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AUTOREVIEW

FOR OBTAINING THE ACADEMIC AND SCIENTIFIC DEGREE

“DOCTOR”

IN THE PROFESSIONAL LINE

3.7. “ADMINISTRATION AND GOVERNANCE “

**„CONTROL OF THE SYSTEM OF PUBLIC
PROCUREMENT”**

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The dissertation has a volume of 280 pages, citing over 119 information sources, of which - 14 in Bulgarian, 7 in English, 8 in Russian and over 90 regulatory and internet sources.

The dissertation is developed in an introduction, four chapters, a conclusion, nine applications and used literature.

Nine tables, 35 figures and 9 citations of researchers in various fields were used to illustrate the texts.

The author presents the Declaration of Originality and Authenticity of the Thesis.

The dissertation is available to the interested persons in the Rectorate of the IBS and on the University's website.

I. SYNOPSIS OF THE DISSERTATION PAPER

This dissertation has been written based on conducted research work, personal observations and experience in the field of public procurement control.

Public procurement procedures have been designated as one of the activities most vulnerable to corruption practices of governments.

The systemic scientific research and due diligence on public funding of activities and services is an important means for more appropriate management of public resources in the fast-changing marketing and regulatory environment. Regarding this, emerged the necessity for elaborating the activities of the institutions which form the System of Public Procurement Control (SPPC) in Bulgaria.

The desire to work out the current topic was prompted by the fact that in the course of development of public procurement in the Republic of Bulgaria, no research has been done on the role of the institutions, which have the obligation to exercise control over organizing and carrying out public procurement, nor has it been done on the performance of concluded contracts. There are many authors who have explained the changes in legislation on this topic by publishing books and giving seminars. Next to nobody though, has dealt with the problematic area with the methods of scientific investigation.

The work on the thesis has been accompanied by multiple studies with reference to performance and practice of the control institutions and with an emphasis on the one and only control institution in the country which has got the nature of an independent body for exercising control in this field – the National Audit Office. Relationships among the institutions which form the System of Public Procurement Control are as well treated e.g. to what extent their efficiency is and what changes occur resulting from their joint work on the implementation of control.

The purpose of the dissertation was to analyse the operative system for control over public procurement, providing guidance and propositions about optimizing the process of implementing control and enhancing effectiveness, efficiency and economical spending of public resources in public procurement.

To achieve this, the following needed to be done:

- To make observation analysis of the theoretical and methodological background of the control activity on spending public resources and give guidance and recommendations for improving it.
- To create a model of the public procurement process.

- To examine the following areas:
 - The legislation regulating public procurement
 - Presented results from audit performance of public procurement
 - Provisions for implementing control over the process of public procurement

through conducting empirical test

The object of this research was public procurement in the public sector, the subject, the System of Public Procurement Control (SPPC) built up by the institutions responsible for the control of public resources.

The operative system for control of public procurement provided an opportunity to draw on good practices and rule out the bad ones when conducting assignment procedures, respectively, assignments below threshold including execution of contracted agreements and exercising control upon them.

The following information sources have been used: the information database of the Public Procurement Agency; annual and audit reports and plans for audit activities along with additional officially provided data from the National Audit Office; information on the Internet site of the Agency on State Financial Inspection as well as an officially submitted response from the Director of the Agency and others.

The period, examined in the thesis, spans the years 2011 to 2018 and that includes the amendments to the Public Procurement Act and the Regulation on Application of PPA in effect since 15.04.2016.

The main assumption of the research has been that there is a possibility to evolve and enhance the control, implemented by the eligible institutions when organizing and conducting public procurement and at executing the concluded contracts. The System of Public Procurement Control does not function effectively. Interaction between institutions does not fulfil expectations; hence the results from performing checks (audits and inspections) do not carry the needed result. The control institutions do not make the necessary efforts to enhance administrative capacity and remedy interaction between them; in this way, they do not promote the betterment of the environment for public procurement nor the one for execution of concluded contracts. This results in the fact that public procurement does not take place under the best possible provisions nor is the execution of contracted agreements with the requisite quality, therefore it cannot be defined as means of economical, effective and efficient spending of public resources.

Working hypotheses, additional to the main one:

- Tracking of the separate stages of public procurement procedures plays a fundamental role in the investigation into the process of public procurement control.
- The act of harmonization of national and European legislation to regulate public procurement is one of the factors, as regards introduction of good practices in carrying out public procurement.
- Practical examination of the procurement process and control over the different stages contributes to a thorough study of the strong and weak sides of the control activity.
- Giving major guidance for improvement of the control activity in the field of public procurement is supposed to enhance the procedural efficiency of the assignors.

The research methods employed in the elaboration of the dissertation are *analysis* and *synthesis* – based on the analysis of the existing system for control of public procurement to provide possible guidance for rendering better control environment on public procurement in Bulgaria; *documentary analysis* – related to the field legislative acts (in effect and repealed) to find mainly such extracts indicative of the difficulty they cause instead of promoting effective control implementation on the part of the institutions for carrying out the activity on public procurement and on executing concluded agreements; *standard due diligence* – on the basis of the performed documentary analysis to evaluate the impact of the problematic texts on the economic processes which have a connection to the procedure of public procurement and executed contracts; *deduction* – after wraparound of information obtained from various information sources, to build a System of Public Procurement Control adequate to the needs of Bulgaria.

Method of empirical study – *inquiries with experts* – holding inquiries into opinions of professionals - representatives of control institutions at different levels through questionnaires. The method is appropriate for the purpose of this investigation mainly because of the existing different standpoints referring to the requisite control over the system of procurement.

Credibility of the examinations and their outcome arises from the sources of employed data – that is, official reports and officially demanded and submitted data from the heads of the institutions.

The practical input of the dissertation is, drafting a proposal for change to the methods of implementing control over public procurement, by utilization of unified electronic tables to collect information, automated check lists and presenting the gathered and analysed

information through a description of the process rather than focusing on specific problems in particular cases of public procurement.

Other proposals, tabled in the thesis, relate to the quality assessment of public procurement procedure and the execution of concluded contracts through the System of designating the quality of public procurement (SDQPP). Formulation of indexes, such as The Public Procurement Quality of Execution Index (PPQEI) and the Public Procurement Control Index (PPCI), is one more way of this dissertation to contribute to enhancing the quality of procurement procedures and concluded contracts as well as to help boost the quality of the performed control in this field.

Other probable contributions:

- Identifying problematic areas and specifics when dealing with public procurement control.
- Assessment and analysis of the operative system on public procurement control to determine the positive and negative sides of the system.
- Working out guidance and instructions on implementing control over every stage of public procurement process as well as movements how to improve the control system.
- Identifying possibilities to incorporate and apply new control procedures in the system.

Narrow framework of the topic:

- The dissertation emphasizes the implementation of *ex-post control* on public procurement by specialized institutions.
- The research is set up on the control carried out by institutions at the national level and the main accent is put on the activity of the National Audit Office in its capacity of external and independent control body being a Supreme Audit Institution. Participants in SQPP are presented as follows: The Agency on State Financial Inspection, the Executive Agency “Audit on European Union Resources”, the Public Procurement Agency with its inherent methodological and control functions. The quoted institutions are viewed as partner organizations of the National Audit Office in the area of public procurement control.
- In the research paper, The Committee on Protection of Competition is not enlisted in the System of Public Procurement Control as it appears to be a body of first instance in relation to appellation of administrative acts, issued by assignors, nor is the Supreme Administrative Court included, being a second instance body on public procurement. The connection between the main functions of both institutions in relation to public procurement,

their entire work in this field as well as their connection to the rest of the institutions, part of the SPPQC represents a field which deserves a wider investigation at a later stage.

II. STRUCTURE AND CONTENTS OF THE DISSERTATION WORK

1. STRUCTURE OF DISSERTATION

The structure of the dissertation work is predetermined by the combination of the object, subject, purpose and tasks and clearly reflects the author's approach to the research.

The volume of the dissertation is 280 pages, of which: preface – 6 pages; main body (4 chapters) - 243 pages; conclusion – 2 pages; 11 pages supplements, over 119 information sources – 14 in Bulgarian, 7 in English, 8 in Russian and over 90 legislative and Internet sources.

2. CONTENTS OF DISSERTATION

The contents correspond to the tasks laid down and presented in the following sequence:

PREFACE

CHAPTER I. LEGAL FRAMEWORK WHICH STIPULATES THE SYSTEM OF PUBLIC PROCUREMENT CONTROL

- 1.1. Public procurement – legal nature, contents and evolvement
- 1.2. Legal framework in relation to public procurement
- 1.3. Secondary legislation on public procurement
- 1.4. Internal institutional regulations

CHAPTER II. PUBLIC PROCUREMENT CONTROL

- 2.1. Control as a form of regulation of relations connected with public procurement
- 2.2. Forms and types of control
- 2.3. Implementation of control over public procurement
- 2.4. The systems of financial management and public procurement control
- 2.5. Bodies for implementing control over compliance with public procurement legislation, forming the System of Public Procurement Control
- 2.6. Kinds of violations – identification and classification
- 2.7. Irregularities and frauds when conducting public procurement and methods to overcome them

CHAPTER III. METHODOLOGICAL BACKGROUND OF THE ANALYSIS AND ASSESSMENT OF THE SYSTEM OF PUBLIC PROCUREMENT CONTROL

- 3.1. Public sector status and problems.
- 3.2. Interaction between the bodies performing control over compliance with the Public Procurement legislation.
- 3.3. Access to information regarding public procurement control from the National Audit Office and the Agency of State Financial Inspection (ASFI).
- 3.4. Efficiency, effectiveness and economical spending of resources as regards performing of control by the Audit Office through the filter of conducted examinations of its activity.
- 3.5. Basic conclusions on the Audit Office activity regarding public procurement.
- 3.6. Problems before the NAO, ASFI, PPA, IA with the public procurement control.

CHAPTER IV. GUIDELINES AND RECOMMENDATIONS FOR IMPROVING THE SYSTEM OF PUBLIC PROCUREMENT CONTROL

- 4.1. Concept for elaboration of the system of public procurement control.
- 4.2. Guidelines for improving the system of public procurement control.
- 4.3. System for the assessment of the assigned public procurement and executed contracts
- 4.4. Quality of execution indexes in public procurement

CONCLUSION

Supplements

BIBLIOGRAPHY

III. BRIEF PRESENTATION OF THE DISSERTATION PAPER

CHAPTER I. Legal framework determining the system for public procurement control

As a notion, “public procurement” has not been legally defined in the national legislation until the Public Procurement Act was adopted¹. This is the reason why various authors of articles, books and training seminars, have given their own interpretations of the notion. According to associate professor PhD Miglena Pavlova, “...orders designated to satisfy public necessities on which are expended public resources are called, public procurement.”² Many authors do not render definitions or interpretations of the term, they directly elaborate their ideas as regards changes in legislation and the new amendments adopted by the legislators in Bulgaria.

