

## KEY PROBLEMS IN PUBLIC PROCUREMENT IN BOSNIA AND HERZEGOVINA: EXPERIENCES OF PRIVATE COMPANIES

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A survey conducted by Analitika in 2014 showed that the business sector in Bosnia and Herzegovina (BiH) faces numerous obstacles when it comes to participation in public procurement procedures. The survey responses indicate that problems crop up in all phases of the process: during the development of tender documents, the collection and evaluation of tenders, and the implementation of the contract. The majority of respondents believe corruption is widespread in public procurement, and that political or personal connections are a prerequisite for being awarded public procurement contracts. Furthermore, there is a pervasive lack of trust among the business community in the public procurement system and in the likelihood of corruption and irresponsible public spending being sanctioned. The prevalent view is that companies are forced to participate in corruption in order to survive in the market.

### SUMMARY

### 1. INTRODUCTION

Public procurement is a process by which the public sector procures various types of goods, services, and works from private companies. This includes all procurement necessary for the unimpeded operation of public bodies, from the procurement of paper and pens to that of complex software solutions and expensive medical equipment. Given that procurement is financed by tax payers, institutions are obliged to apply a set of rules to guarantee that the funds will be spent in a rational and transparent manner, and in accordance with the public interest. The aim of procurement is to achieve best value for money, so a functional public procurement system is in the interest not only of public bodies and tax payers, but also of private companies, for which public sector contracts are a signif-

icant business opportunity. Efficient public procurement, therefore, significantly depends on free market competition between private companies. Preconditions for unhindered competition are, at the same time, an important requirement for membership in the European Union as a community of states with free movement of goods and services.<sup>1</sup>

In view of the above, the first Law on Public Procurement was adopted in BiH in 2004. It determined the procedure for implementing public procurement, as well as the rights and obligations of all the stakeholders in the process.<sup>2</sup> Nevertheless, during the ten years of its application, it came to light that the Law was flawed in numerous ways, primarily because it did not manage to ensure the mechanisms to prevent the irregularities and abuse that plague public



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<sup>1</sup> Representatives of Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands, Treaty establishing the European Economic Community (Rome: March 25, 1957).

<sup>2</sup> "Zakon o javnim nabavkama BiH" [Law on Public Procurement of BiH], *Official Gazette of Bosnia and Herzegovina* 49/04, 19/05, 52/05, 8/06, 24/06, 70/06, 12/09, and 60/10.

procurement in BiH.<sup>3</sup> With the assumption that flaws in the public procurement system can affect the business of private companies, the “Analitika” Center for Social Research conducted a study in 2014 to identify the key obstacles faced by the business sector in public procurement procedures in BiH. The study included representatives of Bosnian-Herzegovinian private companies of various sizes and from various branches of the economy that had participated in public procurement procedures.<sup>4</sup> The study covered numerous aspects of public procurement, including, among others, the criteria for selection of candidates and evaluation of tenders, technical specifications, types of procedures, fees charged for tender documents, legal protection of bidders, control of implementation of contracts, as well as issues such as the perception of the prevalence of corruption and trust in the public procurement system.

It is important to note that the survey was conducted while the 2004 Law on Public Procurement was still in force, before it was superseded by the new Law in 2014. In that context, the results of this study provide insight into the state of public procurement in BiH reflecting the ten years of application of

the old Law and can be used as a reference point for evaluating the effects of the new Law on Public Procurement.

This summary contains key research findings<sup>5</sup> presented through the key phases in the public procurement cycle, i.e. the pre-tender phase (defining qualification criteria for bidders and for awarding the contract, and choice of type of procedure), the tendering phase (publishing the public procurement notice, collecting and evaluating tenders, awarding the contract, and the appeal procedure), and the post-tender phase (implementation of public procurement contracts). Findings on corruption are presented in a separate section, and the conclusion summarises the key findings and general recommendations.

## 2. RESEARCH FINDINGS: PROBLEMS IN PUBLIC PROCUREMENT IN BiH FROM THE PERSPECTIVE OF BUSINESS ENTITIES

### 2.1. Pre-Tender Phase

During preparations for public procurement procedures, contracting authorities decide

<sup>3</sup> See, for example: Public Procurement Agency of BiH, *Izveštaj o monitoringu postupaka javnih nabavki u 2012* [Public Procurement Procedure Monitoring Report for 2012], (Sarajevo: Public Procurement Agency of BiH, 2013); Public Procurement Agency of BiH, *Izveštaj o monitoringu postupaka javnih nabavki u 2013. godini* [Public Procurement Procedure Monitoring Report for 2013], (Sarajevo: Public Procurement Agency of BiH, 2014); Audit Office of the Institutions of BiH, *Izveštaj o reviziji izvještaja o izvršenju budžeta institucija Bosne i Hercegovine za 2012. godinu* [Audit Report on the Budget Execution Report of Institutions of Bosnia and Herzegovina for 2012], (Sarajevo: Audit Office of the Institutions of BiH, 2013); Audit Office of the Institutions of BiH, *Izveštaj o reviziji izvještaja o izvršenju budžeta institucija Bosne i Hercegovine za 2013. godinu* [Audit Report on the Budget Execution Report of Institutions of Bosnia and Herzegovina for 2013], (Sarajevo: Audit Office of the Institutions of BiH, 2014); Open Society Fund, *Procjena rizika od korupcije u javnim nabavkama: Analiza stanja u Bosni i Hercegovini* [Corruption Risk Assessment in Public Procurement: Analysis of the Situation in Bosnia and Herzegovina], (Sarajevo: Open Society Fund, 2013); Support for Improvement in Governance and Management (SIGMA), *Bosnia and Herzegovina: Public Procurement Assessment* (Sarajevo: SIGMA, 2012); Transparency International BiH, *Monitoring implementacije Zakona o javnim nabavkama BiH* [Monitoring of the Implementation of the Law on Public Procurement of BiH], (Banja Luka: Transparency International BiH, 2012); Transparency International BiH, *National Integrity System Assessment: Bosnia and Herzegovina 2013* (Banja Luka: Transparency International BiH, 2013).

