

USE OF  
ELECTRONIC  
PROCUREMENT  
SYSTEM AT  
LOCAL LEVEL

MONITORING  
REPORT



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## MONITORING REPORT

Prepared by Partners Albania

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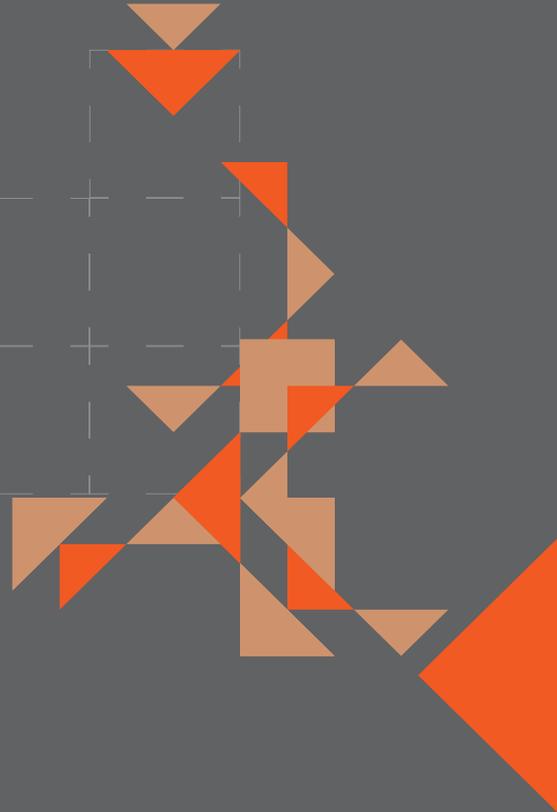
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## ABBREVIATIONS

Contracting Authority.....	<b>CA</b>
Decision of Council of Ministers .....	<b>DCM</b>
Economic Operator .....	<b>EO</b>
Gross Domestic Product.....	<b>GDP</b>
Electronic Procurement System .....	<b>EPS</b>
Local Government Unit.....	<b>LGU</b>
Organization for Economic Cooperation and Development .....	<b>OECD</b>
Partners Albania .....	<b>PA</b>
Public Private Partnership .....	<b>PPP</b>
Public Procurement .....	<b>PP</b>
Public Procurement Agency .....	<b>PPA</b>



## SUMMARY

Electronic procurement is the main form used widely in public sector to increase the effectiveness of funds used by central and local government bodies. By using information technology, procurement is easier, as it is based on faster and simplified procedures. It is less expensive, as it reduces the excessive paper documents and promotes increase of competition. The system is more transparent, as it enables an increased information flow, greater accountability, and ensures a more efficient and effective use of taxpayers' money.

The Electronic Procurement System (EPS), for the first time was implemented in Albania in 2008, with the support of the Millennium Challenge Corporation Threshold Programme. The system is based on an internet application and enables the electronic management of public procurement procedures throughout the country. The Electronic Procurement System is managed by the Public Procurement Agency (PPA), and it may be used through the PPA website. Under the Decision of Council of Ministers (DCM) No.45 dated 21.01.2009, from January 2009, usually all public institutions realise their procurements only through the EPS, thus, avoiding the use of paper-based procurement procedures.

The main findings from monitoring of the application of electronic public procurement at local level, addresses the findings from monitoring of public procurement procedures from local government units (LGU), experience of economic operators (EO) involved in these procedures, and legal and regulatory framework and its impact throughout the implementation.

## MAIN FINDINGS

### CAPACITIES AND EXPERIENCE OF ECONOMIC OPERATORS

- Economic Operators have sufficient human resources to meet the contractual obligations. 53% of the interviewed economic operators hire 10-49 employees;
- Generally, EO have experience in public procurements. More than half of interviewed EOs (60%) have more than 5 years of experience in public procurements;
- EO, in general, have experience with CA (Contracting Authority) for the procurement of goods, services and works. Thus, 38 % of the interviewed EO participate on average in 51-100 procurement procedures per year. In addition, 68% of the interviewees have experience with more than two municipalities in public procurement field;
- About 56% of the interviewed economic operators realise more than 51% of their annual turnover by the contracts they receive from contractual authorities.

### INFORMATION ON PUBLIC PROCUREMENT PROCEDURES

- More than half of respondents use internet as a source of information about public procurements;
- The majority of the interviewees (77%) think that the information contained in tender documents is complete and entirely complete;
- In general, EO (82%) agree that it is not difficult to receive information on tenders and to find calls for tenders;
- Generally, EO receive information on procurement procedures by the PPA portal.

### COMPLAINT PROCEDURES

- EO have no trust to follow the complaint procedures, however, there are cases when they lack information on these procedures;
- In addition, 57% of interviewees agree that procedures and regulations of electronic procurement, in general, are easy to follow.

## TRANSPARENCY OF PROCEDURES

- The majority of interviewees (75%) think that the current procurement procedures are transparent and very transparent;
- The PPA online portal enables to monitor open tender procedures in all the cases stipulated by the law. However, the monitoring of contract awards upon the termination of procedures is difficult because the majority of procedures are promptly archived after their termination;
- In the online portal, it is not possible to identify the successful EO for small purchases, because the procedure is promptly archived by the CA;
- Recently, the PPA has made some changes in the platform to increase public transparency for the procedures of concluded procurements. The CAs can publish in the Contract Award all the successful economic operators, regardless of the type of procedure;
- In the PPA portal are published also two registries about procurements: Forecasts Registry and Registry of Concluded Procurements;
- The reasons for exclusion of EO are published in the notices of electronic procurements bulletin;
- 62% of the interviewees think that the current procedures have somehow reduced corruption, and only 24% think that they have reduced and have reduced corruption a lot.



## APPLICATION OF SPECIAL CRITERIA

- 63% of EO agree that application of special criteria in a tender procedure favours some of EO, and discriminates/excludes many of EOs that participate in a tender;
- More than half of the interviewees agree that the application of special criteria in a tender procedure affects in decreasing the number of EOs participating in a tender;
- The application of special criteria by the CA creates barriers, prevents equal access and competition among EOs. In some cases, establishing such criteria favours certain EOs.

## FUNCTIONING OF THE PPA PORTAL

- Economic Operators think that the amendments of recent years (2013-2014) on public procurements have been positive and helpful to EOs;
- EO face difficulties in using procurement portal, difficulties related mainly to the large overload in the final hours of closing procedures, difficulties in downloading forms or in uploading tender documents;
- According to CA, the PPA contact number for the clients is not always working, and the PPA staff is not available to assist online the CA staff;
- The monitoring through the e-procurement platform presents some difficulties, because a part of procedures are promptly archived once they are completed and the public has no access to the website archive;
- In the PPA portal, the finding of notifications for contracts signed by the Contracting Authority and the winner notification are enabled, but the quick archiving of procedures makes the receiving of information after the winner's declaration difficult. The CA shall publish this information in the webpage, in order to increase transparency.

## COMPETITION IN PUBLIC PROCUREMENTS

- A considerable part of the interviewees somehow agree that the current procurement procedures ensure equal opportunities to all to participate in the procurement process (40%) and that the public tenders award is a fair and non-discriminating process (42%);
- 1/3 of the interviewees somehow agree that the contracting authorities continue to sign direct contracts which are difficult to be challenged by possible bidders;
- Competition in "Open procedure" and "Request for proposal" still remains low. In all municipalities, there were found cases when works, goods and services contracts were signed by the same company. While the competition in "Purchase of low value" procedures is higher and number of EOs participating in these procedures is high.

- Participation of EOs in public procurement procedures varies depending on municipalities and contract nature. The competition in municipalities located far from big centres is very low;
- The small number of participating firms influences also on public procurement financial terms. The savings from the limit fund for all the open procedures or request for proposal, in general, varies from 0.1 to 3%;
- In the list of successful firms, there are noticed cases when firms are contracted some times for similar services or goods;
- In some cases, municipalities have opened some procedures to purchase the same similar good or goods in order to respect the threshold determined for low value purchases.

## EFFECTIVENESS OF USING FUNDS

- In general, it is noticed that the savings of the limit fund form procurements of contracts for works are minimal; there are even cases when they are under 1%. In addition, there are some cases, especially in small purchases, there is no saving or the savings are 30%;
- In general, the value of contracts for supervision of public works is lower than the limit fund. This fact is noticed in all municipalities. In most of the cases, the offer of EOs does not cover the costs they incur for the supervision of works;
- The limit fund savings varies depending on the type of contract. Contracts for services have higher savings. They vary from 1 to 90.2%. In open procedures, the saving of limit fund varies from 1.9 up to 19.5%.





## INTRODUCTION

### ABOUT THE

# monitoring report

This report is prepared by Partners Albania for Change and Development, with the support of the Embassy of the Kingdom of the Netherlands in Tirana, under the frame of the project “Enhancing transparency and accountability of e-public procurement at the local level” implemented from November 2013, to April 2015.

The report is based on data review, and analysis, from monitoring the legal and regulatory framework implementation of public procurement procedures at local level, and more concretely at the Municipalities of Berat, Fier, Himara dhe Saranda, and based on the experience of the economic operators and municipal staff - members of procurement units or commissions in the municipalities - as well. The selection of the Local Government Units part of this monitoring process and project as well, was organized based of an "open application procedure" where municipalities themselves expressed their interest for collaboration and involvement in this process. Their selection was made according to several criteria including the size of the LGU, number of personnel, the annual average procurement procedures, etc. aiming at identifying various problems, and gaining the opinion of different local government units, in terms of different characteristics and experiences.

The monitoring was used to assess the process transparency, EO's access to participate in such procedures and their perception on the possibility to equal access provided by such procedures, increase of transparency, enhance competitiveness, effectiveness and the role these procedures have played to reduce corruption.

The project is in line and continuation of PA work to contribute to the democracy development and good governance in the country, empowerment of the institutions and increase of access to information for the groups of interests and public at large. The findings and the recommendations of this report, aim to contribute in undertaking of concrete measures by the responsible authorities and also in advancement of the legal and regulatory framework with the purpose of increasing of transparency and efficiency of the use of electronic public procurement at local level.

## ACKNOWLEDGMENTS

# and thanks

The monitoring report was prepared with the collaborative efforts and the support of local government units, economic operators and experts.

Partners Albania would like to express its gratitude to the Mayors of the Municipalities who participated in this process, to the representatives of procurement units, and commissions in the four municipalities, to the administrators and legal representatives of the companies involved in this monitoring effort, by appreciating their cooperation, contribution and devoted time. It was their contribution that made possible the preparation of this report.

Partners Albania would like to express its gratitude to Embassy of the Kingdom of the Netherlands in Tirana for its support in the implementation of this monitoring effort.





# 3 METHODOLOGY

The monitoring process was carried out during January 2014 - Mars 2015. Partners Albania employed a set of methodological tools aiming the monitoring of correct implementation of the Public Procurement Law and of electronic procurement procedures for public tenders in four pilot municipalities: Municipalities of Berati, Fieri, Himara and Saranda.

The methodological approach included:

- (i) Literature overview. Considering the specific nature of the study and the various changes of the procurement legislation throughout the years, the literature review included laws and sub legal acts on public procurement, and the regulatory framework of the institutions responsible for the implementation. From November 2006, time when the public procurement law entered into force, many changes have occurred in the regulatory framework and sub legal acts. In particular in the last couple of years, a series of Decision of Council of Ministers (DCM) and directives have been approved and entered into force. Some of these changes and few considerations with this regard are presented in the following section of the report.
- (ii) Data analysis from the on-line research and monitoring of the website of Public Procurement Agency and the targeted municipalities. During January-December 2014, was monitored on regular bases the PPA website, the municipalities website, and the public procurement bulletins. The monitoring aimed to collect data and analyze the announced procedures by each municipality, announcement of winners, number of procedures cancelled and cancellation reasons, number and types of contracts signed, complaints regarding procedures, contracting funds, etc.
- (iii) Sampling. The sample of the study was 210 economic operators who participated in public procurement procedures in the last years in the Municipalities of Berati, Fieri, Himara and Saranda.

