



REPORT

**on the activities of the Public Procurement Bureau in the realization
and functioning of the public procurement system
in 2007**

Skopje, May, 2008

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1 Introduction

Public Procurement Bureau (hereinafter: Bureau) is an institution which ensures, on national level, the monitoring, development and promotion of the public procurement system by securing legality, rationality, efficiency and transparency, equal treatment, non-discrimination and encouragement of competition. The competences of the Bureau, which under the Law on Public Procurement (Official Gazette of the Republic of Macedonia nos. 19/2004 and 109/2005) were stipulated in Article 28, in the new Law on Public Procurement (Official Gazette of the Republic of Macedonia no. 136/2007) are stipulated in Article 14.

Pursuant to Article 14, paragraph 1 indent 14 of the Law on Public Procurement (Official Gazette of the Republic of Macedonia, No. 136/2007) the Public Procurement Bureau submits to the Government of the Republic of Macedonia this Report on the activities in the realization and functioning of the public procurement system in 2007.

In this Report, the Bureau informs the Government of the Republic of Macedonia and the public on its activities aimed at further harmonisation of the national legislation with the EU legislation on public procurement and implementation of best practices in this area, the preparation of a Draft Amendments and Modifications to the Law on Public Procurement with a Draft-Law, as well as Draft-Law on Public Procurement and its adoption in the Parliament of the Republic of Macedonia, organizing trainings on proper application of the provisions under the new Law on Public Procurement, the statistical data on the implemented procedures and signed public contracts on national level in 2007, as well as on the observed irregularities in their implementation.

After the adoption of this report by the Government of the Republic of Macedonia, it shall be available to the public on the website of the Bureau, <http://javni-nabavki.finance.gov.mk>.

2 Normative activities

2.1 Law on Public Procurement

Upon the request by the Government of the Republic of Macedonia, the Bureau started preparing a Draft-Law on Amendments and Modifications to the Law on Public Procurement. The Draft Law was prepared and submitted to the Government for consideration in April 2007. The main reason for proposing amendments and modifications to the Law on Public Procurement was to facilitate the public procurement procedures for both contracting authorities and tenderers and to eliminate certain inconsistencies disclosed. The so-far implementation of the Law on Public Procurement showed that long period for regular procedures, envisaged in the international practise for major procurements are inadequate for all procurements exceeding EUR 3,000 stipulated under the 2004 Law. These were also the comments of foreign experts who considered this approach to be inefficient and overly bureaucratic, thus dramatically increasing the costs of the public procurement.

However, the conclusion was that the Draft Law does not achieve satisfactory level of harmonisation of the public procurement legislation with the EU Directives. Therefore, the objective of the Draft Amendments and Modifications to the Law of the Government was to intervene in facilitating the implementation of the public procurement procedures, while the long-term harmonisation should be achieved by adopting new Law on Public Procurement which was prepared by a workgroup established by the Minister of Finance, and coordinated by the Public Procurement Bureau. Under the document „Transposition of the EU directives on public procurement in the Law on Public Procurement“, drafted within the project „Public Procurement Office“, financed by the CARDS Programme and realized in the period September 2004 – May 2006, the level of harmonization of the previous Law with the EU directives on public procurement was around 50%. Therefore, and in accordance with the obligations of the Republic of Macedonia to harmonise the public procurement legislation with the EU acquis, in 2007 Draft Law on Public Procurement was prepared, which was adopted by the Parliament of the Republic of Macedonia on 6 November 2007 (Official Gazette of the Republic of Macedonia, no. 136/2007), and it entered into force on 1 January 2008. When the new Law on Public Procurement entered into force, the Law on Public Procurement (Official Gazette of the RM nos. 19/2004 and 109/2005) ceased applying. Since the adoption of the Draft Law on Amendments and Modifications to the Law on Public Procurement was unexpectedly delayed in the Parliament of the Republic of Macedonia, the Government decided to withdraw it from parliamentary procedure.

After the evaluation by the European Commission and the SIGMA experts, the text of the new Law on Public procurement is of high quality and of high level of harmonisation with the relevant EU directives in the area of public procurement.

The Law on Public Procurement, which started applying as from 1 January 2008 incorporates the following EU public procurement directives adopted by the European Parliament and the Council on 31 March 2004:

- **Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004** coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and
- **Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004** on the coordination of procedures for the award of public

works contracts, public supply contracts, and public service contracts.

- **Commission Directive 2001/78/EC of 13 September 2001** on the use of standard forms in the publication of public contract notices.

Also, the Law incorporates the existing directives on reviews in the public contract award procedures, i.e.:

- **Council Directive 1986/665/EEC of 21 December 1989** on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts;
- **Council Directive 1992/13/EEC of 25 February 1992** coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;
- **Directive 2007/66/EC of Parliament and of 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 new Law on Public Procurement shows greater flexibility in the implementation of the contract award procedures resulting from its provisions, as well as more detailed provisions regulating the general and special conditions for implementation of the procedures, utilities contracts, reviews etc. More significant novelties in this law are the following: application of new terminology in the area of public procurement, harmonized with the EU Directives, new ways of contract awarding for non-priority services (envisaged under Article 17 paragraph 1 indent 2 of the Law), introduction of the possibility to establish central procurement body, new manner of assessment of the value of the public contracts excluding VAT, new rules on drafting tender documentation and technical specifications, introduction of the obligation for online posting of public procurement notices through the public procurement information system of the Bureau, introduction of higher value thresholds and shorter periods for implementation of the procedures, new contract award procedures such as competitive dialogue, negotiated procedure without publishing a notice, simplified competitive procedure with or without notice for contracts with relatively lower value, more detailed explanation of the conditions for concluding framework agreements and implementation of electronic auctions, establishing the activities for which utilities contracts are awarded and procedures for awarding utilities contracts, precisely determined review and conditions for lodging an appeal, as well as the establishment of the new State Public Procurement Complaints Commission, envisaged by 30 June 2008 at the latest.

2.2 Bylaws

The new Law on Public Procurement envisages 14 bylaws, 13 of which should have been adopted within three months as from the day of start of the application (by end-March 2008) and one within 12 months (by end-2008). Despite the legally stipulated period, the Bureau made efforts by end-2007 to adopt the bylaws that were key for starting proper application of the law, whereby 9 bylaws were adopted of 14:

- Rulebook on the format and the contents of the annual public procurement

- plan (Official Gazette of the RM no. 154/2007),
- Rulebook on the procedure for opening the tenders and on the format of Minutes for public opening of bids (Official Gazette of the RM no. 154/2007),
 - Rulebook on the format and the contents of the notice, the notice on cancellation of the procedure and the form of the records of the simplified competitive procedures (Official Gazette of the RM no. 154/2007),
 - Rulebook on the manner of assessment of the value of procurement contracts (Official Gazette of the RM no. 154/2007),
 - Rulebook on the manner of using the public procurement electronic system (Official Gazette of the RM no. 154/2007),
 - Rulebook on the format and the contents of notices in public procurement contracts (Official Gazette of the RM no. 154/2007),
 - Decree on services subject to public service contracts (Official Gazette of the RM no. 157/2007),
 - Decree on types of construction activities subject to public procurement contracts (Official Gazette of the RM no. 158/2007),
 - Decision on the indicative list of contracting authorities (Official Gazette of the RM no. 159/2007), and
 - Decision on procurements in the area of defense.¹

2.3 Prepared opinions on the application of the Law on Public Procurement

During 2007 the entities subject to the Law on Public Procurement as well as economic operators submitted to the Bureau a total of 509 requests for opinions regarding the application of the Law on Public procurement and the bylaws. They have received answers within the legally set period.

¹ Adopted by the Government of the Republic of Macedonia. Due to its confidential nature, it was not published in the Official Gazette of the RM.

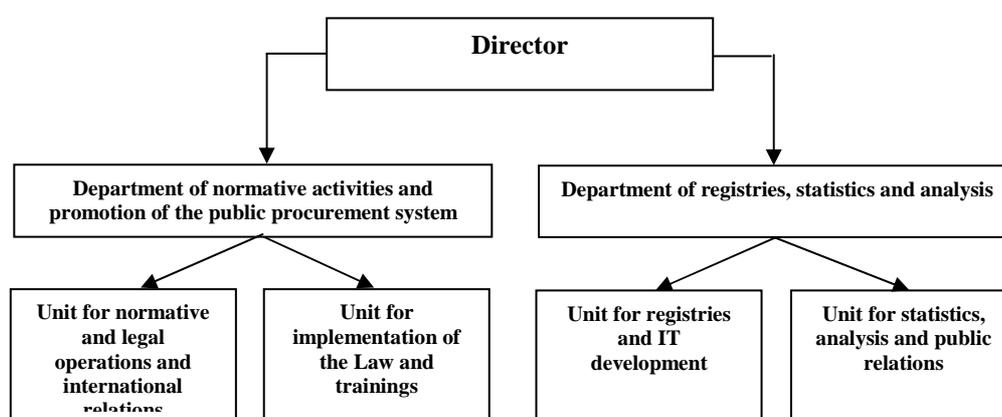
3 Public Procurement Bureau

3.1 Competences, organization and structure

The establishment of the Public Procurement Bureau was a significant step undertaken and adapted to the administrative system necessary for functioning of the public procurement legislation.

On the basis of the proposal for new organization and systematization, and in accordance with the real needs for human resources and adequate organization that would match the legally stipulated duties which the Bureau submitted in December 2006 to the Minister of Finance, in 2007, the new internal organizational setup of the Public Procurement Bureau was adopted.

The new organizational setup of the Bureau, realized in 2007, includes two departments, each comprising two units. Belo is the chart showing the organizational setup.



As of 2007 total number of employees in the Bureau was 13 persons, of which:

- 5 are Bachelors of Law;
- 3 are Bachelors of Economics;
- 1 is a Bachelor of Civil Engineering;
- 1 is an IT Engineer,
- 1 is a Bachelor of Philology,
- 2 are administrative officers.

Pursuant to the new Law on Public Procurement, the Bureau shall remain as government administration body within the Ministry of Finance.

Pursuant to the previous Law on Public procurement, the competences of the Bureau were stipulated in Article 28 thereof, but certain competences were stipulated in other provisions of the law. In accordance with these competences, the Bureau had a task to give proposals for adoption of laws and bylaws and other acts in the area of public procurement, to monitor and analyze the implementation of the law and other regulations, the functioning of the public procurement system and to initiate changes for its improvement, provide opinions with regard to the implementation of the law and the bylaws, provide advice and assistance to contracting authorities, to prepare standard tender documentation and forms for the open and restricted invitation and

negotiated procedure, to keep single registry and sub-registries for the procurements by contracting authorities that will be accessible on the public procurement website, to ensure transparency both with regard to the publishing of indicative notice on the procurements each procuring entity plans to realize during the year and with regard to their realization, thus encouraging competition; the Bureau informed the Government of the Republic of Macedonia and the Minister of Finance; regarding the detected irregularities on the basis of the obtained data from the procuring entities on the implemented public procurement.; set minimum conditions on professional qualifications of persons who would carry out specialized activities for public procurement; upon prior programme, it trained persons who would implement public procurement procedures in the entities subject to the Law, realized international cooperation with regard to the public procurement system with international institutions and other foreign entities, so as to achieve uniformed application of public procurement legislation on one hand and ensure transparency and encourage competition between economic operators, as well as their education on the other.

Also, during 2007, and in the following period, the Bureau cooperated and shall continue to do so with the contracting authorities and with companies, professional research institutions, associations or experts in certain areas regarding the public procurement.

In the future, strengthening the administrative and institutional capacity of the Bureau is also a significant step to be undertaken so as to adjust the administrative system necessary for functioning of the public procurement legislation.

