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Analysis of the current situation concerning competition in public procurement and recommendations for further improvement

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Belgrade, June 2018

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TABLE OF CONTENTS

Introduction.....	3
Methodology	6
Data collection.....	6
Limitations in data collection	6
Structure	7
Evaluation	8
Time Plan	8
Findings.....	9
Interest in public procurements	10
Motivation	12
About company	22
Additional conditions	23
About environment.....	26
Conclusions	27
Recommendations	28
ANNEX - QUESTIONNAIRE ABOUT PUBLIC PROCUREMENT	30





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Introduction

This paper has been prepared within a framework of the project “Support for Further Improvement of Public Procurement System in Serbia” which is funded by the European Union and implemented by a consortium led by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

The main purpose of the project is to support the strengthening and developing of a stable, transparent and competitive public procurement system in the Republic of Serbia in accordance with EU standards, including improved implementation of the public procurement strategic and policy framework for an effective and accountable public procurement system.

The results required from the project include:

- strengthened and further developed the strategic, legal and institutional framework for public procurement aligned with the EU legislation,
- improved implementation of regulations in area of public procurement in practice
- E-procurement platform developed and established and
- strengthened capacities and professional skills of the Serbian Public Procurement Office and other relevant target groups.

The Project is aimed to support full harmonization of Serbian public procurement regulation with *acquis* and achieving of performances in public procurement that would match the ones in the European Union. EU Progress report 2018 for the chapter 5 (public procurement)¹ pointed out improving transparency and competition as well as prevention of corruption as priorities for closing benchmarks.

An effective competition has many positive effects on an economy and on public procurement market, in particular. More intensive competition creates incentives for companies (tenderers) to strengthen their competitiveness which is a key precondition to become more successful on international market. Upgraded competitiveness and export increase both GDP and citizen's standard of living. Free competition in public procurement market results in higher «value for money» (VfM) with benefits not limited only to contracting authorities as direct users, but to the citizens as ultimate users of services provided by public sector.

Intensity of competition on public procurement market in Serbia increased since 2014 from 2,6 tenders on average per procedure to 3 tenders in 2017. However, this indicator is lower than in the EU countries in the region such is Slovenia, for example, where an average number of tenders per procurement procedure varied between 3,3 to 3,6 in the same period.

The average number of tenders per procedure is particularly low at the local level: local public companies received, on average, 1,9 tenders per procurement procedure while local public

¹ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>





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administration obtained 2,1 tenders on average. This indicates that it is of high importance to detect factors that constrain competition especially at the local level.

In order to design adequate measures by the policy body and other relevant institutions that would be effective in increasing competition in public procurement, it is important to identify major obstacles that limit competition. International experiences proved that certain factors that hurt competition come from public procurement market itself while other factors are generated outside of the public procurement system. For example, structure of supply side of the market influences significantly in which segments of market competition will be more intensive and where it will be weak. Furthermore, strict or poor discipline in execution of financial liabilities by buyers (contracting authorities) towards contractors strongly influences economic operators' willingness to compete for public contracts in accordance to their risk tolerance.

On the other side, complicated, bureaucratic public procurement procedures hinder competition. This is why it is important to identify both sets of factors: those attributed to a public procurement system and «external» coming from outside of the public procurement system, such as economy, public finance, public administration system etc. This approach enables public procurement institutions to have a list of factors they may influence and to design and target measures in order to eliminate factors sourcing from public procurement system. At the same time, public institutions will have a list of factors that hurt competition that are under their responsibilities which would enable them to design activities, within their competences, aimed to eliminate constraining factors.

The major goal of the research carried out and presented in this document was to identify key factors that hinder competition in the public procurement market in Serbia. The most relevant answers were expected from the companies that ceased to compete for public contracts although they possess required products or services as well as adequate capacities. Having in mind that this kind of research which focuses on limiting factors of competition in public procurement is undertaken for the first time in Serbia, there was a need to establish a tailor-made approach to this issue.

Task comprehended determining of reasons for insufficient competition in public procurement procedures, as well as potential recommendations for increasing competition in the scope of existing legal framework and by suggesting new legal solutions, already known from comparative practice.

Research determined groups of limitations:

- Limitations of existing legal framework
- Limitations from the practice
- Limitations of institutional activities
- Limitations of the market
- Other limitations and reasons for decreased motivation to participate in public procurement procedures.



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Sources of information were only companies registered in Serbia and active in Serbian market. Foreign companies, although allowed to participate in the public procurement procedures conducted in Serbia, were not covered by the research due to the following reasons. First, their interest in the Serbian public procurement is quite limited. According to the Report of Public Procurement Office for 2017, only 3% from total contract value went to foreign bidders². Second, limiting factors of this research such as time and money available did not allowed for more extended investigation.

Research presents experiences of companies that do not participate in public procurement procedures, including both those companies that have never applied for public contracts as well as those which did it in the past but ceased to participate in public procurement procedures.

² http://www.ujn.gov.rs/ci/izvestaji/izvestaji_ujn , page 14





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Methodology

Data collection

Research was implemented in two rounds.

First round was a preliminary research, using face to face method.

Preliminary research served to identify main problems of competition, companies' views to public procurement system and identification of other issues that affect competition, like economic environment companies work in, view of their own capacities to respond to requirements from tender documentations.

Research covered four to six company representatives, by random sample, with the condition that companies can offer all three types of procurement (services, works and supply).

A questionnaire was drafted on the basis of information collected from preliminary research that comprehended potential reasons for participating or not in public procurement procedures. The text of the questionnaire, together with a brief explanation of questions, their purpose, possible answers as well as explanation how to interpret them is attached in Annex to this report.

Research was implemented by telephone calls or through on-line survey (see below). Number of respondents should have been between forty and fifty.

Collecting of information was also conducted through on-line survey. Survey was implemented by sending the link or by direct sending of questionnaire to companies that expressed their interest to participate in the survey. It was envisaged that the questionnaire is filled in by decision makers from sample companies, primarily senior managers and policy makers, founders etc.

Although this was appropriate sample, it also needed to fulfil condition that domains of examined companies correspond for the most part to structure of procurements in percentages, and according to the report of PPO for 2017, if the report gets published by the time of creating list of companies. If the report is not published by then, data for first half of 2017 will be used instead. We need to keep in mind that numerous companies deal with all or several procurement objects. In this case we need to determine dominant activity of the company compared to type of procurement object.

Limitations in data collection

Considering that targeted group of companies, having in mind the purpose of the research, represented companies that never participated or ceased to participate in public procurement procedures, absence of motivation of examined companies could have affected response as well as reliability of their answers.

Starting from the assumption that companies in general and especially those that this research refers to, do not always possess in depth knowledge of the public procurement terminology,



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questions have been formulated in a way to enable their understanding also to those which are not familiar with the public procurement terminology.

Having in mind the assumption that sample companies are not especially interested in public procurements and public procurement system, questionnaire relied on pre-determined answer options, to ensure larger response rate, but when it was appropriate, respondents were provided with the possibility to comment certain questions and answers. Number and formulation of questions, from stated reasons, should have been created in a way that it takes no more than ten minutes to fill in the questionnaire.

Structure

General structure

The questionnaire contained three groups of questions.

First group of questions referred to a company's capacity to respond to public procurement market requirements, as well as to motivation, obstacles and limitations for participating in public procurement procedures – "About public procurements".

Second group of questions referred to view of public procurement market from the perspective of company management, or their decision makers. Answers should have been interpreted also as self-estimation of the capacities to meet obligatory and additional conditions for participation in public procurement.

Third group of questions referred to other factors that were not included in previously mentioned two groups, and concerned business environment.

Second option to group questions is by following categories/indicators:

- Knowledge
- Experience
- Motivation

The order of questions may affect the reliability of answers inside the group and the questionnaire itself. It is known from the experience that if the questions that are expected to be answered negatively are presented at the beginning of the questionnaire, there is great probability that answers to all questions will follow the same line (and vice versa). Therefore, questionnaire started with group of questions that don't indicate the negative view of public procurement system.



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Evaluation

In order to systemically process data, it was necessary to create an excel table that would contain in first column questions from the questionnaire, while second column would be dedicated to answers and space for comments. Each subsequent column refers to one of the respondents. Summarized results were presented in a separate table.

Intersection of the results were performed on the basis of comparative results from the table. Draft Report presented in special graphics the results for each of the questions. On the basis of processed data, recommendations on how to promote public procurement system were drafted. Recommendations refer to amendments of legal framework, practice, drafting of auxiliary tools for contracting authorities or economic operators, as well as other activities that would assist in increasing competitiveness in public procurement procedures.