<sup>4</sup> For the purposes of the study, two surveys were conducted among representatives of private companies from across BiH: one through computer-assisted telephone interviewing (CATI survey) and another face to face survey (FtF survey). The CATI survey was conducted on a sample of 2500 randomly selected private companies from across BiH, representative in terms of company size (according to number of employees) and their geographic location. The aim was to identify within the total number of companies the share of companies that have participated in public procurement, disaggregated by their size, and to thus define the representative sample of companies with public procurement experience for the subsequent face to face survey that ultimately included 511 respondents.

<sup>5</sup> This Policy Brief is based on a report titled “Mapping of Key Obstacles to Equal Participation of Companies in Public Procurement in Bosnia and Herzegovina” published by Analitika - Center for Social Research in 2015. Analitika - Center for Social Research, *Mapiranje ključnih prepreka za ravnopravno učešće privrednih subjekata u javnim nabavkama u Bosni i Hercegovini* [Mapping of Key Obstacles to Equal Participation of Companies in Public Procurement in Bosnia and Herzegovina], (Sarajevo: Analitika - Center for Social Research, 2015).

on the kind of goods, services, or works they plan to procure, the technical characteristics of the object of public procurement, and the criteria for evaluating bidders and their bids. The Law on Public Procurement of BiH defines the procedure and basic principles that contracting authorities are obliged to uphold when preparing the procedure, with a special focus on the principles of efficient public spending, transparency, competition, and equal treatment of bidders.<sup>6</sup>

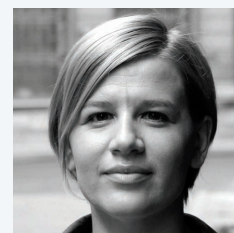
Responses from the survey indicate that there are certain derogations from the basic principles of public procurement in practice. Although two thirds of respondents stated that qualification criteria are mostly or completely clear and precise, a comparable portion (74.6%) also said that qualification criteria leave contracting authorities too much room for subjective judgement and arbitrary decision making. The findings seem to indicate that qualification requirements for bidders are not proportional to the object of public procurement. Namely, 72.6% of respondents with experience in public procurement found the qualification criteria too restrictive because of insistence on formalities and the requirement of more than the minimum preconditions. In addition, 70.1% of respondents believe that including bidders in the preparation of tender documents is very or somewhat widespread in public procurement in BiH.

Generally speaking, there is a risk of abuse when developing technical specifications, which can put a certain bidder in a better position relative to other candidates. The research results indicate that the majority of respondents believe the way contracting authorities define technical specifications has the effect of limiting competition: 83.3% of respondents believe that adapting specifications to certain enterprises is a very or a somewhat widespread phenome-

non in public procurement in BiH. Although the majority of respondents (76.7%) agree with the statement that technical specifications are partly or completely clear and precise, 72.8%<sup>7</sup> also believe that technical specifications are mostly restrictive because they insist on the formal application of specific standards even though there are alternative solutions to meet the set requirements.

In the preparatory phase, the contracting authority also decides on the type of procedure that will be applied in competitive public procurement. The open and restricted procedures are recommended for most procurement needs, while under certain strict conditions provided by law, the negotiated procedure with or without prior publication of notice may be applied.<sup>8</sup> As many as 81.6% of respondents believe that abuse of negotiated procedures is a very or somewhat widespread practice in public procurement in BiH. 71% of respondents believe that extraordinary circumstances are falsified in public procurement in order to justify applying urgent procedures and those that do not allow for competition.

When it comes to applying the appropriate procedure, contracting authorities are prohibited from splitting up the object of procurement in order to avoid applying an open procedure and to justify applying a less transparent procedure.<sup>9</sup> In the survey, 65.6% of respondents stated that splitting up procurement in order to avoid applying the appropriate procedure was a very or somewhat widespread practice in public procurement procedures in BiH. Business entities face an additional difficulty if the contracting authority fails to correctly estimate the value of a contract: 58.9% of respondents believe that this is a very or somewhat widespread phenomenon in public procurement procedures (Graph 2.1.).