The study was realised using some instruments, such as: direct interviews with economic operators (EO) in the four municipalities through a structured questionnaire, three focus groups with EOs representatives and information received by the municipalities.

The main survey instrument was a standard questionnaire. PA received the lists of economic operators by respective municipalities and invited all the companies to be part of the study. The inclusion of EO in the study was one of the main challenges faced in the monitoring effort. It is still a big challenge for the EO to be open and express freely their opinion on their economic activity and such sensitive issues related to it like public procurement system and its functioning at the local level, the transparency of the process and the equal treatment by the contracting authorities etc. Considering so, from 210 EO who was contacted and invited to be part of the survey, only 60 of them or 28.6 % were interviewed

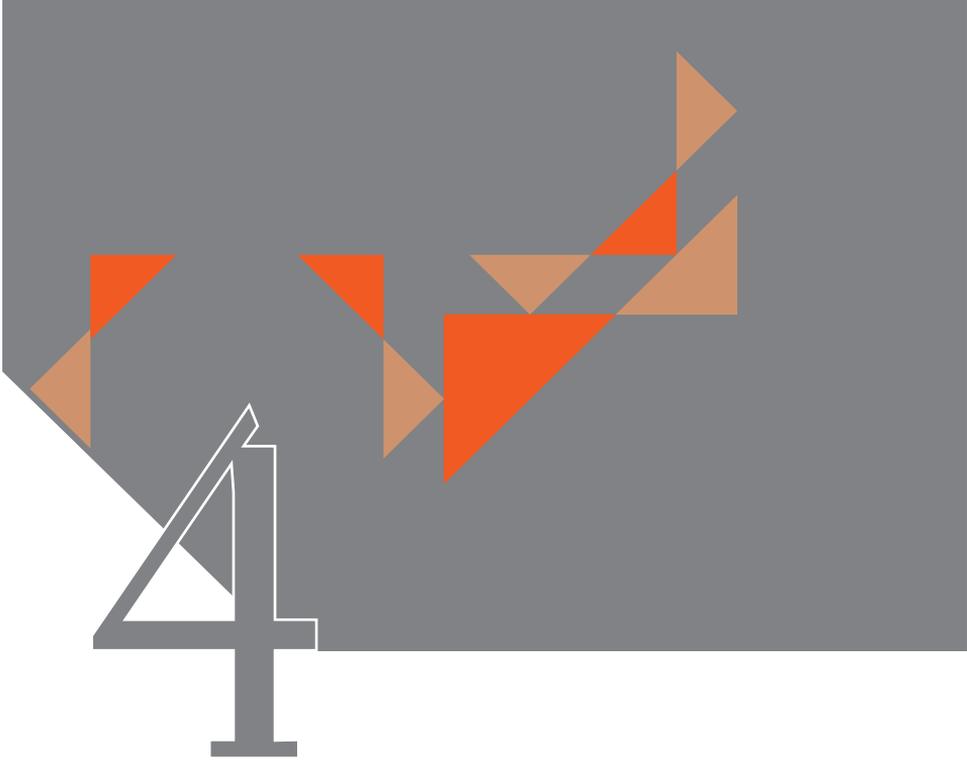
The questionnaire's questions treated the general experience of the respondents regarding electronic procurements based on the experience with the municipality and their general experience with these procedures compared to the period before they were established. The interview method was face-to-face.

**Table 1:** *Distribution of the sample*

MUNICIPALITY	DISTRIBUTION OF SAMPLE	DISTRIBUTION IN %
Vlora	25	41.7
Fier	10	16.7
Berat	14	23.3
Tirana	9	15.0
Other	2	3.4
Total	60	100.0

Results presented in these report are mainly in the frequency form. The small number of questionnaires did not allow a cross tabulation of values. Each Graph reflects the general number of responses. Percentages are rounded to the nearest rational number. The margin error of a sample of 60 EOs is nearly 8%, with a trusting interval of 90%. For some questions, the sample size was smaller (classified where it should be), so the margin error is higher. Due to the small number of responses, some categories of responses are grouped together.

Following the interviewing process, three focus groups were organized in the Municipalities of Berati, Fieri and Saranda, with the participation of 26 economic operators who at least ones were part of procurement procedures in the municipalities. Discussions in focus groups made possible a wide exchange of opinions with economic operators regarding electronic procurement. This served to apply into context the data gathered through the questionnaire and to explain the tendencies observed, as well as helped to draw well-argumentative conclusions.



# 4

## **CONSIDERATION** on electronic public procurement and the legal framework

### **PUBLIC ELECTRONIC PROCUREMENT AND ITS ADVANTAGES**

According to the Organisation for Economic Cooperation and Development (OECD, 2013), public procurement is the process of purchasing goods, works and services by governments and state-owned enterprises.

The term “electronic procurement” is widely discussed both in public and private sector (Panayiotou et al., 2004), and is considered as a perspective to increase the effectiveness of using funds by governments.

According to Davila et al. (2003), electronic procurement may be defined as any technology conceptualised to facilitate the process of purchasing goods by private subjects or governments through internet. The World Bank defines public electronic procurement as the use of information and communication technologies (especially internet) by governments to make the procurement

process with suppliers of goods, works and consultancy services required by public sector. (World Bank, 2003)

The Organisation for Economic Cooperation and Development (OECD) considers public procurement as a strategic mechanism that manages efficiently the government expenditures regarding purchase of goods, services and other works. A mechanism that stimulates synergy, brings novelties and economic and market growth, and guarantees environment protection and opportunities for financial savings, too (OECD 2013).

The OECD participating countries have savings as their primary concern, in order to consolidate public finances and to create fiscal opportunities for other policies. Therefore, a series of countries have started to use innovative means to reach scale economies by: restructuring their purchasing functions; consolidating purchases, and using information and communication technologies in the procurement process.

Public administration interest for electronic procurement may be attributed especially to the high level of public expenditures which represent 13% of the GDP in the OECD countries, and 19% of GDP in European Union member states (European Commission 2013; OECD, 2013). According to OECD, in 2012 the public procurement market volume in developing countries was 25-30% of GDP; with a few levels higher in some developing economies: 35% in South Africa, 43% in India and 47% in Brazil.

As public procurement represents an important part GDP, the implementation of electronic procurement would generate savings and would contribute in the attempts to consolidate public finances.

Effectiveness may be achieved by different means such as adoption of information and communication technologies and consolidation of purchases to reach the scale economies. Taking into consideration the large weight of public procurement expenditures, their reduction, as a consequence of increase of effectiveness by electronic procurement, would create opportunities for economic and social fiscal policies.

Public electronic procurement policies are used by OECD countries not only to increase the economic value that may be generated by investing money but also to reach the objectives of policies. Such objectives are planned to foster innovation, promote sustainable development, stimulate development of Small and Medium Enterprises, and to create equal opportunities for participation in economic opportunities (OECD, 2013).

At national level, any exclusion from open tenders would distort free competition. For the countries maximise competition and, at the same time, ensure effectiveness of procurement process, it is essential that exclusions are used rigorously solely in a limited number of circumstances. Exclusion from participation in open tenders may be subject to abuse which can damage effectiveness from the administrative part of procurement.

## **PUBLIC ELECTRONIC PROCUREMENT IN ALBANIA**

The reform on public procurement field was implemented for the first time in Albania in 2008, with the support of the Millennium Challenge Corporation Threshold Program. EPS is managed by the Public Procurement Agency and can be accessed through the PPA website. With a Decision of Council of Ministers, beginning from January 2009, all public institutions should make procurements only through the EPS, eliminating in this way the use of procurement procedures on paper. While the electronic application of small purchases by public institutions is a new standard set for the first time in 2013.

The purpose of these procedures was to ensure greater equality in the public procurement procedures, enhance transparency and competition among economic operators and to reduce at maximum the possibilities for abuse in the procurement procedures.

The institutional regulatory framework in the field of public procurement is composed of Public Procurement Agency (PPA) and Public Procurement Commission (PPC).

PPA is the central body for the supervision and monitoring of the public procurement procedures, public-private concessions/partnership and public auctions. The PPA exercises some competencies, which include presentation of proposals for legislative amendments in the above-mentioned fields, and giving advices and legal assistance (upon request) to the contracting authorities that undertake public procurement procedures, concessions/PPP (public-private partnership) and public auctions.

PPC is a reviewing body handling complaints of economic operators for public procurement procedures, concessions/public-private partnership and public auction. The PPC decisions are administratively final.

The electronic procurement system is set up based on the functional EU directives, standards and requirements. The main advantages of EPS are:

- Public procurement through information technologies is easier, as it makes the procedures faster and easier;
- This system is less expensive, as it avoids the excessive paper documents and increases competition, therefore, it reduces the contracting costs;
- EPS is more transparent, as it enables the increase of information flow and reduces intervention by different persons;
- Public electronic procurement increases accountability, thus, making a more efficient and effective use of taxpayers' money.

## **GENERAL CONSIDERATION OF LEGAL FRAMEWORK AMENDMENTS ON PUBLIC ELECTRONIC PROCUREMENT**

The basic law which regulates the public procurement and its implementation is the Law no. 9643 date. 20.11.2006 "On public procurement" changed. It regulates all types of procurement including goods, services, work and consultancy. From the entering into power of the law on November 2006, many legal changes have occurred, especially in the last years. Also, through a series of guidelines and instructions as Decision of the Council of Ministers and other instructions, many rules and procedures changed. Some of the changes of the last years and considerations on those are presented in this section.

The Decision of the Council of Ministers No.45, dated 21.01.2009, "On making procurement procedures by electronic means", introduced some changes in the procurement procedures for a small value, increase of transparency and reduction of possibilities for abuse, and promotion of economic operators participation in public electronic procurement.

In 2012, the Law No. 9643, dated 20.11.2006, "On public procurement", as amended<sup>1</sup>, was subject to some amendments and additions under decision of the Parliament of the Republic of Albania. Some considerations on these main amendments and additions of 2013 are given below.

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<sup>1</sup> This law is partially approached with:

Directive 2004/18/EC of European Parliament and Council, dated March 31, 2004 "On the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts", Number CELEX: 32004L0018, Official Journal of European Union, Series L, No. 134, dated 30.4.2004, page 114 – 240.

Directive 2007/66/EC of European Parliament and Council, dated December 11, 2007, amending Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts", Number CELEX: 32007L0066, Official Journal of European Union, Series L, No. 335, dated 20.12.2007, page 31 – 46.

The new definition given by law to the “request for proposal” procedure underlines that, the limited number of selected economic operators does not exclude the submission of offers by other economic operators that may be interested. This definition facilitates free competition and contributes in more favourable offers for the contract offered.

Article 13 of the law provides the Public Procurement Agency duties and the grounds for possible exclusion of an economic operator by procurement procedures. The addition in this Article implies that an economic operator will be excluded from procurement procedures if it has not met the contractual obligations and if there is a decision by the Competition Authority Commission for agreements in offers. The addition in this Article is important, as it sets clear limits when the PPA has the right to exclude economic operators in case the latter behave contrary to the law.

One of the fundamental pillars that guarantee a good functioning of the public procurement system and free competition is equal access to information of economic operators. Therefore, additions in Article 21 are important. According to such additions, the contracting authority is obliged to make the information available within 5 days from the date of receiving the request, and adds that this information is sent to each successful bidder (paragraph c) even for the classification of selected offers.

An important part of equal access to information is also use of similar and non-discriminating communication forms to all. In this way, amendments of Article 22 note that the regulations and procedures for communications in electronic form are established in the public procurement rules, based on the non-discrimination public procurement principles.

In the Article 36, the rules applicable to electronic communications and electronic offers are explained in details. The rules on electronic communications are in compliance with the respective legislation. In case the documents required are not submitted electronically, they can be handed to the PPA.

Another important addition is that of Article 38 stating that public contracts through the open, restricted, negotiated, with prior publication of contract notice, request for proposal or consultancy service procedure will be published through a public notice, under the applicable law.