3.2 Vocational training of the employees

Since the beginning of the transformation of public procurement system in the Republic of Macedonia in accordance with the EU Directives on public procurement, it is especially important to permanently educate the employees of the Bureau, especially in the European legislation on public procurement, the Directive 2004/17/EC and the Directive 2004/18/EC, and the Directives of the Council on reviews 89/665/EC and 92/13/EC. Education of the employees is especially important since in accordance with the obligations resulting from the Stabilisation and Association Agreement and the status of candidate country, the new Law on Public procurement has been prepared and it already applies and therefor, it would be necessary to develop a capacity and knowledge for its consistent and proper application by the employees of the Bureau, by contracting authorities and by economic operators.

At the trainings which the representatives from the Bureau attended in 2007, the employees were enabled to acquire knowledge and experience in the functioning of the public procurement system of the Western European countries; it is important to emphasize the study tour of a group of employees from the Bureau to Germany, organized by the GTZ. Representatives of the Public Procurement Bureau was presented the German system of public procurements, during the meetings held with several government bodies, public enterprises, local government units and representatives of the judiciary.

Representatives of the Bureau were on a study tour in London and Brussels. This study tour was organized by USAID and referred to e-procurement systems in these countries. In London, representatives of the Bureau met with representatives from the Office of Government Commerce of Great Britain) and from other

institutions and government bodies. At these meetings, experiences of Great Britain were presented regarding the development of e-procurement. At the meetings in Brussels with representatives of the European Commission, experiences were exchanged and discussions were held regarding the regulations on implementation of e-procurement in the EU member states.

3.3 Carrying out training

After the adoption of the Law by the Parliament of the Republic of Macedonia, the Bureau, in cooperation with USAID organized promotion of the Law on 3 December 2007.

In addition, and to the end of explaining its provisions and facilitation of the application, the Bureau organized multiple trainings in procurement planning, the types of agreements and types of procedures, value thresholds and time limits, as well as in the new manner of publishing notices.

Thus, in December 2007, the Bureau organized 6 workshops where the new information system of the Bureau was presented regarding the publishing of notices. Over 500 participants attended these workshops, as well as contracting authorities and economic operators.

On 14, 21 and 22 December 2007, representatives of the Public Procurement Bureau held a presentation and a training in the provisions of the new Law to the representatives of the Association of Financial Officers of the local government and public enterprises.

The topics that were presented also during the presentations and the trainings by the representatives of the Bureau referred to the provisions of the Law on Public Procurement, and the secondary legislation:

- Public procurement planning,
- Publication of notices
- Tender documentation,
- Exceptions in the application of the law,
- Types of contracts and types of contract award procedures,
- Criteria for determining the capability, and
- Electronic procurement system.

Two seminars were organized in cooperation with SIGMA, one regarding reviews and the other regarding the new procedures envisaged under the new Law.

3.4 Publications

During 2007 the Bureau, in cooperation with USAID, in order to elaborate certain parts of the Law being envisaged for the first time, prepared seven brochures regarding the following:

- Utilities contracts,
- Electronic auctions,
- Code of Ethics of the public procurement officers,
- Negotiated procedure with or without prior publication of a contract notice;

- Review in the contract award procedures according to the European law,
- Framework agreements, and
- Competitive dialogue.

Also, the Bureau prepared two manuals regarding the utilisation of the Electronic Procurement System, those being the Manual on the manner of using the Electronic Procurement System for economic operators and Manual on the manner of using the Electronic Procurement System for contracting authorities.

The brochures and manuals are published in hard copy, but they are available online on the website of the Public Procurement Bureau.

3.5 Public relations

In the course of 2007, the Bureau, through its contact form on the website, received around 80 questions from institutions, public enterprises, companies and individuals regarding the manner of applying certain provisions in the Law on Public Procurement, applying certain institutes or requests for certain manners of acting in a given situation. Average response time to these questions is less than one business day.

At the same time, the Bureau is open for communication with the public through its telephone line. Average number of calls a day is 36, or around 9,700 calls in 2007.

4 Statistical data on carried out procedures and concluded contracts

Following each procurement procedure, entities pursuant to Article 17, paragraph 4 of the 2004 Law were obliged, within 30 days from the day public contract was signed, to submit PPR-1 Form to the Bureau, being a register of carried out procurement at the contracting entities, stipulated by the Rulebook on the Format and Contents of the Form and Manner of Keeping Public Procurement Registry at the Contracting Entities (Official Gazette of the Republic of Macedonia, 10/2005).

Data from PPR-1 Form were entered in the Single Public Procurement Registry SPPR-2, stipulated by the Rulebook on the Format and the Contents of the Form and the Manner of Keeping the Single Public Procurement Registry (Official Gazette of the Republic of Macedonia, (10/2005), available to the public on the Bureau website. Data stipulated in SPPR-2 Form are published on the website, such as data on the contracting authority, number of the Official Gazette of the Republic of Macedonia in which the contract notice was published, description of the subject-matter of procurement, type of procurement procedure, estimated value of the procurement, date, information on the selected tenderer, number and value of concluded contracts. These data are public and all interested entities have free access to them.

Data in each PPR-1 Registry comprises database on the number and type of carried out procurement procedures and concluded contracts in the Republic of Macedonia.

Entities to which the Law applies submitted 3,289 registries, i.e. PPR-1 Form to the Bureau, as of 31 December 2007 inclusive, and data therefrom are entered in the Single Public Procurement Registry of the Republic of Macedonia, i.e. SPPR-2.

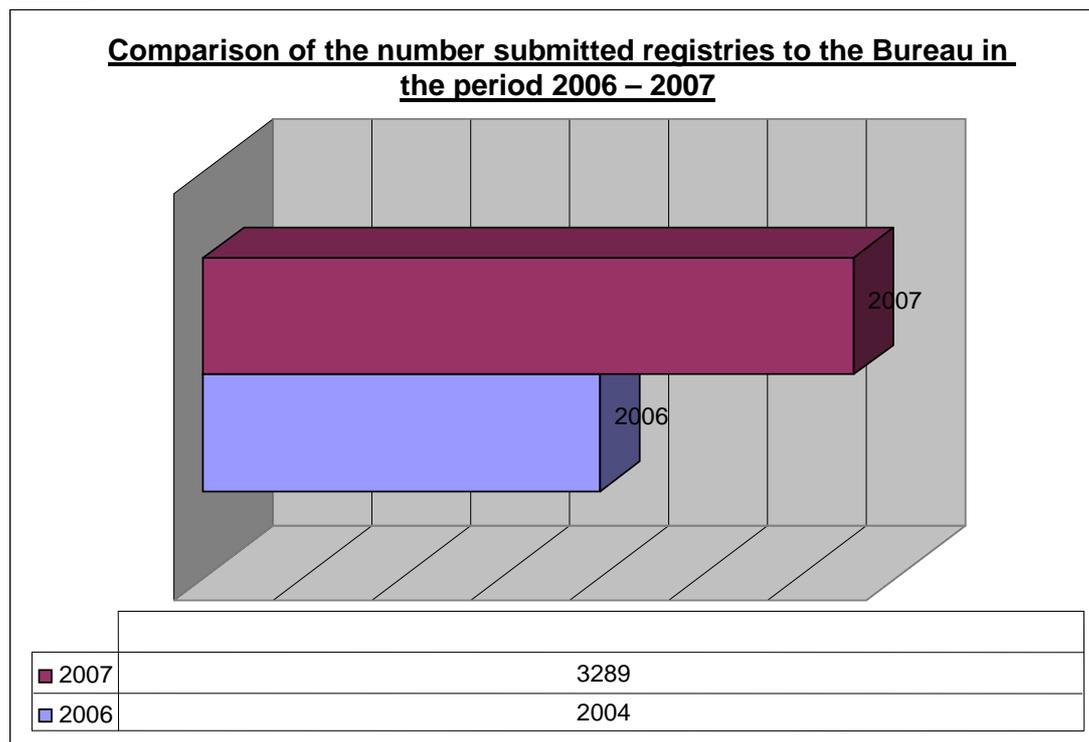
According to these data, in the course of 2007, **6,599** public contracts were concluded in the Republic of Macedonia. Total value of public contracts was Denar **21,841,515,274** (including VAT), being 6.4% of GDP in the Republic of Macedonia.

Public contracts realized on the basis of Article 3, Article 5 and Article 72 of the Law on Public Procurement, as well as their value, are not subject to data analysis.

In the past period, on several occasions by publishing announcement in the daily papers, announcement on its website, as well as with notices, the Bureau encouraged the entities to adhere to their legal obligation to submit PPR-1 Forms. Out of the activities undertaken by the Bureau aimed at more accurate submission of PPR-1 Forms, it was noticeable that their submission increased by 64% in relation to 2006 (Table 1, Chart 1).

Table 1

	Submitted PPR-1 Registries to the Bureau
2007	3.289
2006	2.004
index	64%

Chart 1

Significant increase of the number of submitted registries (according to the abovementioned) considerably influenced the scope and the accuracy of data analysis conducted by the Bureau hereinafter. In fact, increase in the submission of data on carried out procurement at the contracting entities through PPR-1 Forms has direct influence and is the most important factor explaining the increase in all indicators of the public procurement situation presented in this report.

In the course of 2007, **6,599** public contracts were concluded in the Republic of Macedonia (being an increase by 55% compared in 2006). Total value of the recorded public contracts was Denar 21,841,515,274 (2.4 times increase). Tables 2 and 3 and Charts 2 and 3.

