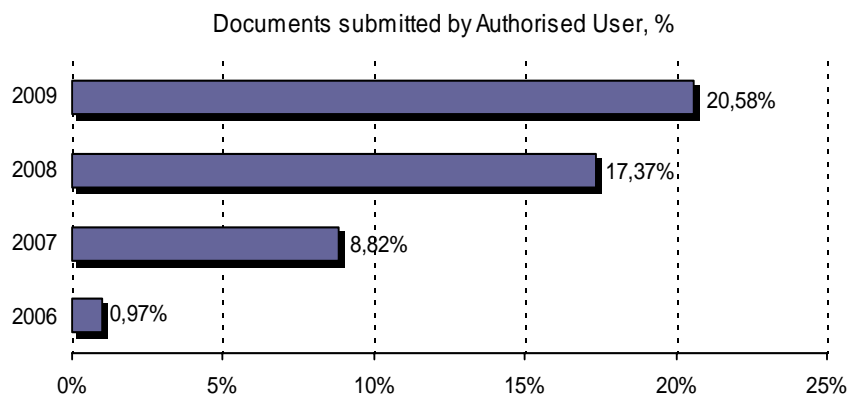
Currently, it may be affirmed that the PPR and the existing regulatory framework are the two pillars of the public procurement system. On one hand, the regulatory framework provides the legal environment for management of public funds, and on the other, the Register represents the practical expression of these rules.

The growing importance of PPR may be illustrated by tracking the dynamics of the documents entered into the database. In 2009, 36,095 documents were entered into the Register.



For the first time in 2009 a drop of 15.6% is noticed, compared to the previous reported period. This is attributed to the reduced number of procurements. This fact is explained, on one hand, by increase of thresholds for notification of the public procurement and the impact of the economic crisis, on the other, and the general cut in number of public procurements.

One of the effective forms of communication of contracting authorities with the PPR is through the so-called 'Authorized User'. The interest towards this form of interaction is growing. According to the data, the number of documents submitted by digital signature equaled 7,427.



The PPR has registered 346 Authorized Users owning a digital signature and sending information on behalf of 274 separate contracting authorities. In 2009 they sent a total of 7,427 documents, representing more than 20% of the total number of entered documents. Over the past years this percentage has steadily grown.

At the end of 2009 the Register comprised data on more than 13,474 contractors of public contracts.

Commission Regulation (EC) No 1150/2009, which on 21 December 2009 introduced a new standard form for 'Voluntary ex-ante transparency notice' and amended the forms 'Contract Award Notice' and 'Contract Award Notice - Utilities', that should be submitted for publication into the OJEU. The Agency provided an updated specialized Form Editor software application and introduced, accordingly, the changes in the on-line forms.

The main functionalities of PPR are the fast and advanced search options. By the advanced search, users may save a particular combination of criteria as a pattern, for subsequent search. Each person may subscribe and receive by e-mail notification about documents published into the PPR, which corresponds to the set criteria. According to the figures available, at the end of 2009, more than 9,400 search patterns were registered into the PPR and some 5,900 requests for electronic subscription were received which are daily processed. The number of users owning their own search patterns amounted to 2,954.

Improvements of the Public Procurement Register

The Agency incessantly tries to further develop its main information systems in a modern and highly technological way ensuring maximum information assurance of public procurement practice in Bulgaria. Driven by the amendments in the EU and Bulgarian regulatory frameworks, the development of e-governance in Bulgaria and the trend unification of public administration information systems, in 2009, the Register's software was updated.

■ *Improvement of search in the Public Procurement Register*

This improvement is user-oriented and aims to achieve better processing of requests. The fast and advanced search modules have been improved: criteria were organized in different groups and a possibility to search in cases and documents has been provided. The option to select awards with electronic tender dossier has been created.

■ *Improvements in the content and business logic of on-line forms*

The on-line public procurement forms have been adjusted with the ones of Form Editor from the point of view of their content, names of the fields, and validation rules. Validation logic is in-line with the one followed by European rules.

■ *Improvement of the specialized software Procurement Form Editor (PFE)*

According to the requirements of Electronic Documents and Electronic Signature Law, a document sent by Authorized User for publication into the PPR has to be digitally signed. In this case an online check is performed in order to ensure validity of digital signature.

When older version of *Procurement Form Editor* is detected on the PC of the user, the new version is automatically installed. System settings have also been developed: a new section has been added to allow the user to enter new information, namely the name, address and contact point. The information automatically appears in the respective fields when opening a new form.

■ *Development of E-Sender*

E-Sender is a free electronic service by which PPA forwards notices pending publication in the Supplement to the Official Journal of the European Union dedicated to public procurement. This service has been improved as to allow contracting authorities to get confirmation on publication into OJEU of their notices. When the user views such notices in PPR, it may also see the link to the respective publication in Tenders Electronic Daily (TED).

