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 **SME Policy Index**

**Western Balkans and Turkey 2022**

 **ASSESSING THE IMPLEMENTATION OF THE SMALL BUSINESS ACT FOR EUROPE**

**DIMENSION 5b - Public procurement**

**Qualitative indicators government questionnaire**

# Public procurement assessment framework

**Public procurement** assesses the systems and procedures required in the Western Balkans and Turkey to facilitate SMEs’ access to the public procurement market.

Figure 1. Public procurement assessment framework

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| **Dimension 5b: Public procurement** |
| **Outcome indicators**Share of SMEs in the total value of public contracts awardedShare of SMEs participating in public tendersAverage delay in payments from public authorities (in days)Share of SMEs submitting proposals in a public electronic tender system (e-procurement) Share of contracts awarded to foreign economic operatorsValue of contracts awarded to foreign companies as a share of the total value of procurement in the economy |
| **Thematic block 1:**Policy and regulatory framework | **Thematic block 1:**Implementation | **Thematic block 1:**Monitoring and evaluation |

## Dimension 5b: Public procurement

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| **Question** | **Response *[expand box as necessary]*** | **Source/evidence/links** |
| **Thematic block 1. Policy and regulatory framework**  |
|  | **Is there an adopted multi-year strategy that defines objectives of support to SMEs in the public procurement system?** |  |  |
|  | If yes | Is the objective of supporting SMEs in public procurement:  | [ ] included in a broader strategy/ policy for public procurement[ ] included in a broader strategy/ policy for SME support[ ] defined as a standalone strategy/ policy |  |
|  | Has the private sector been consulted in the developing the strategy? |  |  |
|  | **If the strategy exists, does it include following issues:** |  |  |
|  | a) | encouraging the division of public contracts into lots? |  |  |
|  | b) | encouraging joint bidding? |  |  |
|  | c) | simplifying/reducing the documentation requirements to participate in a tender? |  |  |
|  | d) | special or focused support to SMEs? |  |  |
|  | **Are the foreign companies allowed to participate in public procurement procedures on equal terms with domestic bidders?** |   |  |
|  | **Does the public procurement framework promote the development of a Central Electronic Registry for Public Procurement[[1]](#footnote-2)?**  |  |  |
|  | If yes | Is the use of the Electronic Registry for Public Procurement obligatory for all contracting authorities? |  |  |
|  | **Does the public procurement framework promote the development of a National System of Electronic Public Procurement[[2]](#footnote-3)?** |  |  |
|  | If yes | Is the use of the National System of Electronic Public Procurement obligatory for all contracting authorities and all domestic business entities? |  |  |
|  | Is there a minimum contracting amount for which the use of the National System of Electronic Public Procurement is obligatory? |  |  |
|  | **Does the public procurement framework promote the introduction of accessibility requirements on public procurement of ICT product and services?** |  |  |
|  | **Does the public procurement legislation allow contracting authorities to divide public procurement contracts into lots[[3]](#footnote-4)?** |  |  |
|  | If yes | Does the public procurement legislation require that all contracts above certain financial value are divided into lots? If so, please specify the value. |  |  |
|  | Are contracting authorities allowed to limit the number of lots that may be awarded to one tenderer? |  |  |
|  | **Is there a law requiring the contracting authority to pay the remuneration to their contractors within certain time limits?** |  |  |
|  | If yes | Does the law impose strict deadlines for payments? |  |  |
|  | Does the law impose financial penalties or other comparable sanctions in case of non-compliance with these deadlines (late payments)? |  |  |
|  | **Must the requirements for bidders be related and proportionate to the object and the value of procurement?**  | [ ] Yes[ ] No |  |
|  | **If specific provisions to this effect exist, do these specific provisions concern:** |  |  |
|  | a) | turnover requirements? |  |  |
|  | b) | technical capacity? |  |  |
|  | c) | previous experience? |  |  |
|  | d) | level of tender securities (deposits) and guarantees of good performance? |  |  |
|  | e) | qualifications of staff? |  |  |
|  | f)  | green public procurement?  |  |  |
|  | **Does the public procurement law contain provisions on tender securities required from economic operators[[4]](#footnote-5)?**  | [ ] Yes[ ] No |  |
|  | **If such provisions exist, does the law:** |  |  |
|  | a) | provide for the maximum amount of the tender security? |  |  |
|  | b) | allow contracting authorities not to demand tender security (tender securities are optional for contracting authorities)? |  |  |
|  | c) | allow economic operators to freely choose the form of a tender security from among the forms mentioned in the law? |  |  |
|  | d) | define conditions (and time limits) under which tender securities must be returned or may be retained by the contracting authority? |  |  |
|  | **Does the law allow groups of economic operators (consortia) to participate in public procurement procedures?**  | [ ] Yes[ ] No |  |
|  | If yes | Does the law allow the contracting authorities to require that economic operators assume a specific legal form but ONLY in order to sign a contract with the contracting authority? |  |  |
|  | **Does the public procurement law include provisions on subcontracting[[5]](#footnote-6)? If yes, does the law:**  |  |  |