In case, the restricted and negotiated procedures are used, the candidates are invited to submit their offers for qualification in the first phase. The minimum to continue the public procurement procedure is 2 candidates. Here, the case of negotiated procedure, without prior publication of contract notice, is excluded.

Tender documents are available electronically free of charge by the contracting authority. An important part of the additions in this Article is that the number of economic operators who have expressed their interest in purchasing documentation, i.e. not electronically, shall be kept secret.

According to amendments in Article 55, on the criteria for the award of successful bid, a bid shall be considered as successful if one of following is met:

- The offer has the lowest price, or
- The offer is economically the most advantageous.

If all other criteria, mentioned above in Article 55, are met, this amendment of the law allows taking into consideration for the assessment of an offer not only the price but also the quality. This amendment is important because it enables that other characteristics of the contract object such as the functionality, economic efficiency, technical assistance after purchasing the contract object, etc., become part of total assessment.

Regarding the contract award and signature, under Article 58, the contracting authority has five days to send the information of the successful bid to the Announcement Bulletin. The paragraph 1 includes also what kind of information should be at least included in the notice of contract award.

Another important point of amendments to this Article is clause 5 which states that, the second ranked bidder in list of bids is awarded the contract if the successful bidder does not sign the contract or does not provide the contract insurance, when required.

In Article 63 "Rights of the interested person", clause 1.1, which provides for a 7 days standstill period for economic operators to complain to the contracting authority, is added. This addition is necessary, because a well-organised complaining procedure is one of the main pillars ensuring that public procurement system is functioning appropriately and on due time. An important part of this addition is also the fact that the contracting authority cannot continue the procurement procedure, until the complaint is completely reviewed.

In case of a decision of the Public Procurement Commission, the parties have the right to raise charges in the competent court against the decision of administrative disagreement, under the amendments of Article 64/3.

Article 65 describes the rights of Public Procurement Agency in the administrative investigation procedures, such as the right to carry out administrative investigations in situ, to demand information and explanations from the central and local administration bodies, to examine and to require expert opinion. In addition, according to paragraph 3, the PPA, while carrying out its duties, has the right to have access to all the offices of contracting authorities' bodies. To have a better functioning of the administrative investigation and to help it in its duties, the PPA has the right to establish a deadline for the giving feedback to its requests for information.

According to Article 66, the Public Procurement Agency takes two types of decisions following the administrative investigation: to terminate the investigation, in case no infringement is found, or to propose a disciplinary measure or to apply a fine for the infringements found. All decisions are given in written form.

Determining the thresholds in the regulatory reform of Public Procurement is of crucial importance. According to the legislation into force, the thresholds are divided per type of contracts (contracts for public works, services and goods) and per monetary value (the highest threshold and the lowest threshold).

**Table 2:** *Thresholds per type of contracts*

THRESHOLD	TYPE OF CONTRACT	
	CONTRACTS FOR PUBLIC WORKS	CONTRACTS FOR SERVICES AND GOODS
HIGHER THRESHOLD	1,200,000,000	200,000,000
LOWER THRESHOLD	12,000,000	8,000,000

The contracts, whose value is lower than 400,000 ALL, are included in the low value procurements.

“Guideline on low value procurements” dates since 28.03.2013 “On Low Value Procurement Procedure”, as amended later by Instruction No.5, dated 16.07.2013, Instruction No. 1, dated 28.02.2014 and Instruction No. 3, dated 27.01.2015.

To sum up, this Instruction defines that the value of goods, services and works during the budgetary year shall not be more than 400.000 (four hundred thousands) ALL in order to use the low value procurement procedure (without including VAT).

In addition, according to this Instruction, the contracting authority can make low value purchases during the calendar year, but the sum of these procedures for the same goods, services or group of goods shall not be more than 400.000 (four hundred thousands) ALL in a year. Based on the Instruction of 2015, this threshold is increased and shall not be more than 800.000 (eight hundred thousands) ALL.

This type of procedure shall be used to purchase a group of goods, to carry out services or similar works that have the same main function or that belong to the same category in the expenditures plan. In this Instruction is stressed out that: “the use of this procedure shall not be considered as an opportunity to avoid the normal procurement procedures. In no case, the contracting authorities shall not procure goods, services or works separately, because they are included in a group, due to their similarity, or due to their main function”.

The government has also decided to avoid cases when companies present very low bids and without quality. According to the decision, a bid is considered as abnormally low when it is lower than 25% of the limit fund calculated. In addition, a bid is considered as abnormally low when its value is less than 85% of the average of the three valid bids. However, there is not provided any abnormally low bid for low value purchases.

In the public procurement field, progress is made regarding the process of alignment with the respective EU legislation. According to the National Plan for European Integration, Albania has fulfilled its engagements regarding the field of approaching the Public Electronic Procurement legislation under the frame of the SAA (Stabilisation and Association Agreement). The legal and institutional framework ensures a good basis to develop an effective public procurement system according to the EU regulation.

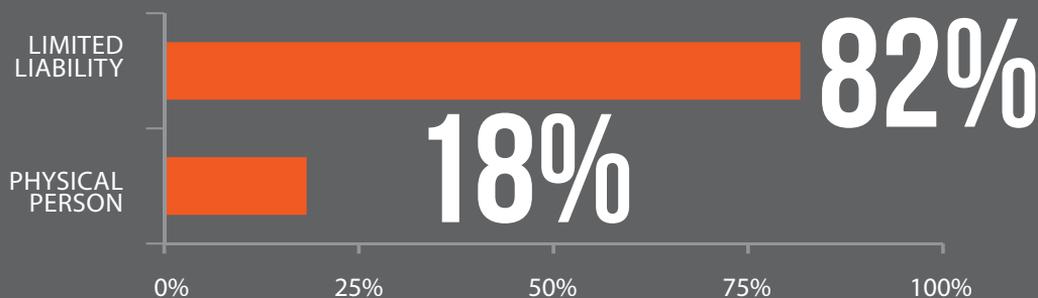


## 5

**MAIN FINDINGS**on economic operators  
experiences with public  
procurement**5.1 MAIN CHARACTERISTICS OF THE SAMPLE**

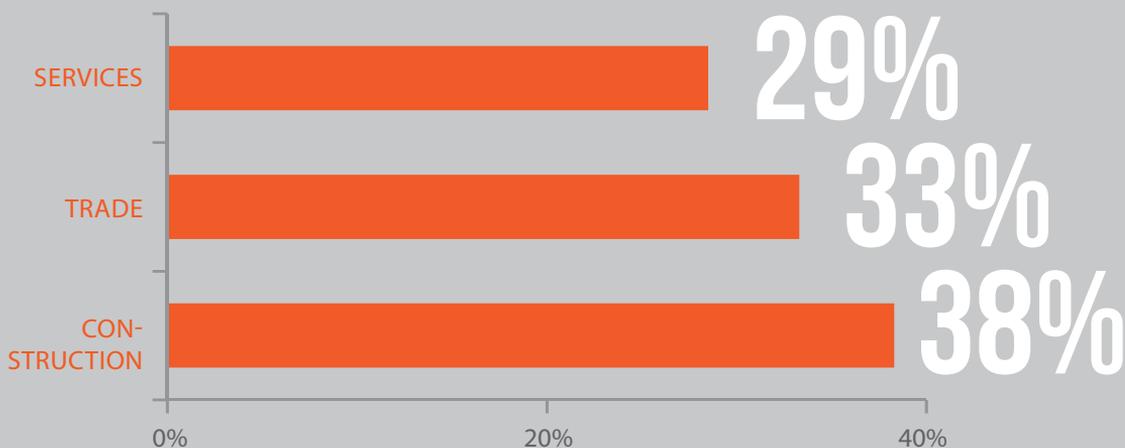
One of the main instruments used in this study was direct interviews with EOs. The main characteristics of the sample used are summarised in the Graph 1 as below.

*Graph 1: Distribution of sample per firm legal form (n=60)*



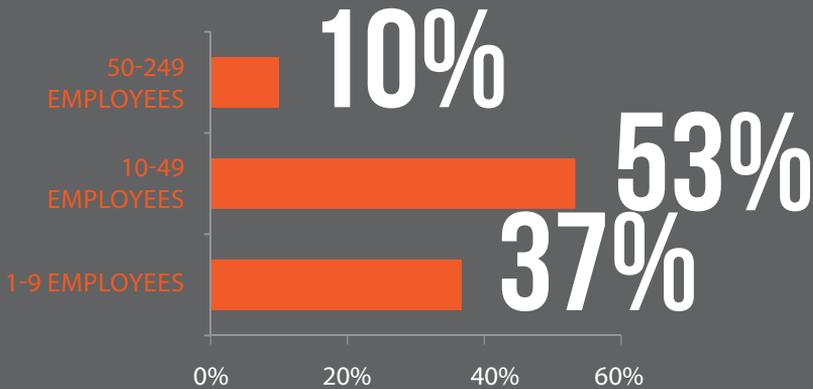
The majority of the interviewed economic operators (82%) correspond to Limited Liability Company. However, the online procurements for “Small purchases” have influenced in the increase of natural persons that participate in the procurement procedures. These subjects are represented in the sample by 18%. (Graph nr. 1).

**Graph 2:** Distribution of sample per main business activity (n=60)



The sample has an almost equal distribution among the three main sectors of economy (construction, services and commerce). 38% of economic operators have construction as their main activity, 33% have commerce as their main activity and 29% services. This distribution is mainly dictated by the nature of procurements concluded by local government units. In general, they have procured goods and services, and the number of procedures related to works in two out of four monitored municipalities (Fier and Himara) has been limited for 2014 (Graph 2).

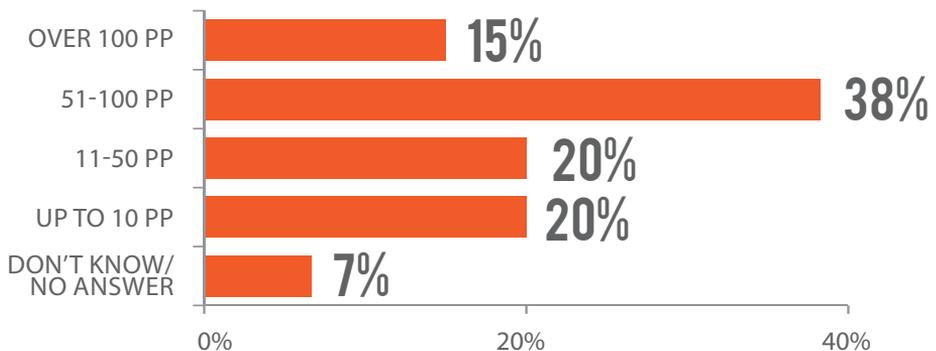
**Graph 3:** Distribution of sample per number of employees (n=60)



37% of interviewed economic operators hire 1-9 employees, 53% hire 10-49 employees, and only 10% hire more than 50 employees. The sample characteristics vary depending on the main regions and sectors of economy. However, what has been noticed is that 90% of operators interviewed belong to small and medium enterprises category (Graph 3).

Economic Operators with the smallest number of employees exercise their activity mainly in commerce and services field. From 22 Interviewed economic operators that have hired 1-9 employees, 54.4% exercise commercial activity and 36.6 provide services.

