

2. CORRUPTION RISK AND CORRUPT PRACTICES

The issue of the critical levels of political corruption in Bulgaria has been central to the public debate since the late 1990's. This is largely due to the regular corruption assessment reports through the Corruption Monitoring System of *Coalition 2000*, as well as the surveys of the Bulgarian Industrial Association and other non-governmental organizations. The latest monitoring reports of the European Commission on Bulgaria's preparedness for membership of the European Union have also put forth the problem of political corruption.⁵ The reports identify the magnitude of high-level corruption and organized crime as the largest challenges to EU membership, relating it directly to the inefficient judiciary and the lack of effective court sentences. Europe's sensitivity to this topic upon accession is fully understandable. During the first seven years of its membership Bulgaria will get access to substantial financial resources from the structural, cohesion and agrarian funds in the approximate amount of € 8 – 9 billion.⁶ The efficiency of European grant schemes depends primarily on the good governance and control systems at the central and local level. Political corruption in the allocation of EU funds to certain Bulgarian businesses and politicians would expose not only Bulgarian but also European taxpayers to the threat of direct losses.

The National Strategy for Transparent Governance, Prevention and Countering of Corruption 2006-2008 identifies public procurement as a sphere with the highest corruption pressure because, together with concessions, public procurement is the main channel for directing public resources to the private sector. Let us, first of all, try to assess the scope of the problem and the related damage on the basis of an assessment of the size of the "market" for public procurement in Bulgaria. For the purposes of this study, with the caveat that the definition is quite conditional, we could define this market as **the consumption of construction works, goods and services, which is carried out within the framework of the procedures and rules set out in the legislation for the awarding and implementation of public procurement contracts.**

⁵ See European Commission COM (2005) 534 and COM (2006) 549.

⁶ National Strategic Reference Framework (version dated 14 September 2006) available online at <http://www.eufunds.bg/docs/>

2.1. THE PUBLIC PROCUREMENT MARKET

The term “public procurement market” is used here conditionally. In order to assess the corruption risk in this sphere, we use it to define the consumption of goods, services and construction works in **the public sector and the utilities**, for which the legislation provides specific procedures to award and implement public procurement contracts. In other words, the definition rules out the consumption in which the choice of a supplier or a contractor does not require any specific procedure. According to Bulgarian laws, these are the public procurement contracts the value of which is below 100 thousand leva for construction works and 30 thousand leva for the supply of goods or services. In this context, the public procurement market includes most of the current and investment consumption of the central and local government bodies and institutions, as well as the legal entities they finance and/or manage. These are the so-called “conventional” contracting authorities in the public procurement sphere. The public procurement market covers also the consumption by sectoral contracting authorities. These are the network suppliers of public services in the energy sector, water supply, transportation, and postal services. Regardless of whether they are public or private, due to being natural monopolies and due to the fact that their (in)efficiency is of huge importance for society, their current and investment consumption is covered by the legal framework regulating public procurement.

Volume and structure. The value of the public procurement contracts awarded in 2005-2006 was 15,176 million leva,⁷ which was about 17% of the GDP generated in these years. This number gives a somewhat distorted picture of the actual size of the public procurement market in Bulgaria since more than half of it accounted for a single transaction, i.e. the contract for the construction of the two units of the Belene Nuclear Power Plant (NPP) worth 7,817 million leva which was concluded in 2006. Therefore to give a more valid picture, the figures concerning the public procurement market are presented here with and without the NPP contract. Leaving Belene NPP aside, the value of the public procurement contracts signed in Bulgaria accounted for some 8% to 9% of the country's GDP (Table 1).

Table 1. Total value of public procurement contracts in Bulgaria 2005-2006 (mln leva)

	2005	2006	2006*
Total Value	3,296.0	11,879.8	4,061.8
Share of GDP	7.9 %	24.2 %	8.3 %

*Without Belene NPP; GDP forecast for 2006 is 48 billion leva

Source: Public Procurement Agency (PPA), National Statistical Institute and own calculations

⁷ Net of VAT

The increased corruption risk in public procurement is largely associated with the fact that this market is strongly dominated by construction works. In 2006, construction works accounted for 83% of the total value of all contracts but a longer period of monitoring would probably reveal that such a high percentage is rather an exception due to the contract for Belene NPP. Leaving that aside, construction works accounted for half of the total value of the public procurement contracts signed in Bulgaria. About one-third of all contracts relate to the supply of goods and about one-sixth cover the provision of services (Figure 2).

Figure 2. Structure of the public procurement market (% of contracts)



Source: PPA

As to the supply of goods, over 40% of the value of the contracts covers four industries: the chemical industry (mainly pharmaceuticals), machinery and equipment, fuels, and medical instruments and equipment. The ranking of the most consumed goods reveals that the health sector is the largest consumer of goods in the public sector. The leaders in the public procurement market for services are business services, waste management and environment protection, as well as repair and maintenance works.

These three service sectors, together with the four sectors concerning goods, account for approximately two-thirds of the value of all contracts awarded during the period under review.