Time Plan

Activity	January	February	March	April	May	June
Preliminary research						
Identification of potential research subjects						
Sending of questionnaire						
Tracking of answers						
Inviting potential research subjects to fill in questionnaire						
Second round of sending questionnaire						
Summarizing results						
Drafting of findings						
Drafting of report						



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Findings

Research sample comprehended the total of 41 company, out of which 19 haven't participated and 22 participated in public procurement procedures in the past (but were inactive in the past year). Another three out of contacted companies didn't agree to participate in the research, and three agreed to participate but haven't deliver answers. Research sample was created to meet all three types of procurement objects (services, supplies and works), however, there is no clear division among these three categories inside each company. Certain companies' business activity comprehends all three groups, e. g. some companies sell goods and provide services of maintenance at the same time. Persons within companies that were contacted to fill in the questionnaire were decision makers, primarily senior managers, founders etc. In terms of motivation to participate in the research, we can divide companies into two main groups, those that were willing to participate and those that weren't. Although lack of motivation due to circumstances was anticipated prior to this research, according to subjective perception of the researchers, the response was more than satisfactory. In the course of preliminary research it was noticed that if the questions in questionnaire were structured in a form of "funnel", starting from general ones towards more specific ones, and if the first set of questions were associated with negative opinions, this would affect further course of answering. Therefore, questionnaire was structured in a form of reverse "funnel" to avoid this problem, and in that way answers received were more relevant for this research (preliminary research showed that answer to first question if in negative connotation determines the rest of the answers). So, the questionnaire started with neutral questions: "Have you ever participated in public procurement procedures?" and "Are you interested in participating in public procurement procedures?".



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Chart 1

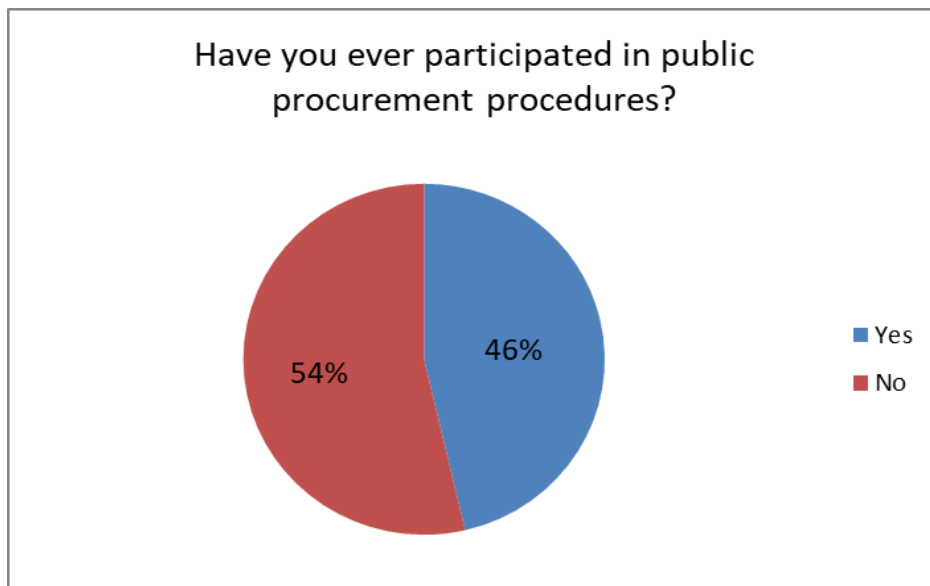
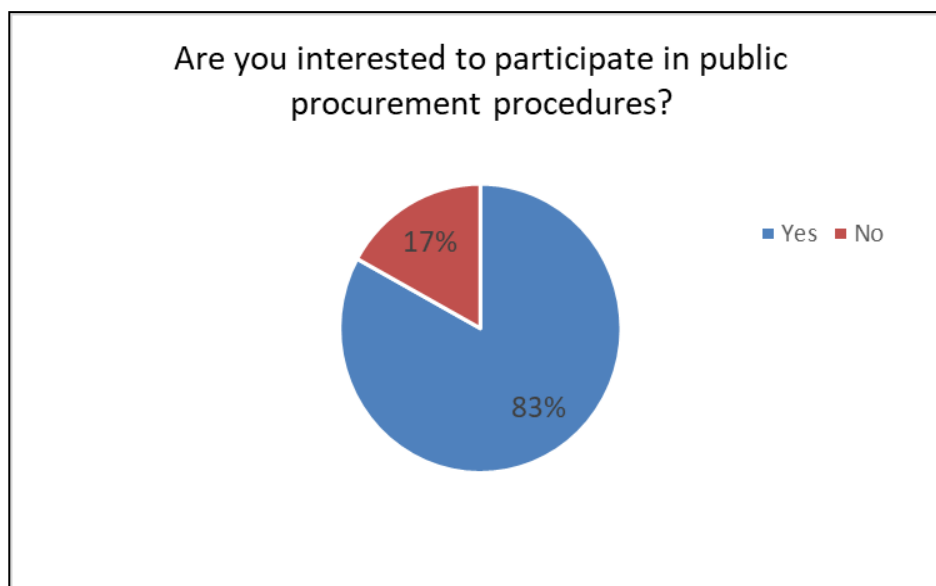


Chart 2



Interest in public procurements

Majority of companies from sample declared their interest to participate in public procurement procedures. Only seven companies expressed absence of interest to participate in public procurement procedures, out of that number, two due to specific contract they have with their main business partners that limit their activity on the market. In the first case, the company has



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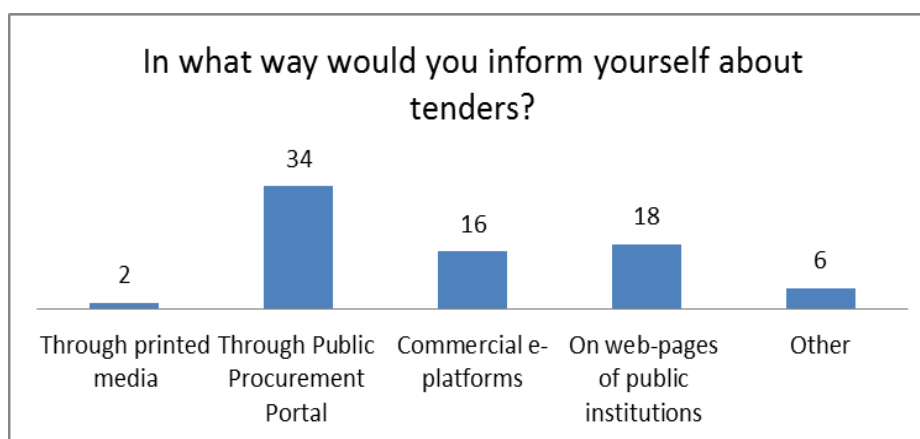
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exclusive contract with its principal that limits distribution of goods to authorized retailers, therefore, goods cannot be offered to other market participants, including public authorities. Second case is similar to first one, with the difference of being obliged by the contract with principal to deliver goods only to principal company, however, contract refers only to their core business domain and not to other business opportunities. Two of remaining companies do not recognize their business activity being present in public procurement market. For the first company selling watches the demand for that type of goods is either non-existent or extremely low. However, for the other company that deals with planting material, this assumption is not true since we determined that there is demand for such goods in Public Procurement Portal³. The remaining three reasons for the lack of their interest is unknown.

Having in mind mentioned result, we can claim, with great certainty, that there is very high interest in participating in public procurement procedures.

Chart 3



To question about how they obtain information about published procurement procedures, respondents predominantly identified Public Procurement Portal as a source of information. This were mainly companies that already participated in public procurements in past. Those that haven't identified Portal as source of information, are mainly companies that are inexperienced with public procurement. Those that choose web-pages of institutions for obtaining information are also the ones, with minor exceptions, choosing the Portal as well, having in mind that multiple answers were offered. Commercial e-platforms were chosen by those that already use these platforms for other purposes. Printed media are not source of information, or rarely, these two companies that choose this answer chose other as well. Those that stated "Other", we are not certain what their source of information was and assumption is that it is predominantly "mouth to mouth" method. Conclusion is that if there is an interest among companies to participate in public procurement procedures, they would be able to obtain information about it. However,

³ Procurement of exterior planting material <http://portal.ujn.gov.rs/Dokumenti/JavnaNabavka.aspx?idd=1877621>





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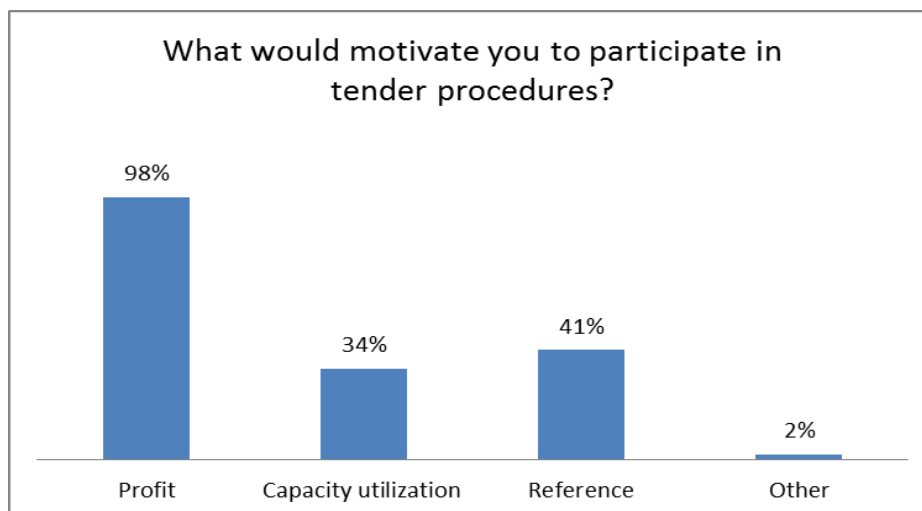


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there is still a significant number of companies that do not recognize Public Procurement Portal as the main source of information, which leaves space for its promotion among potential users.