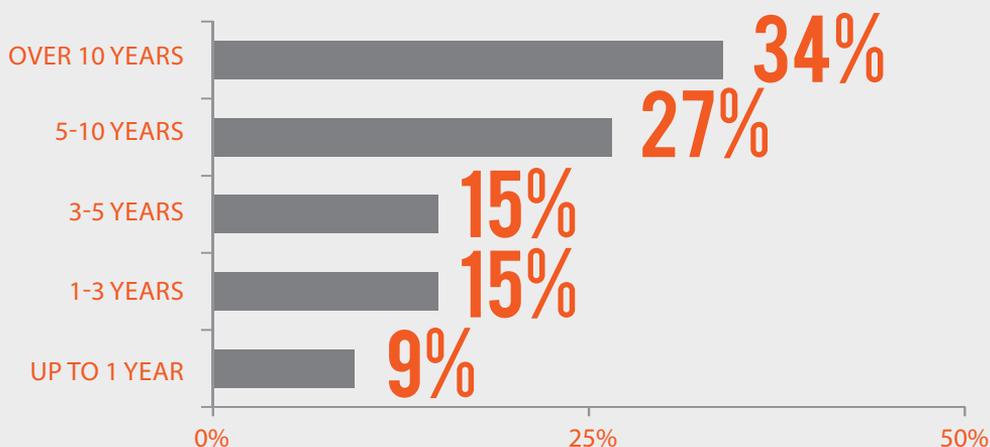
**Graph 4:** Distribution of sample per average number of procedures participated in a year (n=60)



Interviewed economic operators differentiate regarding their participation frequency in public procurement procedures. Thus, 38% of Interviewed economic operators have participated on average in 51-100 procurement procedures in a year. While 20% of Economic Operators have participated up to 10 procurement procedures and, the same number have participated in 11-50 procurement procedures.

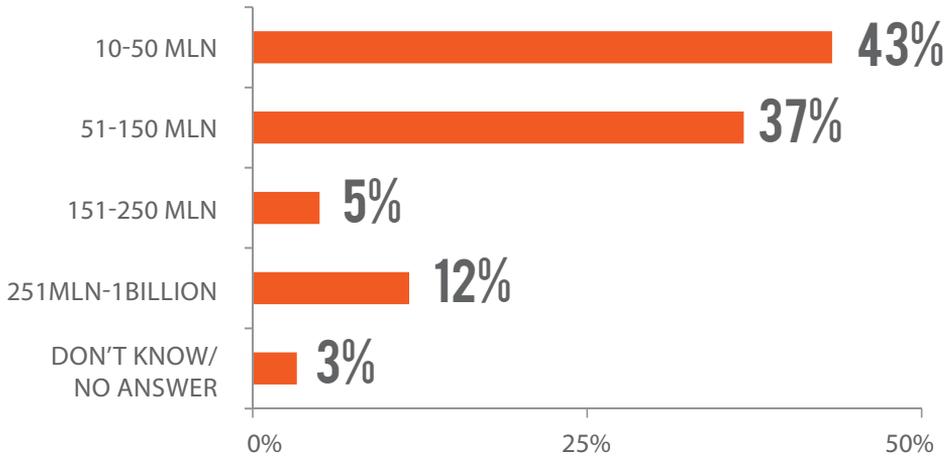
Economic Operators that participate on average in more than 51 procedures exercise their activity in the construction (28.3%) and services (20%) (Graph 4).

**Graph 5:** Distribution of sample per general experience on public procurements (n=60)



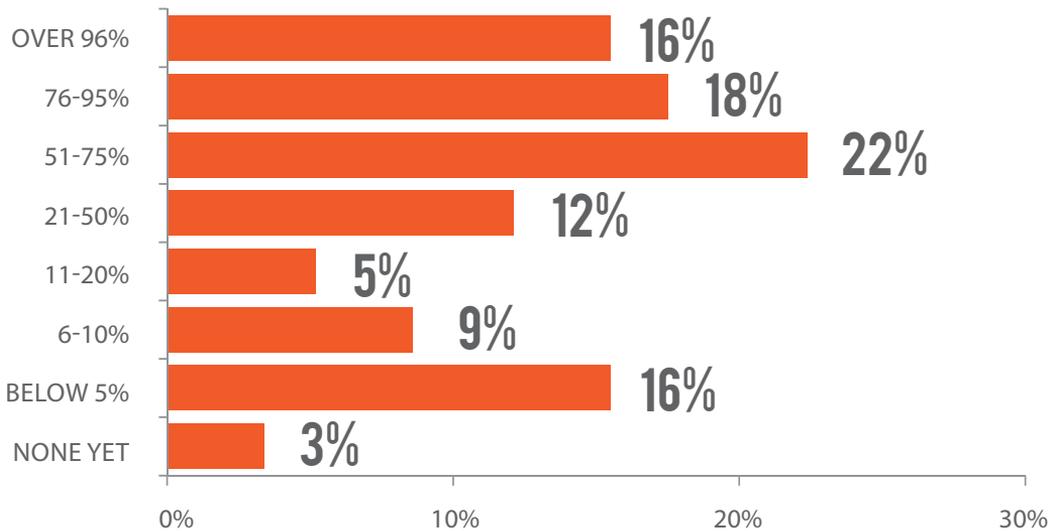
The sample includes economic operators having different experiences in public procurement. The majority of the EOs interviewed (61%) have more than 5 years of experience in public procurements. While nearly 1/3 of them have more than 10 years of experience (Graph 5). The relatively long term experience in procurement field enable EOs to express their opinion on the impact the legislation amendment and presentation of electronic procurement, as the main way for procurement of works, goods and services by public institutions, have had.

**Graph 6:** The company annual turnover for 2013 (n=60)



The sample includes a diversity of economic operators regarding their annual turnover. 43% of the Interviewed economic operators have an annual turnover of 10-50 million ALL, while more than 1/3 of EOs or 37% have an annual turnover of 51-150 million ALL. The number of EOs with an annual turnover of 251 million – 1 billion ALL is small. It is only 12% of the EOs interviewed. Nearly 1/3 of the EOs interviewed that participate in more than 51 procurement procedures in a year, have their annual turnover more than 51 million ALL (Graph 6).

**Graph 7:** Part of the annual turnover realised by contracts with Contracting Authorities (n=58)



Nearly 1/5 or 22% of the interviewed EOs realise over 51-75% of their annual turnover by the contracts they receive from contracting authorities, 25% of the interviewed EOs realise fewer than 10% of their annual turnover by contracts with CA and only 16% of the EOs realise more than 96% of their annual turnover by contracts with CA (Graph nr. 7).

During the period January – December 2014, 143 procurement procedures have been monitored, too. Types of procedures monitored and types of contracts according to municipalities are presented in table 3 and 4.

**Table 3:** Distribution of cases monitored per type of procedure (January – December 2014)

MUNICIPALITY	TYPE OF PROCEDURE				
	SMALL PURCHASE	REQUEST FOR PROPOSAL	OPEN PROCEDURES	NEGOTIATED PROCEDURES	CONSULTANCY SERVICES
Berat	22	13	5	-	-
Fier	15	4	5	2	1
Himara	10	3	7	-	-
Saranda	37	42	2	-	-

**Table 4:** Distribution of cases monitored per type of contract (January – December 2014)

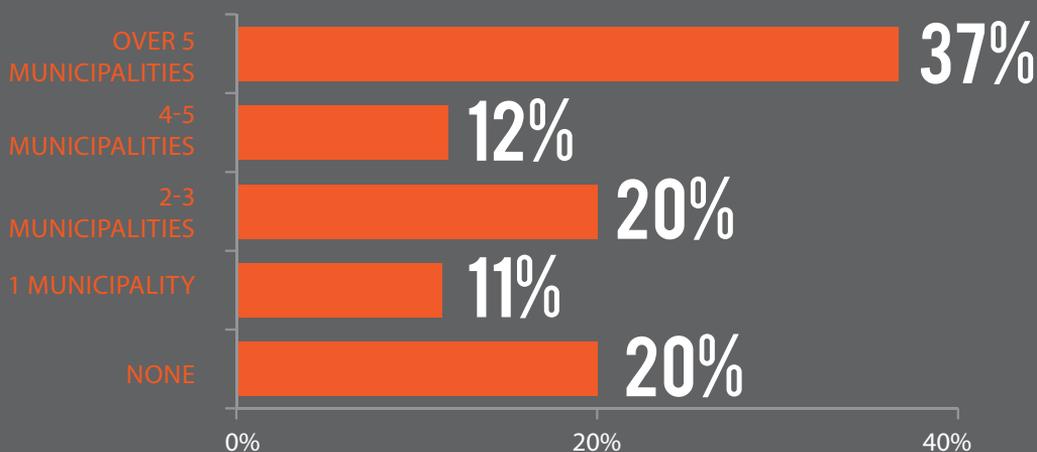
MUNICIPALITY	TYPE OF CONTRACT		
	WORKS	GOODS	SERVICES
Berat	8	25	7
Fier	4	12	11
Himara	10	6	4
Saranda	40	34	7

In the focus groups realised in three municipalities, the economic operators discussed regarding individual experiences in public procurement procedures. They expressed their opinions on the importance of amendments in legal framework, the PPA portal functioning, access they have in information published on procurement procedures, application of the right to complain, implementation of procedures by CA and EOs that participated in the study. The main opinions, perceptions and problems drawn by the questionnaire and raised in focus groups with EOs and meetings and interviews with mayors, specialists of procurement units and economic operators, are summarised according to the problems and are presented below.

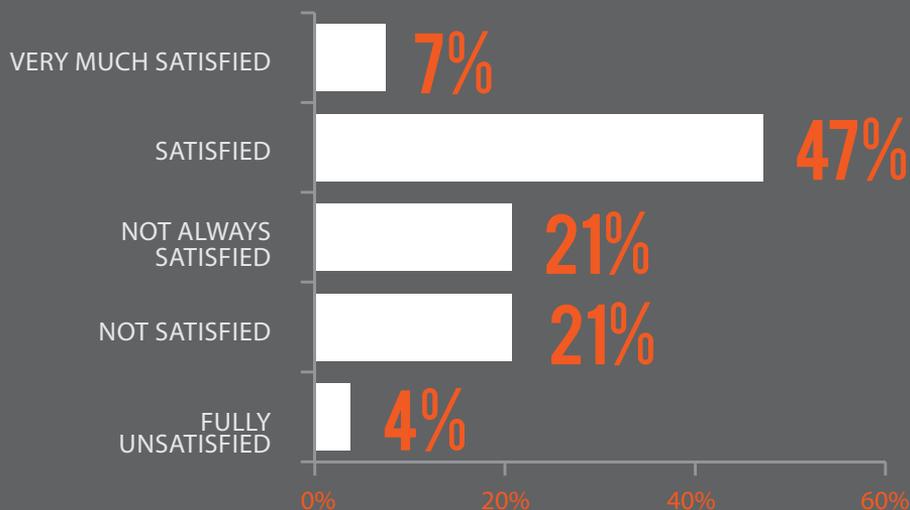
## 5.2 ECONOMIC OPERATORS' EXPERIENCE WITH MUNICIPALITIES

The majority of Economic Operators (69%) provide their services even in other local government units. 1/5 of Economic Operators have experience with 2-3 other municipalities, while more than 1/3 has experience with more than 5 municipalities (Graph nr. 8).

**Graph 8: Economic Operators' experience with other municipalities (n=60)**



**Grafiku 9: Economic Operators' satisfaction from public procurement procedures (n=53)**



More than half of the Interviewed economic operators (54%) are satisfied and very satisfied by the procurement procedures made by the respective Contracting Authority. But, there are economic operators that are unsatisfied and very unsatisfied by public procurement procedures (25%). (Graph nr. 9).

the reasons mentioned quite often was the lack of provision of goods and services required by the Contracting Authority. Other causes are the lack of accountability that the contacts are given based on competition and that it is difficult to work with public procurement procedures and rules, etc.