Table 2

	Number of concluded contracts
2007	6.599
2006	4.250
index	55%

Chart 2

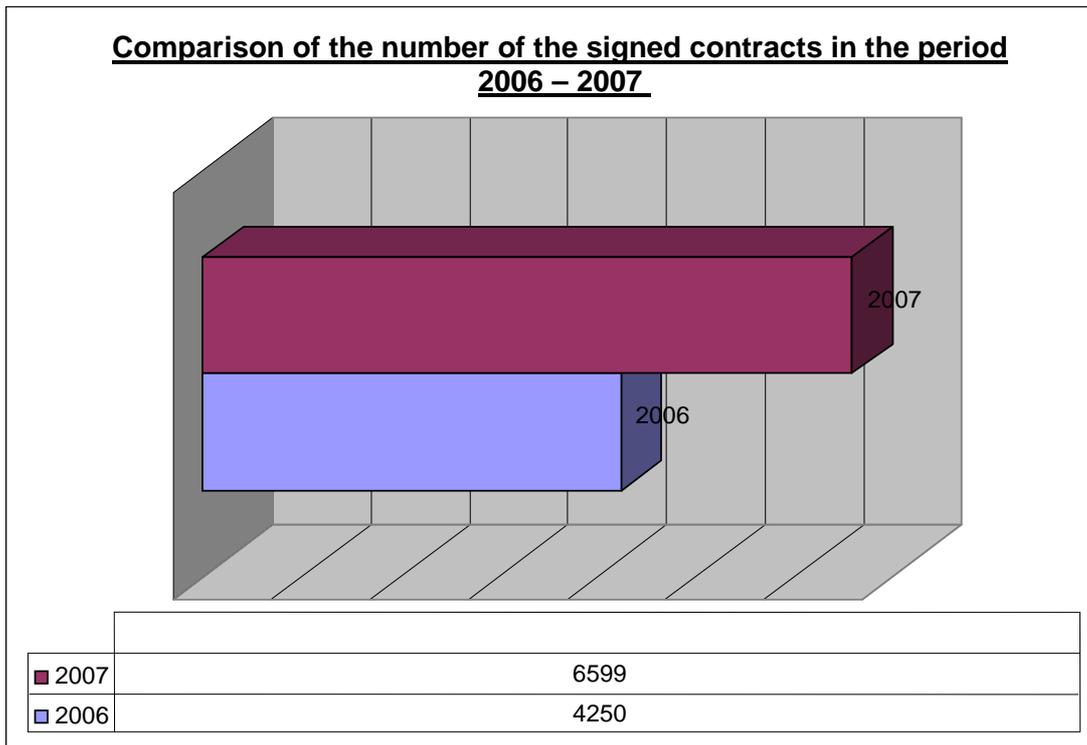
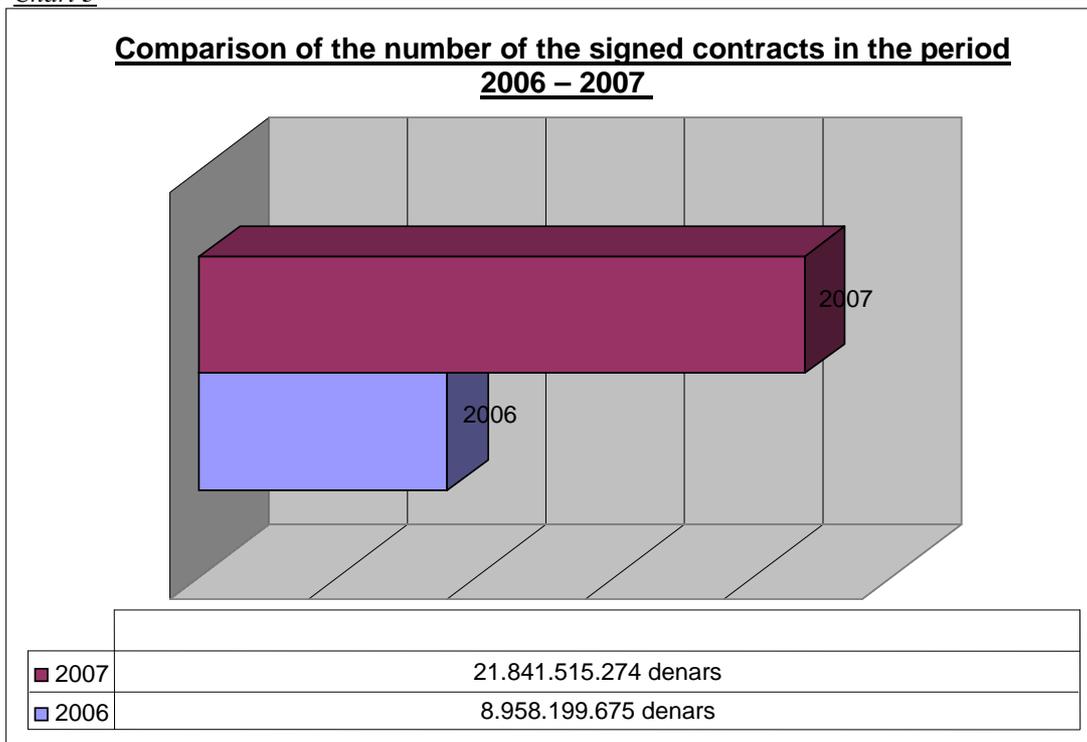


Table 3

	Value of concluded contracts
2007	21.841.515.274 Denar
2006	8.958.199.675 Denar
index	2.4 times

Chart 3



4.1 Data on the number and value of concluded public contracts according to the type of procurement procedure

Pursuant to Article 29 of the previous Law, public procurement can be conducted by applying one of the following procedures: open procedure, restricted procedure, negotiated procedure, design contest and limited procedure for consultant services.

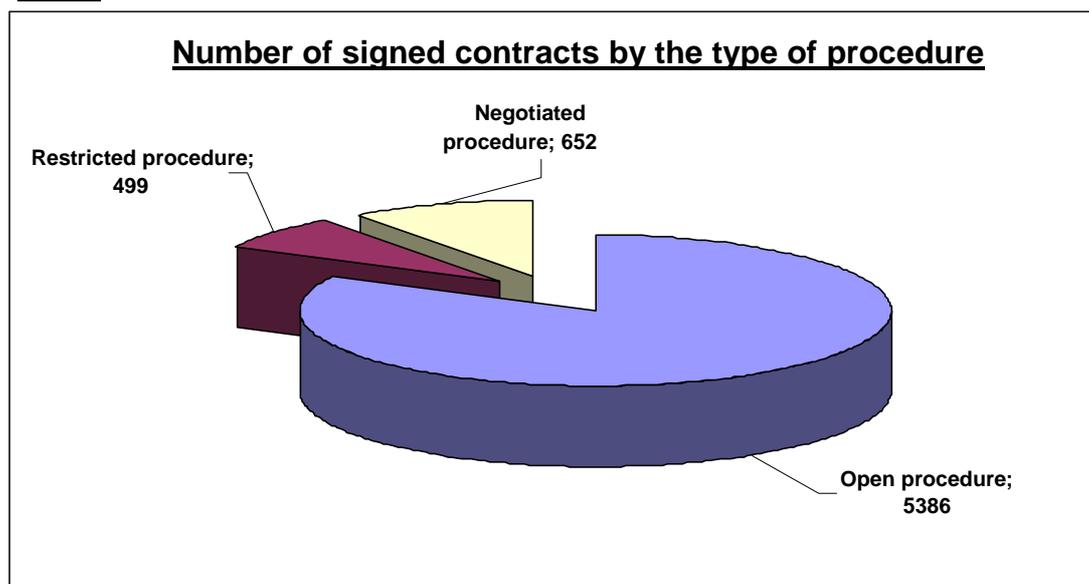
In the course of 2007, 5,386 contracts were concluded under the open procedure with the total value of Denar 17,832,403,076, 499 contracts were concluded by applying the restricted procedure with the total value of Denar 3,061,766,221, 652 contracts were concluded under negotiated procedure without prior publication of a contract notice with the total value of Denar 850,799,256 (Table 4, Chart 4 and Chart 5).

Total of 62 public contracts were concluded by applying special procedure used by public enterprises and other legal entities operating in the area of water supply, energy, transport, telecommunications and utilities pursuant to Article 75 of the Law.

Table 4

Type of procurement procedure	Total concluded contracts	Value of concluded contracts
Open procedure	5.386	Denar 17.832.403.076
Restricted procedure	499	Denar 3.061.766.221
Negotiated procedure	652	Denar 850.799.256
Special procedure used by public enterprises pursuant to Article 75 of the Law	62	Denar 96.546.721
TOTAL	6.599	Denar 21.841.515.274

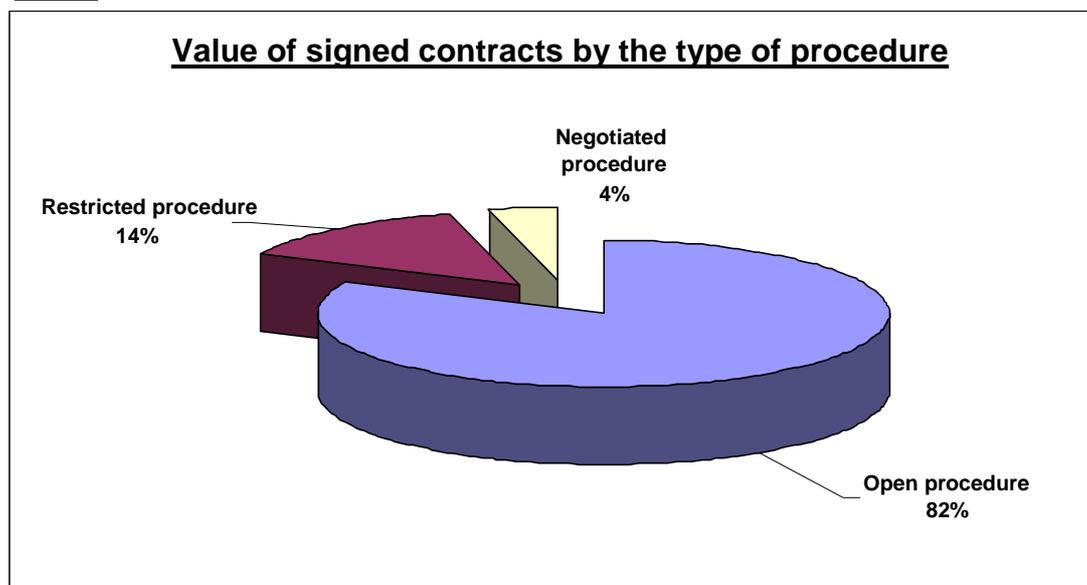
Chart 4



Most of the public contracts or 5,386 contracts were concluded by applying the open procedure. Restricted procedure was applied for 499 concluded contracts, while 652 public contracts were concluded under the negotiated procedure.

In the course of 2007, no registry on carried out restricted procedure for consultant services was submitted to the Bureau and no design contest was conducted. Registries for 62 contracts were submitted, concluded by public enterprises, state-owned companies and companies operating in the field of water supply, utilities, energy, transportation and telecommunications below the thresholds indicated in Article 75, which are not obliged to submit registry of carried out procurement.

Chart 5



Regarding the value of concluded contracts by types of procurement procedure, it was Denar 17,832,403,076 under the open procedure or 82% of the total value of concluded contracts, Denar 3,061,766,221 under the restricted procedure or 14% of the total value of concluded contracts, while the value of contracts concluded under the negotiated procedure was Denar 850,799,256 or 4% of the total value of concluded contracts by types of procedure applied.

Indicators presented show that structure of concluded contracts by types of procedures in 2007 was similar to the one in 2006, i.e. open procedure was applied the most as a result of the fact that it was simplified and the most competitive compared to the other procurement procedures. Entities also applied the open procedure the most due to the fact that the time limits at this procedure (overall duration up to concluding the contract) were shorter, and the procedure itself was significantly simplified compared to the other procedures.

Average value of the concluded contracts under open procedure was Denar 3,310,881, while the average value of the ones concluded under restricted procedure was Denar 6,135,804.

Open procedure: Total of 5,386 contracts were concluded by applying the open procedure (57% increase) with the total value of Denar 17,832,403,076 (increase by 2.4 times) (Tables 5 and 6, Chart 6).