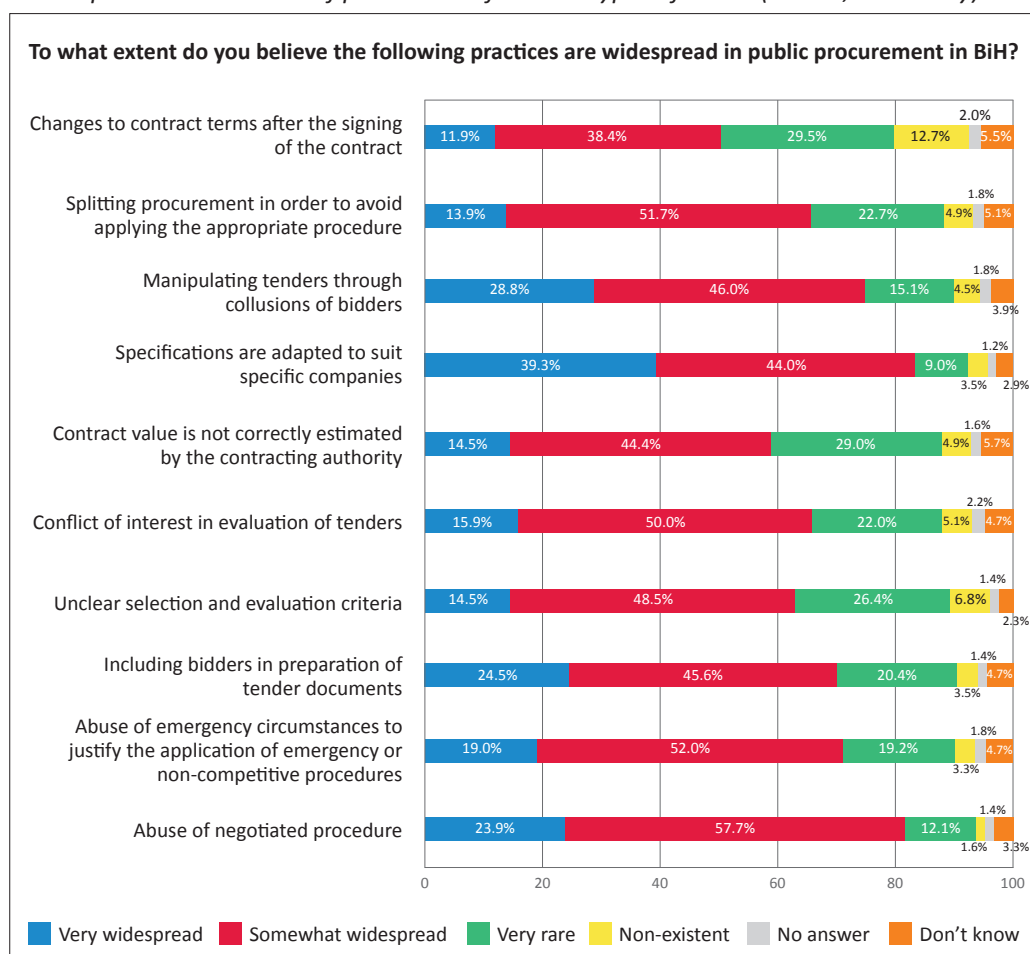
Nermina Voloder received an MA Degree in 2013 within the European Regional Programme “Democracy and Human Rights in Southeast Europe”, a joint degree programme of the University of Sarajevo and the University of Bologna. She graduated from the Faculty of Political Science in Sarajevo, Department of Journalism. From 2007 to 2012, she worked as a journalist for a number of print and online media in Bosnia and Herzegovina. Since 2014, she has been employed at the Analitika - Center for Social Research as a project coordinator and junior researcher. Her research interests include issues of transparency, accountability and good governance in public institutions.

<sup>6</sup> “Zakon o javnim nabavkama BiH”

<sup>7</sup> These results reflect responses to two questions: one about the degree of clarity and preciseness of technical specifications, and the other about the degree of restrictiveness of technical specifications.

<sup>8</sup> “Zakon o javnim nabavkama BiH,” Article 11.

<sup>9</sup> For procurements of lesser value, the law foresees the possibility of using a competitive request, which is applied for procurement of goods and services up to 50,000 BAM, and procurement of works up to 80,000 BAM, while direct agreement is applicable to procurement up to 6,000 BAM. “Zakon o izmjenama i dopunama Zakona o javnim nabavkama BiH” [Law on Changes and Amendments to the Law on Public Procurement of BiH], *Official Gazette of Bosnia and Herzegovina* 12/09, Article 6.

Graph 2.1. Assessment of prevalence of various types of abuse (N: 511, FtF survey)<sup>10</sup>

## 2.2. Tendering Phase

The main activities implemented by the contracting authority during the tendering phase include publishing a call for bids, distributing tender documentation, and collecting and evaluating bids in line with the conditions defined in the pre-tender phase. Respondents to the survey (84.3%) believe that public procurement notices are always or mostly easily accessible. They stated that they keep informed about public procurement mostly through the official gazette (62.04%), followed by through the media - including newspapers and web portals (36.8%), through the official public procurement web portal (32.30%), and through the websites of contracting authorities (28.8%).<sup>11</sup>

Potential bidders interested in participating in a public procurement procedure purchase tender documentation for a fee that covers the costs of reproducing and sending the documents.<sup>12</sup> 36.8% of respondents find tender documentation fees to be appropriate since they reflect the costs of reproduction. On the other hand, 33.3% of respondents said the fees were higher than they should be, and 25% believe the fees are inappropriately high. Apart from tender documentation fees, private companies incur additional costs because they are required to submit proof of personal, economic, professional and/or technical capacity for executing the contract. Out of a total of 511 respondents in the face to face survey, 42.7% said the submission of a final bid, including the tender documentation

<sup>10</sup> Graphs that show the survey results can be found in the report by Analitika - Center for Social Research, *Mapping of Key Obstacles to Equal Participation of Companies in Public Procurement in Bosnia and Herzegovina*, and its annexes.