**Table 5:** *Reasons for not participating in Public Procurement*

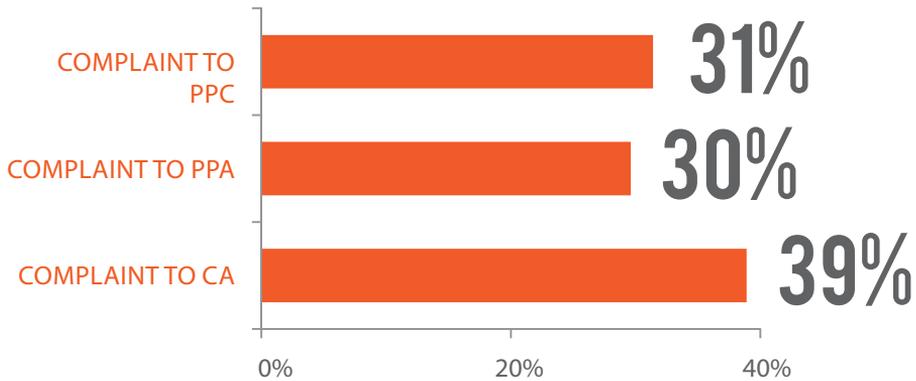
REASONS FOR NOT PARTICIPATING IN PUBLIC PROCUREMENT PROCEDURES (N=17)	NUMBER OF CASES	N%
My business does not provide goods or services usually required by local authorities	7	41.2%
It is very difficult to work with public procurement procedures and rules	3	17.6%
My business has not sufficient resources to invest in public procurements	1	5.8%
Insufficient publicity of calls for procurements	1	5.8%
I don't believe that public contracts are given based on competition	3	17.6%
I have been unsuccessful in the past and now, I am not interested anymore	1	5.8%
Other reasons. Please specify	1	5.8%

### 5.3 COMPLAINT PROCEDURE

Only 41.7% of the interviewees (n=25) have sometimes required the reviewing and/or have appealed, when they were unsatisfied with the procurement result/ procedures followed by the CA.

In general, operators that have filed a complaint regarding procurement procedures have followed all the means stipulated by the law, to express their grievance on the result published by the CA or procedures followed by them.

**Graph 10:** Steps followed in a complaint (n=54)



As shown in the Graph 10, 39% of economic operators have filed a request to the Contracting Authority as the administrative body authorised to review and/or cancel decisions. But, they have undertaken even other steps of making a complaint as a request/complaint to the PPA (30%) or to Public Procurement Commission (31%).

However, there are EOs who have stated that they fear to follow complaint procedures, because they think that they may be penalised in the future, regardless of their opinion that the decision made is not fair.

Economic Operators do not have much information on why the complaint procedure shall be paid and they do not know whether they take back the sum if they win the complaint process.

A part of EOs have positive experiences with complaint procedures, so their request was accepted and procedure was cancelled, but there are some other who do not trust at all that they can solve anything. Meanwhile, there are some EOs that have not made a complaint. The reasons they state of not following this procedure are very different. Among those we can pick out the lack of trust for reviewing of complaints/decisions (20.9%) and tardiness in reviewing of complaints (18.6%), which are some of the main reasons that hold back Economic Operators to follow the steps determined by the law on complaint (Table 6).

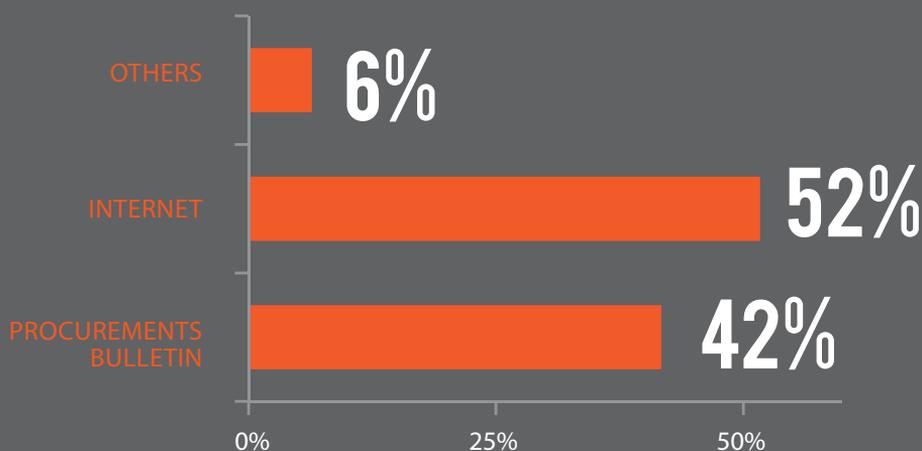


**Table 6:** Reasons of non-complaining to Contracting Authorities

REASONS OF NON-COMPLAINING (N=43)	NUMBER	IN%
Fear that if you complain you cannot gain contracts in the future by that contracting authority	3	6.9%
I do not trust in the system of reviewing of complaints/decisions	9	20.9%
There was no possibility to make an complaint because the contract has been signed when I was presented with the decision	6	13.9%
Reviewing system is very slow	8	18.6%
Potential legal costs	1	2.3%
Potential rewarding level is insufficient to cover loses	1	2.3%
Financial costs are very high	3	6.9%
Other reasons	12	27.9%

#### 5.4 INFORMATION ON PROCUREMENT PROCEDURES

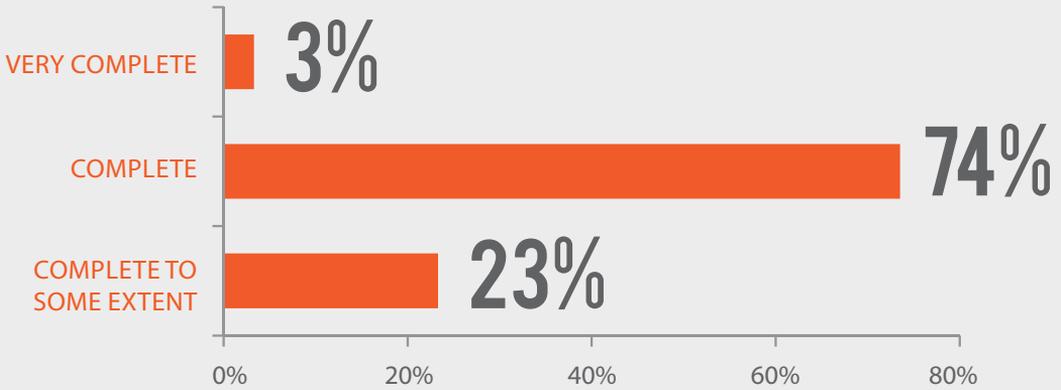
Economic Operators receive information for new calls on public procurements in the PPA website. Only in rare cases, the EOs receive an invitation by the CA if they want to make an offer for certain procedures. In general, EOs refer to the PPA website, regardless of the fact that there may be faced problems to easily find updated information.

**Graph 11:** Information on tenders (n=60)

As shown in the Graph 11, more than half of the respondents use internet as a source to receive information on public procurements, meanwhile 42% of the

respondents use public procurement bulletin, as a source to be informed on tenders. Only 6% of the interviewees use other sources, such as newspapers, direct invitations or personal contacts to receive information on tenders.

**Graph 12:** *Completeness of information included in tender documents (n=60)*



The majority of the interviewees (77%) think that the information included in tender documents is complete and very complete while 23% think that the information is somehow complete (Graph 12).





# 6

## MAIN FINDINGS

### from monitoring at municipality level

The PPA portal on public electronic procurement was monitored for a 12-month period (January – December 2014). Some of the specific findings for the whole monitored period for each of the LGUs are as follows:

#### MUNICIPALITY OF FIER

- For January – December 2014, 27 procurement procedures were monitored in the municipality of Fier. From these, only 5 procedures or 18.5% were “Open” procedures, 62.9% were small purchases and the rest were “Request for proposals”, “Consultancy services” and “Negotiated procedures without prior publication of contract notice”;
- From 27 procedures monitored, 4 contracts were signed for works, 12 for goods and 11 for services;
- The municipality made us available the concluded procurement plan for January – December 2014 available to our organisation;
- According to the results of concluded procurements that municipality has signed 27 contracts through electronic procurement procedures, and by procurement procedures has been saved 4.69% of the limit fund planned (or 13,624,120 ALL);

- Saving of the limit fund varies depending on the type of contract. The highest savings are in contracts for services. They vary from 1 to 90.2%. In open procedure, saving from the limit fund varies from 1.9% to 19.5%;
- In the list of successful EOs it is noticed that two firms have been contracted by municipality 3 times for similar services and goods;
- In the municipality of Fier, four procedures for purchasing stationery, papers and toners have been opened, separating the fund in order to respect requests for small purchases;
- Number of economic operators that have participated in tenders could not be calculated due to the lack of information/data.

## MUNICIPALITY OF BERAT

- For January – December 2014, 18 procurement procedures were monitored in the municipality of Berat, which are recorded in the registry of concluded procurements. Out of these, only 5 procedures or 27.7% were “Open” procedures and the rest were “Request for proposals”;
- From 18 procedures monitored, 6 contracts were signed for works, 8 for goods and 4 for services;
- Municipality made us available the concluded procurement plan for January – December 2014;
- According to the results of concluded procurements that municipality has signed 18 contracts through electronic procurement procedures, and by procurement procedures has been saved 9.82% of the limit fund planned (34,160,391 AAL);
- Saving of the limit fund varies depending on the type of contract. The highest savings are in two contracts for services (over 80%). While for 5 other contracts they vary from 22-23%;
- PA has monitored 22 procedures for small purchases. The limit fund saved for these procedures is 10.3%;
- In the list of successful firms it is noticed that there are firms that have been contracted by the municipality twice for similar services and goods;
- In the municipality of Berat, five procedures for purchasing stationery, papers and toners have been opened, separating the fund in order to respect requests for small purchases.

## MUNICIPALITY OF HIMARA

- For January – December 2014, 20 procurement procedures were monitored in the municipality of Himara. Out of these, only 7 procedures or 35% were “Open” procedures, 50% were low value purchases and the rest were

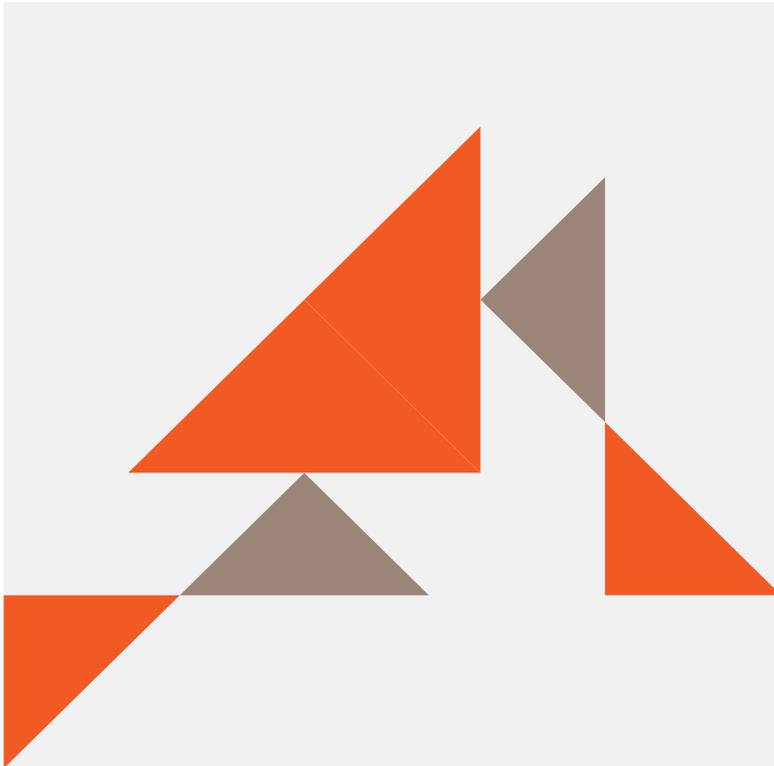
“Request for proposals”;