With the adoption of the new Public Procurement Act in 2016, in Art.1, para. 2 the legislator gives the following definition: “Public Procurement is the acquisition by one or several assignors, by means of contract for public procurement, of construction, delivery or services from selected by them contractors, designated for public purposes or for the needs of public assignors whereas with sector assignors – to perform sector activities.” In the above rendered definition of the term, I consider that the legislator has wrongly emphasized the acquisition by means of a *contract*. In my opinion, there should be an addition to the text of the definition, that is – *an aggregate of strictly defined and consecutive actions which make for a lawful and expedient acquisition of services and assets by means of performing construction, delivery and services in public profit or for the needs of public assignors, whereas with sector assignors – to perform sector activities.*

It is only right to note here that the acquisition of assets, the receiving of services or the execution of construction is a result action of carrying out public procurement. Reaching the public procurement agreement results from multiple stages throughout which certain actions in a proper consistency ought to be performed by precisely appointed persons. Negligence to these actions and their consistency can lead to unlawful operations and failure to fulfil the aims and objectives of the assignor.

Hence, every deviation from the rules, prescribed in the legislation, leads away from the desire to effectively expend public resources and therefore to a deviation from the substance of the notion “public procurement”. Rightfully, we should note here that the execution of a contract concluded as a result of conducted public procurement, represents a

¹Promulgated in SG. issue13, 16 February 2016, enforced 15.04.2016

² Pavlova, M., “Public Procurement”, University Publishing House – UNWE, Sofia, 2015, page 9

commitment made, which obligations have been specified in the process of the public procurement.

Provisions, procedure, objects, subjects and types of public procurement are regulated in the Public Procurement Act as well as in the Regulation on Application of Public Procurement Act.

Historically, the predecessor and source document of legislative regulation of requirements to the public sector organizations, concerning expenditure of resources on supplies, rendering of services and construction works in the Republic of Bulgaria, is the Law on assigning state and community orders.¹³

Throughout the years since then, the regulation of planning, conducting, assigning of public procurement and execution of concluded contracts has gone through multiple changes. Amendments to the Public Procurement Act have been adopted, Acts have been repealed and new ones passed with new concepts and enactments.

In connection with the development of contemporary business environment it can be maintained that the described multiple legislative changes pose an obstacle rather than help process.

Upon the implementation of control, it is obligatory to trace whether the permitted, hence, the resulting winner – candidates/participants meet the prescribed legal requirements and whether the available information is sufficient, this information which the public procurement committee has collected, processed and on which basis decisions have been made.

The legal framework regulating relations between subjects, having reference to public procurement, has been repeatedly modified. The underlying reason for this has been the process of adapting the national legislation in the field of public procurement to the European one drawing on various European Directives.

Methods and methodological guidelines issued by the Public Procurement Agency are of that kind, supportive of the activity on assignment of public procurement and are of great importance mostly for assignors.

CHAPTER II. Control of public procurement

The understanding of “control” in the current thesis ought to be viewed not simply as an inspection, which aims at sanctioning any drifting away from standards but rather as a

³ The Law was passed in 37th National Assembly on 16 Jan. 1997, promulgated in State Gazette No.9, enforced as of 31st Jan. 1997 and repealed on 22 June 1999, State Gazette No.56.

process investigating into the conditions which breed deviations, followed by fast and appropriate reaction to prevent and eliminate them.

Being a process, the control is composed of elements where each of them can be essential to a different degree in different cases, when applied. For the purpose of the current thesis, the process of implementing control can be presented as follows:

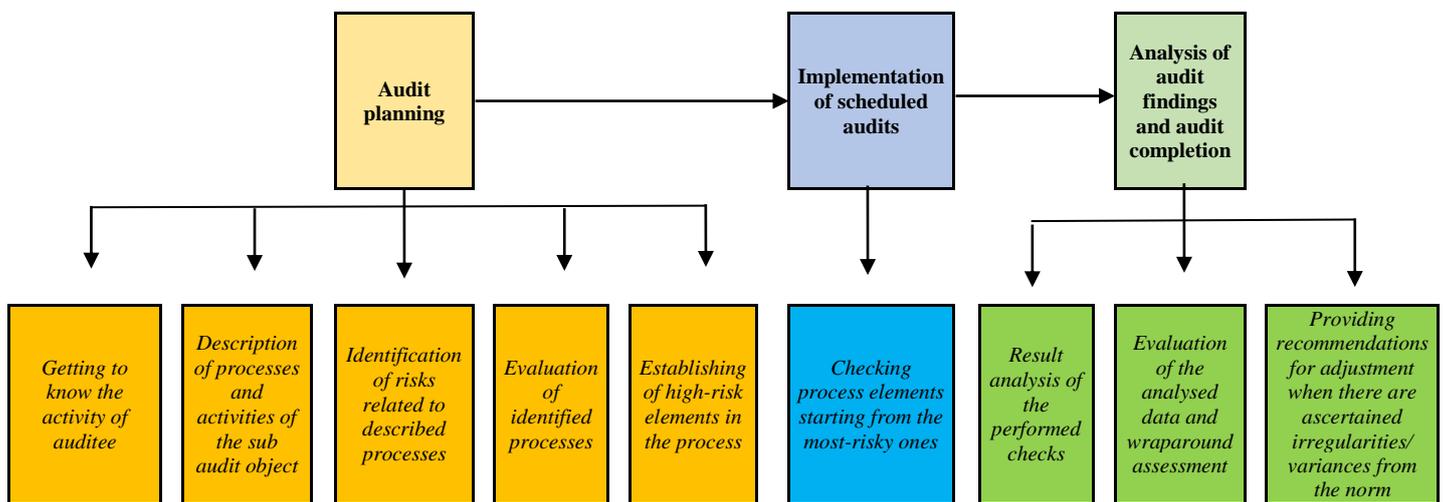


Fig. № 1 – The process of implementing control

Looking at the graph, you can notice that the planning stage of the audit consists of the most sub-stages. Planning of control is of great importance and one can say that “*what you plan is what you check*”, respectively, this will, to a large extent, depend on the outcome which will be analysed and summarized, hence, the recommendations that will be given with reference to the established deviations.

As regards the control of public procurement per se, in its main part it is accomplished *post factum*, which by and large determines its inefficiency. The ascertainment of errors and irregularities at the stage of organizing and conducting public procurement, as well as at the stage of execution of the concluded contracts, is to be arranged by the accountable institutions in a manner which allows the disbursement of public resources to be done at possibly the best provisions. Diversion of public funds by the main object of order is supposed to be minimized with the idea of gradually moving to full absorption fit to purpose.

A major problem about absorbing public resources through assignment of public procurement is the high risk for corruption running at the early stages of implementation of public procurement. Despite the constant negative appraisals given by various international, national institutions and non-profit organizations, the bodies in charge, in the person of the legislative and executive power, and the control institutions do not take the necessary

measures to a sufficient degree to combat corruption and enhance the quality of public procurement procedure.

The chief feature of control nowadays is meant to be the control prior to and during the event, not after it.

Subject of control is the conduct of systems and individuals within them, whereas objects are the systems themselves.

Control is often defined as part of the governance of an organization, that is, control is exercised prior to and during the performance of certain activity.

If you scrutinize the control, it can be divided into types and sub-types according to various indicators.

One of the control branches is the audit. The audit is a control process which is carried out with control procedures, so that a motivated opinion on the credibility of other processes could be expressed. The essence of it is the collecting and treating, by using different methods, of adequate information subject to quantitative and qualitative appraisals. The existing of standards, legislative acts and regulators which serve as criteria, as a framework of minimum instructions for executing procedures, allows to be made an appraisal of the audit results.⁴

As a specific process subject to control, to plan, carry out and assign public procurement, has the features of a multistage process and is liable to careful identification of sub-processes where some of them if possible are separated as stand-alone processes. Regarding the type of audit, the public procurement audit ought to be viewed both as compliance audit and as execution audit.

Audits in the public sector obey the principles laid down in the International Standards of the Supreme Audit Institutions (ISSAI).⁵

Under ISSAI 1003⁶, Compliance Audit checks the auditee on the level of compliance with rules, statutes and other provisions, policies, adopted codes, established order and manner of action etc. The aim of Compliance Audit is to give the target users of the audit report reassurance for their abiding by the lawful requirements and an assessment toward appropriate criteria.

⁴ Yordanov, K., „Fundamentals of Audit”, Sofia, 2005, page 6

⁵ Drafted and adopted by the International Organization of the Supreme Audit Institutions (INTOSAI)

⁶ Instructions on Financial Audit. Glossary of terms to the Instructions on Financial Audit of INTOSAI.

While looking at Compliance Audit, it is fair enough to say what the identifying of non-compliance constitutes. In conformity with the definition in ISSAI 4100⁷, there is a case of non-compliance when the auditee has not observed:

A/ the legal framework – in Compliance Audits concerning regularity or

B/ the general principles of good financial governance in the public sector or the conduct of civil servants in the public sector – in Compliance Audits regarding correctness.

That is, in case the authorities of Supreme Audit Institutions (SAI) ascertain a deviation from the legally prescribed criteria⁸ or from the general principles of good financial governance in the public sector, or deviations in their civil servants' conduct, this is considered as non-compliance.

Identifying of non-compliance with the legal framework, that is, the criteria which are derived from it, is much easier to achieve and prove.

In the case of public procurement audits, to define criteria that refers to the legislation which regulates the processes in this field, is much easier work to be done. In this connection, permanent criteria can be worked out to be used until legislative acts regulating the assignment of public procurement need to be amended.

In relation to observing the general principles of good financial governance and civil servants' conduct in the public sector, setting of criteria to examine compliance is a much more complicated endeavour.

Under the terms of ISSAI 1003, Performance Audit is an audit on the provident use, efficiency and effectiveness of resources upon the audited object's performance of obligations. It is also known as Value for Money Audit.

In accordance with ISSAI 3000⁹, Performance Audits may cover various audit objects and may apply a vast range of research methods. As a result, the level of detailed description of the requirements allows for flexibility and provides a good opportunity to utilize various audit approaches.

Composite parts of the Performance Audit can be part of an audit of a larger scope which incorporates both Compliance Audit and Financial Audit. When various types of audits overlap (or when combined audits are performed), the auditor must respect all

⁷ Instructions on Compliance Audit – regarding audits performed separately from audits of financial reports.

⁸ *Criteria* – reference indicators applied for assessment and measurement of audited objects, when appropriate, including contingent criteria for presentation and disclosure. Criteria can be formal or less formal. For one and the same auditee can exist different criteria. What is necessary, are appropriate criteria for judicious sequential assessment or measurement of the audited object within the context of professional judgment (INTOSAI 1003)

⁹ Standard on Audit Performance

applicable standards and take into consideration that should there be different priorities, the main purpose of the audit will lead the auditor on what standards to apply.

Performance Audits carried out by SAI represent independent, objective and reliable check on whether government initiatives, systems, activities or organizations function in conformity with the principles of economy, effectiveness and/or efficiency and whether improvement is possible.

Performance Audit contributes to the improvement of economy, effectiveness and efficiency in the public sector. Performance Audit as well promotes good governance, accountability and transparency. It endeavours to provide new information, analysis or knowledge and where appropriate recommendations for improvement.