Table 2. Value of the contracted goods and services by sectors in 2004-2006 (net of VAT)

Sector (Classification Group in the PP)	mln levs	Share
1 Chemical industry (24-25)	463.02	
out of which pharmaceuticals (244)	408.63	
2 Machinery and equipment (29),	404.70	
out of which turbines and reactors (291)	69.43	42.3 %
3 Oil products and fuels (23)	402.59	
4 Medical and other instruments and devices (33)	357.02	
out of which medical equipment (331)	267.95	
5 Professional and business services (74)	342.04	
6 Waste management and protection of the environment (90)	317.77	24.4 %
7 Repair and maintenance works (50)	281.13	
8 Office and computer equipment, of which (30)	187.52	
office equipment (301)	47.18	
computer equipment (302)	83.13	
9 Semi-finished products (28)	173.25	
out of which, metal products (281-287)	110.88	
building materials (288)	63.44	
10 Electrical machines and equipment (31)	126.03	
11 Motor vehicles (34)	93.99	
12 Financial services (66-67)	80.55	
13 Food, beverages, tobacco products (15-16)	77.62	
14 Textiles, garments and leather products (17-19)	62.36	
15 Energy (40)	53.82	
out of which: nuclear fuel (405)	1.23	
16 Other goods	262.87	
17 Other services	163.76	
Total	3,850.04	

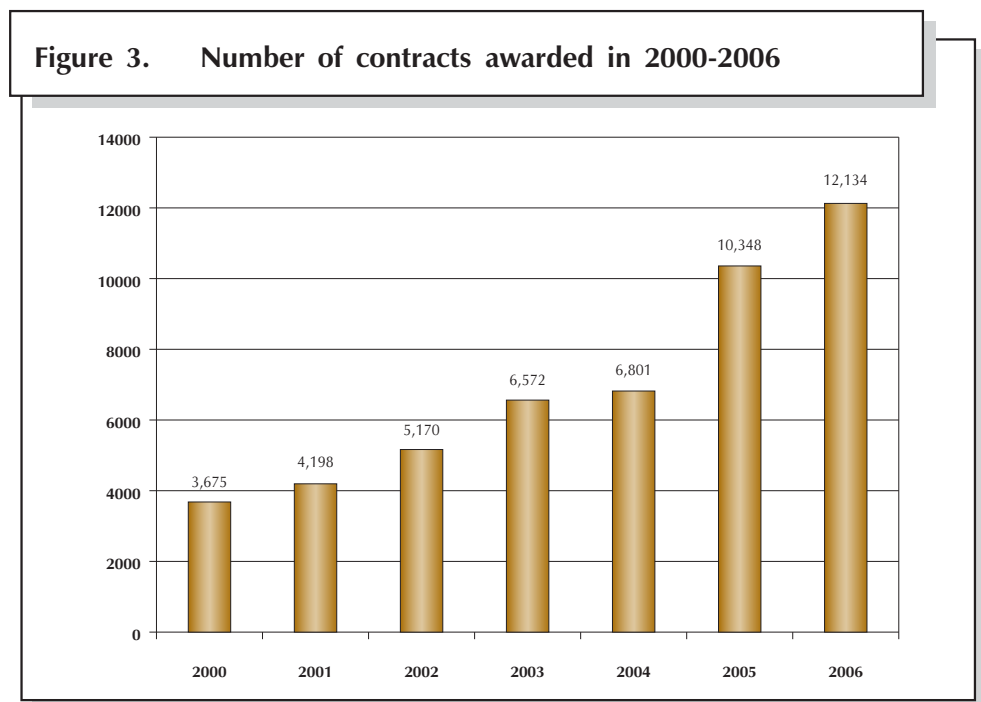
Source: Public Procurement Agency, the data cover the period from 1 October 2004 to 30 June 2006.

Service sectors are highlighted.

These figures relate to the **registered** public procurement market in Bulgaria. The actual size of the public procurement market is 20% to 25% larger. It includes transactions which are not subject to registration (for instance, those related to national defense and security), as well as transactions which are subject to registration but have not been registered for various reasons. It also includes transactions concluded without any tender procedure regardless of legal

requirements for that. Thus the size of the public procurement market in Bulgaria today can be estimated at approximately 10% to 12% of the GDP, i.e. 4.5 - 5.5 billion levs in 2006.

Dynamics. The difficulties in the assessment of the volume of the public procurement market in Bulgaria are partially due to its high growth rates and the fact that it is far from its equilibrium state. Only two years ago, the average annual size of the public procurement market was put at 1.8 - 2 billion levs (5 % of GDP) on an average annual basis,⁸ while today it is some three times larger. Figure 3 shows the almost quadrupling of the number of contracts between 2000 and 2006. Part of that growth resulted from the increase in the registered contracts and perhaps covered mainly lower value market segments. Therefore growth rates were more modest in value terms but they were equally impressive. These high growth rates of the value of public procurement contracts in the initial years of Bulgaria's EU membership will continue, coming closer to the EU public procurement average market size of 16.3% of GDP. Moreover, growth will be further fuelled by the drive for Bulgaria to quickly overcome gaps in its basic, communication and environmental infrastructure to meet the requirements of the European internal market. This is the purpose of the substantial amount of EU funding to be allocated to Bulgaria in the first 7 years of its EU membership. A large portion of the money entering the country through the EU structural funds will be distributed via the public procurement procedures. The public procurement market can be expected to grow by an average of 6% to 7% per year during the first seven years of membership. According to the most conservative estimates (i.e. without the sizable transactions of the Belene NPP type), this implies that the average annual volume of the market will reach 6 - 7 billion levs in 2007-2008.