Regardless of its importance, the PPR is part of the overall system intended to inform the general public on procurement issues. The complex information services are accomplished by the Public Procurement Portal - www.aop.bg

Upgrade and maintenance of the Public Procurement Portal

In 2009 the internet site of the Agency has been totally transformed and became the Public Procurement Portal. The Portal is centralized information system which provides access to information concerning all aspects of public procurement systemized in separate topics corresponding to the particular interests of the main user groups. The organization and activity of PPA is presented, as well as the public procurement regulatory framework and practice and useful links to other internet resources. They are intended to enhance openness and transparency of public procurement and deepen public awareness. The Portal provides updated information aligned to the amendments of

Bulgarian and EU legislation and established good practices. The Portal is designed for use by disabled persons too. The Portal provides free option to acquire the Form Editor software application.

The Portal is being updated on a daily basis. Over the year, 611 rulings and orders of the CPC and 80 rulings of the Supreme Administrative Court concerning review of public procurements have been uploaded. They give full picture on review procedures. 31 news announcements were also published covering Agency's initiatives, events and activities. 7 methodological instructions were also published at the Portal, the practical guidelines were updated. The list of persons having been found by the Public Financial Inspection Agency guilty of infringing the rules on spending EU-funds is updated on a monthly basis.

Assisted by professional associations and branch organizations, the PPA maintains the list of experts that the contracting authorities may involve as external experts in award procedures. In 2009, this list contained 1,569 experts. Out of them, 449 experts were proposed by 41 organizations and the remainder was included on their individual request.

In 2009, PPA internet site and the Portal registered the access of 664,301 users, which accounts for more than 1,820 visits a day. As the Portal was launched on 1 July 2009, only 370,962 visits were registered. During the second half of the year, the average of 2,040 visits a day were registered, which indicates the increase of interest towards the renewed PPA internet resources. Based on this information, we may state that the Portal is perceived as useful and reliable source of information.

Enhanced and new functional options of Public Procurement Portal

■ *Change of content organization of the Portal*

The content is subdivided into several main topics, namely: PPA, Register, Legal Framework, Practice, eServices, Contracting Authorities, Business Sector, Appeal and Control. All the pages of the Portal contain its map, context-oriented help, form of feedback, etc.

■ *Design Optimization*

The interface is easy for orientation and use, including by disabled persons. Elements facilitating such persons, namely, voice explanation of the main content and change the font size option are also available. Navigation is intuitive. Each sub-page contains the respective path and ensures the possibility to return to higher levels.

■ *Providing tender documents electronically*

The option to provide tender documents electronically is available. Thus the candidates may save time and efforts, in particular, in the cases when the contracting authority is established in another location. After selecting the respective case-file, PPR authorised users may upload documents electronically. Before publishing the tender dossier, the contracting authority may set the option allowing tender documents to be seen by all or only those candidates that request to do so and/or pay the respective amount. The exchange of information is carried out and visualized on the Public Procurement Portal. Over the reported period, 44 electronic tender dossiers were provided by the Portal, out of which 31 have been downloaded by 173 unique users. The service was used by 9 contracting authorities. PPA efforts are focused on raising awareness on this new option, which speeds up the award process and facilitates communication with tenderers in the public procurement.

■ *Contracting Authorities Area*

The Public Procurement Portal also allows contracting authorities to manage and edit their own sub-pages containing individual information. This service is available to contracting authorities/entities that have their Authorized PPR user. The window 'CA presentation' allows any institution or entity to provide diverse information on itself and its activity, including presentations, image content, relevant links, etc. This is a way to help contracting authorities/entities that do not have the possibility to create and maintain their own website, as well as those wishing to additionally disseminate their tasks and activities.

■ *Publication of Short Announcements*

Another new service is available: the publication of the so-called 'short announcements'. Authorized Register users may publish announcements concerning contracts whose value is below the thresholds under Article 2 of Ordinance on the Award of Small Public Contracts, i.e. the cases in which the contracting authority may not carry out award procedure, but should collect at least three price offers.

■ *Portal new functional possibilities*

Contracting authorities may benefit from the so-called Procurement Calendar option, which automatically calculates the lawful terms under PPL and OASPC to launch and conduct award procedures.

The new functionality available to administrators was added to monitor and retrieve statistics on visits.

The Portal provides feedback with users by surveys on hot topics related to public procurement practice and saving the information in a database and automatic process and statistics data generation. A feedback form is available allowing users to send to PPA their opinion, recommendation and other information.

Interactive news calendar has also been developed.

The Portal has two language options: Bulgarian and English.

Current Status of Public Procurement Market in Bulgaria



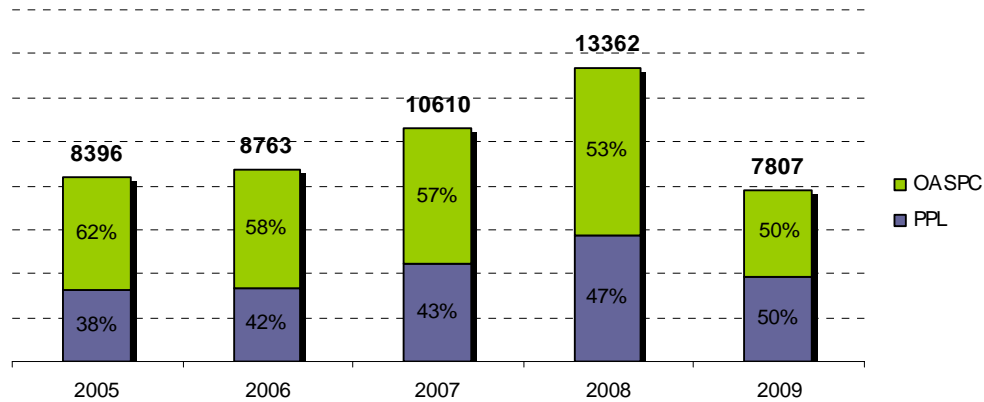
Public procurement is an area where the state is expected to manage effectively and transparently the expenditure of public funds, as well as funds related to public interest. The efforts are focused on achieving this objective by building-up relevant legal framework and its application by linked institutions, including the administrations of contracting authorities awarding the public contracts. The aim is to achieve this goal by means of appropriate legislation and efforts in applying this legislation by institutions, including the administrations in their aspect of contracting authorities. The study of the current status of public procurement market is of particular importance in order to know its characteristics and volume, as well as data describing it as a specific part of the common EC market.