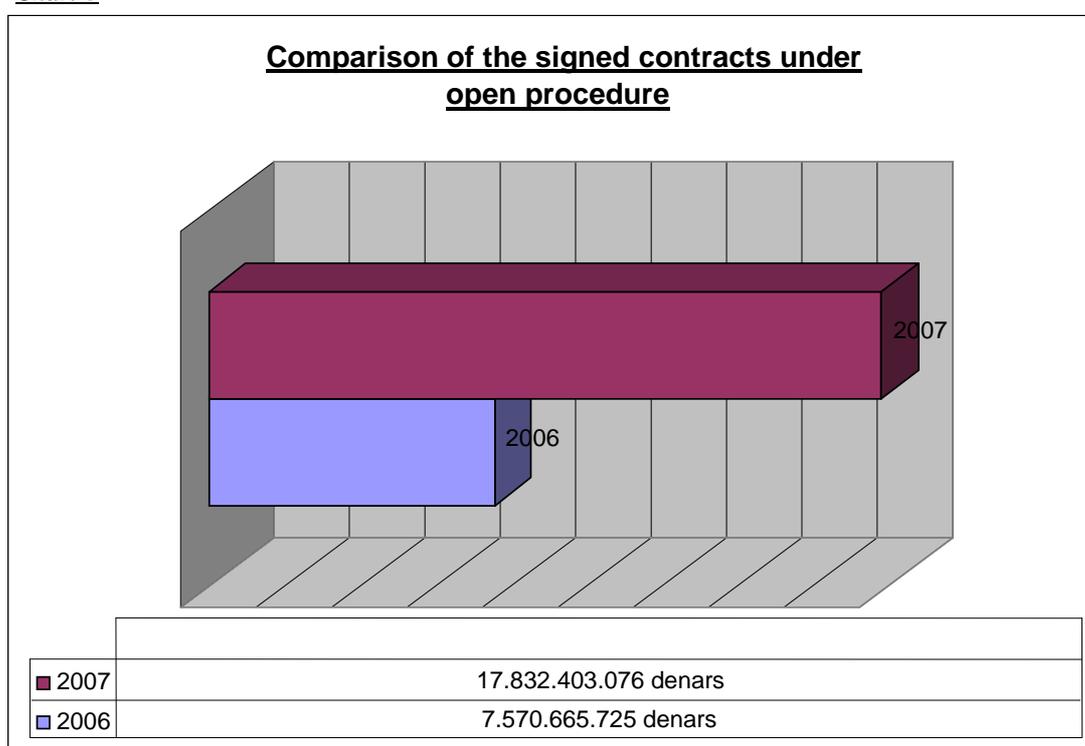
Table 5

	Value of contracts concluded under the open procedure
2007	Denar 17.832.403.076
2006	Denar 7.570.665.725
index	2.4 times

Table 6

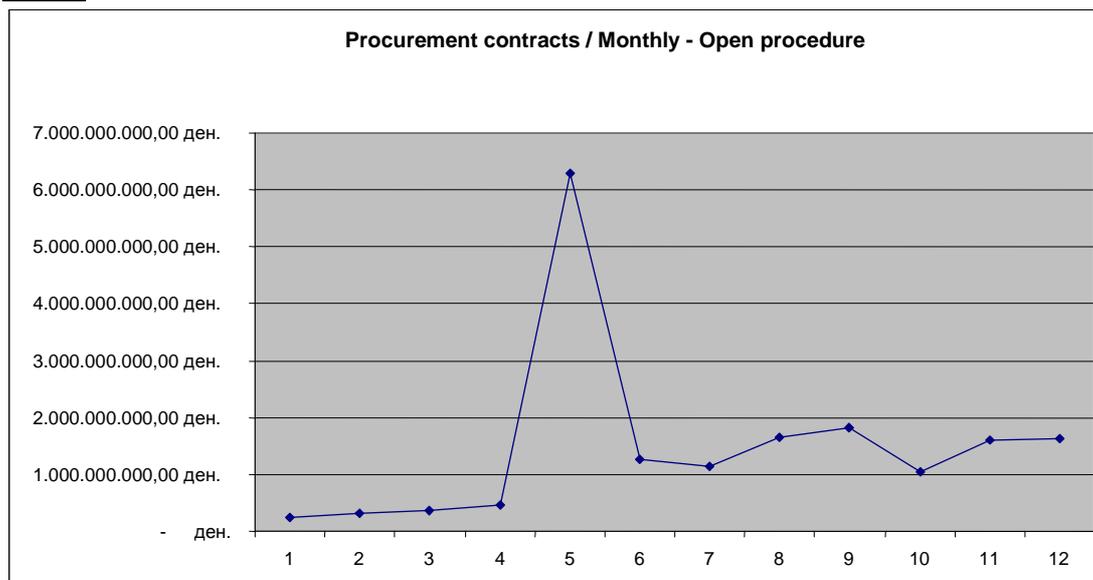
	Number of contracts concluded under the open procedure
2007	5.386
2006	3.420
index	57%

Chart 6



Data shown indicate significant increase in the number and value of the contracts concluded under open procedure in 2007. As mentioned above, this was mostly due to the increased volume of data available to the Bureau through the increased submission of PPR-1 Forms, as well as to certain individual large-value contracts to be presented hereinafter. Dynamics regarding the conclusion of contracts under open procedure (Chart 7) shows that most of the contracts were concluded in the period April-June. This was due to the fact that the entities most often started procedures at the beginning of the year and, in line with the time limits for open procedure, most of the contracts were concluded in this period.

Chart 7



Restricted procedure: Total of 499 contracts were concluded by applying the restricted procedure (86% increase) with the total value of Denar 3,061,766,221 (increase by 3.9 times) (Tables 7 and 8, Chart 8).

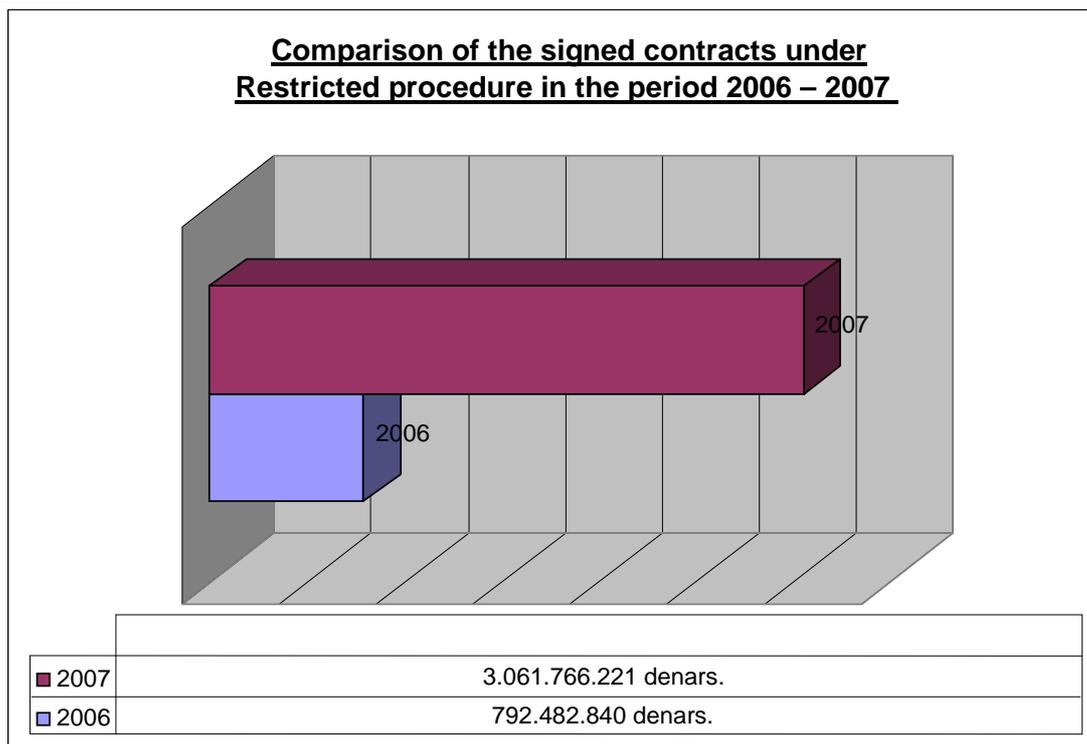
Table 7

	Value of contracts concluded under the restricted procedure
2007	3.061.766.221 Denar
2006	792.482.840 Denar
index	3.9 times

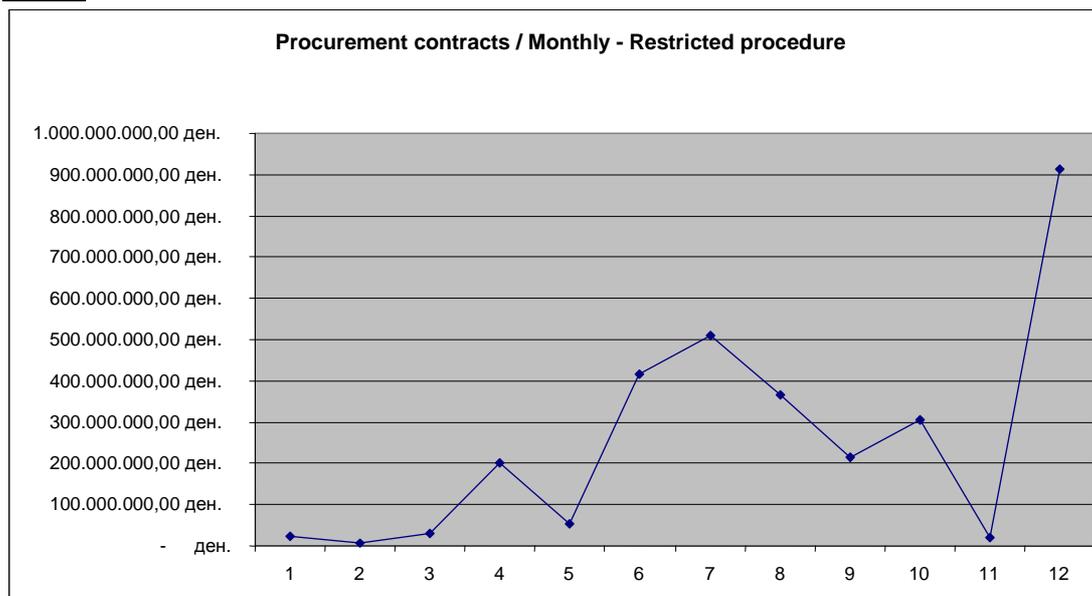
Table 8

	Number of contracts concluded under the restricted procedure
2007	499
2006	269
index	86%

Chart 8



Data presented, as well as the pace of concluding contracts (Chart 9), show increase at all indicators, whereby the most contracts were concluded in the period June-August, which was expected having in mind the fact that restricted procedure is a more complex procedure with longer time limits. Increase in the value index regarding the concluded contracts in 2007, as well as the index of the pace of concluding contracts in December, was mainly due to the conclusion of the contract for “Construction of North Stands and Demolition of the Existing North Stands on the City Stadium” between Public Housing Enterprise and AD Beton in the amount of Denar 896,224,256 on 27 December 2007.

Chart 9

Negotiated procedure without prior publication of contract notice. Total of 652 contracts were concluded by applying the this procedure (25% increase) with the total value of Denar 850,799,256 (56% increase) (Tables 9 and 10, Chart 10). Taking into account the reduced number of given consents for applying the negotiated procedure in 2007 by the Bureau, increased number of contracts concluded on the basis of this procedure was due to the greater discipline in submitting PPR-1 Form, which was pointed out as a problem in the 2006 Report.