According to ISSAI, the audit in the public sector is performed in an environment where state institutions and the other public objects bear the responsibility for using the resources, collected from taxpayers and other sources, on rendering services to civilians and other users. These objects have the obligation to account for their governance, performance and use of resources before those who provide them and before the civilians who count on the services with the help of the resources. The audit in the public sector promotes creating of favourable provisions in order to support expectations that organizations in the public sector and their civil servants will perform their duties effectively, efficiently, ethically and in compliance with the applicable statutes and provisions.

Generally, the audit in the public sector can be described as a systematic process of purposeful obtaining and objective assessment of evidence to ascertain whether rendered information or real conditions comply with the standing criteria. The audit in the public sector is of substantial importance in view of the fact that it delivers to the legislative and supervisory bodies, to the persons in governance and the society, information and independent objective pronouncements concerning governance, execution of state policies, programs and activities.

According to ISSAI 100¹⁰, the audit in the public sector is crucially needed to public administration as public funds management is a matter of trust. The audit in the public sector delves into and expands confidence of target users by rendering information and independent, objective assessment regarding deviations from adopted standards or institutes of good governance.

¹⁰ Basic audit principles in the public sector

All audits in the public sector hold the same basic elements: an auditor, a liable party, target users (the three sides of the audit), standards for the audited object assessment and obtained information about the auditee, resulting from the audit.

The object of audit is the information, the provision or the activity which is measured or assessed toward specific criteria. The proper object of audit is the one that can be identified and allows consistent assessment and measurement toward set criteria by way of incorporating procedures for collecting adequate and relevant audit evidence in support of the audit statement or conclusion.

Criteria are reference indicators used in the audited object assessment. Every audit must have criteria appropriate for the provisions of a given audit. Criteria ought to be accessible for target users so that they can understand the mode of assessment and measurement of the auditee.

The information about the object of audit refers to the outcome of the assessment or measurement of the auditee toward the criteria. This info may come in various forms and features subject to the purpose and scope of the audit.

The audit implemented by the legally authorized bodies ought to span *the whole process* attendant of the corresponding public procurement. The process initiates from the moment the decision has been made by the assignors, about the procurement they intend to carry out during the year.

The checks at the different stages include stand-alone and/ or various types of control which ought to be performed by the empowered authorities.

With the aim to facilitate the audit performance and presentation of information to the interested parties, the process of assigning public procurement can be divided into three separate procedures (see the graph in the supplement):

Procedure No.1 - planning of public procurement

Procedure No.2 - holding public procurement

Procedure No.3 - execution of concluded contracts based on public procurement

Systems for financial management and control of public procurement:

The systems for financial management and control include a system for preliminary control and a system of dual signing related to taking financial obligations toward spending.

1) *Compliance with legislation, internal acts and contracts:*

Managers are obligated with the provision all civil servants to abide by the applicable legislation which incorporates secondary legislation, internal acts and contracts to

which they are parties. They regulate the main operations and activities implemented in the organizations from the public sector, the way they function, collect and disburse public resources.

2) *Trustworthiness and comprehensiveness of the financial and operative information:*

Heads of administrations organize to register and communicate requisite, appropriate, reliable and useful information in due time. The information created, stored, utilized and submitted by a given organization has financial and non-financial nature. It is of exclusive importance, as it is the base on which tasks are fulfilled, decisions are made and truthful, correct and trustworthy financial reports are worked out.

3) *Economy, effect and efficiency of the activities:*

The institute of good financial management lies on three requirements – economy, effectiveness and efficiency.

4) *Protection of assets and information:*

Acquisition, utilization and management of assets and information require special care on the part of management. Building of internal control must guarantee safeguarding the assets and information and act in prevention against theft, misappropriation, destruction and some other wrongful acts.

Relationship between purpose and the elements of financial management and control (FMC).

There is a direct connection between the purpose of an organization (i.e. what the organization strives to achieve) and the elements of FMC (i.e. what you need, to accomplish the purpose)

The five elements of FMC are as follows: control environment, risk management, control activities, information and communication and monitoring. The elements are interdependent, they supplement one another and relate both to the whole organization and to its separate divisions, activities and operations.

The checks made with reference to public procurement also go through the filter of the five elements of the system.

On analysing the annual reports of the Audit Office for the period 2011 – 2018 regarding function of the Systems of financial management and control, it was noticed that in each one of the audited objects the list of established irregularities overlapped almost entirely. Provided that very often institutions, which become audited objects for compliance with

financial management, have repeated the same identified omissions throughout the years in the conclusions of the Audit Office, tells of rather ineffective follow-up control i.e., inspections performed to check whether the given recommendations have been fulfilled.

Authorities that implement control over public procurement compliance with legislation and which make up the System of public procurement control

The dissertation treats the main obligations, structure and public procurement powers of the Audit Office of the Republic of Bulgaria (AO), The Agency on Public Procurement (APP), the Agency of State Financial Inspection (ASFI), Committee on Protection of Competition (CPC), the Supreme Administrative Court (SAC), the Executive Agency “Audit on European Union resources”(EA “AEUR”) as well as the managing bodies to the operational programs, which in the author’s opinion represent part and parcel of the System of public procurement control.

Types of infringements – identification and classification

Public Procurement can be treated as one of the main tools for effective and anticorruption management of state and community resources. To cope with the requirements of transparency, during the different stages of the public procurement process, assignors ought to observe the requirements of the legal framework which regulates the conduct of procedures. To this end, the authorities empowered to draw up the legislative acts in this field, must ensure provisions such as 1) fair treating and equal standing of the participants; 2) the utilization of state resources to fund public procurement shall be in conformity with the defined goal; 3) adequate and timely control over the procedures;

On assigning public procurement, are expended public resources which substantiates the necessity for implementation of effective control. In this connection, to carry out inspections and audits by different institutions promotes the identification and prevention of a row of violations. In general, the infringements ascertained by specialized institutions can be presented the following way: 1) division of orders; 2) incomplete announcement and/ or documentation; 3) violations tied to appointment of performers of public procurement; 4) infringements on releasing guarantees; 5) failure to submit mandatory documents when concluding contracts; 6) failure to send information to the Registry of public procurement and to the Official Gazette of the European Union; 7) unlawful amendment to an already concluded contract.

From the enlisted infringements, visibly, the assignors allow variances related to the choice of procedure and wrongful determining of threshold value of orders, which on its own part, is telling about mala fide attitude and lack of knowledge of the legislation.

And if ignorance of the law is a signal predominantly toward the management of the assignors that they are supposed to recruit staff who are competent of the matter and/ or are aware of the need to organize training seminars, mala fide attitude is a signal to the control bodies about deliberate actions of the assignors.

Identifying of irregularities and frauds at the performance of procedures on assigning public procurement is a problem that needs constant and in-depth research.

Public procurement very often appears to be a source of unauthorized acquisition of funds or other benefits for the assignors or their representatives.

The dissertation has entries of definitions of major terms and notions such as “irregularity”, “fraud” and “corruption” often attendant of establishing deviations from statutory requirements at the stages of conducting public procurement and execution of contracts.

Upon identification of the main indicators for finding irregularities and frauds in the field of public procurement, a division can be made into the stages which public procurement goes through.

CHAPTER III. Methodological grounds for analysis and assessment of the system of public procurement control

One of the main prerequisites for the development of modern business is sustainable legislation. Sustainable is supposed to mean a legislative framework which is steady to changes, balanced in requirements, with texts which *serve* and with mitigated requirements to legal entities to which they are addressed.

Sensitivity of economic subjects towards changes in legislation runs extremely deep, you can even name it “painful” concerning regulations on public procurement. Any amendments to legislation influence substantially not only subjects in the procedures for assigning orders but as well the corresponding control bodies. Over the time, since the adoption of Public Procurement Act in 2004 until March 2015, there have been passed and promulgated over 35 amendments and supplements of statutory texts and since its enforcement in 2016 till the end of 2019 – 18 more.

Interaction of authorities for exercising control over compliance with public procurement legislation

The interaction of authorities on exercising compliance control in public procurement is the backbone for high accomplishments with effective, efficient and provident expenditure of public resources based on public procurement procedure.

The system of public procurement control renders safety to the potential users of benefits that they will receive the best value for money.

The paper contains graphic presentation of the participants in the System of Public Procurement Control (SPPC) and the way they interact.

The one thing that unifies the three separate groups, where the participants are, is the operative legislation.

In the first group are the assignors, the candidates/ participants, and the administrators. Depending on the viewpoint, one and the same institution can be in the role of assignor, as well as a candidate and in some cases – an administrator. Control authorities, besides being in that capacity, are as well assignors.

To the second group belong the subjects which make up the System of Public Procurement Control.

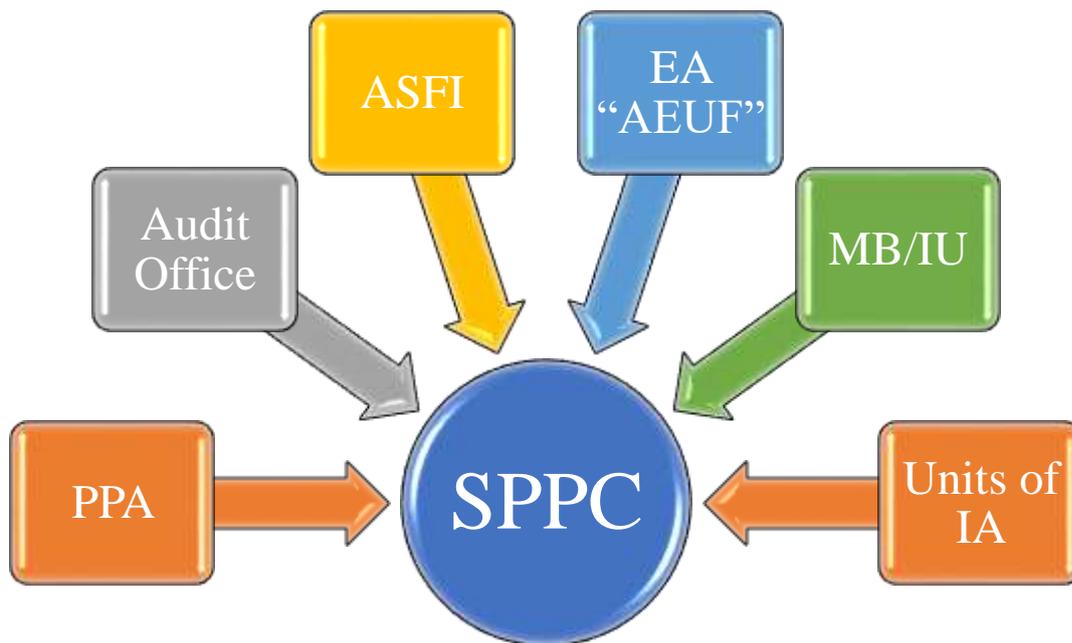


Fig.2 Diagram of the subjects, forming the System of public procurement control

The appeal authorities occupy the third group. Although they can be attached to those with the control operations, regarding regulation of relations between assignors, on the one hand, and candidates/participants, on the other hand, CPP and SAC, are in fact, one level above the described control authorities. As the work of CPP and SAC have a direction

somewhat different with a very specific nature, the current dissertation will limit to examining only the activities of the remaining institutions.