<sup>11</sup> Respondents could select multiple answers to this question, N: 511.

<sup>12</sup> "Zakon o javnim nabavkama BiH," Article 18, para. 4.

fee and additional documentation costs and not counting any guarantees that may be required, cost them between 101 and 300 BAM. A somewhat smaller proportion of respondents (23.7%) said the cost of submitting a bid was up to 100 BAM, while 18.4% of respondents confirmed having paid from 301 to 500 BAM for tender and additional documentation. Only 2.9% of all respondents believe the costs of additional documentation to be low, while 48.5% of respondents said the costs were high, and 46.6% of respondents said the costs of submitting documentation accompanying the bid were neither high nor low.

Respondents were also asked to assess, based on their experience, the work of contracting authorities or competition committees in terms of selecting the best bidder. Here the respondents had divided opinions: 49.3% said that decisions on the best candidate are always or mostly fair, selecting the most competitive tender in line with public interest, while 45.8% stated that this happens only rarely or never. In addition, 63% of respondents said that the evaluation criteria were very or quite often unclear in public procurement procedures in BiH (Graph 2.1.).

Impartial decision making on the best bidder may be undermined if any of the participants in public procurement have a conflict of interest. In that respect, it is indicative that 65.9% of respondents stated that conflict of interest in evaluating bids is very or somewhat widespread in public procurement in BiH.

Bidders themselves may significantly impact competition in public procurement, especially by colluding and forming cartels with the aim of dividing up the market and taking

turns getting contracts.<sup>13</sup> For that reason, one of the questions in the survey was concerned with the possibility of manipulation of tenders in public procurement through prohibited agreements between candidates, and the results show that as many as 74.8% of respondents believe that this practice is very or somewhat widespread in BiH.

The public procurement system guarantees the right to appeal if a candidate believes the contracting authority violated any legal provision during the public procurement procedure. Given that in 2013 the fee for initiating appeal proceedings was increased from 100 to between 500 and 25,000 BAM,<sup>14</sup> respondents to the survey expressed their opinions on the stipulated fees: 30.5% believe that the stipulated fees are too high, 19.4% believe that the fees are necessary, but the amounts are not appropriate, while 38.4% of respondents believe there should be no fees at all. Respondents who had filed complaints with the Procurement Review Body also said that this institution decides on complaints from dissatisfied bidders in a timely (82.8%), transparent (79.3%), and fair manner (67.5%).<sup>15</sup>

The final instance of appeal for candidates is the Court of BiH, which rules in cases when the applicant contests the decision of the Procurement Review Body. According to the survey results, the shortest length of proceedings before the Court of BiH entailed a decision within three months. The longest duration of proceedings according to the majority of respondents (34.8%) was from one to two years. However, 17.4% of respondents stated that the longest procedure took two to three years, and the same percentage (17.4%) stated that the procedure before the Court lasted more than three years.<sup>16</sup>

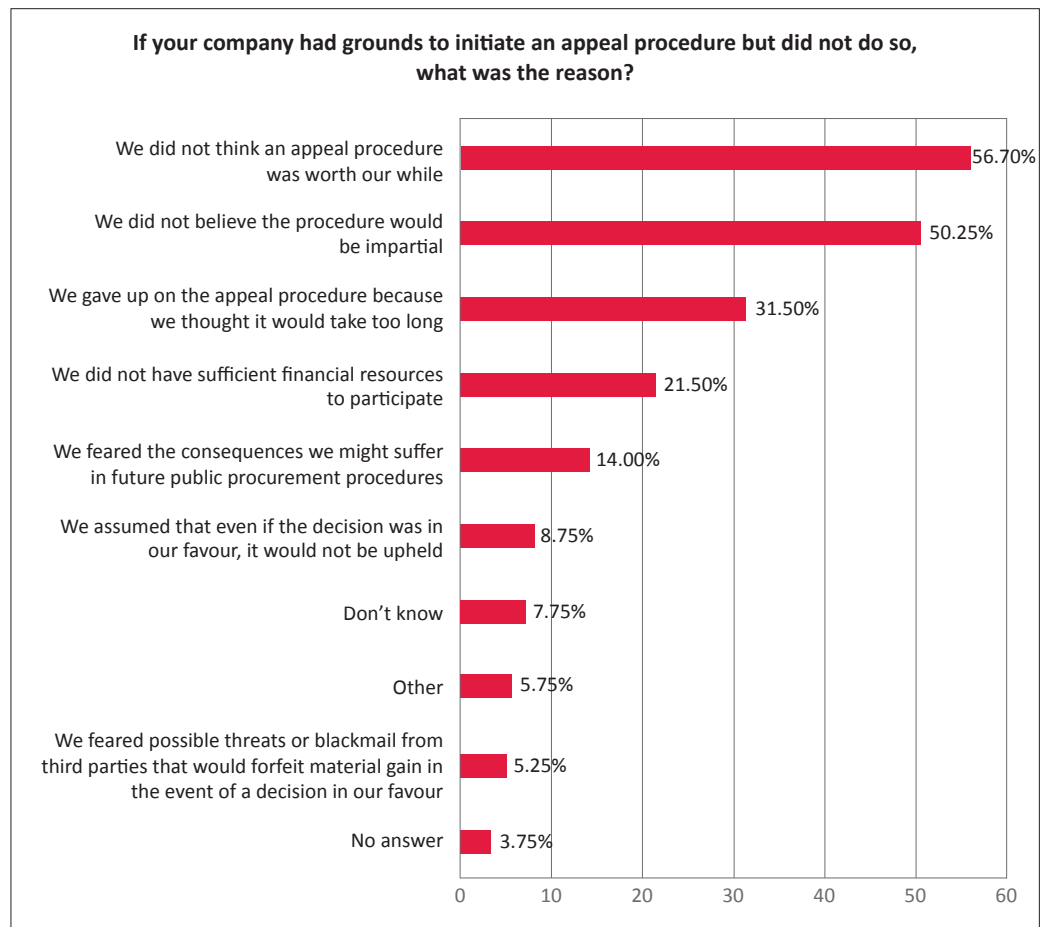
<sup>13</sup> Bundesbeschaffung and the Ministry of Economy, Labour and Entrepreneurship of Croatia, *Javnom nabavom protiv korupcije* [Fighting Corruption with Public Procurement], (Vienna: Bundesbeschaffung, 2008), p. 5.