Source: Public Procurement Agency,

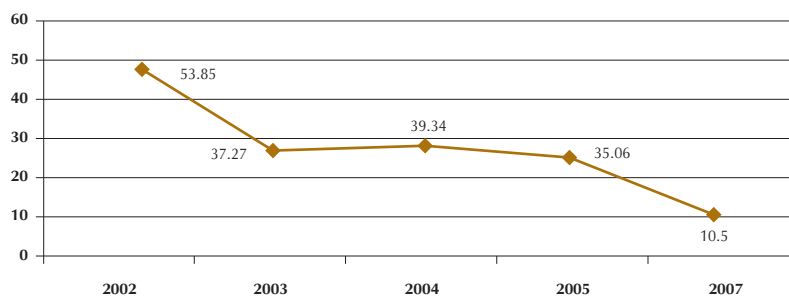
⁸ See BIA, *Public Procurement Monitoring: The Most Common Violations and Corrupt Practices*, Sofia, p. 4 (<http://www.bia-bg.com/files/ZOP-brshura-2005.rtf>).

2.2. LEVEL AND SPREAD OF PUBLIC PROCUREMENT CORRUPTION

It is to be expected that this large and very dynamic market of the Bulgarian economy and the related opportunities for excessive profit and non-market and/or non-regulated income it creates would generate strong incentives for both suppliers of goods and services and contracting authorities to resort to corrupt behaviors.

Despite that, the data from the Corruption Monitoring System (CMS) of the Center for the Study of Democracy point to a downward trend. Five years ago, every other company participating in a public procurement procedure admitted to paying a bribe; in 2005, one in three respondent companies shared such an experience, while in 2007 only one in ten companies paid a bribe in public procurement (*Figure 4*).

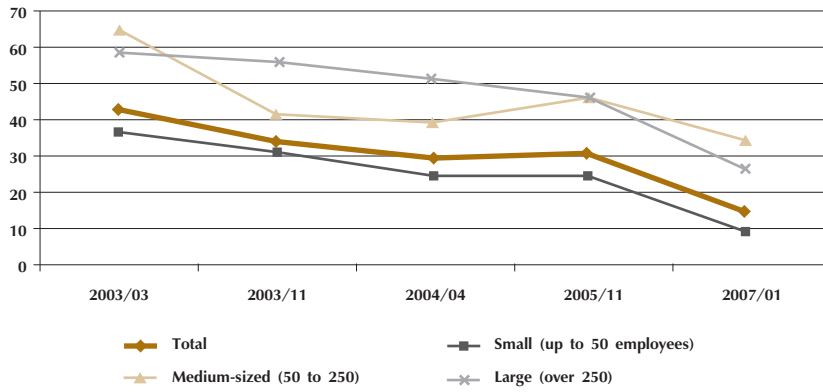
Figure 4. Share of the companies which resorted to bribery in the public procurement market



Source: Vitosha Research

However, some caveats apply to these optimistic results. Other CMS indicators raise the issue whether these statistics are indicative of reduced corruption in the public procurement sphere or rather of its institutionalization, i.e. its migration from the medium administrative level to the higher levels of the executive power and its transformation from occasional deals to closed corrupt networks known as “loops of companies”. Several arguments tend to tilt the balance to the latter conclusion. First, the suspected concentration of public procurement corruption into the higher levels of government is corroborated by the reduced number of participants in public procurement tenders. Fewer and fewer companies, especially new entrants, take part in the announced procedures. Since 2003, the share of the companies which have participated in public procurement procedures has decreased by two-thirds: from 43% in 2002 to 14% in 2006 (*Figure 5*).

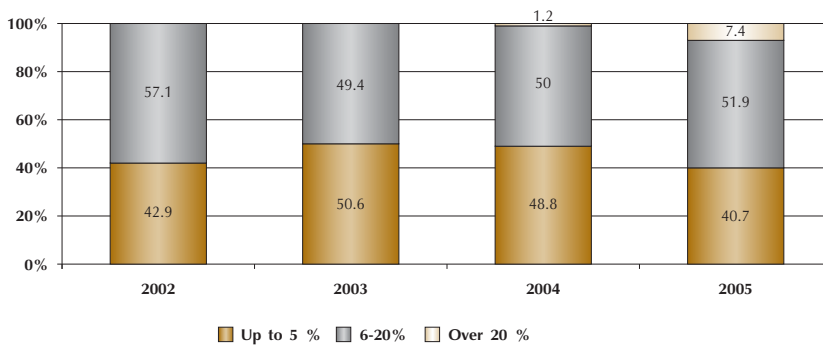
Figure 5. Share of the companies which took part in a public procurement procedure (% of the respective group)



Source: Vitosha Research. The month and the year indicate the time of the respective survey, reflecting the experience of the respondents in the previous year

Second, the size of the bribes has increased (Figure 6). Finally, the victimization surveys underlying the CMS give the best reflection of the personal involvement in corrupt practices where respondents perceive themselves as victims. In other words, they reflect the intensity of the administrative corruption in the public procurement sphere. Their capacity to gauge the large-scale political corruption within public procurement is limited. Businesses are accomplices rather than victims in this case.