In view of the increased number of procedures and their division into procedures for public and sector assignors, the increased number of assignors as well, to enlarge the circle of subjects executing control functions as part of SPPC, is imperative. This comes to explain why in the circle of SPPC are also placed APP, The Audit Office and ASFI, EA “Audit of European Union Funds”, the managing bodies and the interim units of the operational programs and the internal audit units.

Signed agreements between the Audit Office and other institutions for cooperation and interaction on control over public procurement.

Interaction among the Audit Office, ASFI and APP, before the adoption of PPA in 2016, was based on the agreement signed on 19.04.2005., “*Agreement for cooperation and interaction among AO, APP and the Agency for state internal financial control¹¹ in the field of control over public procurement.*” The agreement makes arrangement for: the official relationships among the three administrations concerning assistance in effective disbursement of budgetary, extra-budgetary and other public funds through public procurement; providing effective quality control; achieving coordination among all control authorities; reporting mutual interest based on cooperation; respecting independence of institutions empowered by virtue of the Constitution and statutes of the Republic of Bulgaria.

On the day of signing the trilateral agreement, Art.18 enabled the Chairman of the AO to request from the executive director of the APP to submit summarized information from the Registry of PP.

The fulfilment of obligations of each one of the three institutions was not quite up to the mark. The AO has requested twice the APP to provide information in connection with the legal obligation of the Agency to collect data from the assignors about conducted public procurement. The requested information referred to audits of AO. Without any lawful arguments, APP refused to submit the information and in one of the cases admitted that the Agency did not possess the necessary resources (human and technical) to process and submit the requested data. This contention with APP arose despite their obligations under PPA (repealed) and Regulation on Application of PPA (repealed), to collect, process, store and on the grounds of the agreement, to commit the requested information to the AO.

¹¹ With SG No. 3 of 21 April 2006 was promulgated the Act on State Financial Inspection according to which ASIFC was restructured and renamed to ASFI.

From the analysis of the AO's work – participation in audit tasks, reviews of internal acts which regulate the activity of the institution, posted audit reports on the Internet site - it is visible that information, which relates to number, type, and value of the announced, terminated and completed procedures, public tenders and concluded contracts, are requested and provided by the audited objects. Part of the information necessary to exercise control can be accessed on the web site of APP and with the amendments to PPA as of 2014¹², a large part of the information ought to be accessible to its users in the buyer's profile of the specific assignors. But since the enforcement of the current PPA¹³, the publicly accessible information has been again restricted.

The collecting of data by the auditors about public procurement carried out by the auditee is linked to information review available on several Internet sites. Collected information also contains references, prepared by representatives of the audited organization, delivery of documents by various departments of the assignor, interviews etc. The whole process takes considerable time and resources.

Owing to the fact that for part of the information there are deadlines and a corresponding sanction if you fail to obey, the approach of performing cross-checks has a disciplinary effect on officials responsible for sending the information and the result is – quality improvement of public procurement.

Under ISSAI 4100¹⁴, when scheduling the audit activity, it is necessary that criteria or reference indicators should be identified toward which the subject of the audit will be compared.

Criteria are due to be appropriate, namely: 1) Relevant; 2) Reliable; 3) Comprehensive; 4) Objective; 5) Understandable; 6) Comparable; 7) Acceptable; 8) Available.

On planning an audit, particularly checks on public procurement, criteria about the collected audit evidence as reliable, comprehensive and objective, must be laid down. Gathering of information by staff members of the organization which is being audited, moreover directly involved in doing the checks and potentially subject to being imposed administrative sanctions for failure to statutory regulations, creates a risk of obtaining data which have been manipulated and do not present the process objectively whereas in some cases they are even covered and/ or and unreported.

¹² SG, No.40 of 2014, enforced as of 01.10.2014

¹³ 15.04.2016

¹⁴ Compliance Audit Instructions – regarding audits performed separately from audits of financial reports

In this connection, the refusal of the director of APP to submit information to the AO authorities affected directly the quality of the audits. This is how audit reports risk to contain findings and conclusions based on unreliable information while the recommendations will lose their intended purpose - remedying of the SFMC in the organization.

This lack of coordination between the three major institutions in the field of public procurement has been pointed out in the dissertation, with reference to the trilateral meetings which they had to hold under the repealed PPA.

Toward the moment of writing this thesis, as of 01.03.2019, a standing expert board for cooperation has been set up with the participation of representatives of the AO, APP and ASFI. The work of the board will follow rules acknowledged by the Heads of the AO, APP and ASFI.

Nevertheless the legal obligation for setting up and regulating the activity of the board, seven months later, on the site of just one of the three accountable institutions there are some documents posted and/ or other information regarding the formation and regulation of the activities and the actual actions of the Board.

Agreement between the Audit Office and the Agency of State Financial Inspection

In execution of measure 12.3 of the National Strategy for development of the public procurement sector in Bulgaria over the period 2014 – 2020, the Audit Office and the Agency of State Financial Inspection have drafted and signed a Guidebook for uniform ex-post control in the area of public procurement, exercised by AO and ASFI.

The Guidebook adopted by the two authorities, is an important document which will benefit persons performing checks on public procurement. Uniformity in the practices of the controlling bodies is a right approach if only the written rules are applied de facto. An example that coordination of practices between the two institutions does not go to the end, is the fact that they failed to work out uniform control lists to be used in the checks.

Regrettably, there is again one more case of coordinated activities in public procurement only between part of the institutions which make up the System of Control.

Access to information in reference to exercising control over public procurement by the Audit Office and ASFI

On performing their work, state institutions ought to inform the public about the services and the results they have achieved during specific periods of reporting. Public procurement is a topic which is of interest to public opinion mostly for the fact that taxpayers insist on knowing how their funds are being spent. This is exactly why the control authorities

must monitor the effective, efficient and sparing expenditure of public funds and inform the public.

While preparing to write the current dissertation, an analysis of the information posted on the Internet site of the AO and ASFI was carried out. What made an impression was, that the information offered on the site of AO, despite the aforesaid flaws, was much more detailed. Here is the moment to note that the Internet site of AO displayed the received audit reports in full volume whereas the information on the site of ASFI was considerably less and more summarized. Unavailable or insufficient data, in compliance with the provisions in the Access to Public Information Act, was further demanded from both authorities.

The managements of Audit Office submitted the requested information. As for the claimed data about number and types of infringements identified by the authorities of ASFI, regarding checks on public procurement, information was not available at the Agency the way it should be, and it did not have a function to create such so as to be rendered upon express demand. In his response, the director of ASFI addressed the Internet site of the Agency, where claimed information could be found in the annual reports. On reviewing the corresponding reports, it was found out that the requested information needed more details than the one given in the entries of the annual reports, which did not cover it.

Given the refusal of the director of ASFI to render the claimed data, the dissertation made an elaborate analysis based on the information produced by the AO and the additionally gathered data from different sources.

To prove the effectiveness, efficiency and economy at accomplishing the activities on control of procurement by the AO, for the dissertation work study has been done research such as:

- Analysis of the administrative capacity related to public procurement.
- Analysis of the mode of presenting information in the Annual reports and Audit reports.
- Performed training of staff.
- Preparedness of AO to fulfil the entrusted administrative penal function.
- Empirical test carried out with the help of an inquiry card to receive the opinion of employees of AO about the status of control in the establishment and the level of competence of auditors.

Administrative capacity engaged in the performance of audits on assignment of public procurement and execution of concluded contracts

The frequent amendments to the legal framework, which regulates the work of AO, brings along changes in the structure and organization of work of the establishment. Considering the multiple alterations in the structure of AO, the work organization has gone through multiple transformations as well.

Organizing of audit tasks regarding public procurement audits and reporting the results of their performance.

In conformity with the adopted practices and methods, over the period 2011-2015, in Compliance audit on financial management were explored three audit spheres: budget, public procurement assignments and property. During the period 2015- 2019, apart from hereinabove three spheres, to auditors was given the opportunity to survey other spheres of activity of the audited organizations as well.

In the audit sphere “Assignment of public procurement”, auditors survey: 1) internal regulations governing the operations of planning, assigning and performing of public procurement; 2) scheduling of public procurement; 3) particular procedures selected on a sample principle; 4) unperformed procedures; 5) execution of contracts.

Assignment and Execution Audits on public procurement are tasks which cover the processes of scheduling, performed/ unperformed public procurement and execution of concluded contracts. The audit stages are the same as the afore mentioned, though the volume of audited procurement is larger.

Program of the audit activity and Report on the work of AO of the Republic of Bulgaria over the period 2011-20018.

The Program of audit activity of AO for the respective calendar year, scopes audit checks which, partially or entirely, are conducted on scheduling, carrying out and assigning of public procurement and execution of concluded contracts. The audits performed on public procurement are of the type Compliance Audits and are, for the most part, in the Audit Directorate “Compliance audits of financial management”. On separate audit tasks, the audit is also made by Audit Directorate “Specific Audits”.

Comparative analysis of the Programs for audit activity and the Reports of AO has been carried out, spanning the period 2011-2018.

On accounting the activity of public procurement, in each report it was written that material deviations and inconsistencies were identified. On analysing them, they entered this

paper as it was established that the ascertained inconsistencies were of the same kind and they repeated over the years. In relation to this, it was also found that neither of the establishments, part of the hereinabove System of Public Procurement Control, made a campaign to train and explain or to make popular the good and bad practices of assignors of public procurement. The result of the passive attitude of control institutions and mostly that of APP is that the identified violations are to a large extent of one type and tend to repeat.

Structure of AO audit reports.

Under ISSAI 4100, the objective of Compliance Audit is to reassure audit users about the audit outcome of the assessment or measurement of the audit subject toward appropriate criteria.

In this connection, the auditor must build trust with target consumers regarding audit results. This can be achieved by balanced and substantiated interpretation of how findings, criteria and conclusions have been elaborated and how the overall conclusions and recommendations have been reached based on the findings.

Reporting is the way to inform users about the status of the respective audited process. It is an essential part of an audit in the public sector and enlists reporting of deviations and violations, the aim of which is taking corrective actions so that the respective officials can be held responsible for what they have done. Underlying audit principles prescribe that each audit should end with a written report where findings are stated in a proper way.

The activity of the Audit Office is implemented through a Guidebook, adopted by the management, which applies the Internationally acknowledged audit standards and audit activities. This Guidebook was compiled based on the ISSAI. In the General Part of the Guidebook are reviewed the aims and objectives of all types of audit. In a special chapter, "Compliance Audits", the general rules are further developed in relation to their application in Compliance Audits and specific rules, procedures and steps in the performance of this audit are looked at. On carrying out Compliance Audits, the two parts of the Guidebook are applicable together, whereas in cases when themes/ procedures/ issues are not covered in the "Compliance Audit" chapter, the rules in the General Part of the Guidebook are applied.

In compliance with ISSAI, respectively the Guidebook, audits are carried out by tracking certain operations/ sub-operations underlying the audit objectives.

At the performed survey and analysis, the following is visible:

1) In their final statements, the reports, containing information which refers to public procurement audits, possess similar structure. One can see that naming of the items in the report varies but their content structure is identical.

2) In items where the established state of audited procurement should be described, is presented information which is simply a description of the audited procurement with the identified irregularities. In other words, presenting deviations from selected and defined criteria of specific public procurement instead of giving the whole picture with identified problematic stages of processes and sub-processes, which ought to be traced.