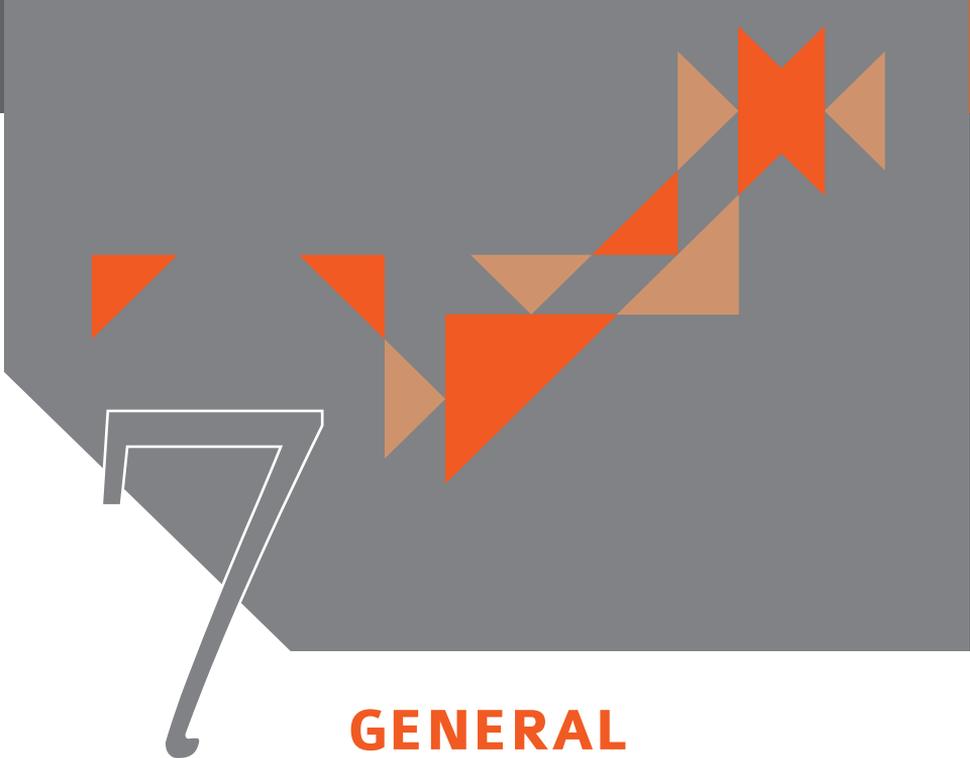
- From 20 procedures monitored, 10 contracts were signed for works, 6 for goods and 4 for services;
- Municipality made us available the concluded procurement plan for January – December 2014;
- In 6 monitored procedures for works, saving from the limit fund is on average 2.48% and the number of EOs that have participated is 2.
- In 3 monitored procedures for works, 3 companies have competed in each procedure, out of which 2 EOs have been excluded. This indicators shows that competition in the municipalities located far from big centres is very low;
- A small number of participating firms influences on public procurement financial terms. In general, saving from the limit fund for all open procedures and requests for proposal varies from 0.1 to 3%. But, there are cases such as the procedure realised for “Reconstruction and rehabilitation of facades of Kudhës Village”, where saving from the limit fund was only 1 ALL.
- The saving of the limit fund varies depending on the type of contract. The largest savings are for contracts of small purchases of goods and services. PA has monitored 10 procedures of “Low value purchases”, out of which 3 contracts are for works, 2 for services and 5 for goods. The average number of EOs that have participated in these procedures is 9.4. Saving of the limit fund is on average 29.45%, but it varies according procedures from 0 to 90%. The largest deviation is for a service contract for supervision of works in Kudhës (90% of the limit fund saved);
- PA has monitored 10 contracts signed through Open Procedures and Request for Proposal, and saving from the limit fund results 3.1%.

## MUNICIPALITY OF SARANDA

- The municipality of Saranda is the municipality that has published the largest number of procedures in the PPA website, but, at the same time, it has had e large number of procedures cancelled, too. Thus, the municipality of Saranda has notified the largest number of open procedures (56 procedures) in the e-procurement platform for July – September 2014, while it has the highest percentage of procedures cancelled (26.7%);
- 45 procedures that are included in the registry of concluded public procurement for 2014 were monitored in the municipality of Saranda. Out of these, 35 procedures or 77.7% have been procedures for works;
- According to the data of public procurement registry, for 45 procurement procedures reported, 10.6% (or 22,039,254 ALL) of the limit fund planned is saved;

- For 45 monitored procedures of the registry, 25 EOs are declared successful, so on average it is less than 1 procedure won by each EO. Data on the number of EOs that have participated in tenders were not possible to collect by the PPA system;
- PA has also monitored 37 contracts for “Small purchases” through the PPA website. 14.8% (or 797,188 ALL) of the limit fund planed is saved from the procurement procedures. For 10 out of 37 procedures monitored, saving is under 4%. The municipality has contracted 9 times the same EO for small purchases, or 27% of the contracts are signed with an EO;
- For 45 monitored procedures of the concluded procurements registry, 25 EOs have been declared successful, so on average it is less than 1 procedure awarded to each economic operator;
- From the monitoring of 45 procedures results that in the municipality of Saranda there are two EOs that have been awarded a large number of contracts. A company has been awarded 10 out of 45 procedures monitored (or 22.2%) and the other company 6 procedures (or 13%). These indicators show the lack of competition in procurement procedures in this municipality.





## GENERAL

# perceptions on electronic procurement procedures

In the following section are presented some general considerations from EO on the public procurement procedures, level of transparency, competition at local level, use of funds, and also some problematic identified by EO and the survey team with regards to the functioning of PPA website and other concerning issues.

### 7.1 AMENDMENTS TO LEGAL FRAMEWORK

- The legislative amendments on public procurements have been positive and facilitating for EOs;
- Opportunity of sub-contracting has been very useful and valuable, and has increased possibilities for works for small firms;
- The procedures for low value purchases are easier. Filing of record is not delayed, but some EOs think that this process is not very transparent. EOs think also that the low value purchases lead to corruption;
- The EOs consider as positive the amendments to the Law related to the publication of procurement procedures only in case the Contracting Authorities have available funds. According to them, it is a good thing that the tender is not made without funds, because many CAs have outstanding invoices to EOs from the previous years;

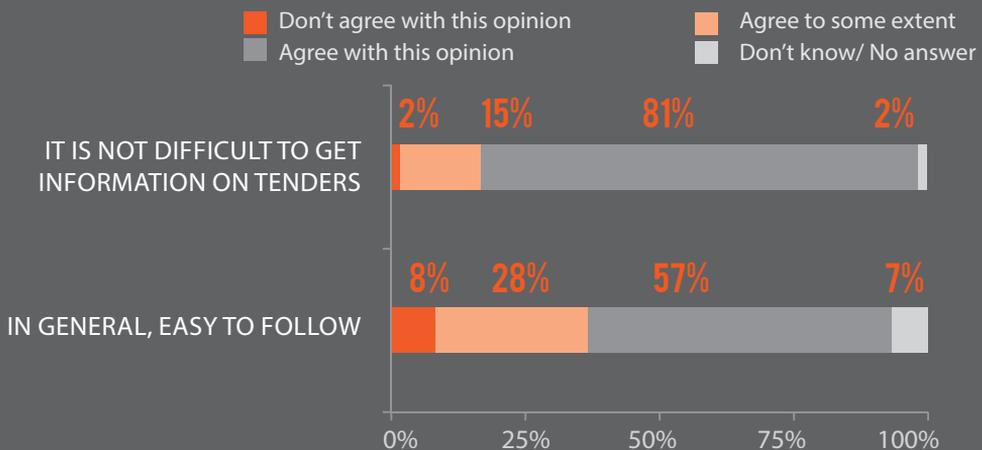
- The increase of threshold for small purchases is a measure that facilitates more the CA work, while it is considered a good measure by EOs, but without any considerable effect for them.
- The continuation of tender when there is only one offer available is considered as positive, although this is perceived more as a measure which creates facilities only for CA;
- The PPA addresses accurately all the complaints of EOs, and after the monitoring process of procedures, it sets fair penalties.
- The Law on procurement is very tolerant and should be amended, taking into consideration not only the best world practices, but, above all, the domestic economy specifics and especially corruptive practices that are well-known and that shall be avoided by law and sublegal acts.

Economic Operators are asked to give their opinion whether they agree or no regarding the following opinions:

- In general, electronic procurement procedures and rules are easy to follow;
- Current procurement procedures provide equal opportunities for all to participate in the procurement process;
- Call for public tenders is a fair and non-discriminating process;
- It is not difficult to receive information/to find calls for tenders;
- Contracting authorities continue to sign direct contracts, which are difficult to be challenged by potential bidders.

Economic Operators' perceptions regarding public procurement procedures and rules are different. In general, 81% of EOs agree with the opinion that it is not difficult to receive information on tenders and to find call for tenders. In addition, 57% of the interviewees agree with the opinion that electronic procurement procedures and rules, in general, are easy to follow (Graph 13).

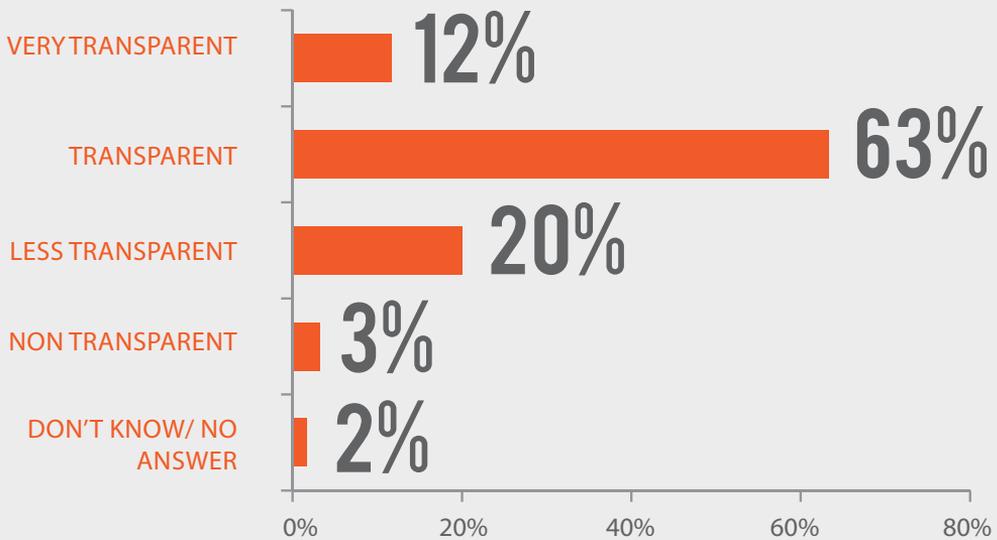
**Graph 13: Information on tenders (N=60)**



## 7.2 TRANSPARENCY OF PROCEDURES

The majority of the interviewees (75%) think that the current procurement procedures are transparent and very transparent. But,  $\frac{1}{4}$  of the interviewees (25%) think that procedures are less transparent or not transparent.