<sup>14</sup> According to changes to the Law, depending on the value of the public procurement, the fees were between 500 BAM and 25,000 BAM. "Zakon o izmjenama i dopunama Zakona o javnim nabavkama BiH" [Law on Changes and Amendments to the Law on Public Procurement of BiH], *Official Gazette of Bosnia and Herzegovina* 87/13, Article 50b. According to the new Law on Public Procurement of 2014, the fees were decreased and are now in the range between 500 BAM and 10,000 BAM. "Zakon o javnim nabavkama" [Law on Public Procurement], *Official Gazette of Bosnia and Herzegovina* 39/14, Article 108.

<sup>15</sup> Responses to this question were provided by 111 respondents, or 21.7% of the total number of respondents to the FtF survey, who had direct experience of the appeal process. The results reflect the responses to three questions about the efficiency of procedures.

<sup>16</sup> Only 4.5% of respondents answered this question, i.e. 23 out of 511, saying they had appealed a decision of the Procurement Review Body before the Court of BiH.

Graph 2.2. Reasons why companies did not initiate appeal procedures  
(N: 400, FtF survey)



The survey also showed that a certain number of respondents are distrustful of the system of legal protection within public procurement in BiH. Namely, 77.5% of respondents who had grounds for appeal did not have any experience with the appeal procedure, and when asked why they did not initiate appeal proceedings even though they had the grounds for it, as many as 56.75% stated that they believed it was not worth initiating appeal procedures, 50.25% stated they did not trust that the procedure would be implemented impartially, while 31.5% believed the procedure would take too long<sup>17</sup> (Graph 2.2.).

### 2.3. Post-Tender Phase

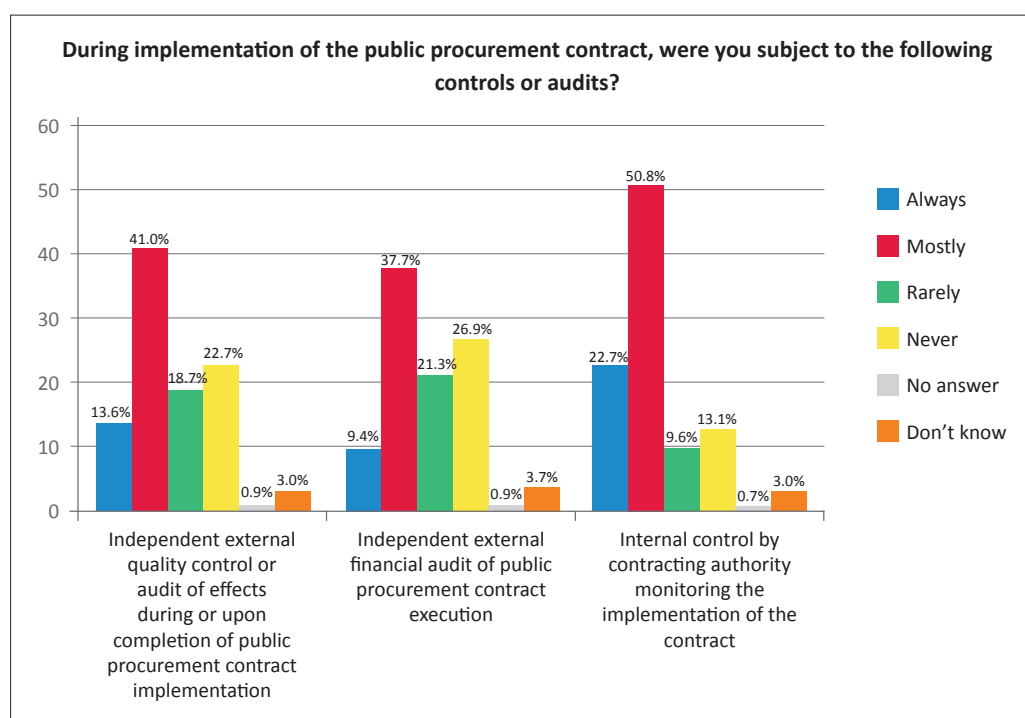
The implementation of public procurement contracts is an important segment of public

procurement even though this phase is not formally regulated by public procurement legislation but by laws on obligations. In this phase, the greatest risk arises out of changing the terms of the contract, such as the stipulated quantities, deadlines, or quality of goods, services or works that were part of the conditions for being awarded the contract through the tendering process. If we are to judge by the views of business entities, such negative practices are widespread in public procurement in BiH. Namely, 50.1% of respondents believe that changes to contract terms after signing are very or somewhat widespread in public procurement in BiH.