Presenting information, likewise, does not give an idea to the users, i.e. the management of audited institutions, civilians, public organizations and some other interested persons, about the state of public procurement system which functions at the assignor. The presented irregularities are meant to inform the assignor where specific irregularities in the audited procurement are, for which infringements they will be sought the respective administrative penal responsibility.

Methods of conducting public procurement audits by Audit Office

According to Art.13 of the Administrative Procedure Code, administrative authorities shall duly and publicly announce criteria, internal rules and established practice of exercising their operative autonomy in applying the law and achieving its objectives.

On the Internet site of Audit Office or in any other public place, administered by the establishment there are no published criteria and/ or other internal rules on performing audits, nor is there an established practice of exercising its operative autonomy.

Electronic references, Control lists (check lists) for carrying out checks on public procurement, adopted for work in Audit Office.

One of the examples for lack of vision regarding the audit of public procurement is the want for methodology which will regulate processes related to organizing, conducting and assigning of public procurement as well as tracking the execution of concluded contracts. In compliance with the existing practice, collecting of information and documenting the state is done by the auditors themselves requesting data from the audited assignors by means of questionnaires, references, check lists etc. in the “docx” format. Software potential is not made use of, neither specialized software (expressly programmed for checks on public procurement), nor the most widely used Excel and Access.

The role of methodology in implementing control is particularly important. The whole set up of the process has been prompted by the necessity of methodological assistance - timely, in proper limits and provided by competent staff.

As a major problem, concerning the use of control lists by the control authorities, I would firstly point out the format which has to be filled in. Considering the variety of problems which can be encountered at the checks of public procurement, the control lists have a volume of 20-25 pages when they are not filled in (having in mind the procedure which is being checked and the description of problems auditors may come across), and can reach twice as many or even three times after finalizing the check.

Because of the volume of questions and annotations in the control list (CL), it is likely some of the questions to identify infringement which will not be transferred in the conclusive part of the CL.

With this volume of CLs, it will be hard for the controller to trace the described facts and circumstances in the performed checks so that he could reach the respective conclusions and evaluation.

At this recite of problems, it is visible that methodological guidance and activities relevant to the provision of suitable control environment, have not reached the mark yet.

Functions on administrative penalties

Administrative penal proceedings for infringement of RAPPa are instituted only by officials of ASFI, as the penal body is the Minister of Finance or empowered by him officials.

Seeking administrative penal liability on violations of PPA.

For the aims and objectives of this dissertation study, the Audit Office was requested data about identified infringements in performed audits over the period 2011-2015 incl. The period was chosen in conformity with the powers of AO as regards administrative penalties for offences in the process of organizing and conducting public procurement. Based on the rendered response, the most common offences in public procurement were analysed.

The elaborated analysis showed that during the first year of applying the administrative penal activity on public procurement, effectiveness of the Audit Office was more than unsatisfactory. Visibly, the control bodies in the institution and the ones engaged with the entire process of seeking administrative penal responsibility, were not prepared to meet the challenge, which the legislator has envisaged, with the adoption of the Audit Office Act. As a result of this new to the institution function, considerable obstacles emerge for the participants in carrying out procedures upon application of PPA, pertinent to both assignors

and candidates/ participants. The drawing of an EMPA and the involvement in penal prosecution will engage considerable resources in its appealation. It is also evident that the resources of the assignors are much more effective than those of the penal body.

Trainings of the auditors' panel related to public procurement audits.

One of the factors that influences the quality of audit activity and the function on administrative penalty is the available human factor and their capacity. The civil servants' competence is determined by their education, qualification, experience and by attended concurrent trainings on legislative changes or on getting familiar with the good and bad practices in the respective field.

From information published in the annual reports, it is visible that Audit Office aims to direct checks towards administrative violations with a written statement ascertainment. Until reaching the stage of drawing up executive management penal acts (EMPA), the auditors have to undergo various procedures – to demand inquiries of various sorts, to inspect whether the acts of the officials and the documents made out by them comply with the regulation, to analyse the information gathered etc. From the annual reports of Audit Office, apparently the institution does not conduct in-service trainings for qualification of auditors on the main stages a public procurement check goes through, until it comes to drawing an EMPA. Emphasizing the written statement ascertained violations, shifts, to some extent, the main accent in the public procurement check. Practice shows that some violations though not directly bound to administrative penalty can occur and they are essential to the economical, efficient and effective spending of public funds.

Consequences of empirical research carried out among civil servants of the Audit Office on the status of control in the institution and auditors' level of competence.

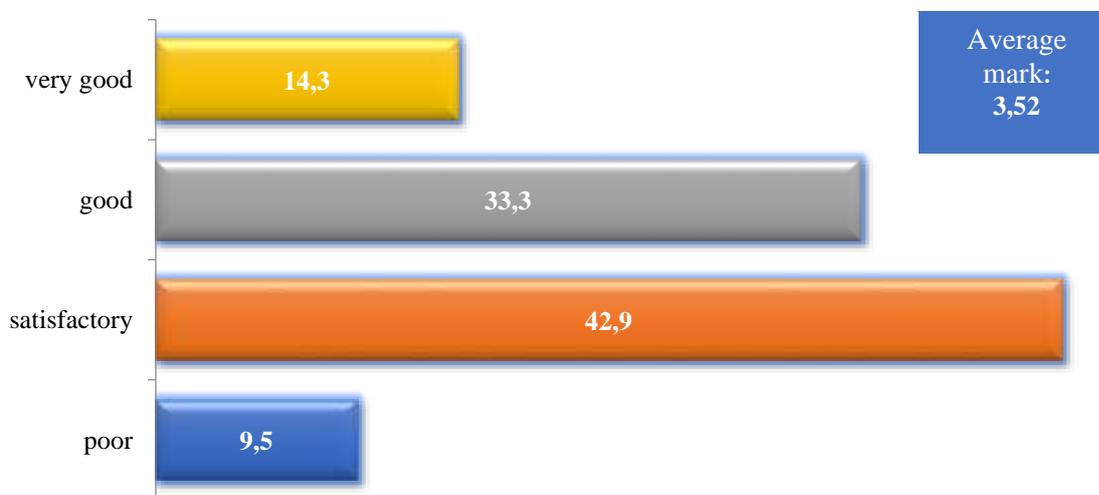
The inquiry conducted among the staff of the Audit Office on the activity of the Institution in the field of public procurement control covered seven major areas:

1. General questions concerning the activity of AO in the control of public procurement.
2. Questions related to conducted trainings on public procurement.
3. Questions related to the utilization of specialized software for control of public procurement.
4. Specific questions related to conducted checks on public procurement.
5. Questions related to problems which occurred with audited objects.
6. General questions related to the respondent.

7. Recommendations provided by the respondent.

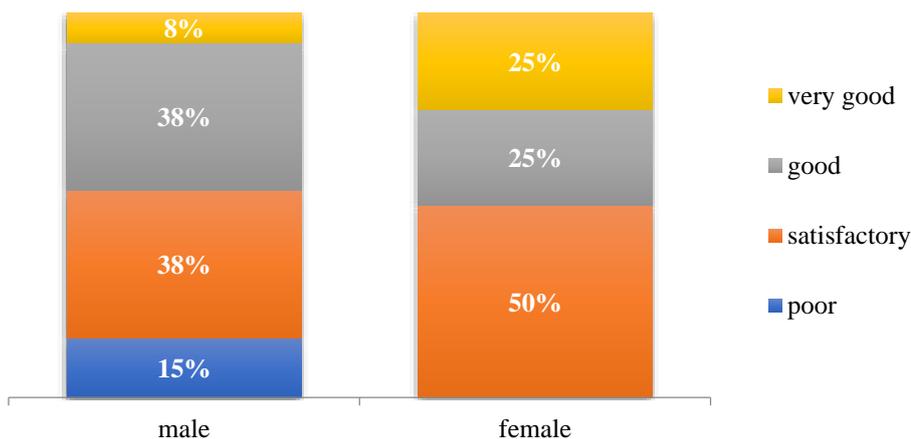
The average number of auditors who participated in conducted compliance audits in the financial period 2011-2014 were 93,5 persons. The current poll represents sample statistical research of 20% of the aggregated figure (93,5 persons) and encompasses part of the individuals in the general aggregate – 19 persons. The survey was conducted in July – December 2015. The outcome of the survey allows to make the following inferences and conclusions:

The average mark given by the respondent auditors, on the level of control of public procurement, implemented by Audit Office is 3.52. The biggest share has the mark “satisfactory” – 42,9 per cent of all given responses.



Graph No. 1 - Total score of the level of public procurement control implemented by Audit Office

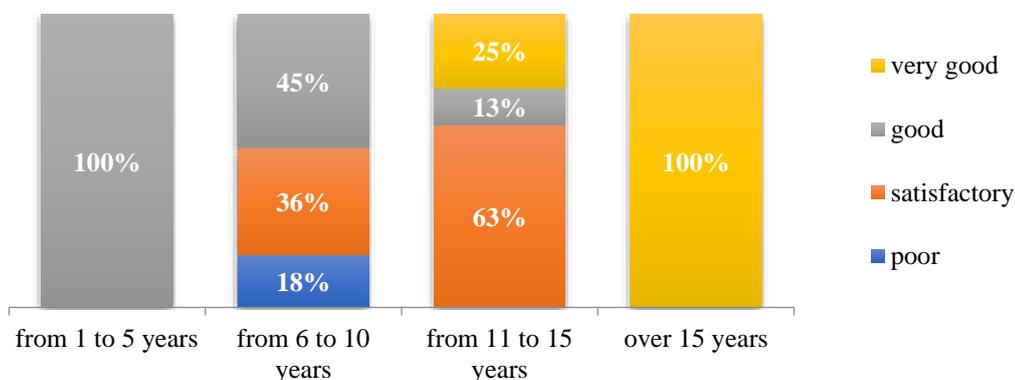
Most impressive is that neither of the respondents has given the mark “excellent”. The highest score is “very good”, given by 14,3 per cent of the respondents while the lowest is “poor” – 9,5 per cent of all respondents. In this case, the evaluation on the level of control is done by people who exercise control over public procurement as part of their occupation. In this connection, the marks given, can be interpreted as level of qualification/ preparedness and methodology used by and expressed by respondents themselves.



Graph No.2 General evaluation of the level of public procurement control exercised by Audit Office by gender of respondents

It is interesting to note the division of responses by gender of respondents. Obviously, the graph shows that women in AO take a different viewpoint from men about the level of exercised public procurement control. Due to this, 15 per cent of men give “poor” mark to control. The biggest share of marks given by men auditors are “good” and “satisfactory” - 38% each, and just 8% for the mark “very good”.

With women auditors, the mark “satisfactory” is given the largest share in their responses, while “good” and “very good” have got equal number responses – 25% each one.