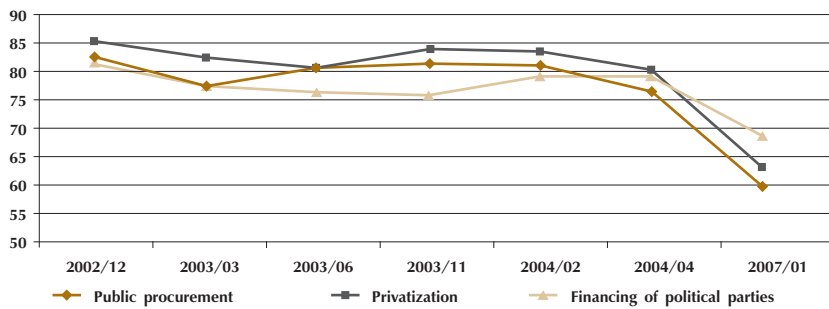
Figure 6. Size of the bribe as percentage of the transaction



Source: Vitosha Research

This is confirmed also by the CMS indicators which show the assessment, rather than the personal involvement, of entrepreneurs of the level and spread of corruption in the public procurement. Although there are signs of a decline, 60% of the Bulgarian companies still assess corrupt practices in the public procurement as “widespread” (Figure 7).

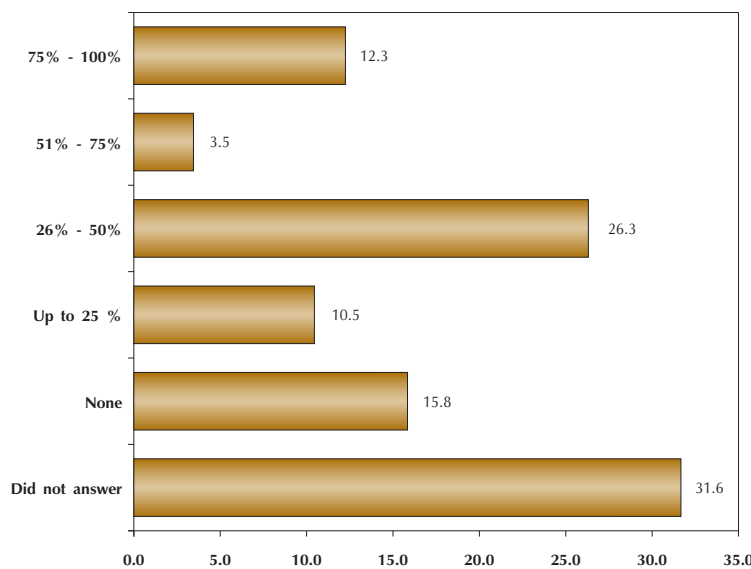
Figure 7. Assessment of the spread of corruption in the public procurement sector given by businesses (% of those respondents who answered that it was widely spread)



Source: Vitosha Research

42% of the Bulgarian entrepreneurs assess the share of discredited procedures in their industry to more than 25%, and one in eight companies states that procedures are strictly followed only in less than 25% of the cases (Figure 8).

Figure 8. Share of discredited procedures in your industry (% of the participants in public procurement procedures who specified the respective percentage)



Source: Vitosha Research

Besides sociological (soft) data, there are some hard data proving the relatively high levels of corrupt practices and corruption risk within public procurement. For instance, a good measure for the substantial corruption risk in this sphere is the share of regulation violations actually detected (*Table 3*). The relative share of discredited procedures in public procurement in Bulgaria in value terms is more than 50% according to the findings of internal auditors. In 2005, the Bulgarian Public Internal Financial Control Agency (PIFCA) audited 6,399 procedures (some 60% of all registered) at a total value of 1.2 billion levs and found out violations of procedures in 1,609 cases at a total value of 567 million levs. Some three-quarters of the revealed violations refer to small scale public procurement which accounts for only 9% of the violations in monetary terms. Over 91% of the value of revealed irregularities were for procedures regulated by the Law on Public Procurement (LPP).⁹ Furthermore, the internal audit found that authorities failed to hold public procurement procedures for projects in the amount of 98.5 million levs, although the grounds for holding them existed. This adds up to a total of 666 million levs in violated procedures and failure to hold procedures in 2005 or 56% of the value of all procedures checked by PIFCA. Such a high level of non-compliance can hardly be explained with procedural mistakes as a result of legal incompetence or administrative inertia and lack of interest. Instead, it rather testifies to widespread corrupt practices.

Table 3. Results of the internal audit of public procurement contracts

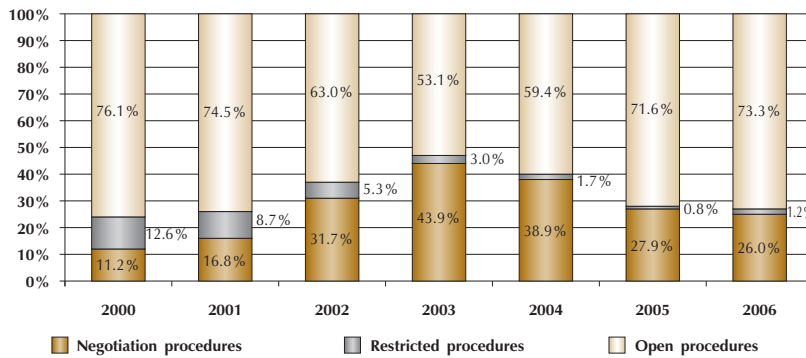
	2003		2004		2005	
	Number	mln. levs	Number	mln. levs	Number	mln. levs
Registered procedures (1)	6,572		6,801		10,583	3,296.0
Audited (2)	6,096	729.1	5,624	988.0	6,399	1,200.0
Violated procedures	1,941	350.0	1,479	249.5	1,609	567.0
Violations established			2,154		2,551	567.0
under the LPP					651	515.3
under the RSPP					1,900	51.7
Failures to conduct procedures	820	85.0	484	79.8	641	98.5
Total violations and failures (3)	2,761	435.0	1,963	329.3	2,250	665.5
Share of audited procedures (2/1)	92.8%		82.7%		60.5%	36.4%
Violations/audited procedures ratio (3/2)	45.3%	59.7%	34.9%	33.3%	35.2%	55.5%
Violations/registered procedures ratio (3/1)	42.0%		28.9%		21.3%	20.2%