The survey results partially illustrate the degree to which contracting authorities control the public procurement process

<sup>17</sup> This question was answered by 400 out of the 511 respondents who had not filed complaints even though they had the grounds to do so. Respondents could select multiple answers to this question.

Graph 2.3. Experience with controls and audits in public procurement contract implementation (N: 511, FtF survey)



after signing a contract with the best bidder. Thus, 73.5% of respondents stated that during the implementation of a public procurement contract they were mostly or always subject to internal controls. Also, findings indicate that contracting authorities ensure external controls to an adequate degree: 54.6% of respondents stated that they were mostly or always subject to external quality control or review during or after the execution of a public procurement contract, while 48.2% of respondents stated they were almost never or never subject to this type of review. As shown in graph 2.3., 47.1% of respondents were mostly or always subject to independent external financial audits, while 48.2% of respondents were almost never or never subject to this type of control.<sup>18</sup>

#### 2.4. Public Procurement and Corruption in BiH

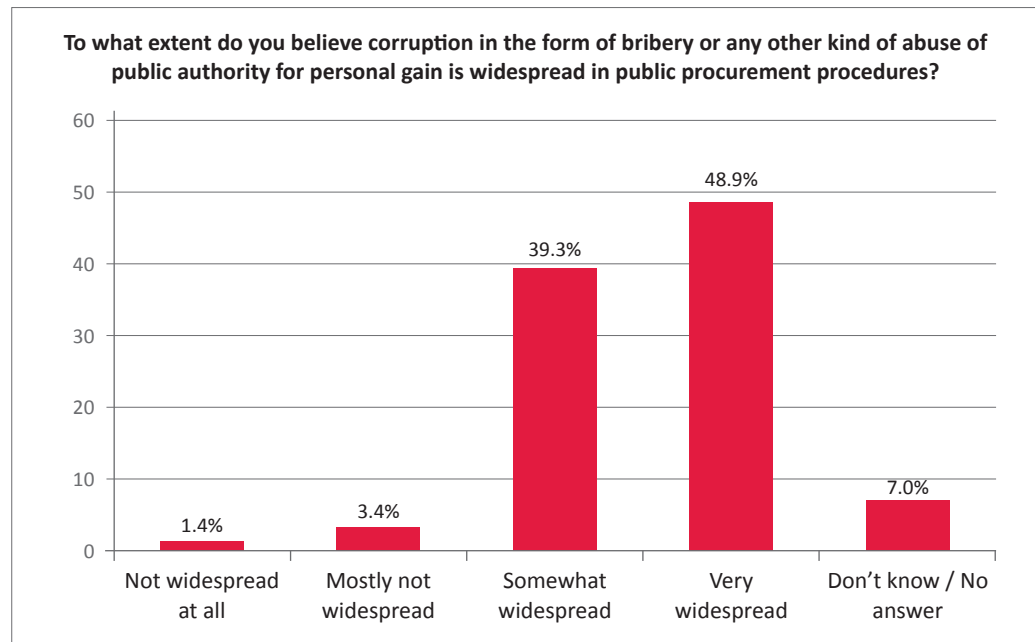
The public sector as a buyer holds enormous financial power, because a significant portion of the budget is used for the procurement of various goods, services, and works. It is estimated that at the level of the European Union, the value of public procurement amounts to 16% of gross domestic product.<sup>19</sup> Public procurement accounts for a significant amount of public spending in BiH as well: during 2013, the value of public procurement amounted to 2.7 billion BAM, and the year before it was 3.5 billion BAM, which is almost 10% and 13% of the gross domestic product, respectively.<sup>20</sup> Given that public procurement transfers financial resources from the public to the private

<sup>18</sup> Responses to the question about control of contract implementation were given by 427 respondents who had previously stated having had experience in implementing public procurement contracts.

<sup>19</sup> "Public procurement," European Commission, last updated on October 31, 2014, <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/> (Accessed on January 15, 2015).

<sup>20</sup> Public Procurement Agency of BiH, Godišnji izvještaj o zaključenim ugovorima u postupcima javnih nabavki u 2013. godini [Annual Report on Public Procurement Contracts in 2013], (Mostar: Public Procurement Agency of BiH, 2014), p. 15.

Graph 2.4. Perceptions of corruption in public procurement procedures (N: 2500, CATI survey)



sector, this area is particularly susceptible to the risk of corruption.<sup>21</sup> Bosnia and Herzegovina is no exception in this respect. According to the analyses of the SIGMA experts, corruption in public procurement is a prominent problem, and authorities in BiH should focus their efforts on implementing reforms in public procurement, especially those to reduce corruption and fraud.<sup>22</sup>

Results from both surveys included in the study show that the business community perceives a high level of corruption in public procurement.<sup>23</sup> As many as 88.2% of the total of 2500 respondents to the CATI survey believe that corruption in the form of bribery and other types of abuse of public authority for personal gain is somewhat or

very widespread in public procurement in BiH (Graph 2.4.). Similarly, 87.1% of the total of 511 respondents from the face to face survey stated that corruption in public procurement procedures is somewhat or very widespread.