Graph No.3 General evaluation of the level of public procurement control implemented by Audit Office related to years of work experience of respondents

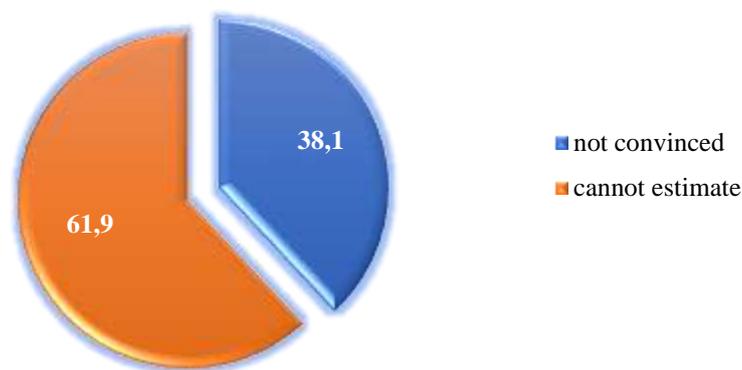
On analysing the responses by the criterion “work experience in the institution”, apparently hesitation lies in the evaluation of auditors with work experience in Audit Office between 6 and 15 years. The score shows that respondent auditors who have work experience over 5 years are still very enthusiastic about the opportunities which the institution offers and evaluate the level of control in public procurement as “good”.

After the sixth year, the auditors' optimism declines and the mark 'good' plummets from 100% to 45%. Some dissatisfaction begins to show concerning the level of control, which is achieved when involved in public procurement, whereas 18% of respondents have shown totally negative attitude.

With the third group of auditors who have work experience between 11 and 15 years, predominates the opinion that public procurement control is satisfactory. Here, utter negativism is not perceived but there is transit to absolute positivism with 25% responding with the mark "very good".

Auditors of over 15- year experience consider the level of control in the field as very high.

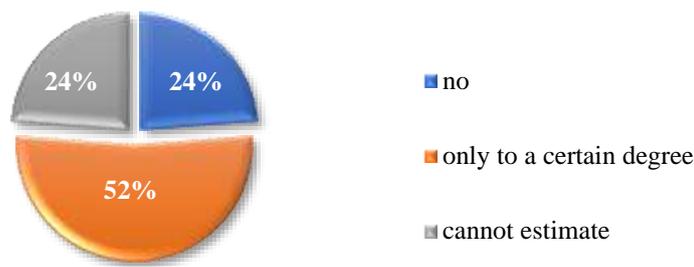
When asked the question: "How do you feel about the assertion that the level of control over public procurement, implemented by Audit Office, is at the level of implemented control by Audit Offices in other EU countries?", the respondents emphasize the two responses – not convinced/ cannot estimate.



Graph No.4 The level of public procurement control of Audit Office compared to that of other Audit Offices in EU

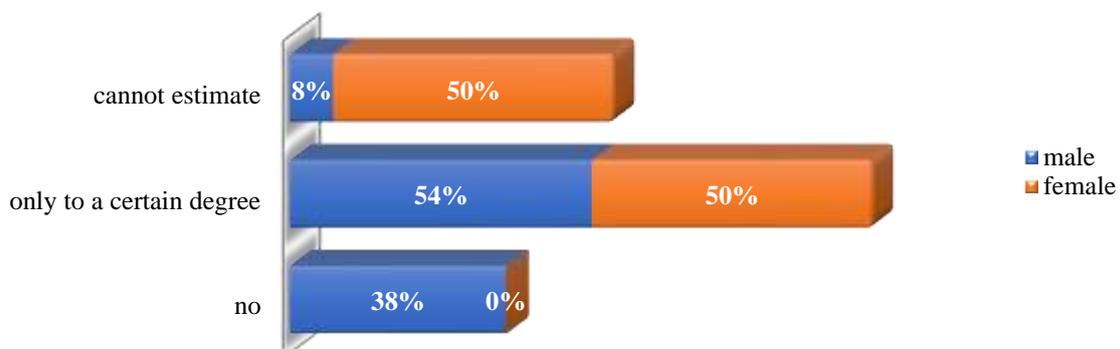
The high percentage of auditors, who cannot give definite answers to the question can be explained with the fact that they lack basis for comparison. As it is evident from hereinabove, over the period 2011-2014 the Audit Office did not arrange and/ or attended training seminars and audits on public procurement with other Audit Offices in the EU. This lack of opportunity for exchange of professional experience, can be said to be one of the basic problems to be solved by the institution.

When asked the question: „Do you consider training on public procurement (both internal and external), organized by Audit Office, to be sufficient?“, the most common answer given was „only to a certain degree“ in 52 % of the cases.



Graph. No.5 Are trainings on public procurement (internal and external), organized by Audit Office the requisite ones? (%)

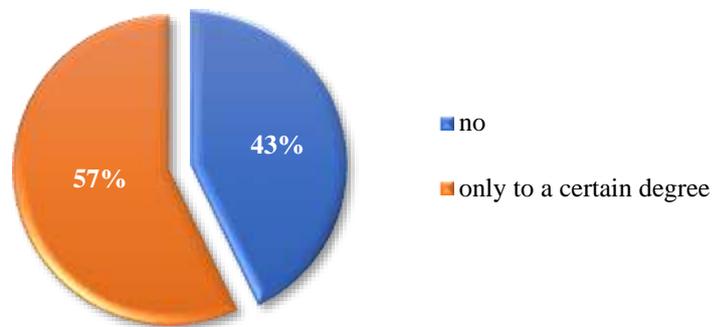
Those who could not estimate, equalled in number with the ones who were not satisfied with the conducted trainings on public procurement. The high percentage of hesitating is indicative that the respondents are mostly dissatisfied with the training offered by Audit Office. This hesitation to express definitively your opinion comes from the fact that not in every compliance audit the respondent auditor inspects public procurement. Practice shows that one and the same auditor in certain audit may check cases of public procurement whereas in the next audit another fellow can be engaged in this field. One more argument in favour of hesitation opinions is the specifics in the activities of the various auditees, where audits are carried out. This is how the same auditor could, in a particular moment, land in a big budget ministry where considerable financial resources were expended on public procurement, and in the next – to deal with a second level spending unit, having put funds in a small number of orders. Similarly, in one audit the auditor may have had to check public procurement of a municipality with considerable financial resources expended through public procurement and in the next moment to do a check in a municipality with a humble budget, where the cases that occurred were less and easier to resolve. Here, what also matters is the type of procedure and assignment, which will be subject to audit.



Graph. No.6 Are trainings on public procurement (internal and external) organized by Audit Office requisite? (by gender)

The answers to this question, showed again divergence in male and female opinions. Females are hesitating more when they are supposed to give a definitive answer and tend to express neither positive nor negative attitude to whether conducted trainings are requisite. On the other hand, most males give expressly their negative answer to the same question – 38%, and the highest percent gathers the answer “only to a certain degree” – 54%. What makes an impression is, that the percentage male to female regarding whether trainings are requisite almost equals- 54% with males and 50% with females.

The discontent of auditors with the public procurement trainings, conducted by Audit Office, is visible from the responses to the next question:

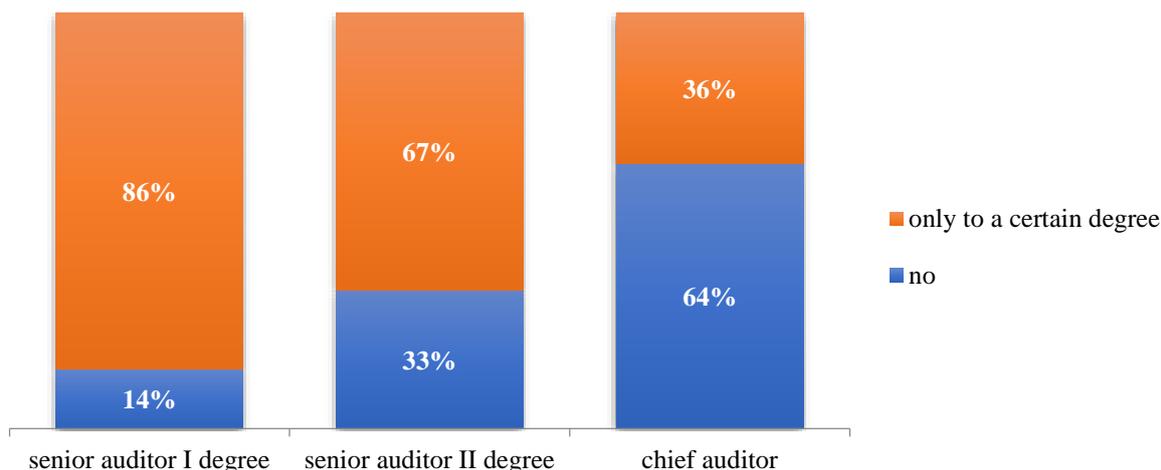


Graph. No.7 Practical orientation of the conducted trainings on public procurement

When asked:” Did you consider that trainings on public procurement (internal and external) organized by Audit Office were oriented towards practical needs?”, answers were given by all respondents. The inquiry card suggested expressing opinions by pointing out four types of answers – “no”, “only to a certain degree”, “entirely”, “cannot estimate”. The auditors though gave only two answers:

- “no” – 43% of all respondents
- “only to a certain degree” - 57% of auditors

The answers to the question intrigue when taken in relation to the positions occupied by respondents.



Graph. No.8 Practical orientation of conducted trainings on public procurement control. (by occupied position)

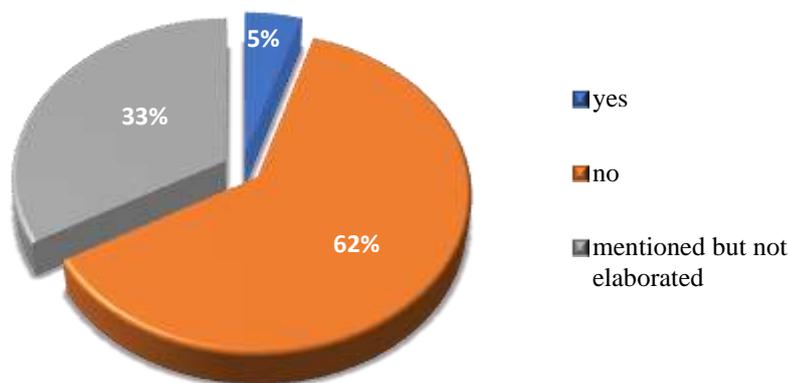
It is evident by all submitted answers that, the more practical experience the auditor gains, the more training he needs so he can deal with the tasks set before him. The conclusion makes sense, since by getting promoted and by gaining experience the staff are confronted with more and more complicated tasks to fulfil. It transpires that within formed audit teams, chief auditors commence training auditors of lower rank or of newly recruited, or get appointed as heads of audit teams, which on their part, engages them in more serious obligations and responsibilities.

There are also interesting responses drawn from the query, “To what extent, the knowledge you acquire during trainings (internal and external), organized by Audit Office, is compatible with changes in the legal framework?” From the suggested five possible answers in the inquiry form, which varied from “absolutely not pursuant to legislation” to “entirely in agreement with legal amendments“, dominated positive responses. One fifth of the respondents have given evasive answers and have been unable to express an opinion to what extent legislative amendments underlie the conducted trainings. There is no participant who has answered negatively, though. These responses are quite encouraging and at the same time they are a good warning to the management bodies of Audit Office and their intentions as well to the lecturers who deliver trainings.