Chart 4



Motivation

According to expectations, all of the respondents chose profit as main motivation for participating in procurement procedures. However, there are other important reasons like obtaining the references on past experience and engaging available resources. References are important for doing business in future with public authorities, and are highly valued and create positive image of the company. Capacity utilization is important for companies that mostly provide works and do not use their full capacities in already existing activities. Limitations of this motive are that it is difficult to anticipate length of procurement procedure and therefore capacity utilization as well. Explanation for choosing the answer "Other" is that this is a company delivering industrial oils, with contract obligation with its principal to sell certain amount of goods annually in Serbian market. Therefore, this company participates in public procurements when estimate that sales wouldn't reach requested quota, according to them even participate with loss (considering that this brand is expensive).



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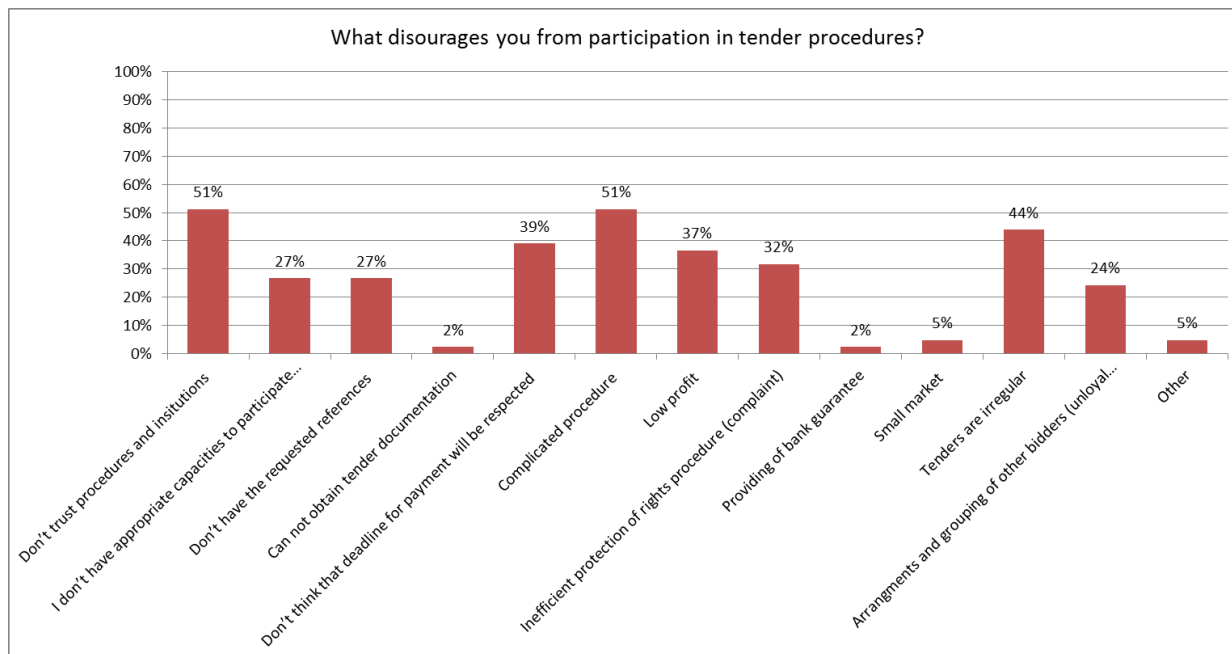
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Chart 5



Two main reasons for non-participating in public procurement procedures are mistrust in procedures and institutions of public procurement system. Mistrust is related to perception about irregular procurements and potential delays in payment. These answers were chosen mostly by same respondents. Those that stated complicated procedures as the main reason are mostly smaller size companies. 39% of the companies think that after execution of the contract payments will be late, although there is Law on Deadlines for Settlement of Financial Liabilities in Commercial Transactions⁴. Further explanation of this problem by companies is that this Law is valid if there are assets available to contracting authority. 37% of companies consider that with existing prices they cannot make profit, looking at procurements, since the price is so low, and they claim procurement with that contractual price can only be either subjected to contract annexes or the contract wasn't executed in contracted scope and/or quality. Importer of office supplies claims that he provides goods to those that win procurement procedures under prices that are higher than those acquired by procurement procedure. Also, other example of large construction company shows that construction project was changed by contracting authority after signing of contract, which lead to changes of parameters that were requested in tender documentation and disrupted construction company in its other activities. Those that stated lack of capacities and references, are usually smaller companies that would participate in smaller scale procurements where such references are not necessary. This is also corroborated with perception that procurements are usually of significantly larger value, which is untrue. Those that think protection of rights is inefficient are usually those that are introduced to procurement

⁴ Published in the Official Gazette of the RS, Nos. 119/12 of 17 December 2012, 68/15 of 4 August 2015 and 113/17 of 17 December 2017





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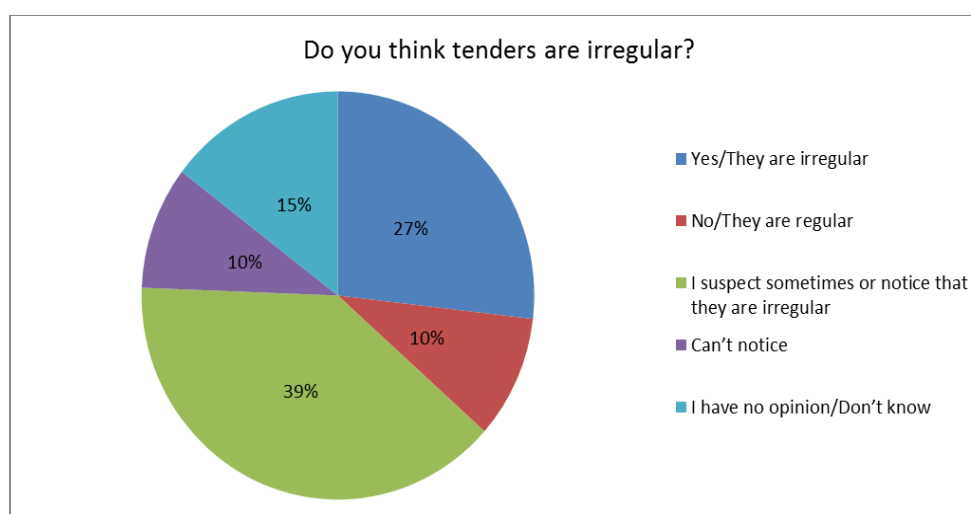


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procedure, and are aware that filling of complaint only leads to partial cancelling or cancelling and announcing of new procedure. Contrary to expectations, these are not just companies that participated in public procurements, but there are also those among them that haven't. Although, providing of bank guarantee for larger value procurements was more important reason in the past for non-participating on the basis of our previous research⁵, only one company stated it as an obstacle. Also, only 5% of companies estimated that public procurement market is too small for their business domain. 24% of companies believe that forming of cartels controls the market and therefore their competition potential is decreased.

Chart 6



This question is formulated with premise that procurement procedures are irregular rather than regular, which gives subjectivity to answers. Preliminary research showed that predominant opinion is of irregular procurements, therefore we decided to reverse positive question since psychologically it is more determining if you corroborate the question instead of answering with "No". Most of the respondents just suspect of irregularities and there is significant number of those that consider procurements are irregular. When this suggestion that procurements are irregular is offered as part of larger set of answers (like in question no. 5), percentage is lower than when offered in separate question. Percentage is lower if examinee is given the option to choose among other options as well, which points out to subjectivity of estimation. Only 10% believes that procurements are regular, and curiosity is that these are companies that already participated in public procurement procedures.

Explanations to question how they learn about procurement irregularities, answers were mostly general statements, like: "It is well known fact", "I heard it from the others" etc. However, 15 companies provided exact answers, by stating following factors:

- Technical specification

⁵ Monitoring of Public Procurement System in Serbia, Transparency Serbia, First Assessment (January – March 2015)





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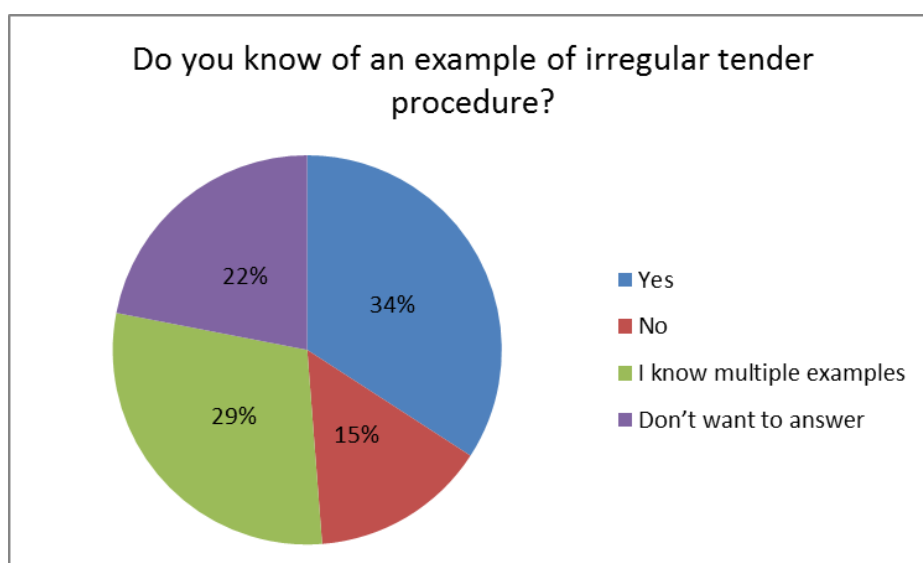


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- Additional conditions
- Timeframe of procurement procedure
- Deadlines for contract realization
- Method of tender evaluation

Chart 7



Approximately two thirds of respondents know of one or more examples of irregular procurements, but when asked to state examples they most often refer to those that are publicly known. However, those that are aware of multiple examples are the ones that already participated in public procurement procedures and knew about irregularities from their business area. Whether these claims are true remained unexamined. 15% that don't know of any example could be the ones that are not interested in public procurements and therefore have no knowledge of it. It is especially interesting that significant number of companies (22%) decided not to answer this question. Explanation might be that these respondents restrained themselves from answering to avoid elaborating their answer if asked for it subsequently. One of the explanations of such answer could be that these respondents know of irregularities but are not willing to share this information. This corroborates assumption about weak trust in the institutions of the system.