Judging by the responses to the survey, corruption is almost equally widespread at all levels of government: at the local or city level (71.70%), at the cantonal level (58.40%), at the entity level (57.30%), and at the state level (56.85%).<sup>24</sup> Within the public sector, respondents believe that corruption in public procurement is most widespread in the energy sector (46.1%), the health care and social security sector (40.9%), and the justice sector (37.5%).<sup>25</sup>

<sup>21</sup> Organisation for Economic Cooperation and Development (OECD), *Fighting Corruption and Promoting Integrity in Public Procurement* (Paris: OECD, 2005), p. 9.

<sup>22</sup> Support for Improvement in Governance and Management (SIGMA), *Priorities for Bosnia and Herzegovina* (Paris: SIGMA, 2014), p. 15.

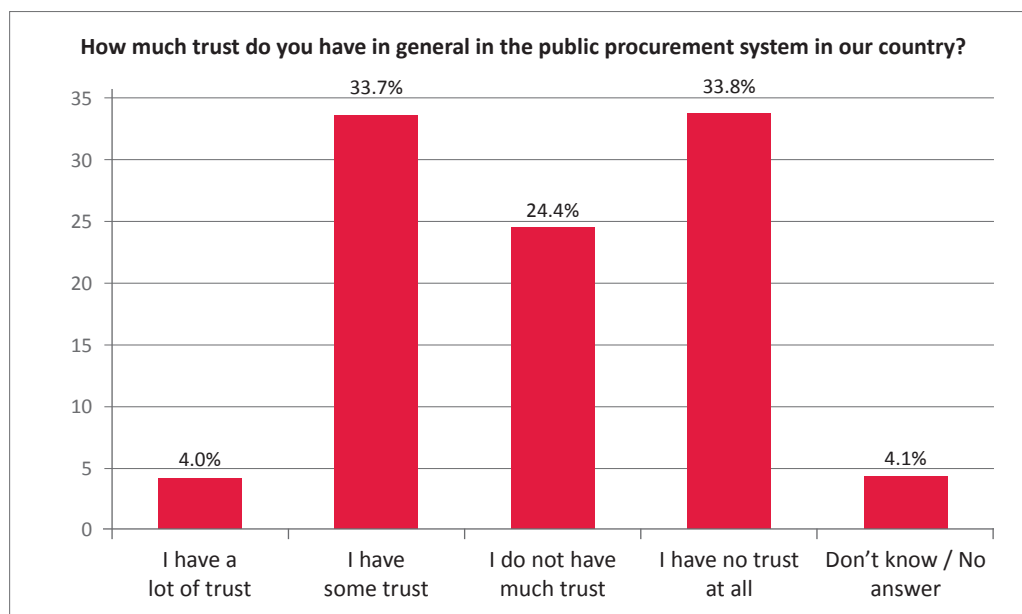
<sup>23</sup> This survey adopted the definition of corruption from the Eurobarometer survey: offering, giving, requesting and accepting bribes or kickbacks, valuable gifts and important favours, as well as any abuse of power for private gain. TNS Political & Social, *Flash Eurobarometer 374: Businesses' Attitudes towards Corruption in the EU, Report* (TNS Political & Social, 2014).

<sup>24</sup> The question was answered by 445 respondents in the FtF survey, who believe corruption is present in public procurement. Respondents could select multiple answers to this question.

<sup>25</sup> The question was answered by 445 respondents in the FtF survey who believe corruption is present in public procurement. Respondents could list three public sectors they believed had the most widespread corruption in public procurement.



Graph 2.5. Trust in the public procurement system in BiH (N: 2500, CATI survey)



In addition, 20% of respondents admitted that representatives of their companies were asked or expected to give bribes, gifts or services in kind to secure contracts in public procurement. Respondents also confirmed that corruption is detrimental to their business: 53% of them believe that corruption prevented them from being awarded a public procurement contract in the past three years. Explaining the possible reasons for this, 70.5% of respondents believe that this was due to adapting public procurement criteria to suit certain bidders, while 57.1% of respondents stated that decisions on choice of supplier were made even before the publication of the public procurement notice. In addition, 39.8% of respondents said that the reason for their not being awarded the contract was an agreement between bidders to avoid the rules of free and competitive participation in the procedure.<sup>26</sup>

The dominant view among respondents was that the very close connections between the private sector and politics in BiH lead to corruption: as many as 94.2% of respondents agreed with this statement. It is the opinion of 80.3% of respondents that hav-

ing political connections is the only way to survive in the BiH market.

In addition, 84.1% of respondents completely or partly agree with the statement that corruption in public procurement undermines the competitiveness of the economy. Respondents are also not satisfied with the effects of anti-corruption measures: 80.2% of respondents said that anti-corruption measures are not efficiently applied in public procurement. What is more, 70.1% of respondents believe that companies in BiH are forced to participate in corruption in order to survive in the market.

The survey results indicate a relatively low degree of trust in the public procurement system. Out of the total of 2500 respondents to the CATI survey, 58.2% said they have little to no trust in the public procurement system in BiH (Graph 2.5.).

Most representatives of private companies covered by the FtF survey did not indicate much trust in the mechanisms to sanction corruption, either. When asked what would happen to persons or companies that participate in corruption activities in

<sup>26</sup> 271 out of the 511 respondents answered this question. Respondents could select multiple answers to this question.

public procurement procedures, 76.5% of respondents to the FtF survey did not believe that perpetrators of corruption would pay high fines or end up in jail. Lack of trust is particularly pronounced in relation to possible repercussions of engaging in corruption: 81.6% of respondents believed that nothing would happen to persons and companies participating in corruption. It is worrisome that representatives of private companies do not believe that corruption cases are reported: 77.1% of respondents said there was little to no likelihood that participants in corruption activities would be reported to the police or prosecutor's office, or that the police would apprehend them.