The volume of public procurement market in Bulgaria in 2009 marked a decreasing trend in number of public procurements. Adverse processes in the Bulgarian economy arising from the global economic crisis challenged the financing of budgetary systems in the public sector. As a result, a prioritization and limit of expenditure was required, which led

to cut in all measured indicators. Therefore, the analysis of data should take account the particular economic environment in 2009.

The main source of obtaining relevant systematic information in Bulgaria is the Public Procurement Register. Below are given some data on public procurement, based on the main indicators monitored by PPA, which illustrate the status of public procurement market in Bulgaria.

The first indicator shows the volume of the market and its dynamics.



As the chart reveals, total number of opened procedures progressively increased between 2005 and 2008, more smoothly during the first two years and faster over the next.

Total number of opened procedures for 2009 amounted to 7,807. Compared to 2008, a decrease by 5,554 procedures was registered. If expressed in relative value, this decrease corresponds to 41.6% year-on-year cut, which may be qualified as a sharp cut.

Another characteristic feature of the market is the proportion between award procedures carried out under the regime of the Public Procurement Law (PPL) and the Ordinance on the Award of Small Public Contracts (OASPC). The decreasing trend in number of award procedures conducted under OASPC regime continued, as well as the increasing the number of the ones conducted under PPL regime. In 2009, 49.6% of the award procedures were carried out under the PPL regime, while the remainder 50.4% was carried out under the OASPC. This proportion reflected the increase of number of contracts, whose value exceeded the thresholds set down in OASPC, and they were awarded under the regime set down in PPL.

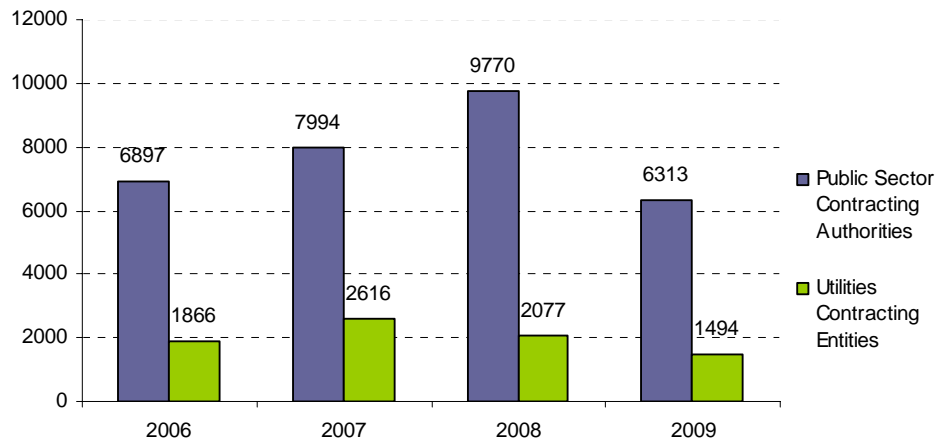
Naturally, the reduced number of opened procedures led to decrease in number of the concluded contracts, where also a cut was detected.

Total number of public contracts		currency	value	
			2008	2009
2008	2009	BGN	6 749 058 262	9 578 307 088
17 292	15 371	EUR	349 219 353	345 768 293
		USD	9 645 653	61 932 128
		LVL	2 178 891	X
		GBP	33 059	147 060

As shown on the table, in 2009 a total of 15,371 public contracts were concluded, down from 17,292 in 2008. If expressed in figures, the decrease amounts to 1,921 contracts or 11.11% year-on-year. Over BGN 10 billion were allocated for public contracts in 2009. The average contract value, irrespective of the legal act for its award, amounted to BGN 371,591, down from BGN 390,000 in 2008¹.

According to their status, an indication of contracting authorities' activity is the proportion of award procedures carried out by those from public sector and utilities. Public sector contracting authorities are all those spending budget funds, while utilities sector contracting entities comprise activities of public interest, such as, water and electricity power supply, transport network operation, etc.

The chart below gives picture on the proportion between award procedures launched by the two groups of contracting authorities.



Compared to previous years, both public sector contracting authorities and utilities sector contracting entities had decreased their awarding activity in 2009. This difference amounted to 35.4% year-on-year shrink in public sector, and some 28.1% year-on-year step-down in utilities sector.