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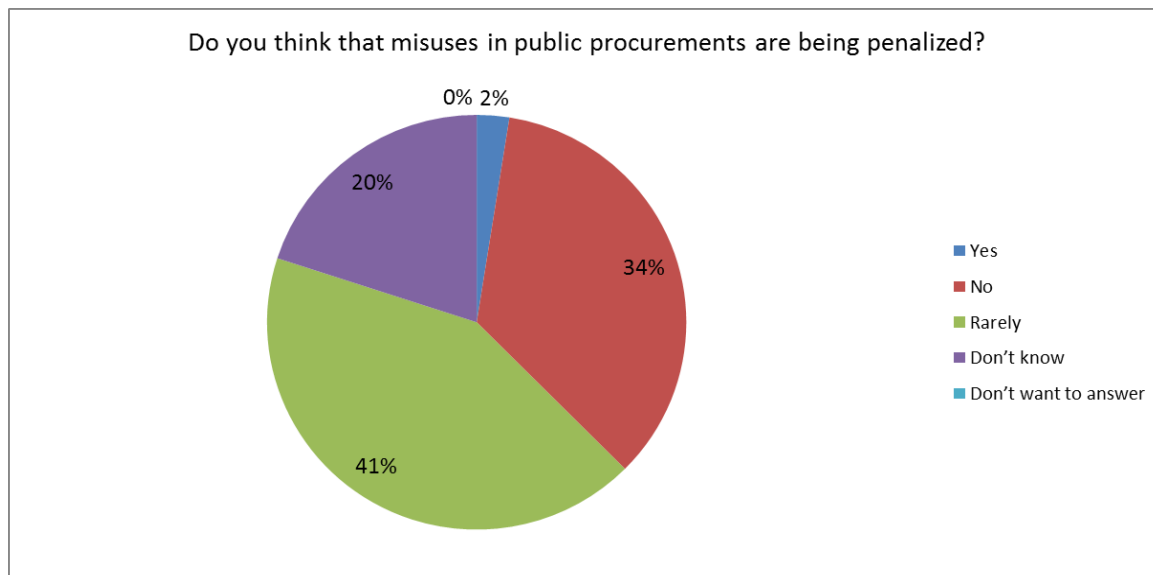
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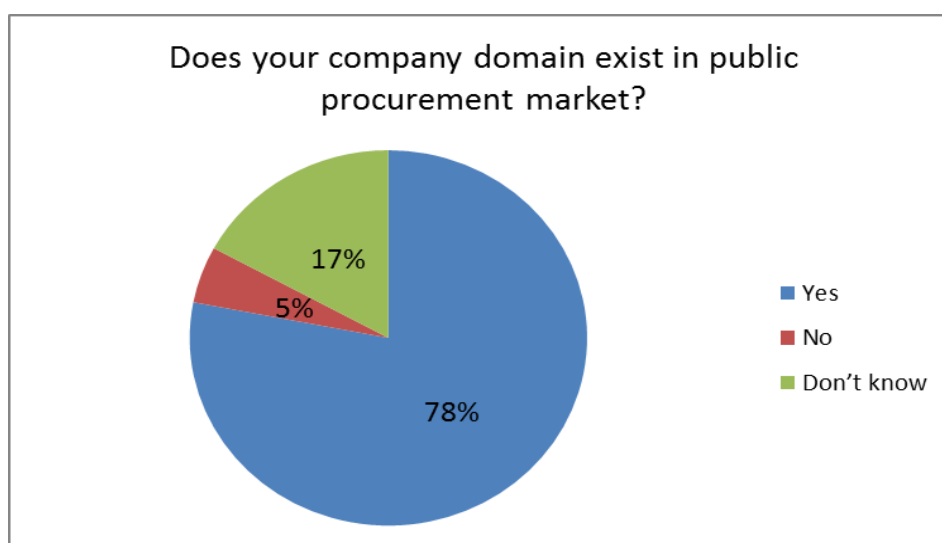
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Chart 8



Predominant opinion in terms of penalizing misuses in public procurements is that it happens rarely or doesn't at all – total of 75% of respondents. This data is interesting to cross examine with question about trust in institutions where less respondents showed lack of trust – 51%. Explanation for such result is that respondents have less trust into law enforcement and judiciary system compared to complete state apparatus. If we compare these answers with question about irregular procurements, it is easy to conclude that respondents believe that procurements are for the most part irregular and that there is no penalty or institutional reaction. It is interesting to notice that all of respondents answer this question which indicates that they are indignant to mentioned system.

Chart 9



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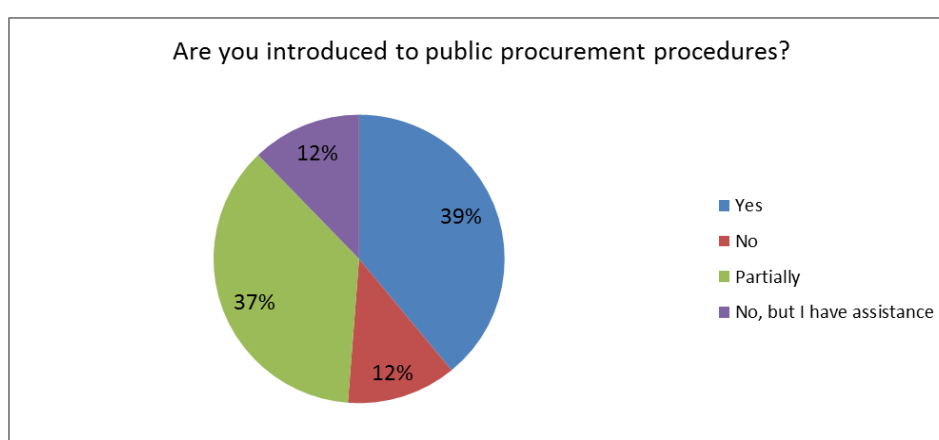


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Majority of respondents recognizes that their company business is present in public procurement market. 5% that answered with “No” are two companies with specific contract limitations with their principal. Those that answered with “Don’t know” are the ones that never participated in public procurement procedures. Researcher tend to base its sample on companies that could participate in public procurement market, so this shows that there is still a great potential among companies that do not participate, and that companies recognize this potential as well.

Chart 10



According to respondents' estimation, 76% have some knowledge about public procurements, out of which as much as 39% think they are well informed about public procurement procedures. Validity of such result is partially verified through question number 11, where majority (90%) knew which institution to submit complaints to if unsatisfied with the result of procedure. 12% estimates that they would need assistance for participating in public procurement procedures. Percentages of respondents that estimate that are informed about public procurement procedures to a certain level is unexpectedly high, which leaves space for some dilemma whether this is proper estimation. Taking into consideration recent findings, it is possible to conclude that lack of knowledge about procedures is not limiting factor for participation and therefore does not affect competition significantly.



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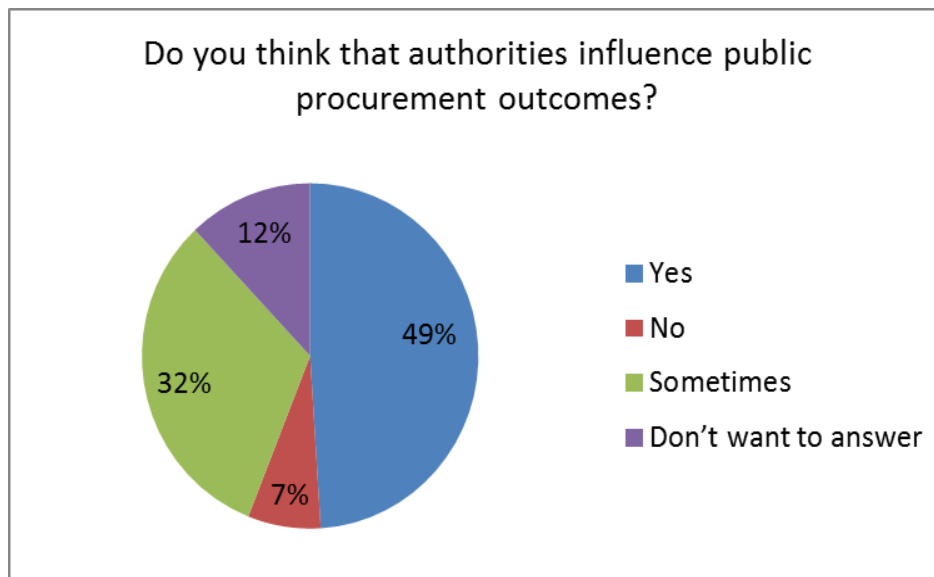
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Chart 11



Large percentage of those that are assured that authorities either completely influence public procurement procedures (49%), or sometimes (32%) – in total 81%. This percentage overcomes 51% that stated lack of trust in procedures and institutions as one of reasons for not participating in procurement procedures. This can be explained with respondents' perception that authorities don't influence solely results of tenders but also to creating of demand in the planning phase. Compared also to answers about perception of penalizing, where 75% of respondents said that missuses in public procurement are not being penalized or rarely, general belief is that authority representatives are "immune" to prosecution, and that true reasons of mistrust into system lead towards them and not to those who implement public procurement procedures. 12% of those that didn't want to answer this question corresponds to 22% of those that also didn't want to answer to a question whether they know of any example of irregular procurement.