Source: PPA, PIFCA

⁹ See Report of the Public Internal Financial Control Agency for 2005, Sofia, May 2006, http://www.advfk.minfin.bg/files/docs3_2005.pdf

Another useful indicator of the corruption risk level in public procurement is the share of the contracts signed through various forms of negotiation with the contractor, i.e. without full prior disclosure of the parameters of the procurement in advance. First and foremost, it should be pointed out that such procedures are not only provided by law but, in the case of some complex transactions, they are desirable to guarantee the best protection of public interest. From the entry into force of the *Law on Public Procurement* in 1999 to its amendment in 2004, however, the share of procedures employing negotiations rather than open competition tenders tripled, reaching a peak of 44% in 2003 before falling back again (*Figure 8*). This growth could possibly be related to more diligent reporting compliance (i.e. entering of the transactions in the Public Procurement Register). Nevertheless, these figures show that corruption pressure is concentrated largely in the negotiation type procedures of public procurement. The experience with the amendments of 2004, however, clearly shows that corruption can be substantially reduced through more strict regulations concerning the application of the procedures.

Figure 9. Share of the procedures involving negotiations (% of the number of contracts awarded in 2000– 2006)

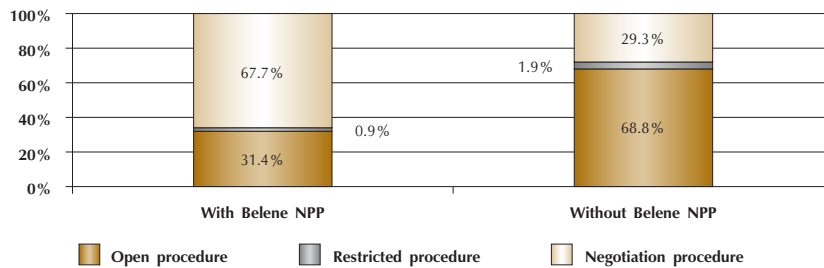


Source: *Public Procurement Register (2000-2004); Public Procurement Agency (2005-2006). In 2005 and 2006, the procedures involving negotiations included both negotiations with announcements and negotiations without announcements under the LPP and the RSPP.*

Data about the relative share (in value terms) of procurement procedures based on direct negotiation, i.e. without competitive bidding, are more useful for corruption risk assessment. The estimates for 2005-2006 (*Figure 10*) reveal that it is much higher than their share in the total number of procedures.¹⁰ However, the data cover only a short period of time and, besides, they include the Belene NPP deal. Therefore they are used here rather as a point of departure in the corruption risk assessment and not so much as the basis for any firm conclusions.

¹⁰ The Public Procurement Register does not provide such statistical information for 2000-2004 (prior to the establishment of the Public Procurement Agency). The PPA data used here cover the period from 1 October 2004 to 30 June 2006.

**Figure 10. Share of the procedures involving negotiations
(% of the value of the contracts awarded)**



Source: Public Procurement Agency (2005-2006). The data in value terms cover the period from 1 October 2004 to 30 June 2006. In 2005 and 2006, the procedures involving negotiations included both negotiations with announcements under the LPP and the negotiations with invitations under the RSPP.

The growth of corruption in the public procurement sphere was noted also by external observers. According to the report of the European Bank for Reconstruction and Development (EBRD) on transition economies in 2005, public procurement corruption was the only one to worsen in Bulgaria over the period between 2002 and 2005.¹¹ In terms of that indicator, Bulgaria ranked second-to-last in South-Eastern Europe (before Albania) and it was the only country to report deterioration over time.

2.3. THE COST

The issue of the economic cost of corruption in the public procurement sphere is important from the perspective of the ex-ante impact assessment, i.e. the selection of anti-corruption instruments, and the ex-post assessment of their efficiency.

First and foremost, corruption in the public procurement sector causes direct fiscal damage. It is due to the artificially inflated prices of supplies, which include excessive profits for the suppliers and the corruption income of the responsible officials. Despite this the corrupt interaction does not always lead to excessive costs. More often than not beating of competition in an open tender requires for lower delivery prices. Then the excessive profit for the supplier and the bribe the contracting authority are a result of the compromises with the quality and the parameters of the supply contract. In other words, there are no excessive fiscal costs but there are welfare losses because society does not receive the public goods in the quantities and the quality it has paid for. Quite frequently these compromises could lead to higher costs in the operation or consumption of the goods and services supplied under a particular public procurement contract, i.e.

¹¹ The EBRD conclusions in its *Transition Report 2005* are based on data from Business Environment and Enterprise Performance Survey in Eastern Europe and Central Asia for 2002 and 2005.

transfer of budget spending further in time or to other institutions, beyond the time-line of the specific tender.