In 2009, award procedures launched by contracting authorities represented 81% of the total, while the remaining 19% were conducted by contracting entities.

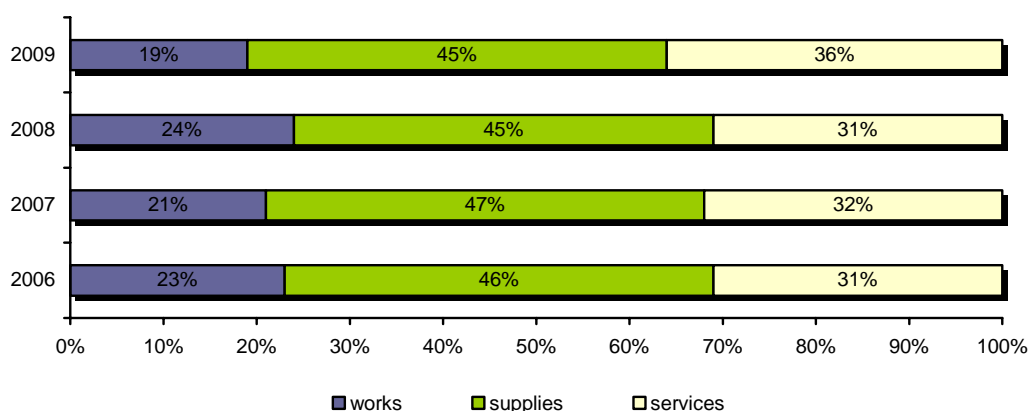
The table below illustrates the most active contracting authorities in Bulgaria in terms of number of contracts concluded in 2009.

Contracting Authority/Contracting Entity	Number of Contracts
Sofia Municipality	360
Lozenets Hospital, Sofia	325
Ministry of Health	251

¹ The comparison does not include the public services contract of the Ministry of Transport, Information Technologies and Communications for transport by rail for 15 years, whose value equals BGN 4,628,387,000 net of VAT.

National Revenue Agency	239
National Railway Infrastructure Company, Sofia	235
Thermal Power Plant (TPP) Maritza East 2	227
EVN Bulgaria Electricity Distribution Plovdiv	192
Kozloduy Nuclear Power Plant	177
Ministry of State Administration and Administrative Reform	176
Mini Maritza Iztok, Radnevo	137

The division of the award procedures in terms of to their object (works, services or supplies) may illustrate contracting authorities' structure and needs. Each of the mentioned type of award procedures has its threshold of estimated value of the contract, which determines the procedure to be carried out by the contracting authority according to the rules set down in the respective regulatory act.



The above chart shows that over the last four years the proportion was kept. A clearer difference may be seen in works award procedures conducted in 2009, compared to 2008. A slow down is noticed. As in the previous two years, the award procedures for public supplies in 2009 accounted for 45% of the total number of award procedures, followed by public services and works, 36% and 19%, respectively.

In order to get a clearer idea on the proportion of the invested funds, the award procedures should be seen from the perspective of value of the awarded contract, depending on their object. This information allows seeing the expenditure trend and earmarking of funds for public contracts.

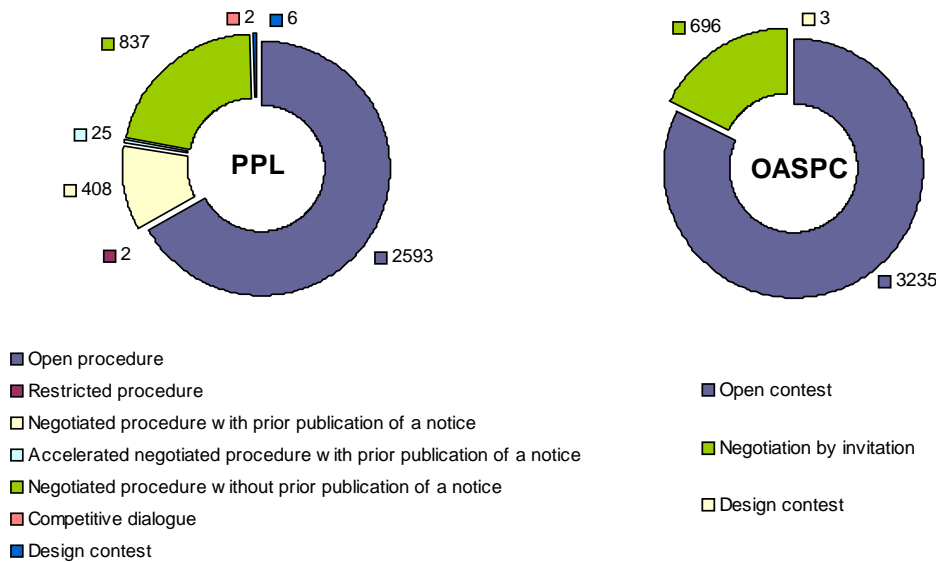
Object of the public contract	Value*	
	2008	2009
works	BGN 3,624,651,259.	BGN 2,547,614,332
supplies	BGN 2,196,503,493	BGN 1,886,766,694
services	BGN 925,843,164	BGN 5,905,359,171

* Value of contracts in other currencies were converted to BGN according to BNB exchange rate for 31.12.2009