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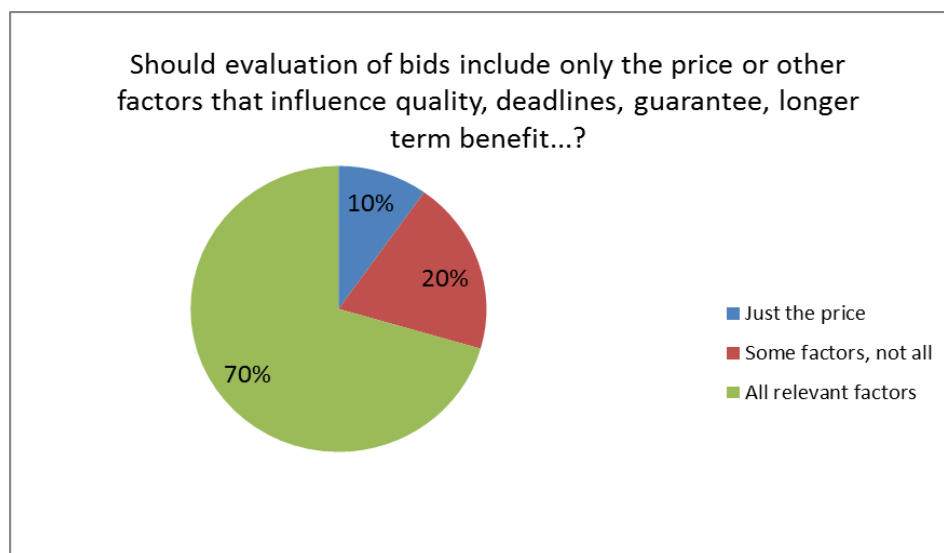
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Chart 12



Although, this question is suggestive, it was impossible to ask whether the respondents are for economically most advantageous tender or lowest price criteria, due to potential lack of knowledge of terminology. Large majority of respondents (70%) think that all relevant factors should be evaluated when choosing the tender, which is not possible in practice, because that would over complicate procedures. 20% also stated that besides just the price, other factors should be taken into consideration. According to this, number of those that would chose economically most advantageous tender is 90%. This number is in direct opposition to the fact that only 10% of public procurement used this criterion in 2017, according to Public Procurement Office Annual Report⁶. Based on mentioned data it is assumed that choosing of criteria for evaluation of tenders influences decision of taking part in procurement procedures. Conclusion from this research is that respondents prefer economically most advantageous tender criteria.

⁶ http://www.ujn.gov.rs/ci/izvestaji/izvestaji_ujn, page 32.





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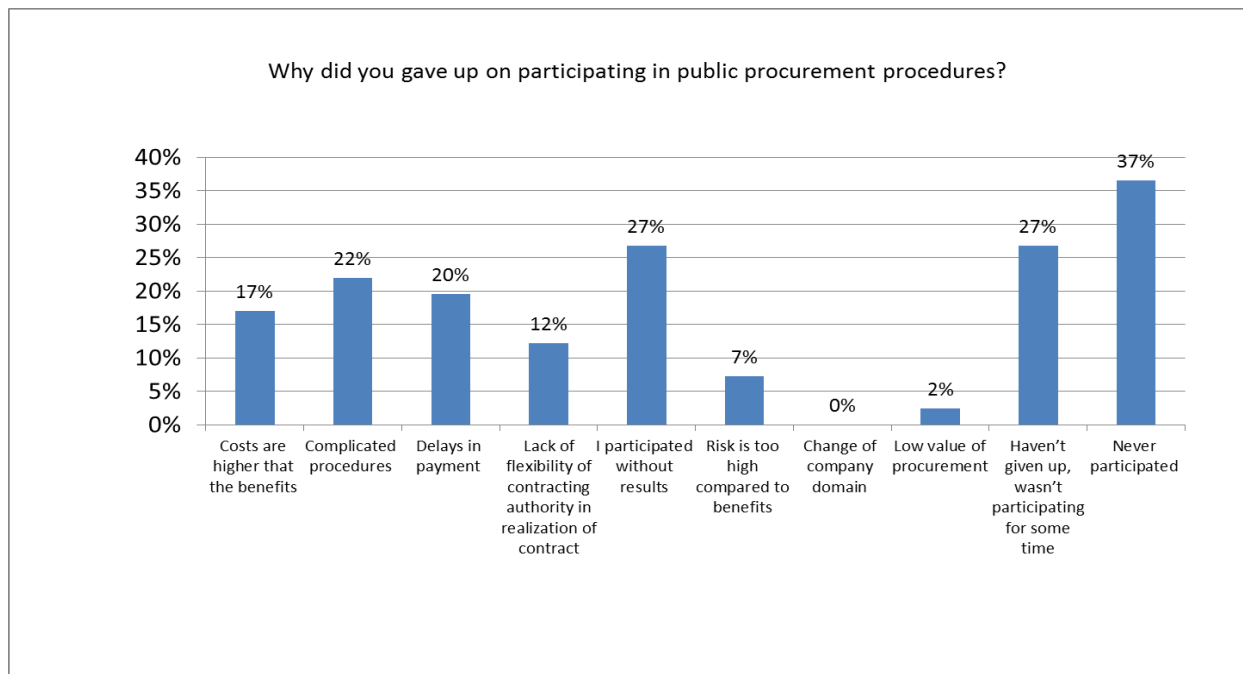
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Chart 13



37% answered that they never participated public procurement procedures, which compared to first question that directly refers to this fact, where 51% of respondents answered the same, shows that those that fall in this difference in percentages answered to one of these offered options. They choose answer about complicated procedures, and made comments of their disbelief in procedures and objectivity in tender evaluation. Same number of those that participated without results in the past, which discouraged them in their further attempts and those that left possibility to participate in public procurements. Complicated procedures is next important element for giving up, and these are the same respondents that chose answer that costs are higher than benefits and that risk is too high compared to benefits. 20% considers that there were delays in payment or that they can occur. Certain number of respondents (12%), based on their experience, thinks that flexibility in realization of contract doesn't exist, which puts them in difficult situation. These are predominantly construction or construction related companies. For example, contracting authority decided to change project plan after signing of contract without notifying contractor, and without timely changing conditions in the contract. 27% of respondents consider themselves as being temporary absent from public procurement market.

Average value of procurements identified by respondents that would encourage them to participate is 1000 – 300.000 EUR.



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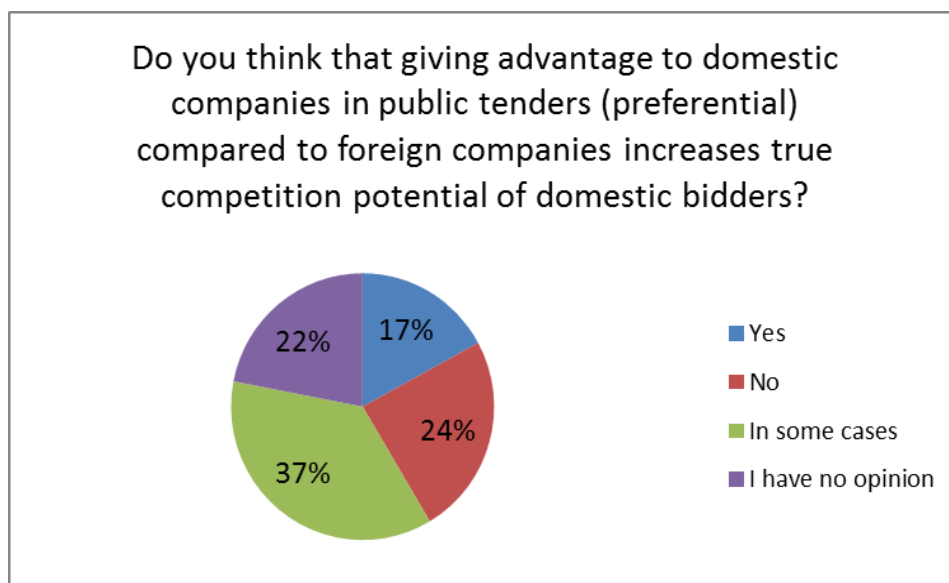
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Chart 14



One should have in mind that respondents are representatives of domestic companies, therefore this answer should be interpreted in this context. Question refers to preferential treatment that is envisaged by the current Public Procurement Law, and whether this preferential treatment increases true potential of domestic tenderers. Only 17% thinks that preferential treatment provides advantage, while 34% thinks that it is beneficial sometimes, and as much as 24% thinks that preferential treatment does not affect competition. Answers are related to the size of the company; larger companies mostly consider that it influences competition while smaller companies think differently. Reason for such division of respondents can be in small advantage (only 5% in ponders of price⁷). Those that answered that they have no opinion (22%) are supposedly those that have no experience in public procurements and don't know about existence of preferential treatment of domestic companies.