The accurate assessment of the fiscal damage in the form of unjustified excessive spending or other public loss as a result of violating the procedures is a difficult exercise based on many assumptions. A somewhat useful point of departure is the information from the Bulgarian internal audit agency with regard to the reported violations listed in *Table 3*. The total value of the infringements of statutory requirements in 2005 was approximately 666 million levs or 56% of the total value subject to internal audit in the public procurement sector. If this percentage is extrapolated to the estimated size of the whole public procurement market (4 - 5 billion levs in 2005), the total value of compromised procedures would reach 2.2 – 2.8 billion levs.

This amount reflects the value of infringed procedures but not the value of the violations themselves. In other words, it is not equal to the fiscal damage caused by corruption. The latter is equal to the excessive rent derived by the contracting authority and the contractor for their personal benefit due to the suppression of competition. The differential between the market price of the supply of the procurement and its tendering price (or the discrepancies in the quantity and quality of the procurement respectively) constitutes the real loss to society. The excessive rent generated by corruption and the lack of competition, although more easily seen at the level of individual transactions, can hardly be calculated at the macro-level. If we assume that it is divided equally between the parties in the corrupt deal, then the losses for the budget would be double the amount of bribes in this sector. According to CMS of the Center for the Study of Democracy in 2005, the average size of the bribe within the public procurement sector accounted for about 7 % of the value of the contract.¹² This implies that, in a conservative scenario, the average amount of the excessive profit generated by corruption and the lack of competition within the public procurement sector is approximately 15%. Since the value of infringed procedures is 2.2 – 2.8 billion levs, the losses resulting from financial abuse in the public procurement would range between 330 million and 420 million levs.

The expected amount of losses should be considered as an underestimate for a number of reasons. First, it reflects a conservative estimate of the potential size of the public procurement market at 4 – 5 billion levs. Second, it is based on a quite optimistic estimate of the efficiency of the internal audit in Bulgaria. In other words, it builds on the assumption that the frequency of violations in the procedures outside the scope of the audit is similar to that in the audited procedures. In fact, if there was an efficient risk assessment and management system, the degree of deviation in the audited procedures should have been even higher than in the rest of the procedures. In this case, a lower estimate for the total number of irregular public procurement procedures would apply to say about 40 – 45% of the awarded contracts. This, however, would only be a realistic assumption in the case that an independent inspection with proven professionalism and integrity existed in Bulgaria.

¹² *On the Eve of EU Accession: Anti-corruption Reforms in Bulgaria*, Center for the Study of Democracy, Sofia 2006, p. 29.

Does the former Public Internal Financial Control Agency, currently the Public Financial Inspection Agency at the Minister of Finance, meet this definition? Are businesses right to suspect that its activities are influenced by political pressures and that most of the violations are found in the small public procurement contracts at the lower levels of government? Some grounds for such doubts can be seen in the data contained in the latest internal audit report of 2005.

According to that report, the procedures audited in 2005 accounted for some 60% of all procedures but only 36% of their total value (See *Table 3* above). Some 75% of all detected violations were small-scale public procurement, as defined by the law, but they accounted for only 9% of the violations in total value terms. One can conclude that the strict internal audit covers primarily the lower market segment, i.e. the administrative aspects of the risk of corruption. If that were the case, an assumption about a higher percentage of infringed procedures in value terms would probably be closer to actual levels.

Finally, the assumption concerning the amount of the rent could also prove quite conservative. International studies show that the size of the bribe is usually very small compared to the benefit it provides for the supplier. Moreover, in the case of political corruption, the classical cash kick-back has limited application, giving way to other types of benefits and protection: support and financing for electoral campaigns, securing employment after resigning from a governmental or administrative position, scholarships for close relatives, safeguards against criminal prosecution, etc. If that was the case, the more realistic estimate for the excessive profit generated by corruption in the public procurement market in Bulgaria could amount to 25% to 30%, which effectively doubles the assumption on the damage caused to society.

To sum up, if we abandon all conservative assumptions underlying the above-mentioned optimistic estimate of the fiscal losses from corruption in the public procurement sector, they could reach 1 billion levs annually, i.e. some 20 - 25% of the size of the market or approximately 2.4% of GDP. All this leads to the conclusion that the actual size of the losses from public procurement corruption tends to come close to such a level.

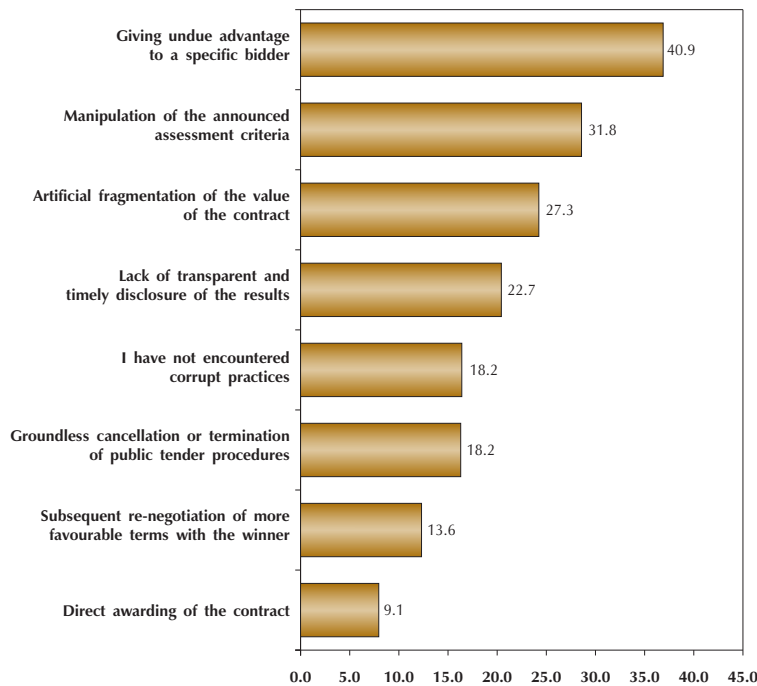
Corruption in the public procurement sector not only generates losses for the public sector but it also inflicts economic damage to the private sector which could be much greater and more overarching than the fiscal damage. The direct economic damage is associated with the losses of bona fide traders who could be more productive than those who win tenders by bribing. Because of corruption, the market cannot recognize and reward their productivity. Market distortions occur and generate disincentives on the supply side and hence the damage is partially transferred to consumers through the prices charged on the market. Corruption within the public procurement could be also an instrument for attaining oligopoly on some markets, where the excessive profit generated from the public sector makes it possible for corrupt companies to sell to private consumers at lower prices and thus crowd out the other, especially smaller firms from the market. Hence, the particular damage which corruption in public procurement causes to small and medium-sized enterprises.