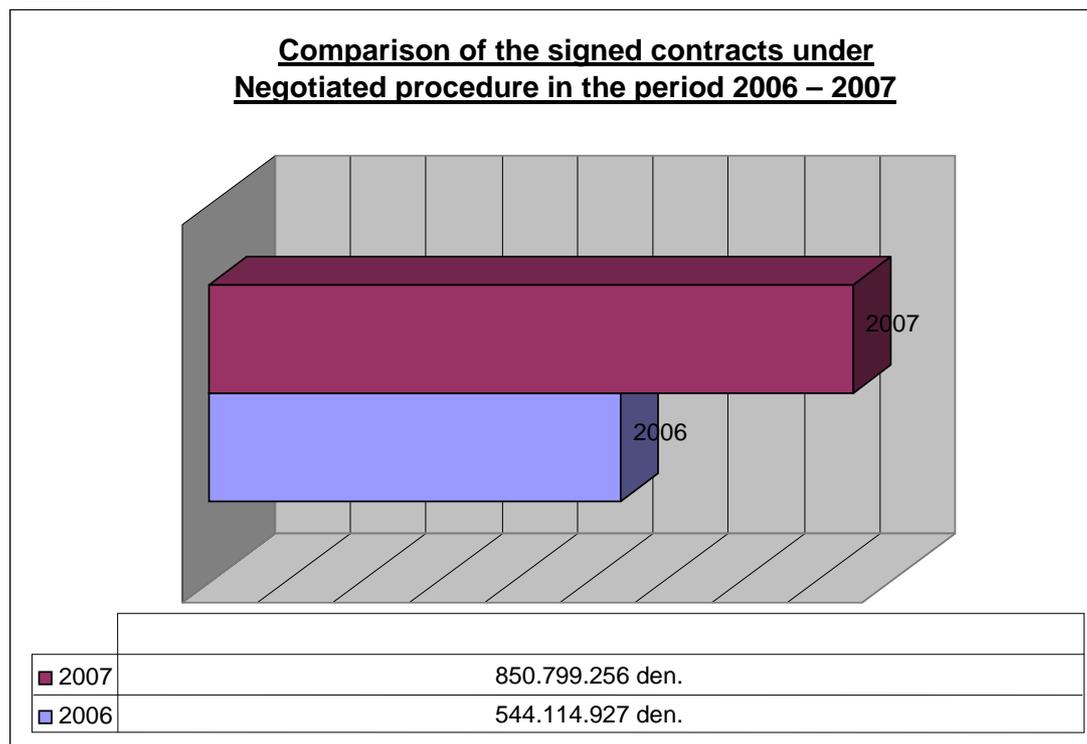
Table 9

	Value of contracts concluded under the negotiated procedure
2007	850.799.256 Denar
2006	544.114.927 Denar
index	56%

Table 10

	Number of contracts concluded under the negotiated procedure
2007	652
2006	520
index	25%

Chart 10



With respect to contracts concluded by applying the negotiated procedure without prior publication of contract notice, no specific trend can be observed due to the nature and the different circumstances under which the procurement procedure is carried out.

However, when analyzing the received request for obtaining prior consent for procurement under the negotiated procedure (Chart 11), one can notice that significantly higher number of contracts were concluded under the negotiated procedure in the second half of 2007. Such trend was due to several factors:

- most of the contracts were concluded on the basis of obtained consent for carrying out negotiated procedure after two previously carried out unsuccessful open or restricted procedures pursuant to Article 67, paragraph 1, indent 1 of the Law, when there was insufficient number of tenders or adequate tenders.
- due to time limits envisaged for completion of the previous unsuccessful open or restricted procedures, it is understandable for the contracts to be concluded in the second half of the year.
- there is also an upward tendency regarding the requests for consent and conclusion of contracts in the last quarter of the year by applying negotiated procedure on the basis of extreme emergency, due to the following: insufficient and untimely planning of the procurement, time constrain for applying the regular procurement procedure and the end of the year and utilization of the unused funds.
- due to legal restrictiveness, procurement procedure commenced only after having planned and provided the funds in the Budget, the financial plan or the investment programme. Taking into account that large number of the budget users and the spending units received additional funds with the

Supplementary Budget, they had no time to carry out regular procedures and to conclude contracts by the end of 2007. This is a problem faced every year, requiring a systemic solution in the regulations governing the budget operations.

Chart 11



4.2 Data on the number and value of concluded contracts by subject-matter of procurement

According to the number and the value of concluded contracts by subject-matter of procurement, total of 4,442 supply contracts were concluded with the total value of Denar 13,232,517,633, 1,338 service contracts were concluded with the total value of Denar 2,826,550, and 819 works contracts were concluded with the total value of Denar 5,782,446,815. Table 11, Charts 12 and 13.

Table 11

Subject-matter of procurement	Total concluded contracts	Value of concluded contracts
supplies	4.442	13.232.517.633 Denar
services	1.338	2.826.550.826 Denar
works	819	5.782.446.815 Denar
TOTAL	6.599	21.841.515.274 Denar

Observing the structure of the public procurement market in terms of the subject-matter of procurement, we can single out significant deviations in relation to 2006. In fact, share of services in the total value of the concluded contracts increased when compared to 2006 (when services participated with 16%).

Chart 12

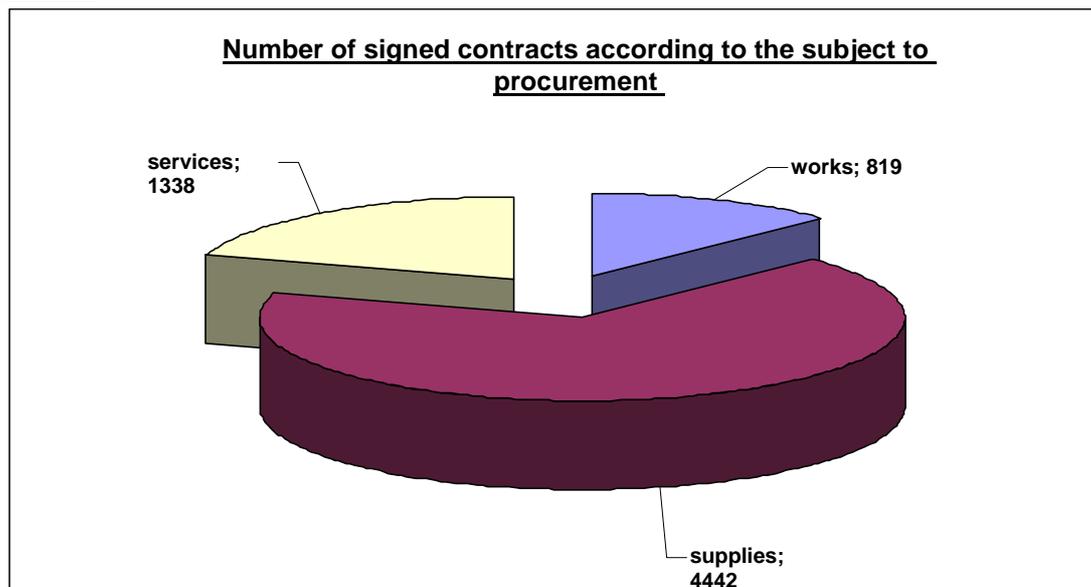
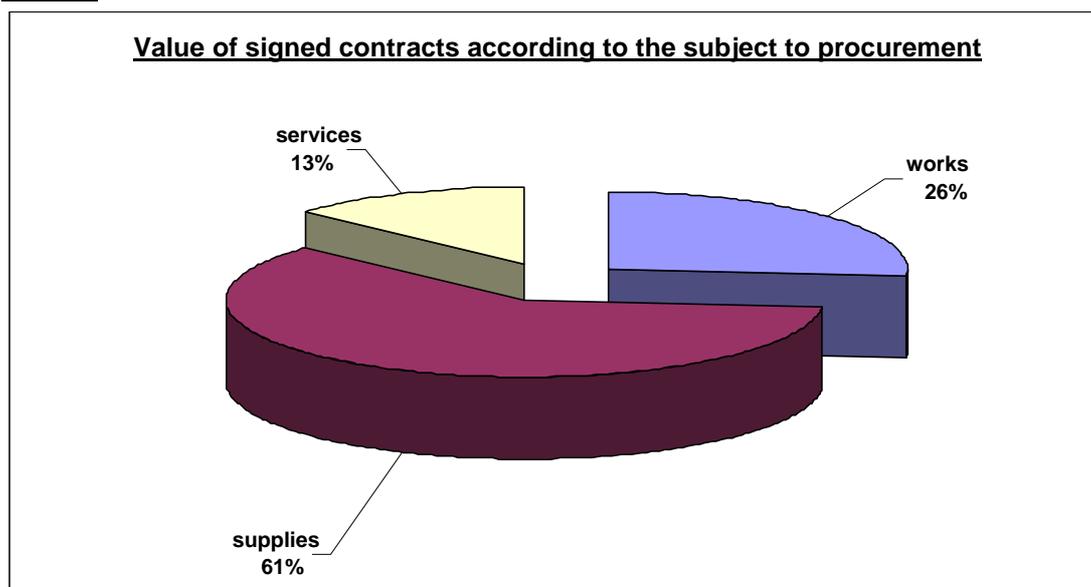


Chart 13



Procurement of goods. In 2007, total of 4,442 goods contracts (increase by 51%) in the total value of Denar 13,232,517,633 (increase by 2,3 times) were concluded, (Tables 12 and 13, Chart 14). Regarding the below mentioned data one can conclude significant increase on the market for public procurement of goods, and this was to a great extent due to the carried out procedure for public supply of electricity by AD MEPSO and the concluded contracts in the amount of Denar 5,039,467,085 with many tenderers. Total amount of concluded public contracts in the Republic of Macedonia accounts for even 23% of the amount of these contracts.

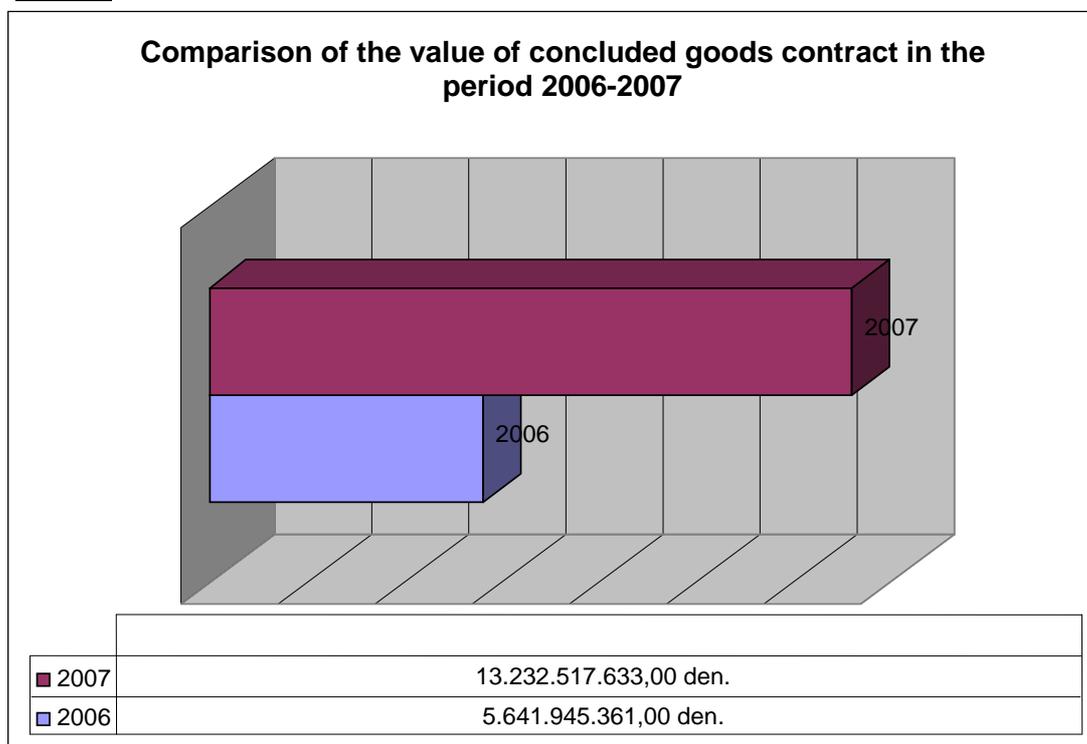
Table 12

	Value of concluded goods contracts
2007	Denar 13,232,517,633
2006	Denar 5,641,945,361
Index	2,3 times

Table 13

	Number of concluded goods contracts
2007	4,442
2006	2,951
Index	51%

Chart 14



Procurement of services. In 2007, 1,338 service contracts (increase by 45%), in the total value of Denar 2,826,550,826 (increase by 95%) were concluded, (Tables 14 and 15, Chart 15).