**Graph 14:** Transparency of procedures (n=60)



- PPA online portal enables monitoring of all tender procedures opened in the cases foreseen by the law. But, monitoring of contract award upon the conclusion of procedure presents some difficulties, as a good part of the procedures are promptly archived upon their conclusion by the CA, and the public cannot access in the website archive;
- The Procurement Bulletin is an alternative source to receive information on successful bidder, the fund contracted and number of firms participating in tender for "Open Procedures", "Request for Proposal" and "Negotiated Procedures";
- However, in the majority of cases, in the online platform, it is difficult to identify the successful Economic Operators in small purchases, because the procedure is promptly archived by CA. If procedure is archived a few days later, it is possible to receive information of the fund contracted and successful EOs, but you cannot receive information on number and names EOs that participated in this procedure;
- Currently, the PPA has made some changes in the platform to increase public transparency on concluded procurement procedures. The Contracting Authorities can publish all the economic operators successful in procedures,

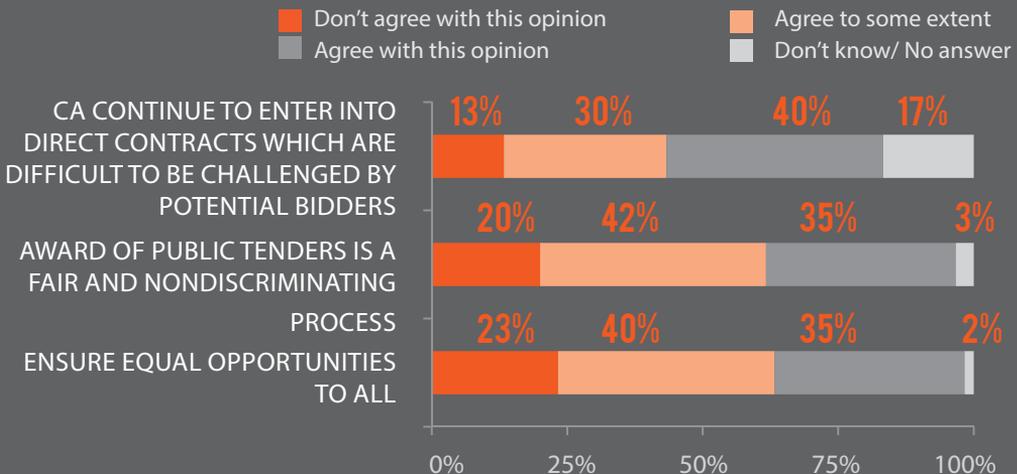
regardless of the type of procedure, to the Contract Award. For January – April 2015, the Contracting Authorities have presented this information in the PPA portal;

- In the PPA portal, two registries regarding procurement are published: Forecasts Registry and Registry of Concluded Procurements. In the Registry of Concluded Procurements, the municipalities of Berat, Saranda and Himara are missing in 2014. While the information published for the municipality of Fier does not include the type of contract, number and names of the EOs participating in each procedure;
- While in the Forecasts Registry, in 2015, there are published only the forecasts for municipalities of Berat and Himara, and there is a lack of forecasts for municipalities of Fier and Saranda. For both municipalities that have published the forecasts, the “Small Purchases” procedures are missing;
- In the PPA portal, in 2014, not all contracts signed by the Contracting Authority and contract awards are published, although this option was provided by the online platform;
- The grounds for exclusion of Economic Operators are published in all notices of electronic procurement bulletin.

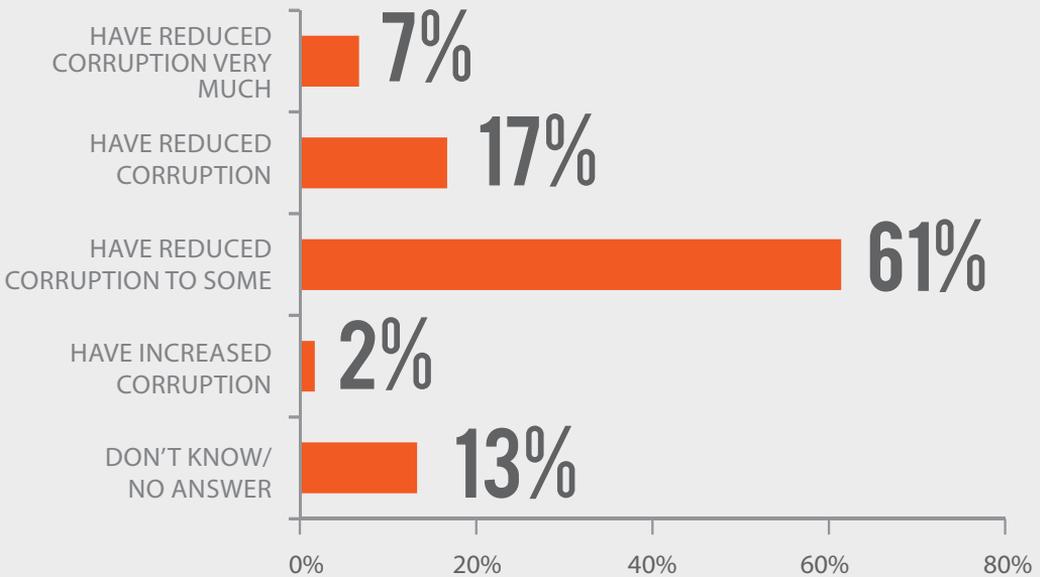
### 7.3 COMPETITION IN PUBLIC PROCUREMENT

A considerable part of the interviewees do somehow agree that the current procurement procedures provide equal opportunities for all to participate in the procurement process (40%) and that call for public tenders is a fair and non-discriminating process (42%). 1/3 of the interviewees do somehow agree with the opinion that contracting authorities continue to sign direct contracts, which are difficult to be challenged by potential bidders.

**Graph 15:** Equality in tenders (n=60)



- The competition in “Request for proposal” and “Open Procedure” procedures is still low. In procedures for works, the number of EOs participating in procurements is low. The number of EOs participating never exceeds 3, and in some cases 2 of them have been excluded. There were even procedures, in which only one company has participated. But, there are cases like the municipality of Fier where the number of competitors has been larger;
- The number of Economic Operators is considerable, but the Contracting Authorities face cases when the offer consists of low prices and out of the economic logic, which means that according to them it influences in a low quality of the service or good bought;
- The number of “Low value purchases” procedures results larger for all the municipalities, but this number is especially large in municipalities of Saranda and Berat. In three out of four municipalities monitored (Fier, Saranda and Berat) it is noticed that more than one procedure has been opened for the same good or service, separating the fund in order to respect requests for small purchases. In some cases, this attitude of CA has been dictated by the lack of liquidations, because payment of bills shall occur within 30 days. But, there are cases when contracting authorities procure goods, services and works included in one group separately;
- In all the municipalities, there are cases when a given EO appears successful in several contracts; however, this phenomenon is more frequent in the municipality of Saranda. The CA has contracted 3 Economic Operators for 25 procedures (10, 9 and 6 procedures respectively). Such a thing has taken place for both low value purchases and contracts for work;
- The licensed companies have problems of competition by unlicensed companies. For instance, in one fuel tender participate not only the companies related to this issue, but there were cases when tailoring companies have participated, and such a thing has penalised other providers of goods;
- The training of companies shall be taken into consideration by the Contracting Authorities. There are cases when construction firms participate in tenders on detergents for kindergartens. According to Economic Operators, “it has been 10 years that construction firms activity is not like years ago, and now they participate in each possible tender”;
- The right to apply in tenders for firms from all over Albania is a good thing and, of course, it serves to the implementation of economic freedom, but the logic of business selects application, because none of the firms is interested to apply for a tender in an area far from the firm’s location and due to the fact that transport of machineries and employees costs too much. However, this criterion penalise the local firms that according to Economic Operators have good capacities to carry out works and local labour force that will help the local economy of the city;
- The limit fund of investment shall be determined by law according to the economic logic. The low price shall not be a criterion for qualification, because this has damaged the quality of public works and competition.

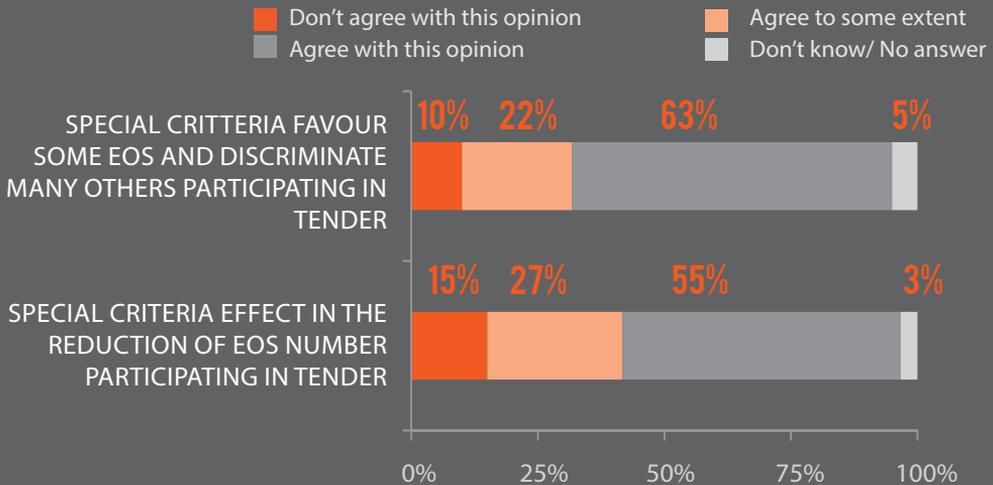
**Graph 16:** Procedure vs. corruption (n=60)

The interviewees were asked to give their opinion regarding the impact the reforms in procurement field have had to reduce corruption. 61% of the interviewees think that the current procedures have somehow reduced corruption and only 24% think that that the current procedures have reduced and have reduced too much corruption (Graph 16).

#### **7.4 APPLICATION OF SPECIAL CRITERIA**

A considerable part of the interviewees (63%) agree with the opinion that application of special criteria in a tender procedure favours some EOs and discriminates/excludes many of them to participate in a tender. More than half of the interviewees agree with the opinion that application of special criteria in a tender procedure influences in the decrease of the number of Economic Operators to participate in a tender. 27% of them do somehow agree with the opinion that the application of special criteria in a tender procedure influences in the number of EOs to participate in a tender (Graph 17).

**Graph 17:** Application of special criteria (N=60)



- The discretion that the law gives to each CA to establish special criteria are unreasonable and unfair according to EOs. Their application leads to corruption and creates unfairness of procedures and eligibility of EOs for public works;
- The PPA should review the restrictions on property of equipment. In tender notices, it is specified that equipment shall be possessed or rented. This specification is considered unfair by the EOs that have invested for years in purchase of devices. According to them, it is very simple to have a fictive contract for renting with other firms. It is important to set a threshold, at least 50% of tools shall be in ownership, like it was before 2005 (such as: pickaxe, shovel/paddle, some basic machineries, not machineries of heavy tonnage, but they shall not be 100% by renting). This will influence on quality, increase of employment, as well as performing works within the deadline;
- The CA shall eliminate special criteria that are exaggerated. A firm constructing a village school cannot be asked to have 240 employees, super heavy tonnage machineries and other specifications;
- The guarantee criterion is established by law, however, the tender commissions, quite often set unreachable criteria or criteria based on capacities of preferential firm;
- Article 45 provides the guarantee in compliance with the investment value, while there are cases that, for object values up to 100 million ALL, the firm is required a guarantee of 300 million ALL. EOs state that, they have complained many times about such criteria; they have followed the procedure foreseen by the law, and have resulted successful. Unfortunately, it is noted that such

cases are very frequent, and not everyone is able and patient to file and follow to the end the complaint procedures;

- The provision of firms with licences has created room for abuses. In Saranda, a kind of license is available only for two Economic Operators. When specifications are published, it is known to firm the contract will be awarded. An Economic Operator states: "I applied for furniture. They told me I needed a license on furniture. Anyway, a firm without license won the tender. Only they know how it happened";
- The requests for ISO certificates are unfair and exaggerated. For a work of a value of 300,000 ALL, 3 ISO certificates for environment were required. According to Economic Operators, these certificates are like businesses. They do not show any skills or training, because they are bought; they are provided just to generate income to those who have them and to their intermediators;
- A classification of firms or a reassessment based on capacities shall take place and it is important to know for what type of level/work/tender they can apply. As EOs declare "Economic Operators may not have capacities for tenders of thousands of Euros, but they can have possibility for 1 million ALL";
- The criteria to have a similar object within a 3 year period is not fair. The firm may have had prior similar experiences. The fact that it has experience in the last three years does not mean that it does not know to do it anymore. It is true now that the work volume is decreased in these 3 years and these criteria have damaged the local Economic Operators;
- During the tender process, EOs are often required a bill to certify the payment of electricity. There were Economic Operators that are excluded from the process, although they claim that they were okay with the EDO (Electricity Distribution Operator), but the municipality where they exercised their business may have unpaid dues towards EDO, which has nothing to do with Economic Operators;
- Any special criteria shall be well-drafted and with objectives closely related to the nature and volume of works and services required. They shall be determined by law and shall not be evasive. In order to meet the tender criteria, EOs pay salaries and insurances of employees that are not needed and finally, they are not qualified in tenders. This damages them financially and they result in artificial increase of number of employees;
- The requirement of ISO certificates of quality to businesses is a legal criterion under the legislation regulating the PP. The last two years, the PP legal framework has increased the requirements for EOs' capacities, and this, for the honest business, is translated in higher costs. However, Economic Operators think that these certificates do not guarantee the quality of product and service. Their issuing has become an affair in itself. Practically, Economic Operators purchase ISO certificates without meeting any criteria; they buy them just because they are required by the CA. For this reason, a construction company, for example, from 2 technical construction leaders, had to hire 20, just because the ISO standard requires it.