Graph No.9 Commitment of public procurement themes of trainings to legislative amendments.

Providing of trainings related to public procurement control is obligatory and ought to contain themes pertinent to finding out frauds and irregularities. The most susceptible and favourable for the assignor place of attempted deceits is the defining of indicators for the criterion “Economically most beneficial offer”¹⁵. With regard to this, in the inquiry form was put the question: “In conducted trainings, organized by Audit Office (internal and external), have you been trained how to detect frauds in audits on public procurement with an offer assessment criterion “Economically most beneficial offer”?”

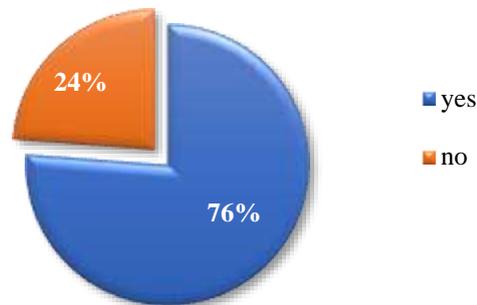


Graph No.10 Commitment of themes of trainings on public procurement to legislative amendments

Regrettably, only 5% of the respondents considered to have been instructed on this subject matter, while with 33% the topic was touched upon in some other types of training and 62% of the respondents have never attended trainings which treat the matter thoroughly or to some degree. Similar results ought to be looked upon as an indicator that trainings on detecting frauds and irregularities in public procurement need to be conducted.

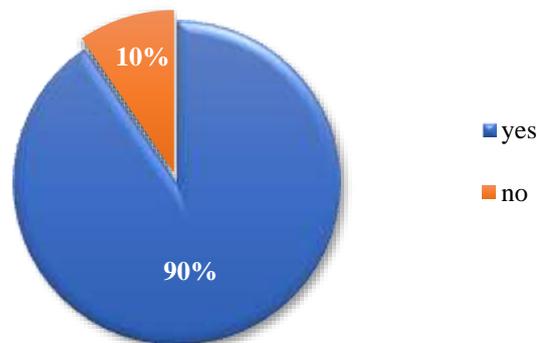
¹⁵ Towards the time of the research, the effective law was PPA, SG, No.40 of 2014, enforced as of 01.10.2014.

The question concerning automation of the process is crucial for the quality of performing audits, time consumption and number of cases audited.



Graph No.11 Safety at using specialized software for performing public procurement checks

Apparently, the results show that 76% of the respondent auditors prefer to use specialized software when checking public procurement.



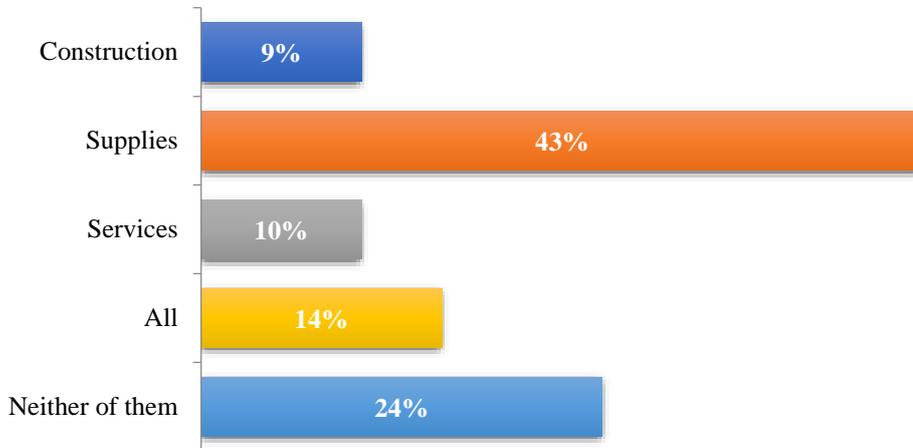
Graph No.12 Expressed desire for training in the usage of specialized software in public procurement checks

At the same time, 90% of respondent auditors would like to be trained in the use of specialized software in public procurement checks. This high percentage for further trainings is indicative that the auditors in Audit Office have overcome their fear and embarrassment of using specialized software. Now they have realized the advantages and appreciate safety that can be provided by this new way of implementing control.

In the conducted survey, respondent auditors answered questions directly related to carrying out public procurement control. Visibly, the results show that one of the main difficulties is due to lack of appropriate check lists for documenting the performed audits. The auditors' opinion has also been taken about the procedures in PPA, which they find difficult to carry out and which public procurement object they feel the most prepared about.

When approached with the question "Which one of the public procurement objects did you feel most prepared about to perform audits?", 43% of the respondents pointed out

supplies, while the other two objects - services and construction works – gained equal score in the survey. Only 14% claimed preparedness on all objects of procurement, and 24% did not feel sufficiently prepared on neither of the three objects of public procurement.



Graph No.13 Degree of preparedness by public procurement object

When auditors were asked whether their opinion about public procurement control was requested by means of inquiry, 95% of the respondents answered negatively.



Graph No.14 Participation in inquiry into implementation of public procurement control

Requesting professional opinion from auditors in relation to various topics underlying the activities of the institution can be a corrective to decision making of senior, middle and lower management. Auditors as field experts, can provide the right assessment and address decisions on cases that have occurred, in a direction that will boost the authority of the institution.

In conclusion, it can be noted that the level of control over assignment and execution of public procurement depends to a large extent on the level of preparedness of the expert staff, the work set up and the degree of penetration of IT technologies in the work of control bodies.

Major implications from the activity of Audit Office with reference to public procurement.

It is a matter of fact that Audit Office has contributed to enhancing discipline on compliance with the provisions of PPA. The effect from the work of the institution, as Supreme Audit Authority, would be even greater if an analysis on the current process related to implementing public procurement control was done. The inferences of the analysis can help promote audit work to achieve better results by undertaking adequate and timely measures for dealing with weaknesses and problems, by performing checks at the stage of planning and assigning of public procurement and at the stage of execution of signed contracts.

Problems before Audit Office, ASFI, APP and EA “OEUF” at the public procurement control.

An attempt made by the legislators, to introduce an electronic system for monitoring and control over public procurement, until now has not given any specific result. Proof of this are the amendments to PPA of 2014¹⁶ as well as the adoption of PPA in 2016¹⁷. In time, it has become clear that the idea of creating e -platforms for promoting public procurement control is just wishful thinking that still has not been realized.

¹⁶ SG, No. 40 of 2014, enforced on 01.10.2014

¹⁷ SG, No. 13 since 16.02.2016, enforced on 15.04.2016

CHAPTER IV. Guidance and recommendations for elaboration of the system of control over public procurement

One of the major problems, attendant the System for control of public procurement, is lack of constructive interaction among institutions forming the system. The exchange of data – summarized or analytical would rather allow the control to be improved than impede the work of the specific institutions. On the other hand, the elaboration of interaction among institutions will enhance the quality of conducting public procurement.

Guidance for elaboration of the system of control of public procurement

Each year the funds expended on public procurement rise significantly. This necessitates APP, the Managing Bodies and the Interim Units of the Operating programs alongside with the Control Bodies – Audit Office and ASFI, to work in close cooperation in order to prevent the mala fide doings of assignors and to guarantee the legality and expediency at conducting procedures.

System for assessment of assigned public procurement and executed contracts

One of the main objectives, which all institutions forming the System of public procurement control ought to have set is, that the results of performed audits should correlate and be comparable. Only in this manner, by making an analysis, could a conclusion be elaborated about the level of evolution of the system of control over public procurement. Accordingly, the assignment of public procurement must have clearly defined indicators, qualitative and quantitative, toward which efficiency, effectiveness and economy of funds assignment should be measured.

Tracing the degree of compliance at the stage of execution of public procurement and the attained quality is quite different from the criteria¹⁸ and indicators¹⁹ which assignors have underlain when they have announced and carried out the procedure/assignment. The requirements of assignors ought to be part of the quality indicators, later to be researched by the control bodies. The System for Designation of the Quality of Public Procurement (SDQPP) should be led by independent indicators which should account to what degree the indicators and criteria set by the assignors have contributed to the quality of public procurement execution and to what degree the achieved effect has benefited the assignor.

The demand for building a System for designation of the quality of public procurement has become even more imperative following the adoption of the current PPA.

¹⁸ Tender assessment criteria and selection criteria

¹⁹ Overall assessment indicators

The drop of specific requirements has created a risk for inexpedient spending of funds at public procurement assignments.

Through the research and surveys done, described in the previous chapters of the dissertation work, a conclusion can be drawn that SCPP needs to develop a uniform methodology which will facilitate the exercise of control over public procurement and execution of contracted orders. This methodology can be considered as a process which consists of interrelated steps, displayed on the graph below.

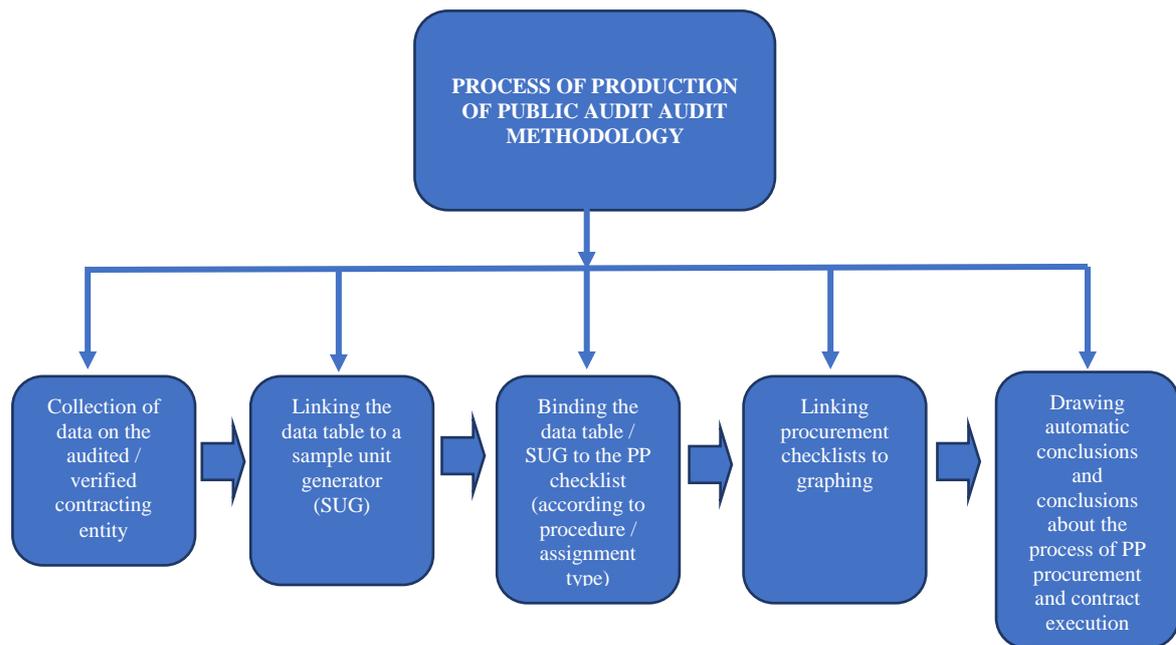


Fig.3 Process of developing methodology on public procurement audit performance

If we assume that the process of assignment of public procurement is:

Planning \rightleftarrows Organizing \rightleftarrows Conducting \rightleftarrows Assigning of Public Procurement
 (concluding of a contract) \rightleftarrows Execution of concluded contracts

Then the graph below illustrates the idea in principle (stages and sub-stages of the assignment procedure are not given one and all, they only serve the aim of the given example):

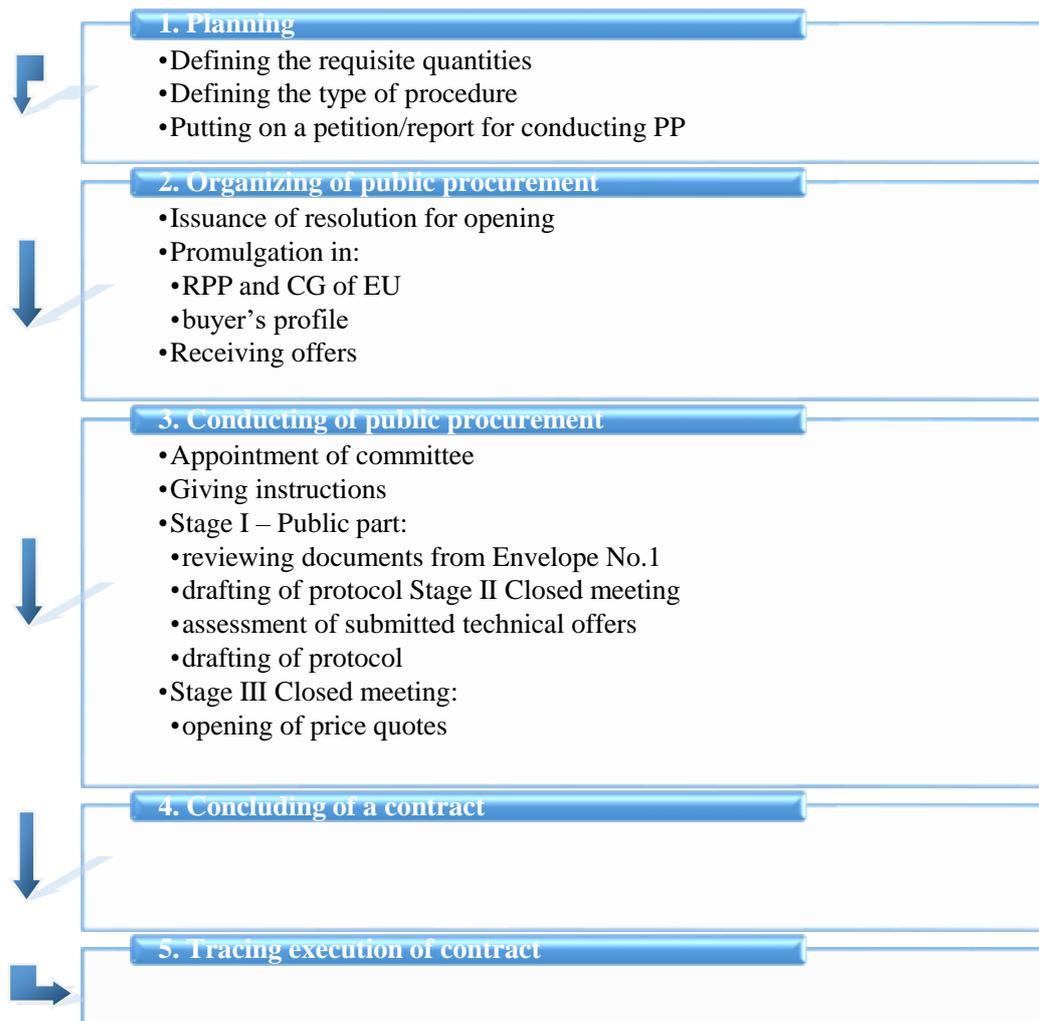


Fig. No.4 Example model of a process and sub-procedures in assigning public procurement and presenting information in audit reports

Considering the uniform rules/framework/criteria which the assignment of public procurement and the concluded contracts must comply with for all assignors, presentation of information in reports should follow the order of specific stages (and sub-stages). Drawing up of uniform content of reporting and order of texts, presupposes only filling in the auditors' findings and is a step in the right direction. It would be also a good idea if uniform texts of inferences and conclusions could be worked out. While developing the methodology, it will be all right to be made a list of audit evidence, which auditors need to collect in order to prove regularity or irregularity. At the end of the text referring to assignment of public procurement and execution of contracts, to visualize the results of performed audits, it will be good to attach a graph reflecting the stages, so that the most common irregularities can be displayed.

At the basis of the methodology for carrying out checks on public procurement should be drafting of uniform inquiries for requesting information, automated check lists etc.

Other proposals connected with assessment of assigning public procurement and execution of concluded contracts

The next stage, following the uniform methodology for audit of public procurement and execution of contracts is devising of method for overall assessment of assignment and execution of procurement.

The measuring of the achieved quality of assignment ought to be differentiating, depending on the object of public procurement. The dissertation paper dwells upon specific indicators – quality indicators with quantitative measurement of various objects of assignment – construction works, supplies, services. Some specific criteria have been presented (scaled with the corresponding indicators) which can serve to define the quality of assigning public procurement.

Quality indexes for execution of public procurement

As a result of research work of the level of quality of the assigned public procurement, this dissertation paper suggests forming of Quality Index on Performance of Public Procurement (QIPPP). It is proposed that the index should be calculated on a monthly, half yearly and annual basis.

QIPPP aims at acquiring representative data for the country about the level of quality of the assigned public procurement so that general, group, time, territorial and sector indexes could be calculated.

QIPPP is a tool to measure the general quality of assigning and executing of public procurement. The general quality index on execution of public procurement summarizes the individual indexes of monitored assignments and performance of public procurement.

QIPPP ought to measure the quality of public procurement, not the changes of price rates, nor the quantity of goods or the number of construction and repair activities.

Parallel to the calculation of QIPPP, it could as well be considered the formation of a Control Index of Public Procurement (CIPP). The index will inform on the level of control, which is implemented by the institutions in the System of Control of Public Procurement (SCPP).

CONCLUSION

The purpose of the dissertation paper has been to analyse the effective system for control over public procurement and render guidance and propositions to optimize the process of control implementation, and provide effective, efficient and economically wise expenditure of public funds in public procurement. The achievement of the aim was made possible by means of multiple studies and follow-up analyses of the received results. The study focus was primarily on the only independent authority for implementing control over spending of public resources, namely, the Audit Office. To a large degree, the work of the rest of the institutions, which form the System of Public Procurement Control, was considered in the light of their cooperation with Audit Office and the coordination they ought to perform among them.

Public procurement as an object of research is an infinite theme regarding created cases and ways of manifestation of someone's desire to circumvent legislative requirements. The allocation of a considerable amount of public funds has changed the field of research into an appealing mode of accumulation of capital from physical and legal persons. Namely these were the reasons why the subject matter of the research became the System of Public Procurement Control, set up by the institutions implementing control over public resources. Coordination among the authorities in question, underlies the sparing, effective and efficient expenditure of public funds by making popular the best-case practice which they apply as a means to exit the limits of state control and stretch it to the opportunities of maintaining public control over the public procurement procedure and execution of concluded contracts.

At the very start of the work on the dissertation, the main assumption laid down was that there is an opportunity to elaborate and further develop control, exercised by the entitled institutions, in organizing and carrying out procedures on assignment of public procurement and execution of contracts. The reciprocal actions between the authorities were not up to the requisite level, hence the results from the performed checks (audits and inspections) did not bring the necessary benefit. Control institutions did not endeavour to raise administrative capacity and enhance interaction between them; they did not improve the environment for public procurement, nor did they make it better for the execution of concluded contracts. Consequently, public procurement has not been carried out in the best possible provisions, execution of contracts has not had the requisite quality, therefore, public procurement could not have been defined as a sparing, effective and efficient means of expenditure of public funds.

As a result of the research work done was established that the institutions, which form the System of Public Procurement Control, were not prepared to fulfil joint activities related to public procurement control, i.e. The System of Public Procurement Control did not function effectively.

The thesis that there is an opportunity for the system of control to be elaborated and further developed by the entitled authorities proved right. Due to this, public procurement procedures did not take place along the best possible provisions, execution of signed contracts did not possess the requisite quality, therefore, public procurement could not be defined as an economical, effective and efficient means of expenditure of public resources.

Building up of an integrated information system for contact between the controlling bodies could substantially impact conducting of public procurement.

An effective control function is indicative of the civil servants' qualification and the software products they use as well as the level of cooperation among all institutions from SQPP.

Indexes formation and their use is a means of unifying approaches in performing audits. Uniform practice applied to various types of control, signals the assignors and taxpayers about the will of controlling bodies to ascertain unlawful acts and trace expedient spending of public funds.

The fact, that despite all problems described concerning control environment where SQPP functions, the introduction of some new methods of approach to audit as well as the fact that the presentation of collected and analysed information gives results, is encouraging.

In spite of the low pace of fulfilment of ideas in one of the control institutions, the change is a fact and it is a matter of time these ideas to catch a larger circle of institutions which set up the System of Public Procurement Control.

APPLIED SCIENTIFIC AND PRACTICAL CONTRIBUTION

In the current dissertation work stand out the following major results and contributory features:

1. A study has been conducted with a focus on the state and major problems of coordination in the work of the institutions which constitute the System of Public Procurement Control.

2. An in-depth empirical research has been done that covers the work of the National Audit Office in the field of Public Procurement Control.

3. There is a substantiated new and optimal method of control over Public Procurement through utilization of unified e-charts, check lists etc. as well as embedded e-documents and use of e-records.

4. It has been developed a substantiated approach that unifies information about conducted audits in the field of research, including re-formatting of contents of audit reports and reporting the findings on each separate stage of the process – planning, assignment and execution of public procurement.

5. It has also been worked out and proposed a set of tools for measuring the quality of assignment of public procurement and execution of signed contracts. In this connection is substantiated the necessity for adoption of Quality Index on Performance of Public Procurement (QIPPP) and Control Index of Public Procurement (CIPP).

LIST OF PUBLICATIONS ON THE TOPIC OF DISSERTATION

1. “Detection of irregularities in public procurement procedures“ - Youth scientific Conference “Bulgaria in the European Union“ - 50 years General economics faculty, UNWE, p. 136-140 – ISBN 978-954-644-071-6

2. “Role of control in the conduct of public procurement and common problems“ - XIII international Scientific Conference “Governance and Sustainable development“, UF, p. 164-167 –ISSN 1311-4506

3. “Irregularities and fraud in the conduct of procurement procedures and ways to prevent them“ - XV-th International Scientific Conference “Governance and Sustainable development“, UF, p. 95-99 – ISSN 1311-4506

4. “Role of institutions in social and economic life“ - National Scientific Conference “Perspectives and Challenges for modern management“, UNWE, p. 295-299 – ISBN 978-954-644-828-6

5. “The successful management of the organizations by setting up a system for determining the quality of public procurement“ - Seventeenth international Scientific Conference “Digital Transformation – business, education, science“, International business School