⁷

Article 86, Public Procurement Law.





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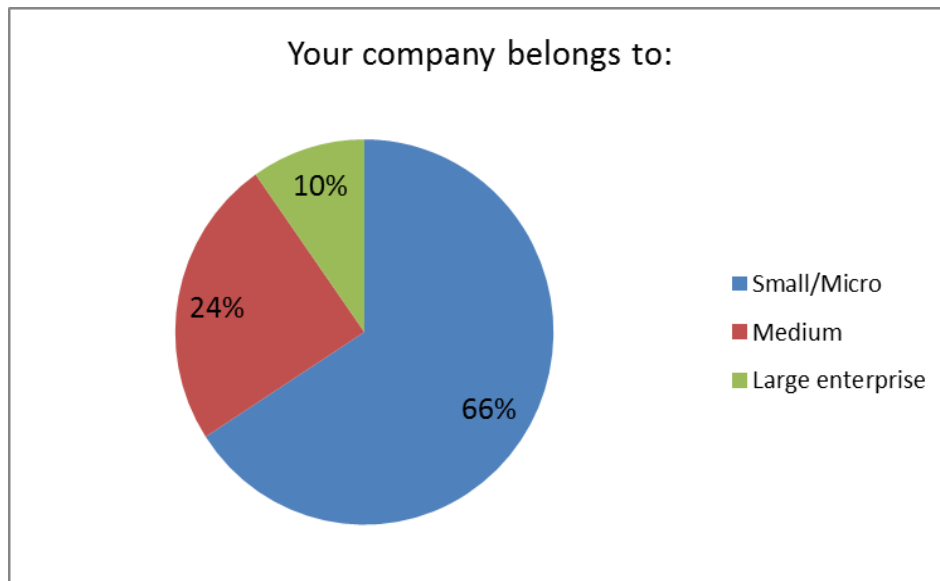


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About company

Chart 15



Research sample comprehended 41 companies, present on domestic market. Regarding size of the companies, sample contains 27 small and micro companies, 10 medium and 4 large. In addition, 8 companies were contacted, whose representatives stated that their companies are not active on the market in public procurements and in general, and therefore weren't part of the research sample.



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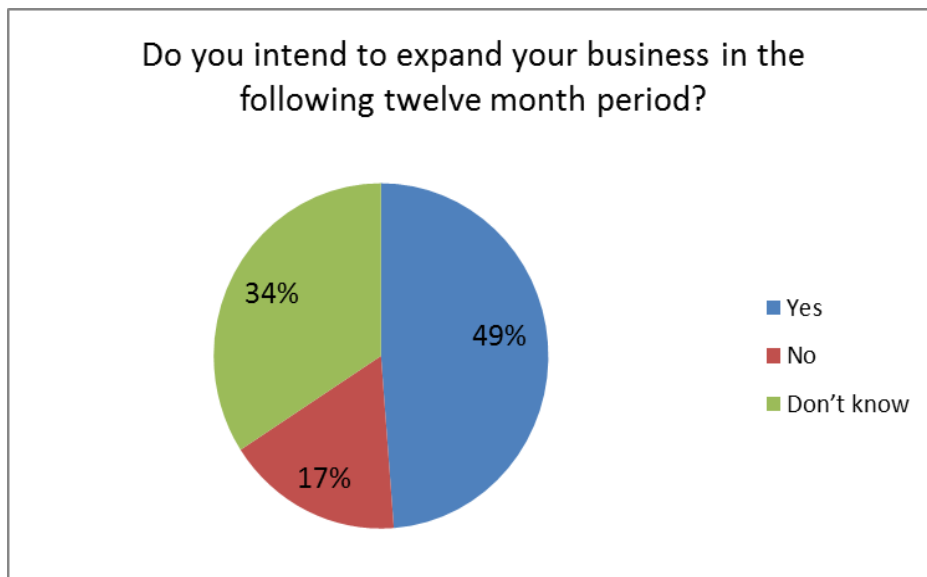
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Chart 16



Almost half of sample (49%), plans to expand their business in following year, which makes them potential participants in public procurement market if they decide to expand in this direction, along with 34% of those that are not sure whether they will expand. Only 17% of those that decisively answered not to expand their activities in the future, which leaves space for optimism about increasing number of potential participants in public procurement market, which would affect positively competition in public procurements.

Additional conditions

Regarding question about tax or any other debts, older than three months, which represents one of mandatory conditions for participation in public procurement procedures, majority – 83% fulfils this condition, according to their statement, which means they are enabled to participate. However, this does not necessarily mean that they fulfil other conditions nor that they are interested. Other mandatory conditions were not part of this research, having in mind that one refers to whether legal representative of the company was criminally prosecuted, with the assumption that there is possibility that answers received won't be relevant due to sensitivity of this matter.

In terms of measuring “financial health” of examined companies, question referring to additional condition for participation in public procurement procedures, whether the company account was blocked in the past year, was set in such a way to present the status as realistically as possible, although there is no assurance that companies' answers are proper. As much as 95% of the companies answered that their account was not blocked (although this is not necessary condition), therefore, this element does not affect potential participation in public procurement procedures. Additional condition that was examined as well refers to doing business with positive



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results in the last three years. 60% answered with yes and 22% partially or most of the time. Only 17% answered negatively, which could affect competitiveness, having in mind that doing business with positive results is sometimes used as additional condition in some procurements.

Question regarding technical condition of disposing with all equipment necessary for realization of work, refers to self-evaluation of respondents, is subjective, without providing any benchmarks for choosing an answer. 56% answered that they dispose with necessary equipment, 32% partially and 12% doesn't dispose. However, these results represent subjective estimation of respondents and do not necessarily reflect real status. It is almost certain that this 12% would not meet tender criteria related to technical capacity, if they participated individually. Otherwise, they can provide leasing or renting of the equipment contract, participate as part of the consortium or as subcontractors.

Follow up on previous question is whether employee qualification structure corresponds to business domain of the company. Majority respondents think they dispose with satisfactory qualification structure of employees (68% completely and 22% partially). Only 5% answered negatively, which meant that this condition does not influence great deal to participation in public procurement procedures.



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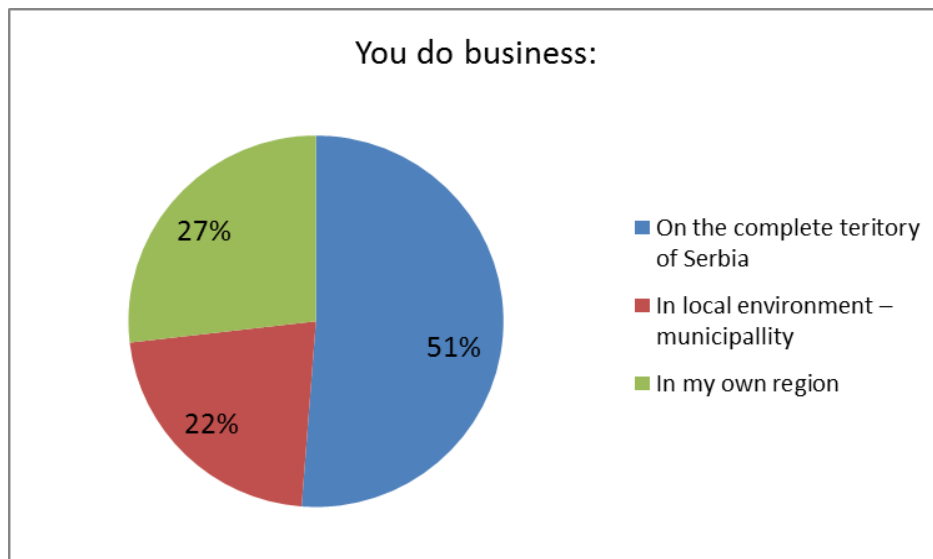
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Chart 17



Although, complete territory of Serbia is being considered as single market, there are two limiting factors, one refers to the type of procurement contract, mostly providing of services that are territorially related (e. g. vehicle maintenance, car wash, various medical services...). Second limiting factor is relatively low average value of procurements⁸, where costs overcome profit, due to distance between provider and contractor (e. g. long distance delivering of goods, especially taking into consideration warranty services). Procurement value in majority of cases influences competition in two ways, by having certain companies that are not interested to participate in public procurement procedures below certain value and by having companies that are interested but are distant, and therefore it is not beneficial for them having in mind potential profit from this work. In any case, relatively low procurement value influences number of companies that would potentially be interested to participate.

⁸ Approximately EUR 27.000, Public Procurement Office Annual Report for 2017, page 2
http://www.ujn.gov.rs/ci/izvestaji/izvestaji_ujn.