Another indirect cost for fair businesses is the increase in the administrative costs for participation in public tenders. This is a result of the attempts by the public authorities to apply more and more administrative measures to curb corruption and financial abuse which increases the compliance costs for the companies, especially smaller ones.

2.4. AREAS OF INCREASED CORRUPTION RISK IN THE PUBLIC PROCUREMENT SECTOR

Most of the abuses in the public procurement field occur in the awarding procedures. These are the stages in which the tender documentation is prepared and bids are ranked. According to the survey conducted among businesses in January 2007, the most common infringements of rules, which participants in public procurement procedures in Bulgaria encounter are related to the ensuring of undue advantage to specific bidders (41 %), and the manipulation of the announced assessment criteria (32 %).

Figure 11 What corrupt practices have you encountered in public procurement procedures? (% of the answers)



Source: Vitosha Research

What follows is a non-exhaustive list of the typical tools used for restricting the range of participants and the directing of the outcome of the tender procedure to the benefit of a specific participant in public procurement procedures.

Direct non-compliance. The direct non-compliance through contracts awarded in violation of the law without any tendering or competitive bidding procedure is still widely spread. Although this type of violation is observed mainly in the case of small-scale procurement by authorities in education, health and local government, the total effect of such violations is not small at all. In 2005, for example, PIFCA detected failure to hold due procurement procedures worth 98.5 million levs, up from 80 million levs in 2004. In other words, about one-fifth of the value of all reported violations is due to brazen disrespect of the law. Even if we assume that the detection rate is much higher in this market segment due to the direct nature of the violation and the relative lack of political protection in comparison to large-scale supplies, the relative weight of this type of violations in the total volume of damage (including the non-detected damage) seems significant. It is indicative of the insufficient deterrent effect of the sanctions compared to the benefits of the corrupt action. Although the action is most likely to be detected, the effective sanctions seem so soft that they could hardly compare to the benefits. An additional motive for such behavior in the case of school headmasters and hospital managers, for example, is the low level of salaries and the diluted control shared by the central and local government, which makes them feel immune to penalties.

Circumvention of the law. Another relatively less risky way of awarding public procurement contracts to pre-determined bidders is by breaking the supply into smaller parts, which fall below the tendering thresholds stipulated by the law, allowing the public authority to go for direct awarding. As it will be explained further in this paper, one of the techniques to modernize the public procurement system in Bulgaria has been to raise the thresholds in order to reduce the compliance costs for businesses in small-scale procurement. As a result, the current thresholds for obligatory tendering in public procurement are 100 thousand levs for construction works and 30 thousand levs for the supply of goods or services. These thresholds seem high for Bulgaria because they leave one quarter to one third of the public sector consumption beyond the scope of the existing legislation.

Abuses in the definition of the parameters and technical specifications of public procurement procedures. It becomes increasingly difficult, in most cases, to ignore or circumvent the tender procedures prescribed by law. Thus, corrupt contracting authorities use an alternative set of tools to direct the procedure so that the preferred bidder wins. One of the tricks employed is to put down such parameters and specifications of the procured product or service in the bidding requirements, which though not essential for the quality of the public good provided, rule out some bidders from the competition or directly predetermine the outcome. This is quite a widely used method and although it is quite easy to detect it, it remains relatively unpunished. In other words, it is one of the methods which obviously hamper fair competition but it is rarely punished as a violation of the law. It is usually applied when the contractor is selected in advance at political level and the stakes are so high that neither the supplier can

afford to lose nor the tendering authorities can afford the risk of failure for the conduct of an outright scam procedure with a predetermined outcome.

Abuses in the definition of the selection criteria. An alternative and not so overt instrument for directing the tender to the desired outcome, but also with a less clear result, is the definition of such selection criteria which leave sufficient room for discretion and manipulation of results. Usually, this is achieved by enhancing the share of the qualitative indicators at the expense of quantitative ones, such as the price and other measurable technical parameters. Some criteria could be too abstract or outright useless for the assessment of the relevance of the supplied product to the satisfaction of the public consumer. Examples of such criteria are “quality of the proposal” or “vision for the development of the sector”.¹³

Others are related to the assessment of the supplier rather than the supplied good or service. These are for example all the so-called “guarantees” for the capacity of the supplier to deliver the procured product in connection with specific experience, annual turnover or participation in similar tenders. The logic of such “insurance” on the part of the contracting authority is acceptable to a certain extent but, in practice, it restricts competition and confines the public procurement market to a narrow range of pre-selected eligible bidders. It leaves out companies which could offer better and more innovative solutions but lack the required “eligibility” to reach consumers.