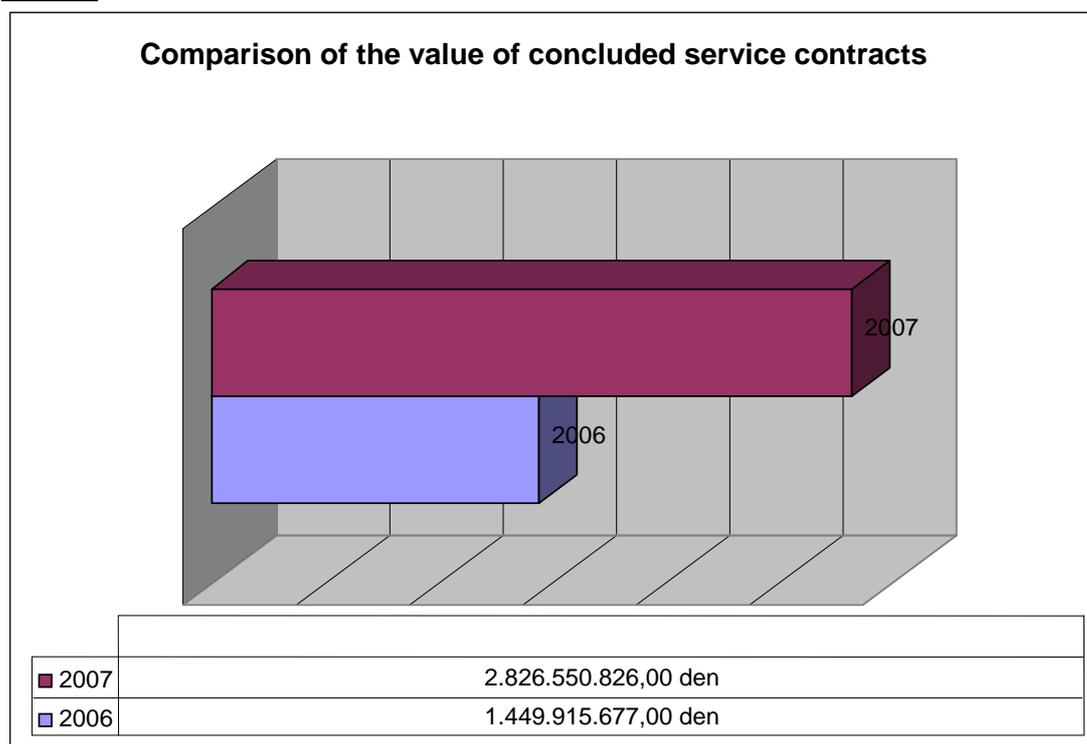
Table 14

	Value of concluded service contracts
2007	Denar 2,826,550,826
2006	Denar 1,449,915,677
index	95%

Table 15

	Number of concluded service contracts
2007	1,338
2006	916
index	45%

Chart 15



Procurement of works. In 2007, 819 works contracts (increase by 2,1 times) in the total value of 5,782,446,815 (increase by 3,1 times) were concluded, (Tables 16 and 17, Chart 16). Regarding both the number and the value of concluded works contracts significantly increased compared to 2006, even though there are not big changes in relation to the structure of the public procurement market regarding the subject-matter of the procurement: 2006 -share 21%; 2007 share - 26% (Chart 13). Increase of the value of concluded works contracts compared to 2006 was mainly due to several separate contracts for performing high-value works, such as the already mentioned one of the Public Enterprise for Business and Housing Premises of the Republic of Macedonia and the contracts of the Agency for Youth and Sports for: "Construction of 35 standard sport facilities", concluded with factory Karpos AD in the amount of Denar 515,600,000 and "Construction of 50 auxiliary football playgrounds, with standard size" concluded with "Macedonia Invest" amounting to Denar 471,316,672.

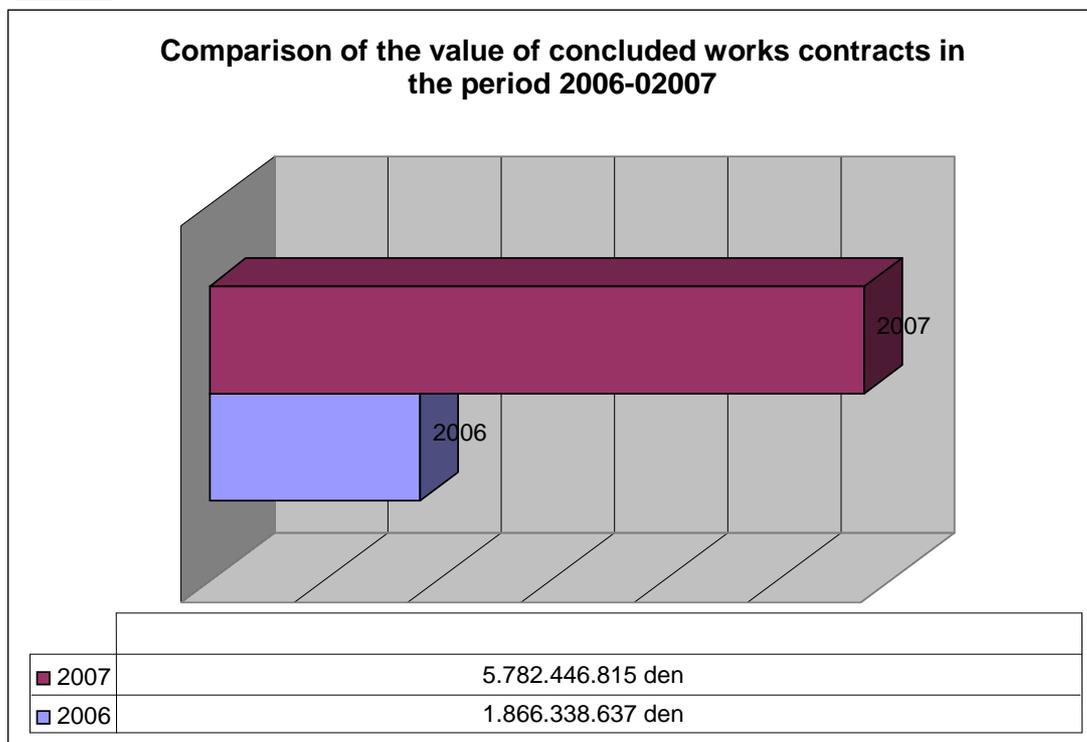
Table 16

	Value of concluded works contracts
2007	Denar 5,782,446,815
2006	Denar 1,866,338,637
index	3,1 times

Table 17

	Number of concluded works contracts
2007	819
2006	383
index	2,1 times

Chart 16



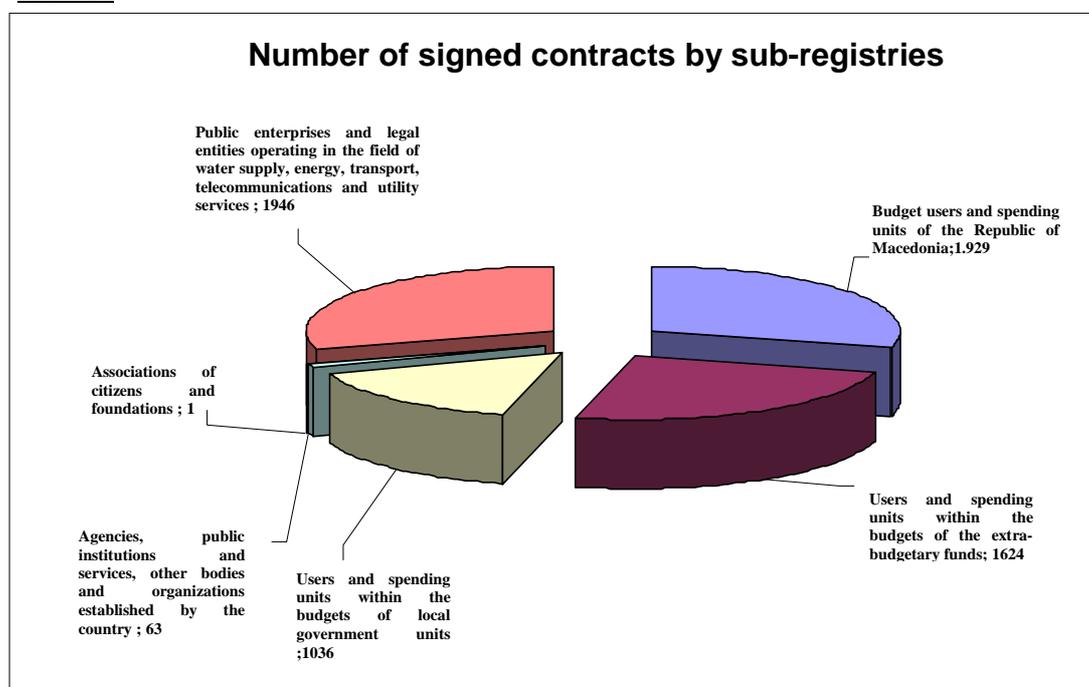
4.3 Data on the number and the value of concluded contracts by sub-registries

Total data in the Single registry of procurements on national level are shown through sub-registries and refer to 6 categories of entities, stipulated in Article 18 paragraph 2 of the Law. Table 18 and Chart 17 show the total number of concluded contracts and their value by sub-registries.

Table 18

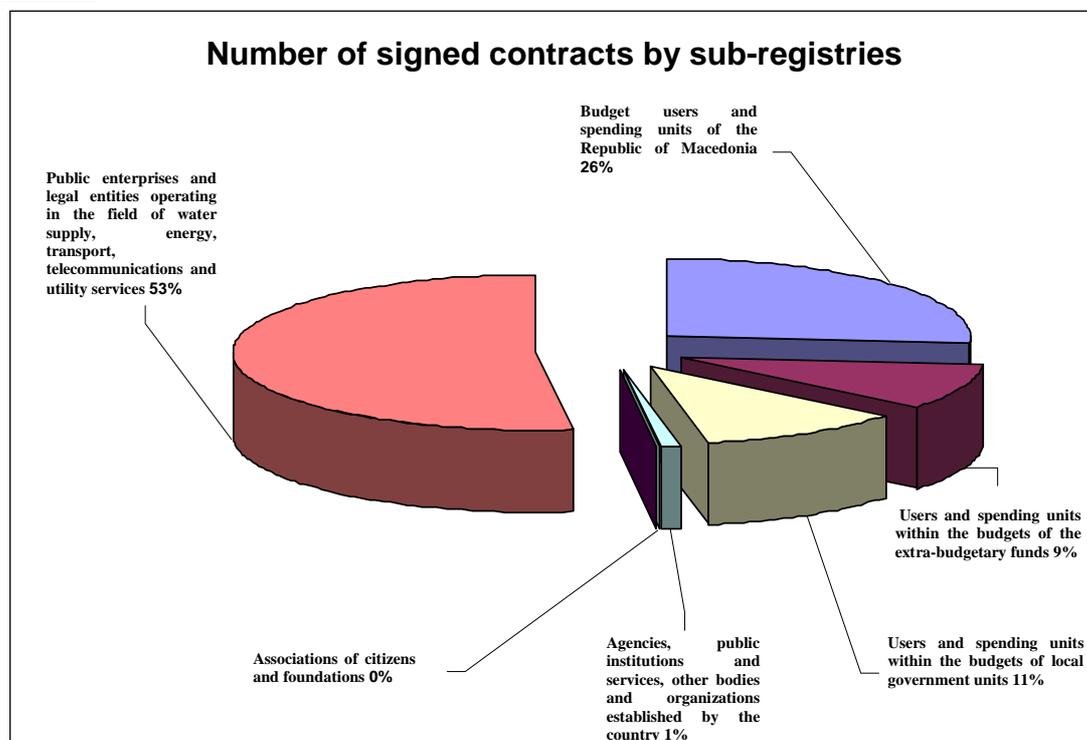
Number of sub-registry	Category of entities by sub-registries	Total number of concluded contracts	Total value of the contracts
1	Budget users and spending units of the Republic of Macedonia	1,929	Denar 5,764,215,534
2	Users and spending units within the budgets of the extra-budgetary funds	1,624	Denar 2,073,598,601
3	Users and spending units within the budgets of local government units	1,036	Denar 2,440,875,735
4	Agencies, public institutions and services, other bodies and organizations established by the country	63	Denar 232,275,949
5	Associations of citizens and foundations	1	Denar 690,300
6	Public enterprises and legal entities operating in the field of water supply, energy, transport, telecommunications and utility services	1,946	Denar 11.329.859.155

Chart 17



The majority of concluded contracts are in the sub-registry of public enterprises and legal entities working in the field of water supply, energy, transport, telecommunications and utility services have concluded 1,946 contracts, budget users and spending units have concluded 1,929 contracts, while the users and spending units within the budgets of the extra-budgetary funds have concluded 1,624 contracts.