In terms of a value, the total amount of public contracts concluded in 2009 exceeded BGN 10 billion. The summed value of public works contracts shrunk by 29% year-on-

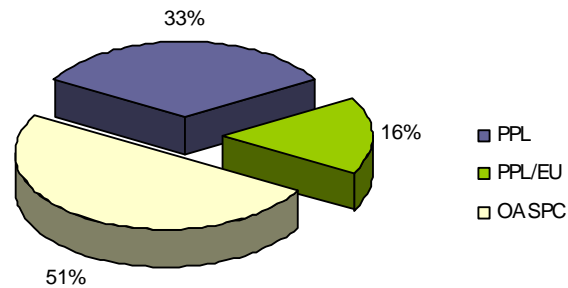
year, while that of supplies, by 10% year-on-year. According to the review, a considerable increase in aggregate value of concluded services contracts, up more than 6 times, compared to the one in 2008. However, the analysis according to this indicator should take into account the conclusion of one single contract of a very large value, namely BGN 4,628,387,000. A more precise comparison requires excluding this contract from statistics, which, consequently, led to 38 % year-on-year rise in services contracts total value, compared to 2008.

The next significant benchmark is the proportion of contracts according to the type of chosen award procedure within the applicable regulation. The doughnut charts below illustrate the award procedure used by contracting authorities.



The open procedure under PPL, the open competition, under OASPC, respectively, were the most frequently used by contracting authorities. Free selection procedures account for almost 80% of the total. While negotiated procedures accounted for about 1/5 of the total number of award procedures and this figure should also be considered higher than the expected. This is due to the fact that in this type of award procedure, always arise concerns about corrupt practices. So, one of the directions to be further developed in 2010 is strengthening the control over this type of procedure, in order to cut their number, irrespective of the fact that they are legally admissible, when certain conditions are met.

An indicator characterizing importance of award procedures launched in Bulgaria for the Common European market is given by the so called award procedures whose estimated value falls below the thresholds stipulated in Article 45a of PPL. These are the procurement procedures that, due to their estimated value, should be notified in the Official Journal of the European Union. In 2009, Bulgarian contracting authorities notified the European Market of a total of 1,264 award procedures, down by 27% year-on-year. As seen on the pie chart below, the procurements notified across EU amounted to 16% of the total and to 1/3 of the procurements notified under PPL regime.



Co-operation



Interaction with other institutions

Having regard to the correct and lawful spending of funds by the award public contracts, the PPA is the preferred partner by many institutions and non-governmental organizations in providing assistance for discussion of public procurement issues.

In 2009 Agency's experts attended several inter-ministerial work groups and discussion forums.

■ *Works groups, round tables and discussion forums*

One of the main PPA's commitments linked to inter-institutional co-operation is the participation in inter-ministerial work group on study the need of setting a Central Purchasing Body to meet the procurement needs of executive power bodies in Bulgaria. The workgroup has the task to propose a model for its legal and organizational form, status and powers.

A form of joint implementation of green public procurement policy and a step towards improving energy efficiency and minimizing expenditure for the procurement of certain product group is PPA's participation in expert workgroup within the Energy Efficiency Agency. The workgroup should elaborate guidelines to foster energy efficient products acquisition by contracting authorities.

Within its competence, the PPA participates in Workgroup 19 'Regional policy and coordination of Structural instruments' and Workgroup 30 'Expansion'.

In relation to absorption of Community funds and their spending according to the rules laid down in the National public procurement legislation, PPA took part in the following events over the year:

- Work session at the Ministry of Justice on implementation of Measure 50 concerning conflict of interest;
- Session to appoint Coordination of Fight against the Infringements Affecting the Financial Interests of the European Communities directorate at the Council of Ministers as national contact point, pursuant to Commission Regulation No 1302/2008 of 17 December 2008;
- Regular meeting at the Council of Ministers on European Funds.

Over the reported year, PPA took part in a round table organized by the Institute on Projects and Programs Management. The problems of terms of reference and technical

specifications elaboration, as part of the tender documents in the award procedure were discussed.

Over the reported period, the Agency carried-out two round-tables:

- between 22 and 24 April 2009, round table with representatives of the National Audit Office, Public Financial Inspection Agency, Commission for Protection of Competition, the Hungarian National Development Agency, etc. was held in Sandanski, to discuss the frequently committed infringements and weaknesses in award procedures. The measures for carrying-out a unified policy on prevention of corrupt activities were also discussed;
- round-table with representatives of branch organizations to discuss the problems in the award of public contracts, to map the measures for their restriction and create environment protecting at higher degree the interests of ethical candidates and tenderers in the award procedure.

■ *Trilateral meetings*

An established way to review specific cases taken from the practice surged in the course of public procurement law application, are the trilateral meetings between the National Audit Office, the Public Financial Inspection Agency and the PPA. Over the reported period, two pre-conciliation procedures initiated by PPA were held. These pre-conciliation procedures tackled issues related to questions addressed to the PPA, in its aspect as main methodological body, such as the inclusion of external experts in the Tender Evaluation Committee in award procedures carried out according to the national threshold rules, the existence of public interest in the activity of entities governed by public law, etc.