Even the quantitative parameters of public procurement can be deliberately manipulated to make the direct comparison of bids more difficult and to increase the chance for applying administrative discretion in the selection procedure. Finally, even the price, which typically weighs a lot in the assessment (most frequently it forms more than 50 % of the final evaluation result), is only one of the cost elements. Manipulative pricing can often display publicly only the immediate costs of a facility without taking account of potential increase in the operational costs of the facility in the future. A more objective criterion would be the direct comparison of the overall net present value of alternative projects. It also includes the discounted future expenditures for the maintenance and operation, including warranty support, spare parts, consumables, etc.

Manipulation of the assessment and ranking. Next, even if all selection criteria are well chosen and specified, the end result can still be manipulated to the benefit of one or another bidder. A kind of guarantee against such practices seems to be the use of a pre-selected formula to calculate the final assessment comprising of all the quantitative and qualitative indicators with their respective weights. However, contracting authorities in Bulgaria rarely provide any written argument or statement to explain the assessment of the various components of the bid and the ranking. Thus the scores by individual criteria can be manipulated and adjusted to a desired final ranking. It is possible to do so because the individual components are not assessed and announced independently from one another, and also because the final assessment is not the result of independent expert appraisal.

¹³ BIA Public Procurement Monitoring: *The Most Common Violations and Corrupt Practices*, Sofia, p. 18

Lack of full transparency in the announcement of the bids and the ranking. The lack of transparency with regard to the parameters of the bids in tender procedures creates opportunities for further adjustment and improvement of certain bids before the final ranking is announced. Such a blackout is a condition and invitation to resort to corrupt manipulation of the tender procedure.

Other barriers to participation in public procurement. Sometimes the costs for participation in the tenders are artificially inflated to discourage 'accidental' players. Although the Bulgarian law does allow the price of the tender documentation to exceed its production cost, in most cases it resembles more a participation fee rather than a charge to cover actual costs. In some cases it is excessive and functions as a filter at the input stage of the tender procedure. Similar barriers are also the unrealistically short deadlines for the submission of bids which can only be met only by companies which have been tipped off in advance. This corrupt practice is related to the leakage of information about the terms of reference for the benefit of a preferred supplier.

Cancellation or discontinuation of tender procedures. Lastly, if all these measures cannot ensure the victory of the preferred supplier, the contracting authority might terminate the procedure, citing as excuses either lack of financing or discrepancies between the bids and the terms of reference. In most cases, there are no clear arguments to support such decisions and outsiders are left only with the costs of bidding in the tender procedure and with a general feeling of distrust in the official rules of the game. Such negative experiences from the participation in irregular procedures act to restrict competition and expand further the range of companies prepared to pay bribes in public procurement procedures.

All the above corrupt practices employed in Bulgaria are related to the directing and awarding of a contract to a preferred supplier ensuring personal benefits for the public officials representing the contracting authorities. They cover the stages of the preparation of the tender documentation and the ranking of the bidders in accordance with the announced criteria. But corruption in the public procurement sphere does not end there. The stage of the implementation of public procurement contracts is not protected against the risk of abuse and corrupt practices either.

Limited opportunities for appeal. In some cases, the contracting authorities do not advise the failed bidders in due course which deprives them of legal remedy within the time limits prescribed by law.

Implementation of the contract. The most widely spread corrupt practice at the implementation stage of public procurement in Bulgaria is the renegotiation of the qualitative parameters of the contract or their outright neglect, or even the change in the price terms. Thus, the contractor who has paid a bribe is able to offer much higher quality at a lower price in the bid, knowing that these bidding parameters are intended only to beat the competition and can be changed during the implementation phase. Indeed, the amendments to the Law on Public Procurement of 2004 tried to put effective barriers to the common practice of signing annexes to the contracts intended to change the initial terms of the public procurement contract. But, at the same time, the law does not include any provisions to ensure control over the implementation of the contract in accordance with the terms and

conditions of the tender. In fact, the LPP regulates the process until the signing of the contract. If there are no changes to the contract, the control over its implementation is left beyond the scope of the law.

From the viewpoint of the size of the transactions, the data of the internal audits show that the corruption risk increases in line with the size of the public procurement value. This is no surprise: large-scale corruption occurs where there is a lot of money involved. Nevertheless, the public debate on this issue was focused for quite some time on the thresholds set out in the LPP and the negative effect of their increase on the corruption risk. Most of the internal audit resources were also allocated in this area. Out of the 2,551 violations established in 2005, 1,900 were in the category of small-scale procurement but their total value was 51.7 million levs, i.e. 9% of the total value of uncovered irregular procedures. This distribution of the risk comes to support the suggestion that, from the viewpoint of the efficiency of control and business costs in the supply of goods and services to the public sector, it is better to raise the public procurement thresholds and to allocate the available administrative resources for the enforcement of the law on the biggest transactions. The optimal internal audit coverage target could be the transactions which constitute 60% to 70% of the value of all procurement contracts signed. At present, the share of the audited procedures is some 30% to 35% in value terms. The data from the internal audit report show that the emphasis is on small-scale procurement, i.e. the lower levels of government.