Chart 18



The highest value of concluded contracts is in the category of entities in sub-registry 6 -public enterprises and legal entities working in the field of water supply, energy, transport, telecommunications and utility services in the total amount of Denar 11, 329,859,155 or 53% of the total value of concluded contracts. Entities in the sub-registry 1 - budget users and spending units have concluded contracts in the amount of Denar 5,764,215,534 or 26% of the total value, while the share of the users and spending units within the budgets of the extra-budgetary funds is 9% in the total value of concluded contracts.

4.4 Prior consents for implementation of the negotiated procedure without publication of public notice

In the course of 2007, the contracting authorities, submitted to the Bureau a total of **1,313** requests for implementation of the negotiated procedure without publishing public notice, being an increase by 11% compared to the requests received in 2006.

The Bureau, pursuant to Article 66 paragraph 4 of the Law, determined that 982 requests fulfilled the formal conditions for implementing negotiated procedure (increase by 2% compared to 2006), and prepared the same number of prior consents, being **75%** of the total number of submitted requests, while it determined that 331 requests for negotiated procedure or **25%** of the total number of submitted requests

did not meet the formal conditions and it refused to provide prior consent for negotiation without prior publication of public notice, being an increase by 55% compared to 2006 (Table 19, Charts 19 and 20).

Table 19

Year	Submitted requests	Issued prior consents	Structure %	Rejected requests	Structure %
2007	1,313	982	75	331	25
2006	1,180	966	82	214	18

These data show that the Bureau received more requests for implementing negotiated procedure without publishing public notice in 2007 than in the previous year, and therefore it is important to emphasize that there is no big difference regarding the number of prepared prior consents, while the requests that did not meet the formal conditions being rejected and an increase by 55% compared to 2006 can be observed.

Chart 19

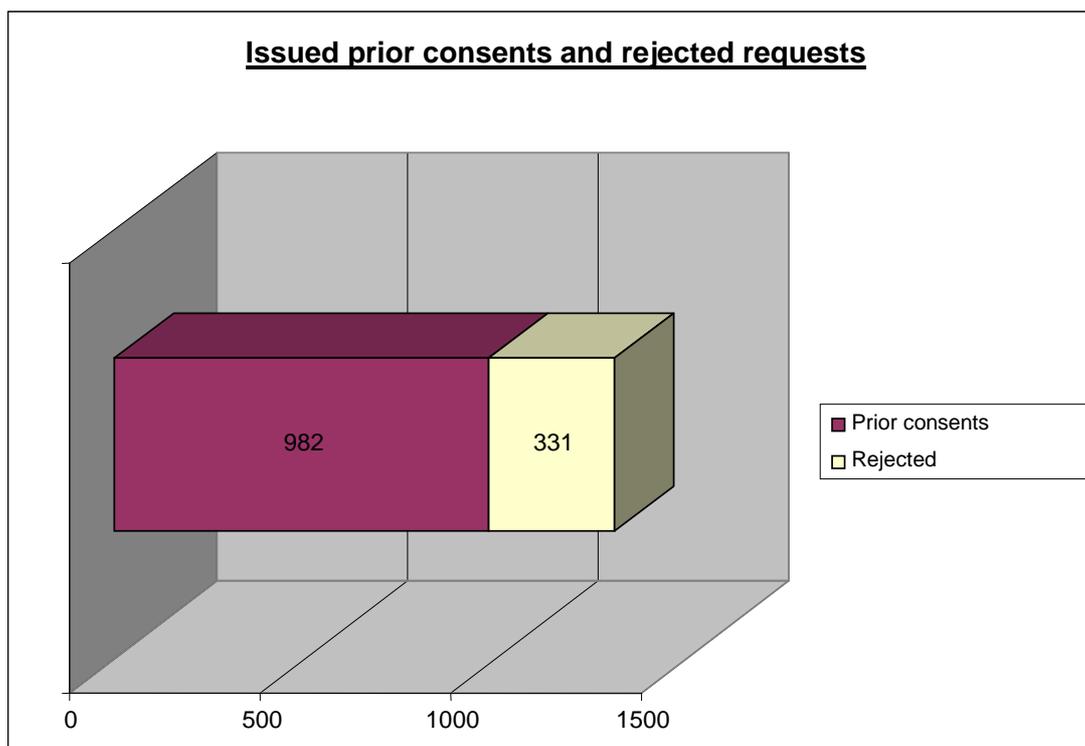
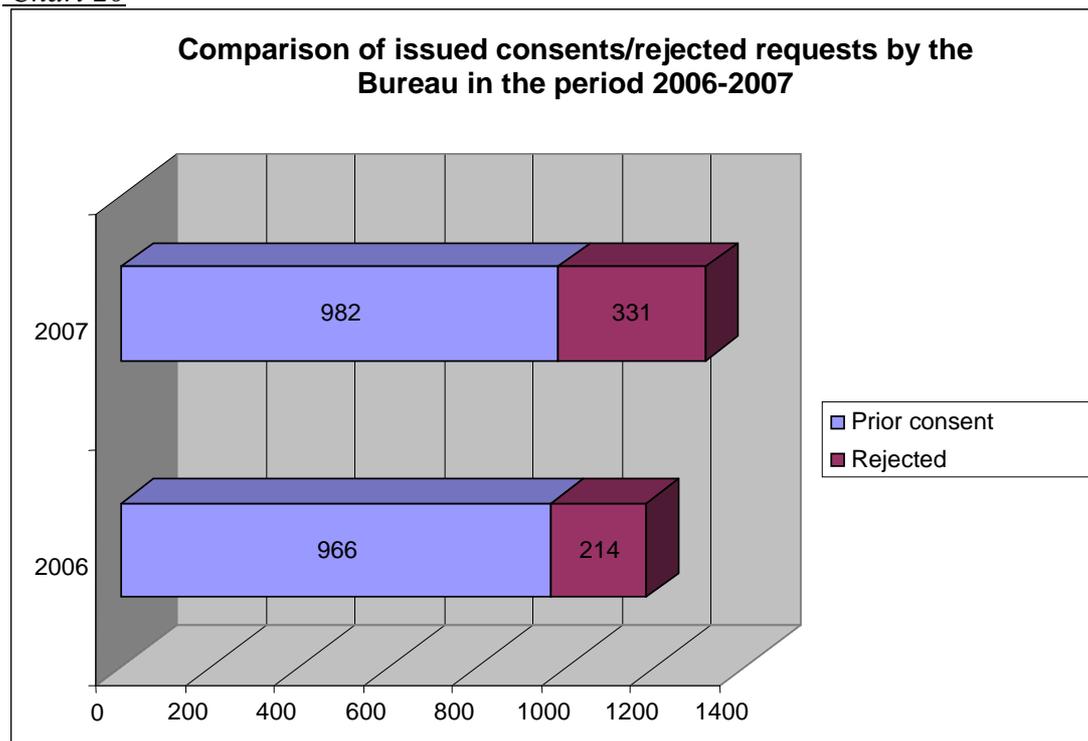


Chart 20

The legal basis, upon which prior consents for implementation of negotiated procedure have been issued, their structure expressed in percents, as well as the estimated value are shown in Table 20 and Chart 21.

Table 20

legal basis for negotiated procedure	number of issued consents	structure %	estimated value (denars)	structure %
Article 67 indent 1 ²	367	38%	1,540,595,391	44%
Article 67 indent 2 ³	331	33%	722,606,344	21%
Article 67 indent 3 ⁴	190	19%	1,087,304,270	30%
Article 67 indent 4 ⁵	10	1%	10,680,745	1%
Article 67 indent 5 ⁶	84	9%	152,983,334	4%
TOTAL	982		3.514.170.084 den	

² Upon previously implemented two procedures of open or restricted invitation, there was insufficient number of bids or eligible bids, provided the contents of the tender documentation of these invitations was not significantly changed

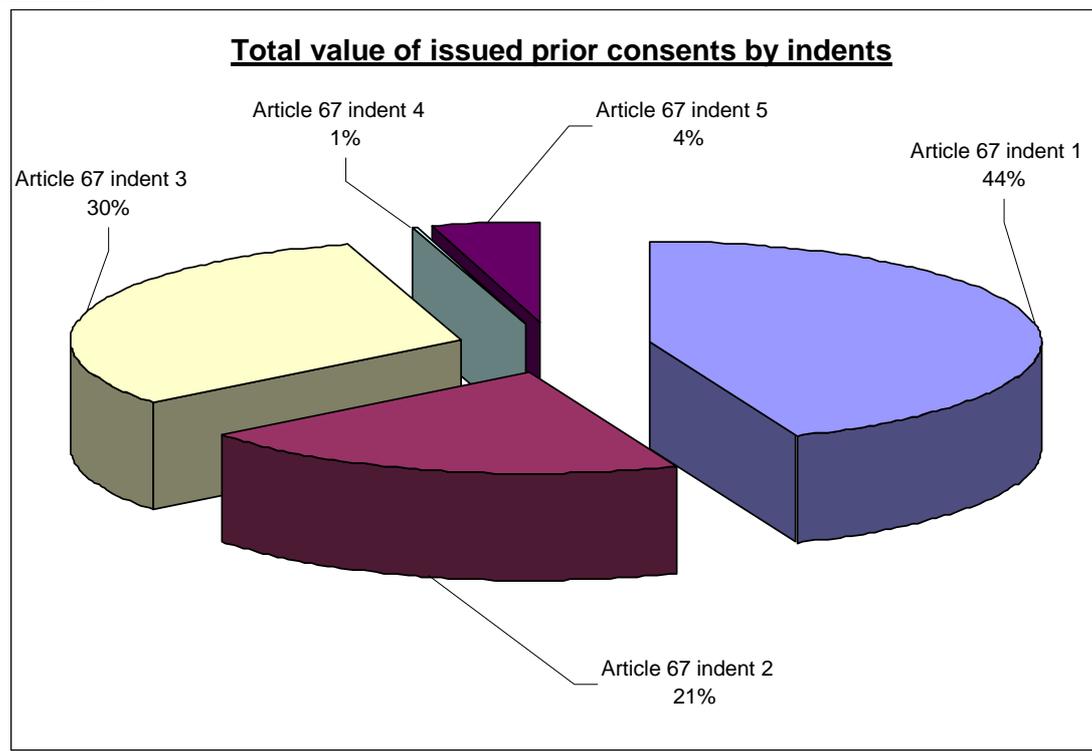
³ Due to technical, intellectual or implementation reasons or reasons related to protection of exclusive rights registered in the Ministry of Economy or the Chamber of Economy of the Republic of Macedonia, the procurement can be carried out only by a certain service provider, contractor or supplier.