■ *Monitoring Committees*

PPA experts were included as members and supervisors of Operational Programmes 2007-2013 Administrative Capacity, Human Resources Development, Competitiveness, Transport and Environment Monitoring Committees. PPA also participates in Monitoring Committee of the National Strategic Reference Framework.



International Co-operation

In accomplishing its mission to support the Minister in implementing public procurement policy, PPA has always counted with active co-operation with key institutions not only at national, but also at international level. Over the past year, this co-operation took form in several joint initiatives, meetings, forums and workgroups.

As part of Bulgaria obligations as EU Member State, the most active are the contacts with EU institutions. In 2009, the Agency officials attended three meetings of the Advisory Committee on Public Contracts, supporting the European Commission to elaborate and apply the relevant policies. PPA was also represented at two meetings of the Economy and Statistics workgroup at Internal Market and Services DG of the European Commission and one meeting on E-Procurement Workgroup within the same DG.

Electronic Public Procurement is the focus of many other international events attended by PPA representatives. The events of this type were two meetings of the TAIEX workgroup and one meeting of IDABC Programme on e-procurement in the context of e-governance.

Within the implementation of Green public procurement project by the European Commission, one PPA expert underwent training at the International Training Centre of the UN International Labor Organization in Turin, Italy. As part of the same project, PPA experts took part in the arrangement of a joint event by the European Commission and the Ministry of Environment and Water, to clarify several questions on GPP practical implementation.

PPA continued to be an active partner and successful representative of Bulgaria within the European Public Procurement Network (PPN) aimed at solving transfrontier problems in this area by co-operation at expert level. Apart from the commitments of PPA in clarification of several questions arising in the course of the award of public contracts in EU Member States, the Agency was represented at plenary session of PPN held by the Portuguese Presidency in Brussels and a conference held by the Italian Presidency, in Rome, Italy.

The active international co-operation has also been continued by participation in various forums and meetings on current issues arisen in the award of public contracts funded by EU. PPA experts took part in training on planning and absorption of resources from the Structural funds in Ireland organized by the Institute of Public Administration. Similar issues were also seen on the conference "Infringements in the award of public contracts funded by European Funds" held in Hungary and attended by a representative of the Agency.

Within the project implemented by PPA under Operational Programme Administrative Capacity some working visits also were accomplished. The visits to Lithuania, Hungary and Cyprus were an excellent opportunity to exchange experience and good practices on fostering lawful award of public contracts and comparing of national systems in this area.

Other important international visits and meetings with international experts were held over the year. A training in France organized by the Institute on Public Administration and several meetings with experts from EU Member States, to name some of them. All of them, aside the other international co-operation activities, reaffirmed the institution as an active party in European Dialog on public procurement.

Project Implementation

Good practices and effective partnership in the field of public procurement project

In 2009, the project ***Good practices and effective partnership in the field of public procurement*** was successfully implemented with the financial assistance of Operational Programme Administrative Capacity co-financed by the European Union by the European Social Fund.

The project was the first one managed and implemented by PPA itself, and the activities under the project were elaborated and accomplished by PPA experts. The project includes essential aspects of public procurement, focusing on actors involved in public procurement process and in this sense corresponds to Investing in People banner of the European Social Fund. In the course of project implementation, the Agency partnered with Italy, Hungary, Lithuania and Cyprus.

The project was oriented towards studying and introducing good practices in the field of public procurement and establishing partnerships in order to increase effectiveness of public contracts awards in Bulgaria. The implementation of the planned activities focuses on achieving the following main objectives:

- Introducing good practices, elaboration of effective models for optimization of award process and raising competence of PPA employees involved in this process.
- Organizing events and taking measures for the improvement of co-operation with bodies involved in methodology, control and remedies of public procurement (PPA, PFIA, Audit Office, CPC, SAC), in order to ensure coherent policy and effective prevention of 'bad' and corrupt practices.
- More effective implementation of principles of openness and transparency, by taking measures aimed at improving the systems of notifying and reporting in public procurement.

The benefits achieved by the successful implementation of the project impact the whole public procurement system in Bulgaria. They are all of considerable relevance for the effective implementation of principles of openness and transparency, improvement of the systems of notifying and reporting in public procurement, more effective and transparent absorption of public funds. To name some of the most significant achieved results, we may state:

- Concept for introduction of Central Purchasing Body (CPB) in Bulgaria developed in order to meet the needs of executive power authorities. In the preparation of the concept, public supplies for central government administration were taken into account, as well as organizational models of operation of CPB in other EU Member States.
- Report containing proposals for the reduction of number of infringements and minimization of risk of corrupt practices in the procedures for the award of public contracts prepared and submitted to the Minister of Economy and Energy. The report included several frequent infringements found in monitoring, as well as the findings of a round table with representatives of PPA, NAO, PFIA and CPC and relevant experiences shared by partners from Lithuania.
- Three trainings on national and European public procurement legislation held. Total of 138 trainees, including representatives of the three main target groups, namely the central and municipal administrations and business, trained.
- Practical Public Procurement Manual issued (1,600 pcs.) to increase knowledge and skills of public procurement actors to better conduct award procedures and support their performance within the procurement process. The Manual has been provided free to the majority of contracting authorities.
- Public Procurement Register updated and upgraded containing rich information on all aspects and phases of the award process.
- Back-up strategy for archiving and protecting the Public Procurement Register database and PPA record-keeping system accomplished.