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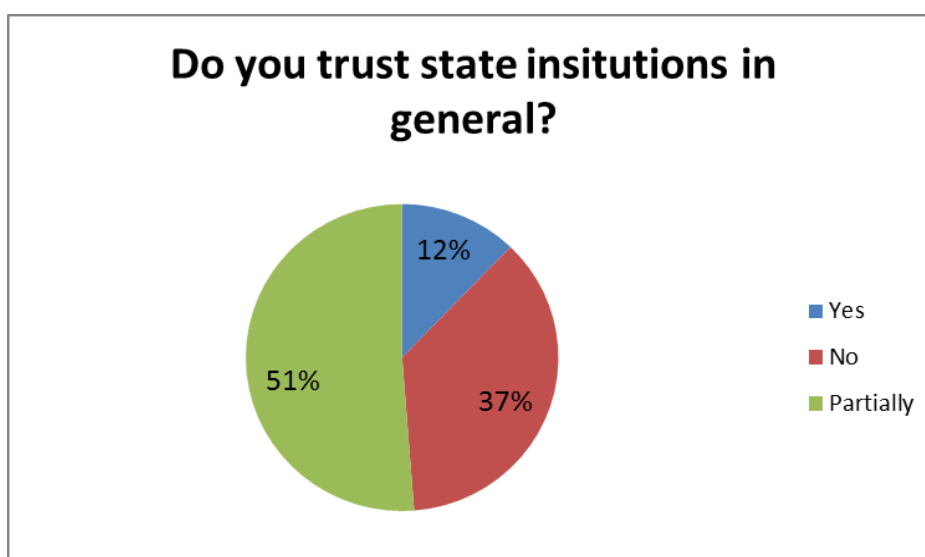
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About environment

Satisfaction with economic situation in the country can be interpreted as respondents' perception about risks of doing business in Serbia: 46% of respondents stated they are unsatisfied, 39% only partially satisfied and 12% are completely satisfied. Reason for a doubt is related to whether the environment enables proper execution of the contract and timely payments of work. The answers provided to this question say a lot about their willingness to participate in public procurement procedures. Compared to question number 17, 12% of respondents indicated as a problem lack of flexibility of contracting authorities during contract execution. Answers to following question related to whether economic environment is beneficial for their business/company, match a great deal with previous question. 37% answered with no, 51% partially and 21% with yes, therefore conclusions are the same as in previous question.

Question about trust into state institutions is designed to be control question for those from the first section of the questionnaire. Only 7% of respondents confirmed their trust into state institutions (41% no and 46% partially).

Chart 18



Mistrust is not only to the institutions of public procurement system but to complete state apparatus. Researcher's hard impression is that private companies see the state institutions in general (including contracting authorities, regulatory bodies, administrative authorities...), as their opponents rather than partners.



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Conclusions

On the basis of the result of research it is obvious that there is a great interest for participation in public procurement procedures, with the motive of profit, but not only. Other motives are obtaining the references and engaging of capacities, primarily for the companies that provide services and construction works. Companies recognize public procurement market as a space for realisation of their activities and information about procurement opportunities are possible to identify, with a little effort, in appropriate places. Majority of companies estimate they have certain level of knowledge about public procurement procedures, however, there is room left for further improvement of their knowledge. Low trust into institutions and procedures expands further than public procurement system, and it is clear that companies do not see themselves as state partner but rather as confronted side. Majority considers that public procurement market is exposed to corruptive and political influences. Additionally, they fear of risks during contract realization. Complicated procedures especially discourage participants, and there is partial belief that profits are low in this type of business, also referring to low average value of procurements. This especially refers to those companies that are distant from the territory of contract realization. Companies also estimate method of tender evaluation as being disputable. They think that besides the price (lowest price criteria) other criteria should also be taken into consideration (economically most advantageous tender), which means they strongly advocate for economically most advantageous tender contrary to current practice. Low average procurement value and low profit related to that, limit majority of economic operators from participation in procurement procedures far from their close environment. If activities would be undertaken to remove some of these identified obstacles, it is highly likely that there will be an increase in number of companies participating in procurement procedures.



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Recommendations

Public Procurement Office

- Promotion of Public Procurement Portal as source of information among those economic operators that are still uninformed on where to obtain it, although research showed that large number of companies is already introduced to this source of information.
- Providing an option on Public Procurement Portal to subscribe to new information about certain procurement objects, procurement value, seat of the contracting authority, place of execution of a contract.
- Providing training for economic operators on public procurement market, procedures, especially related to protection of rights, as well as conditions under which they can file request for protection of rights. Although, trainings on public procurements are being organized, they are mostly not specifically dedicated to potential tenderers and according to research they are mainly limited to Belgrade, and very few organized in other parts of Serbia.
- Standardization of additional conditions related to financial, human and business capacity relative to the subject matter of procurement or scope of contract, whenever possible. This should be done through creating tender documentation model for most commonly purchased products, services and works.

Commission for Protection of Rights in Public Procurement Procedures and Administrative Court

- Accelerating procedures for protection of rights before Commission for Protection of Rights in Public Procurement Procedures as well as before Administrative Court.

Legislator

- Simplifying the procedure for lower value procurement, especially as regards the prescribing additional conditions and their proving.

Contracting authorities

- Division of larger contracts into smaller lots. Although, division into lots is beneficial in terms of increasing competition, the use of this instrument should be related to the value of procurement: if the lot is of very low value there is a risk that no one will apply for it.
- Stimulation of usage of economically most advantageous tender criterion in preference to currently predominantly used criterion of price where the contracting authority simply chooses the cheapest offer.

Government



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- Strengthening oversight of external institutions (such as the State Audit Institution, State Prosecution, Commission for Protection of Competition) over procurement implementation, with additional capacity building of the Public Procurement Office.

Public Prosecution

- Encouraging of processing misdemeanours and potential criminal acts identified in State Audit Institution reports and other reports. Enabling Public Prosecution for such activities by providing additional trainings on this matter.
- Intensifying criminal investigations of potential criminal acts related to corruption in public procurements and budgetary system. According to research of Centre for Investigative Journalism, only 175 criminal charges for violation in procurements were initiated from April 2013 to December 2017, out of that number only 10% was prosecuted⁹.

Commission for Protection of Competition

- Providing of easier reporting of violation of competition in terms of creating cartels on the market, and asking for “unannounced inspection” of Commission for Protection of Competition¹⁰.

All state institutions

- Raising awareness about purchasing entities as partners to economic operators in meeting needs of the society.

⁹ <https://www.cins.rs/srpski/news/article/otvoreni-putevi-za-varanje-u-javnim-nabavkama>.

¹⁰ <http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Primena-%C4%8Dlana-10.-Zakona-o-za%C5%A1titi-konkurencije-kod-povezanih-lica-u-postupcima-javnih-nabavki.pdf>.





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ANNEX - QUESTIONNAIRE ABOUT PUBLIC PROCUREMENT

Interest in public procurement

1. Have you ever participated in public procurement procedures?

☐ Yes

☐ No

Answer "Yes" should determine to which of the sample groups belongs examined company considering its experience in public procurement procedures.

2. Are you interested in participating in public procurement procedures?

☐ Yes

☐ No

Answer "Yes" should determine existence or non-existence of interest for participation in public procurement procedures.

3. In what way would you inform yourself about public procurement opportunities? (multiple answers possible)

☐ Through printed media

☐ Through Public Procurement Portal

☐ Commercial e-platforms

☐ On web-pages of public institutions

Question has double purpose, on one hand, it identifies source of information about procurement procedures and, on the other, it provides an overview about public procurement knowledge. Answers offer potential sources of information, but false source (press), related to question 13 shows more appropriately knowledge about public procurement system.





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Motivation

4. What would motivate you to participate public procurement procedures? (multiple answers possible)

- ☐ Profit
- ☐ Capacity utilization
- ☐ Reference
- ☐ Other: _____.

This question aims at recognising potential reasons for the company to participate in procurement procedures. Even if the profit is identified as primary reason, preliminary research shows that is most often not the only reason and sometimes not even the most dominant one. Having in mind that motivation is affected by several factors, multiple answers are possible.

5. What discourages you from participation in public procurement procedures? (multiple answers possible)

- ☐ Don't trust procedures and institutions
- ☐ I don't have appropriate capacities to participate public procurement procedures
- ☐ Don't have the requested references
- ☐ Can not obtain tender documentation
- ☐ Don't think that deadline for payment will be respected
- ☐ Complicated procedure
- ☐ Low profit
- ☐ Inefficient protection of rights procedure (complaint)
- ☐ Providing of bank guarantee
- ☐ Small market
- ☐ Procurements are irregular
- ☐ Arrangements and grouping of other tenderers (unloyal competition)

Question should provide direct answer to reasons that contribute to company decision not to participate in the public procurement market. Provided answers are result of previous research.





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However, respondents were given the possibility to state some other reasons. As it is highly likely that this decision is affected by several factors, multiple answers are possible.

6. Would you elaborate answers to previous question?

☐ Yes: _____.

☐ No

Question is related to previous one. Examinee is offered a possibility to comment its previous answer as well as the question itself.

7. Do you think that procurements are irregular?

☐ Yes/They are irregular

☐ No/They are regular

☐ I suspect sometimes or notice that they are irregular

☐ Can't notice

☐ I have no opinion/Don't know

☐ Don't want to answer

☐ Comment: _____.

One of the main premises of the research is that procurement procedures are being implemented forma and that winning tender in the procurement procedure is already known in advance, because of the irregularities. Question aims directly to opinion of a respondent about stated problem. Besides provided answers, respondents were offered a choice between various options of answering the question and in addition a possibility of providing different answers and comments.