⁴ Due to reasons of extreme urgency caused by events the contracting authority could not have predicted, nor could they be attributed to the contracting authority as its omission or to events (natural disasters, epidemics, infectious diseases or events caused by force majeure) due to which, the time limit set for the open or restricted procedure has not been complied with.

⁵ When the contracting authority has to make additional deliveries by the original bidder for the purpose of partial replacement of normal goods or installations; extension of existing goods or installations, where a change of the bidder would oblige the contracting authority to purchase material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance.

⁶ When unforeseen circumstances require necessary additional works that would not be included in the considered or concluded contract.

Chart 21



Major percentage of prior consents or 38% were issued on the basis of Article 67 paragraph 1 indent a of the Law, referring to previously implemented two unsuccessful procedures of open or restricted invitation, where there was insufficient number of bids or eligible bids, provided the contents of the tender documentation was not significantly changed.

With regard to the level of the estimated value of the procurement, the most consents or 44% of the total value of all issued consents were issued on the basis of Article 67 paragraph 1 indent 1 of the Law on Public Procurement.

When considering the structure of the value and the number of issued consents, one can observe certain changes compared to 2006. In fact, the share of the value of issued consents by Article 67 paragraph 1 indent 3 (2006 - 55%; 2007 - 30%) was reduced unlike the share of issued consents by Article 67 paragraph 1 indent 1 (2006 - 19%; 2007 - 44%).

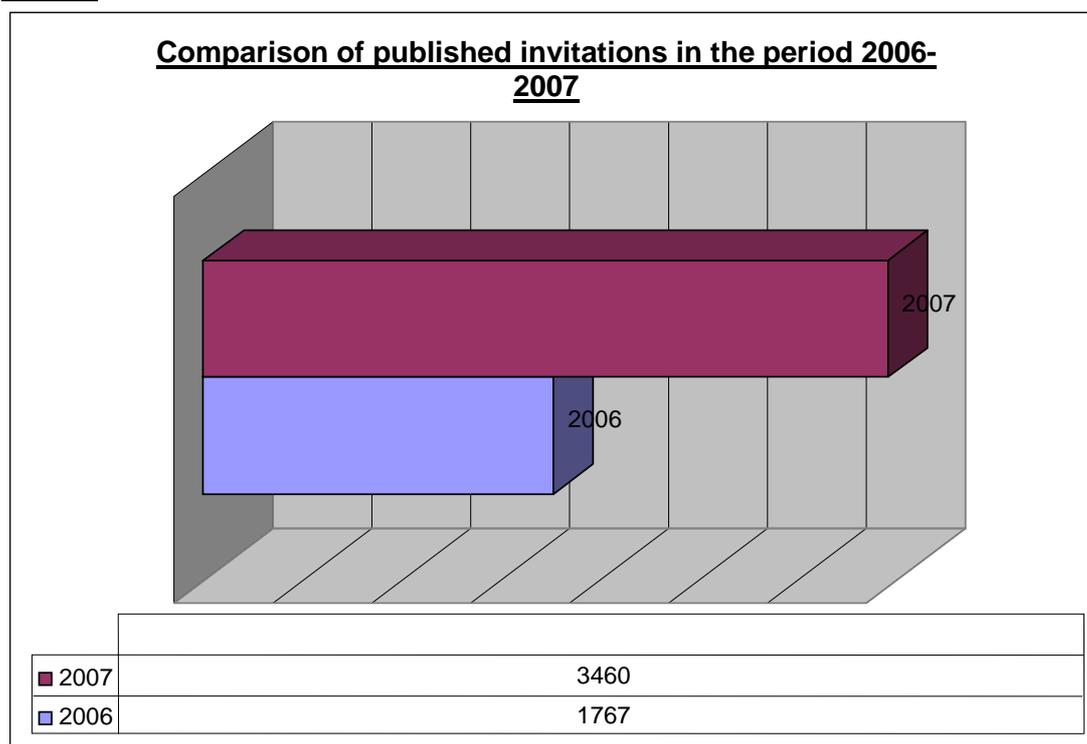
4.5 Published invitations

Table 21 and Chart 22 show data on the legal obligation of the entities to submit invitations for publication on the Bureau website, in line with Article 30 paragraph 3 of the law. The Chart and the Table show increase of the submission of invitations for publication by 96%.

Table 21

	Published invitations
2007	3460
2006	1767
index	96%

Chart 22



4.6 Stated irregularities in the implementation of public procurement procedures

In the past period from the application of the Law on Public Procurement, on the basis of the data obtained by the contracting authorities - the registry of the procurements Form RJN-1, as well as from the correspondence from multiple tenderers, the generally stated irregularities could be classified as follows:

- Failure to submit the 2007 Annual plan for public procurements to the Bureau, being contrary to Article 11 of the Law,
- Incomplete planning of the procurement needs, resulting in higher number of requests to the Bureau for implementing a negotiated procedure due to reasons of extreme urgency caused by events the contracting authority could not envisage,
- Inadequate estimation of the value of the procurement, i.e. non-application of the Rulebook on the detailed rules for estimating the value of the procurement.
- Publishing a single notice for open or restricted invitation, by which the contracting authorities procure various goods, services and works, being contrary to Article 57 of the Law on Public Procurement,
- Implementation of only the I phase of the restricted invitation and conclusion of a contract with the selected candidates, without the II phase of the restricted invitation according to Article 63 of the Law,
- Implementation of public procurement procedures without preparation of tender documentation for open and restricted invitation in the manner set in Article 36 paragraphs 6 and 8 of the Law and the Rulebook on the mandatory elements of the tender documentation,

- Implementation of improper public procurement procedures in relation to the subject-matter of the procurement,
- Implementation of public procurement procedures without providing resources in the realisation phase of the contract, which leads to partial delivery or failure to deliver the subject-matter of the procurement by the supplier,
- Conclusion of annexes to the basic contracts without prior consent by the Public Procurement Bureau,
- Conclusion of public procurement contracts with negotiated procedure with a value higher than the one obtained in the prior consent by the Bureau,
- Missing Form - RJN -1, registry of public procurement at the contracting authorities to the Public Procurement Bureau, although there is improvement in the reporting period compared to 2006.

5 Cooperation with the state bodies

When carrying out its competent activities, the Public Procurement Bureau cooperates with the Public Procurement Complaints Commission within the Government of the Republic of Macedonia, the State Anti-Corruption Commission, the State Audit Office, the Public Internal Financial Control Department within the Ministry of Finance, the Commission for Encouragement of Competition and the Financial Police. What is a joint component, for all bodies, by which cooperation was established is that they are "guardians" of the public procurement policy and practice in the Republic of Macedonia and have a responsible for ensuring legality, rationality, efficiency, transparency and competition encouragement.

Feedback by the bodies such as the Anti-Corruption Commission, the State Audit Office and the Public Internal Financial Control Department were of special importance in the past period in the preparation of the new Law on Public Procurement, since these information disclosed the weaknesses in the previous regulation, being of use in the preparation of the new Law.

During 2007, the Public Procurement Bureau submitted opinions to the Public Procurement Complaints Commission within the Government of the Republic of Macedonia and the State Audit Office, which the Bureau drafted with regard to the application of the laws and by-laws upon request by the contracting authorities. In the so-far functioning of the Bureau, it seems necessary to further intensify the cooperation with the Public Procurement Complaints Commission i.e. the State Appeals Public Procurement Complaints Commission after its establishment. The Bureau does not see this cooperation as interference in the operations of the Commission, nor as arbitrary decision-making, on the contrary, the cooperation is imminent in the building of mechanisms for proper and unified functioning of the public procurement system in the Republic of Macedonia, as well as its upgrading in terms of implementation of the EU Directives on public procurement and good international practice.

In addition to the regular cooperation between the Bureau and the State Anti-Corruption Commission in the past year, what is of great importance is the fact that representative from the Bureau actively participated in the preparation of the National Programme for Prevention and Repression of Corruption in 2007.

6 International cooperation

The activities of the Bureau on international level during 2007 were the following:

6.1 TAIEX

In the course of 2007 TAIEX engaged an expert in public procurement for the Directive 2004/17/EC of the European Parliament and of the Council of 31st March on the coordination of procedures for the awards of works, goods and service contracts, as well as Directives on legal remedies in the public procurement procedures, for the needs of the preparation of the new text of the Law on Public Procurement.

6.2 SIGMA

The cooperation with SIGMA experts during 2007 continued in the process of preparation of the text of the Law on Public Procurement and it is expected to continue in future for the purpose of easier and faster implementation. In addition, consultative meetings were held within the SIGMA expert mission with representatives from the Public Procurement Bureau, the Ministry of Economy and the Secretariat for European Affairs, to which, it was proposed for the system for awarding concessions for public works and services to separate form the concessions for public goods. Two seminars were also organized in cooperation with SIGMA, the first one on the subject of legal remedies and the other on the subject of new procedures envisaged by the new law.

ELECTRAWEB Project

Starting 1st January 2007, the Bureau is active participant in the ELECTRAWEB project. The project was financed and monitored by the European Commission, through FP6 Development and Research Programme. These funds (FP6) are intended for financing projects from the scientific and research sphere. This projects includes 3 consulting houses as its participants (EU partners in technological projects), 4 IT companies/educational and research institutions from Western Balkans and 4 state bodies responsible for public procurement from: Macedonia, Albania, Serbia and Bosnia and Herzegovina. Project duration is 24 months. Main goal of this project is to determine, build and test Application for electronic procurement (based on Open platform) and to determine forms and rules for its support.

6.3 USAID projects

With regard to the international cooperation in 2007, one can emphasize the cooperation between the Bureau and USAID - Business Environment Improvement Project referring to the USAID assistance in the preparation of the new Law on Public Procurement, the organization of part of the trainings and seminars for the law, as well as for organization of three public debates before the adoption of the law. In addition, the Bureau also cooperated with USAID through the E-Government Project in the preparation of the module for implementing the electronic auctions and advancing the electronic system for public procurement. This cooperation lasts many years, and project representatives also participated with their lectures at the seminars held by the Bureau.

6.4 EC Advisory Committee for Public Procurement

The Advisory Committee for Public Procurement is an advisory body of the European Commission aimed at opening for discussion various problems the Member States face in the public procurement system established with the EU Directives on public procurement, discussing the future changes and new solutions to be introduced by the Union in its legislation. It is held 4-5 times per year, and the Republic of Macedonia started participating as an observer after obtaining the candidate status. Generally, representatives from the Republic of Macedonia are employed in the Bureau.

Sub-Committee on Internal Market

Public procurements are separate chapter in the Action Plan for Accession to the EU. Sub-Committee on internal market and competition was held in Brussels, on 15th -16th February 2007, whereby one of the items on the agenda were public procurements. The European Commission praised the progress in the field of public procurement in the Republic of Macedonia. EC pointed out to the need of further promotion with regard to the introduction of an efficient system of legal remedies, continuation of the time limits for lodging complaints and objections, integration of the rules for public works concessions in the public procurement system, implementation of the new Directives etc.

The European Commission emphasized that significant progress was achieved in the harmonisation of the public procurement system in the Republic of Macedonia.

6.5 Regional cooperation

In May 2007, Regional conference of the Southeastern countries on the topic of legal remedies in the procedures for awarding public contracts, was held in Dubrovnik, the Republic of Croatia organized by SIGMA and the State Commission for the Control of Public Procurement Procedures of the Republic of Croatia. In addition to the representatives from all countries in the region, as well the participation of international experts in the field of public procurement and representatives from the European Commission, representatives from the Bureau and the Public Procurement Complaints Commission also actively participated in the operations of the abovementioned conference, presenting the situation with the legal remedies in the procedures for awarding public contracts in the Republic of Macedonia and the future steps to be undertaken with the preparation of the new Law on Public Procurement.