The implementation of ***Good practices and effective partnership in the field of public procurement*** project was aimed to accomplish activities leading to improvement

of public procurement environment in Bulgaria. The project contributed to studying European practices in certain fields of public procurement, which we hope will apply in Bulgaria as well. The established trend of approximation of Bulgarian to common European conditions for the award of public contracts was also among the objectives. We expect higher efficiency in operation of administration, specialized bodies involved in methodology and control, contracting authorities, businesses.

Furhter development of the mechanisms for ex-ante control of procurement procedures financed by EU funds

PPA is a Beneficiary of BG/2007/IB/FI/03/UE/TWL contract, under PHARE program, in implementation of Twinning Light Further development of the mechanisms for ex-ante control of procurement procedures financed by EU funds project. The contract was signed in December 2009 and the implementation was scheduled for 2010. The project activities will be implemented in collaboration with Hungarian Twinning partners, namely VÁTI Ltd. (Hungarian Public Nonprofit Limited Liability Company for Regional Development and Town Planning) and the National Development Agency of Hungary.

The overall objective of the project is to achieve higher level of effectiveness of ex-ante control over award procedures financed by EU funds.

The project activities were implemented in two components:

- Review and analysis of the system for ex-ante control over the public procurement financed by the EU funds.
- Measures for optimization of the system for ex-ante control over public procurement financed by the EU funds.

The specific objectives planned to be achieved by the implementation of the projects are:

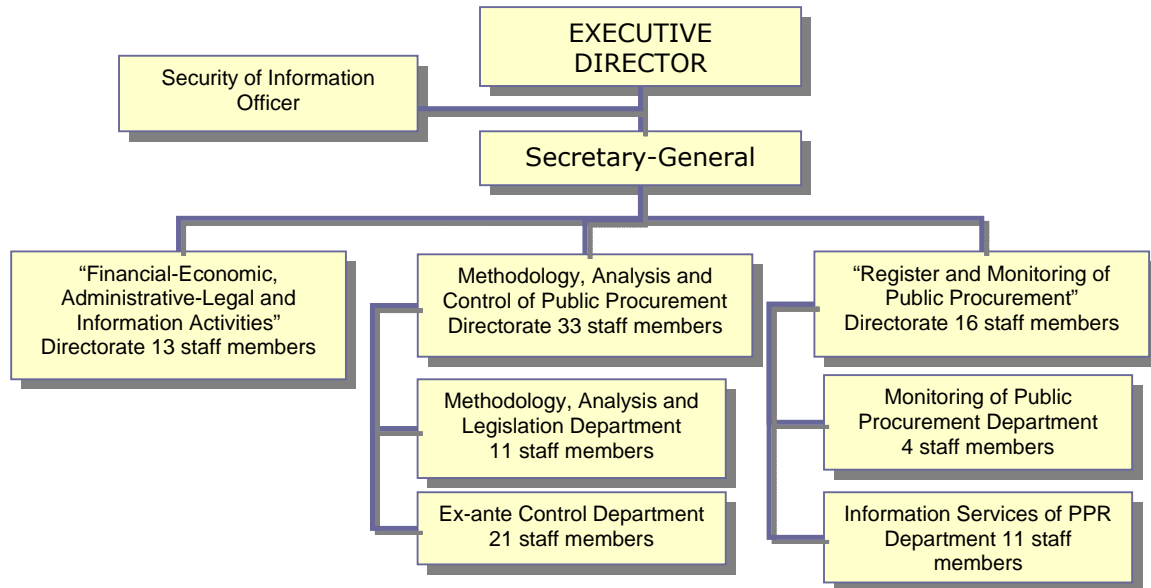
- Identification of the strengths and weaknesses of the current system of ex-ante control over public procurements financed in whole or in part by EU funds.
- Studying best practices and problems the introduction or prevention of which may be used to improve the current system for ex-ante and control over the public procurements financed in whole or in part by EU funds.
- Elaboration of methodology, handbook and template documents for efficient ex-ante control over the public procurement financed in whole or in part by EU funds.

The estimate value of the contract is EUR 194 000. National co-financing will amount to 10 % of the project budget and be provided by National Fund Directorate at the Ministry of Finance of Republic of Bulgaria.

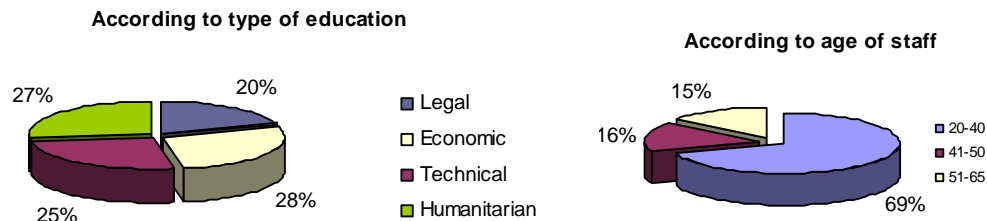
ADMINISTRATIVE CAPACITY AND BUDGET 2009 REFERENCE

Public Procurement Agency Staff

According to the Statutes of PPA, the number of staff members totals 65, of which 56 are civil servants and 9, under employment relationship. Staff distribution at the Agency may be seen on the following organizational chart:



By 31 December 2009 55 positions were occupied. Most of the employees (some 70%) own Master degrees.