The results also show the extent to which the respondents themselves are not prepared to report corruption in public procurement: 54% said they would never or are not sure they would ever report irresponsible public spending or corruption in public procurement procedures. To explain their attitude, 59.8% of respondents said they did not believe their reporting of corruption would have any results, while 25% of respondents do not believe it is their job or role.<sup>27</sup> A certain number of respondents, 12.7%, said they would not report corruption out of fear of consequences for themselves and their companies. Apart from being discouraged from reporting corruption, a significant proportion of respondents (38.9%) do not know who to go to and how to report irresponsible public spending and corruption in public procurement procedures.

Respondents also showed a certain degree of tolerance of corruption: 55.6% of respondents completely or partially agree with the statement that under certain circumstances it may be acceptable to use political and personal connections to get a contract in public procurement procedures. In addition, 53.8% of respondents believe that in order to survive in the market, companies must adapt and pay kickbacks for getting public procurement contracts if other companies do this.

Based on the survey results, it can be concluded that in addition to flaws in the application of the law during the preparation and implementation of public procurement procedures, corruption is another significant obstacle for the participation of private companies in public procurement. This information has special weight if we take into account that corruption, whether perceived or real, undermines the principles of competition and equal treatment of bidders, and has a negative effect on rational budget spending, as well as the price and quality of services delivered to citizens by way of public procurement.

### 3. CONCLUSION AND FRAMEWORK RECOMMENDATIONS

The study conducted by Analitika in 2014 showed that in practice, there are numerous obstacles private companies face in public procurement procedures in BiH.

According to the respondents, abuse appears already during the preparatory phase of procedures, that is, when the main terms and conditions for awarding the contract are being defined. Qualification criteria were also deemed problematic because they leave too much discretion to contracting authorities in terms of ranking bids or are disproportionate to the object of procurement. Relying on their own experiences of participating in public procurement procedures, the respondents also pointed out the harmful practice of setting restrictive technical specifications or adapting them to suit a specific company. Given that a significant number of respondents believe that favoured bidders are included in the preparation of tenders, there is a need to create stronger mechanisms that will ensure equal opportunities for all candidates to participate in public procurement.

The survey results indicate that irregularities also take place during the selection of the appropriate procedure, especially in relation to negotiated procedures with

<sup>27</sup> The question was answered by 276 out of the total of 511 respondents.

or without prior publication of notice. Although emergency conditions may be a valid reason to apply the negotiated procedure, many respondents believe that extraordinary circumstances are used as an excuse to opt for this generally less transparent procedure. Respondents believe that open procedures are also avoided by splitting procurement in order to apply the less transparent procedures for procurement of lesser value. In order to prevent such practices, it is necessary to ensure better compliance of public procurement conditions with the basic principle of non-discrimination, as well as a higher degree of control over preparation of tender documents.

High prices of tender documentation and the requirement to submit extensive reference documents in order to participate in public procurement may constitute a significant obstacle to equal participation of business entities in public procurement. In order to ensure competition and efficient procedures, costs should be rationalised to make participation in public procurement procedures accessible to all bidders.

Apart from contracting authorities, active competition among bidders may also be limited by the private companies themselves. Given that respondents believe bidders collude unlawfully in order to manipulate public procurement procedures in BiH, the public procurement system should be equipped with measures to sanction such conduct.

Special measures of caution are also needed in the field of public procurement contract implementation, given that the majority of respondents stated that changing the terms of the contract after its signing is widespread in public procurement in BiH. The public sector should also strengthen control mechanisms during implementation in order to prevent derogation from the initial contract terms.

Representatives of the business sector also showed a high degree of distrust of legal protection and public procurement audits, which are largely seen as expensive and unprofitable. The private sector is partially distrustful of having their complaints handled

with impartiality. High fees for initiating appeal procedures are of particular concern. Therefore, bidders that are not selected should be provided with accessible and effective review of public procurement procedures in keeping with the principles of equal and fair treatment.

According to the respondents, corruption in the form of bribery and other types of abuse of public authority for personal gain are a significant obstacle to the equal participation of private companies in public procurement procedures in BiH. There is a widely held belief in the business community that political and personal connections are a deciding factor for being awarded public procurement contracts. What is more, a significant number of business sector representatives believe that companies are forced to participate in corruption in order to survive in the market, and that it is acceptable to pay a certain kickback in exchange for being awarded a public procurement contract.

Trust in the public procurement system and the mechanisms for sanctioning irregularities is at a very low level. Only a small number of business representatives have reported corruption or irresponsible public spending, while the majority of the business community does not believe that efforts to fight corruption would be fruitful. The survey results indicate that a certain number of private companies justify the use of private and political connections for getting public procurement contracts.

The survey results presented in this summary point to numerous flaws and shortcomings in the implementation of public procurement procedures in BiH. Practices are expected to improve with the application of the new Law on Public Procurement, so the key results of this study can be used to measure the effects of the new Law. Nevertheless, data on perceptions of corruption, and on its manifestations and causes, are a clear signal to policy makers that improving the public procurement system in BiH requires, apart from a modernised legal framework, strengthened measures and policies to prevent corruption and other forms of abuse of public spending.

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