8. How would you notice irregularities in public procurement procedure, based on your experience?

_____.

Question refers to possibility of respondents to notice irregular procurement procedure, and is related to previous question. In order to determine more efficient level of knowledge about this issue, answer was in an open form.



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9. Do you know of an example of irregular public procurement procedure?

- ☐ Yes
- ☐ No
- ☐ I know multiple examples
- ☐ Don't want to answer
- ☐ Comment: _____.

This question is related to questions 7 and 8 and to specific experiences of respondents. It is aimed at resolving dilemma whether assumption that procurement procedures are being irregular is subjective evaluation of examinee or there are real examples that examinee is introduced with.

10. Do you think that misuses in public procurement are being penalized?

- ☐ Yes
- ☐ No
- ☐ Rarely
- ☐ Don't know

Question is related to level of trust in the institutions of the system. It additionally determines potential reasons for non-participation in public procurement procedures, if the answer is not positive it points out to additional mistrust in the institutions/procedures.

11. Who would you complain to if you were unsatisfied with the outcome of procurement or you notice irregularities in procedure?

- ☐ To entity organizing procurement procedure
- ☐ Republic Commission for Protection of Rights in Public Procurement Procedures
- ☐ Public Procurement Office
- ☐ Commercial Court
- ☐ Commission for Protection of Competition
- ☐ Regular Court
- ☐ Other: _____.



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Question has double purpose. In addition to assessing the level of knowledge about protection mechanisms it aims at collecting information whether companies trust that relevant institutions can help to resolve the problems related to functioning of the public procurement system. If the examinee picks up any of the institutions mentioned in the question, regardless of whether the choice is right or not, it can be concluded the respondent has certain trust in the public procurement system.

12. Does your company domain exist in public procurement market?

☐ Yes

☐ No

☐ Don't know

☐ Comment: _____.

Question refers to assumption that company domain is possible to identify in public procurement market. Question shows level of knowledge of public procurement market as well as recognising of potential business opportunities for the company in the public procurement system.

13. Are you introduced to public procurement procedures?

☐ Yes

☐ No

☐ Partially

☐ No, but I have assistance

Question is matter of self-evaluation of examinee about its level of knowledge of public procurement procedures. If the answer is negative, capacity of the company to participate in procurement procedures is low. One of provided answers is: „No, but I have assistance“, which shows that company has its methods to overcome lack of knowledge about the procedures, in case it is interested in participation.

14. What would contribute to your decision to participate public procurement procedures?

_____.

Open answer is provided with the goal to allow examinee to state potential reason that would contribute its decision to participate public procurement procedures.





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15. Do you think that authorities influence public procurement outcomes?

☐ Yes

☐ No

☐ Sometimes

☐ Don't want to answer

☐ Comment: _____.

A respondent is being asked for opinion about endangering integrity of public procurement procedures by primarily executive authorities, but question is formulated so that it refers to all authority organs, no matter how the examinee identifies them. The goal is to determine perception about systemic corruption, and additionally identify reasons behind answers in question 7.

16. Should evaluation of bids include only the price or other factors that influence quality, deadlines, guarantee, longer term benefit ...?

☐ Just the price

☐ Some factors, not all

☐ All relevant factors

☐ Comment: _____.

Question refers to method of tender evaluation. There are two criteria for comparison of tenders. First criterion is lowest price and second is economically most advantageous tender. Having in mind that lowest price criteria prevails in Serbia, the answer where respondent chooses other answers besides just „lowest price“ shows unbeneficial method of tender evaluation for respondent, which additionally can affect company readiness to participate public procurement procedures.



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17. Why did you gave up on participating in public procurement procedures: (multiple answers possible)

- ☐ Costs are higher than the benefits
- ☐ Complicated procedures
- ☐ Delays in payment
- ☐ Lack of flexibility of contracting authority in realization of contract
- ☐ I participated without results
- ☐ Risk is too high compared to benefits
- ☐ Change of company domain
- ☐ Low value of procurement
- ☐ Haven't given up, wasn't participating for some time
- ☐ Never participated
- ☐ Comment: _____

If the company participated in public procurement procedures, and withdrew at some point in time, it is clear that this decision was influenced by some negative experience that affected company thinking about public procurements. This attitude definitely affects company leadership decision whether to participate in procurement procedures.

19. Below what procurement value you wouldn't participate in procurement procedure?

- ☐ It doesn't matter
- ☐ Value in Euro: _____

Preliminary research shows that value of procurement affects motivation of respondents to participate, although more significant factor for participation in procurement procedure is value of profit. Having in mind that average profit in public procurement procedures is unknown, average value of the contract signed after implementation of public procurement procedure in 2017 is 3.197.000 RSD¹¹, can be determined what contract value represents limit for potential tenderers to participate in procurement procedures and whether current average value is limiting factor in terms of competition.

¹¹ Report of Public Procurement Office for 2017, http://www.ujn.gov.rs/ci/izvestaji/izvestaji_ujn





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20. Do you think that giving advantage to domestic companies in public procurement procedures (preferential) compared to foreign companies increases true competition potential of domestic bidders?

☐ Yes

☐ No

☐ In some cases

☐ I have no opinion

☐ Comment: _____.

Question refers to preferential that domestic companies/goods have if the difference in tenders is less than 5%, whether the criteria of evaluation is lowest price or economically most advantageous tender. Provision¹² that prescribes this advantage can encourage domestic companies to participate more actively in the public procurement procedures since they can propose higher prices than their foreign competitors and still get a contract thanks to preferential calculation of a price. Analysis of answer to this question will show whether it is really a case, in other whether the decision to submit or not a tender is influenced by the fact that company may benefit from the preferential treatment.

About the company

1. Your company belongs to:

☐ Small

☐ Medium

☐ Large enterprise

Question has dual intention to assess the size of the company taking part in the survey but also relevance of the company to public procurement system in general.

2. Do you intend to expand your business in the following twelve month period?

☐ Yes

☐ No

☐ Don't know

¹² Public Procurement Law Official Gazette of the RS, no 124/2012, 14/2015 and 68/2015.





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Question aims at estimation of company perspective in the following twelve months. If the answer is negative, probability that company will participate in procurement procedures in future, and expands its business in that way is small.

3. Do you have tax or any other debts, older than three months?

☐ Yes

☐ No

☐ Don't want to answer

Question refers to compliance with obligatory condition from article 75 of the Public Procurement Law. If the answer is positive, company can't participate in public procurement procedures, therefore, all other answers should be interpreted in the light of this answer.

4. Was your account blocked in the past year?

☐ Yes

☐ No

☐ Don't want to answer

Question is related to compliance with often used condition in terms of financial capacity. With this condition procurement entities try to choose tenderer that is financially stable.

5. You do business in plus in the last three years?

☐ Yes

☐ No

☐ For the most part

Question refers to financial status of the company and is often used, like previous question, as part of additional conditions.



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6. Are you satisfied with the results of your business?

☐ Yes

☐ No

☐ Other: _____.

This question, like previous two refers to self-estimation of the company business. If the answer is negative, it is most likely to assume that company doesn't dispose with certain capacities (e.g. business capacities), sufficient for participation in public procurement procedures.

7. Do you dispose with all equipment necessary for realization of your work?

☐ Yes

☐ No

☐ Partially

Question represents self-estimation of necessary technical equipment, or possibility to satisfy additional conditions in terms of technical capacity. Although, these conditions vary depending of procurement subject, it can be assumed that if the company considers it is unequipped for performing, it won't be able to satisfy requested technical capacities without engaging of additional ones, which affects the cost of execution of a contract, and therefore decreases motivation of potential tenderer to participate in procurement procedures.

7. Your employee qualification structure corresponds to business domain dominant in your company?

☐ Yes

☐ No

☐ Partially

Like question no 6, just related to personnel capacities.

8. You do business:

☐ On the complete territory of Serbia

☐ In local environment – municipality

☐ In my own region

☐ Comment: _____.



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Numerous companies as well as entrepreneurs, for limited capacities and nature of their business domain, do business only in local environment or in limited territory. This company status excludes them as potential participants in public procurement procedures, especially if procurement value is low, therefore engagement in distant areas doesn't even pay off.

About environment

1. Do you consider economic situation in country is on a satisfactory level?

☐ Yes

☐ No

☐ Partially

Estimation of economic situation in the country represents on one hand indirect measure of company success, but also estimation whether potential risk of contractual obligation will be reasonable, that is whether business will be paid, which is one of the main problems of business entities in the country, according to preliminary research.

2. Do you consider economic environment as being beneficial for your business/company?

☐ Yes

☐ No

☐ Partially

Question represents continuation of no 1. It aims specifically to company business area. If respondents estimate that their company/domain act in negative environment, it is less likely that company will try to expand business to public sector, through participation in public procurements.

3. Do you trust state insitutions in general?

☐ Yes

☐ No

☐ Partially

Question refers to trust into state institutions, that is, complete state apparatus. It can be interpreted two ways. First aims at institutions as procurement entities or contracting authorities after implementation of public procurement procedure. Second, to institutions that regulate



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doing business, implement or not existing regulations, and perform supervision over implementation of the Law and procedures. Negative answer should be interpreted in line with questions from the first chapter (questions 5, 7 and 10). That way it becomes clear whether mistrust is related solely to public procurement system or to state institutions in general.



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