PPA 2009 budget implementation

In conformity with Article 34 of Structure of the State Budget Law, for 2009, the validated budget of the Public Procurement Agency totaled BGN 1,251,951. Compared to the approved annual plan, the Agency's expenditure amounted to 83.72 %.

CONCLUSION

The review of the public procurement system status and the activity of the Agency in 2009 is a basis to make certain findings and conclusions, based on which some assumptions may be made and set the objectives for the forthcoming period:

Since the beginning of performing systematic observations, the main feature of the system surging for the first time is the considerable decrease found in most of the quantitative indicators observed. The number of award procedures dropped by some 40%, while the resources earmarked for public contracts diminished by 15% year-on-year. This cut comes as a result of the global economic crisis, impacting, in particular, public finances of the state. However, the slow-down should also be observed from a qualitative point of view. As mentioned above, the drop in number of award procedures outpaced significantly the real invested resources. This means that a rise in value of a single public contract is noticed. In regard to this fact, an exacerbation of the competitive struggle to win public contract may be expected, as in the overall stagnation they grow in value and decrease in number. On the other hand, this will entail new challenges for the review and control systems. A reaction of higher expectations by tenderers may be foreseen, concerning the role of the state to ensure more effective control.

Next, the restricted financial resources aimed for public contracts may arise as a reason for proliferation of corrupt practices, as it will be vital for many economic operators to win a public contract at all costs. This aspect of the crisis should be paid particular attention, taking into account that European institutions are particularly sensitive to corruption issues.

The response to these challenges may be sought in the following directions:

- Increasing the quality of the award procedures: an activity for which the contracting authorities are themselves liable to carry-out. In order to help them, the Public Procurement Agency may improve the process of giving methodological instructions and holding of trainings. In this direction a problem arises as to the insufficient administrative capacity and lack of resources to handle the events.
- Optimization of systems for review and control. In this context, the Agency should be established as an ex-ante control body, pre-checking the award procedures that present considerable risks of unlawfulness or essential overall importance for the economy. However, the development of already established policies again passes through strengthening the administrative capacity of the institution.

The next conclusion coming from the observation of the system is that amendment needs analysis of the public procurement legislation should be made. The economic crisis has shown that very intensive processes took place and after years of economic boom, followed a recession. This requires flexible and adequate legal framework able to meet the need of management measures in conditions of crisis.

The above supposes a thorough re-consideration of policies in the following areas:

- Development of control, in particular, ex-ante control.
- Redefinition the conditions for participation in award procedures, trying to reduce the administrative burden for candidates and tenderers and facilitate them in submitting their tenders.
- Development of electronic means of sending information for publication into the PPR, enhancing electronic ways to submit documentation and conduct award procedures, generation of lists of participants meeting admission criteria, so as to drop the need to prepare bundles of documents in each routine award procedure.

Apart from the findings mentioned above, which may be seen as strategic directions to be followed by the overall public procurement system, the Agency should focus on ensuring functioning of the system in 2010. Based in these conclusions and monitoring of the dynamics of the processes taking place in the public procurement market, the main priorities set by the Agency for development in the next period may be featured in the following manner:

- Ensuring efficiency of the public procurement system in Bulgaria in terms of free and undistorted competition.
- Improving the system of ex-ante control of procedures for the award of public contracts financed by EU funds and reduction of corruption risk.
- Achieving full alignment of national legislation with the new EU public procurement directives.
- Strong interaction with different entities acting in the field of public procurement to exchange experiences and disseminate good practices in the relevant area.
- Inclusion of green and social considerations into the award of public contracts.
- Expanding the approaches to ensure higher degree of openness and transparency in the award of public contracts.
- Monitoring and control of public procurement in order to ensure equality and non-discrimination.

In conclusion, the following general deductions may be draw-up:

A decline in the number of award procedures is noticed, which exceeded the shrink in value of public contracts.

It may be assumed with a high probability that in 2010 we will witness even further drop, in the best case some stabilization in the number and value of public procurements, the source of which may come from resources provided by EU funds.

A significant strengthening of control and smooth operation of the public procurement review system are necessary.

The Public Procurement Agency should ensure the development of the public procurement system and, simultaneously, provide the necessary methodological assistance to all the persons involved. Most probably, these tasks will be accomplished under the conditions of insufficient administrative capacity.

In close collaboration with the authorities performing ex-post control, the Public Procurement Agency should focus its efforts on carrying out prevention and counteracting possible corrupt practices. This will be fulfilled by means of performing ex-ante control and addressing the relevant bodies, when irregularity signal is received.

The view is spreading of the Agency as a useful and effective tool, by which the state succeeds to properly manage the public procurement system in Bulgaria and ensure the reliable application of the European legislation. The tasks entrusted to the

Agency by law, are performed at a very high level, and the technological maximum in view of the existing administrative capacity has been achieved.

EXECUTIVE DIRECTOR:

MIGLENA PAVLOVA