## 7.5 EFFECTIVENESS OF USING FUNDS

- One of the indicators that measure the good planning and management of funds is the percentage of saving from the limit fund. Of course, in this indicator influences the procurement volume realised in each municipality, procurement procedure realised by the municipality and the type of contract. This indicator varies according to municipalities, types of procedures and contract;
- In general, it is noticed that savings of the limit fund as a result of procurements in contracts for works are in minimal values, and there are even cases when they are under 1%. Meanwhile, there are cases, especially in small purchases where there are no savings or they are above 30%;
- The largest savings of the limit fund are noticed in contracts for supervision of public works. The majority of them are out of the economic logic and cannot be avoided by CA, because the abnormally low value is not applied for them.

## 7.6 FUNCTIONING OF THE PPA PORTAL

- The electronic system is very slow and problematic to access in time and to find other necessary materials and documents for PP. EPS is overloaded, especially in the last days of closing the terms, there are even cases when it is impossible to access and it penalises interested Economic Operators;
- The portal has difficulties in use, especially in the day of closing the tender. Quite often, the last hours before closing of application there is an overload and the system is blocked during the application or in the moment when the Economic Operators are saving the application at the end of the process;
- Often, application forms cannot be opened, and this can lead to problems because the deadline is expiring while the EOs are blocked in the internet having no possibility to apply;
- Despite the efforts for amendments in the PPA website appearance, still there are too many defects in the process and procedure, defects that are caused and allowed by the spaces given by the legal framework regulating the PP;
- Archiving of procedures in the webpage take place quickly and it is impossible to have access in documents. According to PPA, the quick archiving is carried out by the PPA to ensure a good functioning of the system and not overloading the server. In these conditions, CA shall publish the information on procurement procedures in their webpage.
- According to the CA, the contact number that the PPA has made available to clients is not functional. Even in cases when someone replies, he/she says that a written request shall be handed, and such a thing needs time to realise and reply.

## 7.7 SUPPORT OF PUBLIC PROCUREMENT AGENCY FOR CONTRACTING AUTHORITIES AND ECONOMIC OPERATORS

- The communication with PPA for procurement issues is not accurately channelled. According to the CA, the PPA does not provide assistance and support they need, and they wait by the telephone or email;
- The staff of municipality uses personal communication channels to receive information by the PPA. One of the municipality's lawyers stated that "for each issue raised, the answer is -come to Tirana".

## 7.8 SUPERVISION OF WORKS

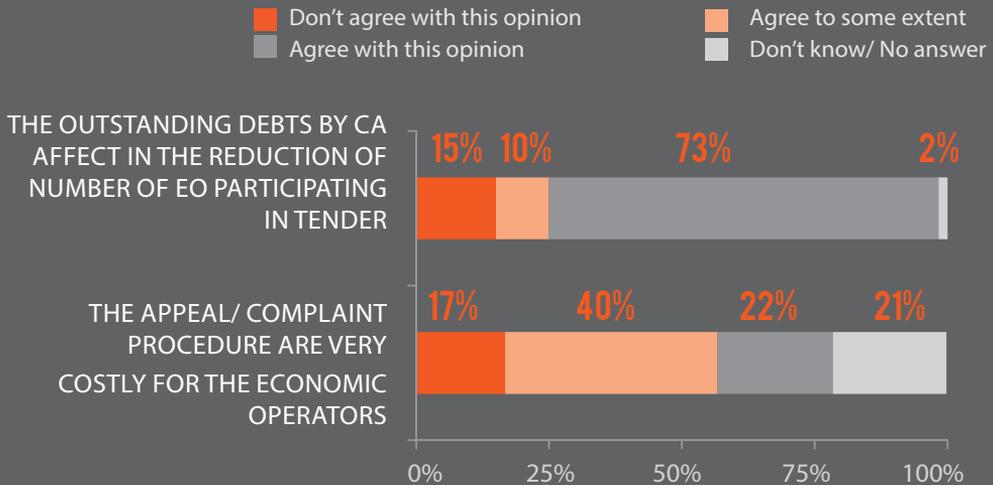
- The Contracting Authorities, and in some cases even the Economic Operators have too many reserves on the way of choosing contracts' supervisors. The lowest offer does not guarantee a qualitative and valid supervision of works;
- Supervision according to EOs shall be performed by local operators, within the region/city where works take place, because those who come from Tirana in another far area cannot supervise works as needed. There were cases and opinions that the supervisor shall be proposed by the CA;
- In general, the continuous supervision is missing and this leads to non-qualitative works and Contracting Authorities continue to contract the same companies, regardless of the fact that they might not have carried out good works;
- In general, supervision in tenders is in sub-costs for transport, value of work, etc. the supervision value is too much lower than the limit fund. This leads to poor quality of works, works without quality are accepted and this damages the service and Albanian taxpayers.

## 7.9 DISBURSEMENT OF FUNDS

As shown in Graph 18, 73% of the interviewees agree with the opinion that obligations unpaid by Contracting Authorities influence in the decrease of the number of Economic Operators participating in a tender. 40% of economic operators do somehow agree with the opinion that complaint/complaint procedures are accompanied with higher costs for EOs.



**Graph 18: Obligations of Contracting Authorities (N=60)**



- The Contracting Authorities have disciplined the issues of expenditures for 2014. However, there are EOs, who claim that Contracting Authorities have not paid their obligations of the past years and this damages their normal activity. Unpaid obligations were one of the reasons decreasing the number of EOs participating in tenders, especially in public works. The low profit margin and the time of funds' disbursement prevent EOs to apply;
- The procedures of budget approval by Municipality Councils cause delays and influences in the deadlines of concluded public works and funds disbursement for EOs. Procurement procedures for investments usually begin in the second quarter, because there are cases that the approval of budgets occurs at the end of March;
- The Instruction of the Ministry of Finance for payment of bills conditions Contracting Authorities to make a distribution of fund in some purchases for operational expenditures or investments realised through the procedure of "Low value purchase". Setting one month deadline for the CA to pay the bill disciplines local finances and prevents creating new debts to EOs;
- However, in the first quarter, the Contracting Authorities have faced the lack of liquidation, because there are cases that the Regional Tax Directorates have not released incomes from the small business (Municipality of Berat);
- The change of threshold for small purchases is considered as positive by CA and EO;

## 7.10 CAPACITIES OF CONTRACTING AUTHORITIES AND ECONOMIC OPERATORS

- The application of electronic procurement procedures presents difficulties for some CA. In special cases the municipality PC capacities or internet speed make access to the platform difficult, and sometimes impossible;
- The local government units have continuous needs for building capacities to implement/monitor/manage these public investments and to implement correctly the PP procedures;
- Seriousness of EOs providing offers in tenders for public works and services is not at the right level. Their real capacities and quality of services is far away from what is presented in documents where they apply for public works and services. This fact makes public works to be postponed, deadlines are broken and the CA becomes subject of penalties by controls of HSC (High State Audit) or Audit of Investments;
- Bidding is also an issue that damages the quality of public works, citizens as taxpayers, but even CA. Favouring the lowest price in an offer artificially compromises the market and competition among EOs, having a negative impact in the quality of works carried out. Such an attitude of a part of EOs damages the municipality budget, because quite often municipalities have to pay on the investment plan due to the fact that needs, which cannot be covered in bidding of the lowest price, can come across the way;
- Misbalance of offers within the same call for public works or services is often too high. Representatives of CA and EOs think that a base level for public works prices according to the bulletin of prices, value of investment, control of works and quality of the goods, etc. The system shall strengthen for a strong/firm control in places where abuse occurs;
- Quality of public works and services provided by EOs shall be controlled by legal forms. ISO quality certificates do not really justify the quality of works, services and goods purchased by CA;
- The supervision system of public works is defective, and it is like legalising a corruptive relation between supervisor and EOs, damaging the interest of the CA and citizens. We need to take into consideration the possibility that the supervision be in a unit to the CA and/or specialised institutions. However, even in the actual conditions, the CA shall find other mechanisms of control to ensure the realisation of investments at the required quality. The issue of supervision is identified as problematic by all contracting authorities, so there is a need to be addressed by reviewing of specific legislation by the responsible institutions.



# 8

## CONCLUSIONS

- The amendments of the last years (2013-2014) on public procurements are considered as positive and facilitating, but Economic Operators face difficulties in using the procurement portal, which are related mainly to the overload in the last hours of closing the procedures, difficulties in downloading forms or in uploading tender documents;
- In general, the information published in the PPA website is clear and understandable for all the types of users. Some changes were made to the platform, which were intended to improve the service, facilitate the use and increase transparency. However, there are still rubrics which shall be elaborated better by the Contracting Authorities, in order to increase access in more detailed information regarding the tenders' results;
- The application of special criteria by Contracting Authorities creates barriers, prevents equal access and competition among Economic Operators. In certain cases, setting of these criteria favours certain Economic Operators;
- In the monitored procedures, there are extreme cases regarding savings from procurement procedures. There are cases when saving is minimal, even under 1%, while there are cases, especially in procedures of services and small purchases where saving is above 30%. These situations are noticed in all the four municipalities;

- In some procedures and municipalities competition is still low. The participation of Economic Operators in public procurement procedures varies depending on the municipalities and the nature of contract. The competition is very low in municipalities located far from big centres;
- The award of some firms as successful more than 3 times during one financial year is an indicator of a low level of competition. While the cases of being successful more than 5 times should be subject to an audit of specialised institutions;
- The number of participating companies is low in municipalities of Himara and Saranda. This indicator is different among municipalities, but even among procedures realised in the same municipality.



# 9

## RECOMMENDATIONS

The following recommendations, issued under the findings of the study and resulting by the discussions with representatives of Contracting Authorities and Economic Operators in focus groups and workshops.

- The PPA shall ask for the opinion of stakeholders and groups of interest, regarding changes and/or improvements it makes in the legal framework.
- The legal and sublegal framework related to procedures of requests for explanations/complaints should be improved and barriers noticed by economic operators should be eliminated.
- The on-line system and its functioning should improve, in particular related to the speed of information/data processing, and access in data and procedures for the public.
- To ensure a higher transparency for the public and economic operators, we suggest to that it is necessary to include, in the Registry of Concluded Procurements, the number of firms participating in each procedure.
- To ensure quality in purchase of goods and provision of services, as well as to avoid cases of abuse with the lowest prices, more attention is needed to be paid by the CA and the application of offer for abnormally low values shall not be accepted.

- The PPA should provide more assistance and capacity building for Contracting Authorities and Economic Operators in partnership with Albanian School Public Administration (ASPA) and Chambers of Commerce and Industry.
- The Contracting Authorities should increase further the transparency with Economic Operators and public, in general, by publishing information on PP in the website or in other informative channels (forecasts, concluded procedures, notices of procedures, contract award, etc.).
- The Contracting Authority should make a better distribution of procurement procedures throughout the year to increase competition and quality of the service provided.
- The Contracting Authority should publish the calendar of procurement procedures and the registry of concluded procedures.
- The Contracting Authority, under its possibilities and legal terms, should avoid application of special criteria in a tender procedure, because it influences in the decrease of competition and creates a climate of mistrust to Economic Operators.



# 10

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## WEBSITES

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Municipality of Fier: <http://www.bashkiafier.gov.al>

Municipality of Himara: <http://www.himara.gov.al>

Municipality of Saranda: <http://www.bashkiasarande.gov.al>

Public Procurement Agency: <https://www.app.gov.al>

Public Procurement Commission: <http://www.kpp.gov.al>

World Bank: <http://www.worldbank.org>