|  | a) | allow the winning bidder to decide whether to subcontract a part or parts of the contract to third parties? |  |  |
|  | b) | require the winning bidder to obtain approval from the contracting authority with regard to identity of subcontractors after conclusion of the contract with the contracting authority? |  |  |
|  | c) | provide for no limitations concerning the maximum share of the value of a contract which may be subcontracted? |  |  |
|  | d) | provide for the possibility of direct payments by the contracting authority to subcontractors? |  |  |
|  | **Does the law provide, in principle, for submission of self-declaration as a preliminary proof of fulfilment of requirements of the contracting authorities instead of documents or certificates issued by third parties[[6]](#footnote-7)?** | [ ] Yes[ ] No |  |
| **Thematic block 2. Implementation**  |
|  | **What specific measures is the government undertaking to encourage participation of SME's in public procurement?** |  |  |
|  | **What measures are being taken to enforce the law on late payments?** |  |  |
|  | **What proportion of contract payments is made on time? What is the average delay?** |  |  |
|  | **What are the fees for submission of appeals?** |  |  |
|  | **If public contracts are divided into lots in practice, how big is the share of the procurement divided into lots?** |  |  |
|  | **Is information on public procurement (contract notices, procurement documents) available free of charge?** | [ ] Yes[ ] No |  |
|  | If yes | Is publication of information on public procurement opportunities centralised[[7]](#footnote-8)? |  |  |
|  | **Do the central procurement institutions offer trainings on public procurement dedicated to SMEs? If yes, please specify** | [ ] Yes[ ] No |  |
|  | **Do the central procurement institutions offer support to SMEs in getting information about public procurement? If yes, does this support have a form of:** | [ ] Yes[ ] No |  |
|  | a) | telephone "helpdesks"? |  |  |
|  | b) | providing written opinions (advice) in response to questions submitted by SMEs? |  |  |
|  | c) | publishing guidance for contracting authorities how to facilitate SMEs participation? |  |  |
|  | d) | publishing guidance for economic operators, in particular SMEs on how to prepare and submit bids? |  |  |
|  | e) | other (please specify) |  |  |
| 1.2.9 | **Has a Central Electronic Registry for Public Procurement[[8]](#footnote-9) been implemented?**  | [ ] Yes[ ] No |  |
| 1.2.10 | **Has a National System of Electronic Public Procurement[[9]](#footnote-10) been implemented?**  | [ ] Yes[ ] No |  |
|  | If yes | Are contracting authorities obligated to perform electronically any of the following processes? |  |  |
|  | a) | publication of basic information on tenders, such as contract notices, lists of contractors, information on procurement activities, rules and processes? |  |  |
|  | b) | specific information on a given tender (such as tender documentation, downloadable forms or templates)? |  |  |
|  | c) | communication between contracting authorities and economic operators, other than submission of tenders or requests to participate? |  |  |
|  | d) | submission of tenders or requests to participate? |  |  |
| 1.2.11 | **Which information on public procurement is available in electronic format?** |  |  |
| 1.2.12 | **Which tendering procedures can be performed online?** |  |  |
| 1.2.13 | **If information about the share of contracts awarded to groups of economic operators (consortia) is collected, please state the value.** |  |  |
| 1.2.14 | **Is information about economic operators collected by contracting authorities stored for purposes of using in future procedures?** | [ ] Yes[ ] No |  |
| **Thematic block 3. Monitoring and evaluation**  |
|  | **Is information about obstacles faced by SMEs in access to public procurement procedures collected and analysed? If yes, please specify** |  |  |
|  | **Is data periodically collected on the participation in public procurement procedures by SMEs** (for example number and value of awarded contracts)**? If yes, please specify** |  |  |
|  | **Is data periodically collected on average payment delays?**  | [ ] Yes[ ] No |  |
|  | **Is data collected on the share of foreign companies participating in procurement procedures?** | [ ] Yes[ ] No |  |
|  | **Does the law allow economic operators to appeal against decisions of the contracting authorities to the independent, both from contracting authorities and economic operators, review body? If yes, does the law:** | [ ] Yes[ ] No |  |
|  | a) | envisage the time limits for submission of appeals, not shorter, though, than 10 days in case of contracts above EU financial thresholds? |  |  |
|  | b) | envisage the time limits for submission of appeals, not shorter, though, than 7 days in case of contracts below EU financial thresholds? |  |  |
|  | c) | enable economic operators to submit appeals without a need to incur excessively high entry fees to have their appeal reviewed? |  |  |
|  | d) | provide maximum time limits during which a decision of the review body should be adopted? |  |  |
|  | e) | provide rules enabling the decisions of the review body to be effectively enforced, including also settlement of costs of the review procedure? |  |  |
| *Optional - Please provide any further information on* ***public procurement*** *in your economy that you deem relevant for the assessment* |  |  |

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| **Question** | **Response** |
| Self-assessed level (1 through 5, whole and half numbers) |  |
| Brief justification |  |
| Assessor name and institution |  |

1. The Central Electronic Registry for Public Procurement is a registry supporting the transparency of public procurement processes, where all contracting authorities are obligated to publish all acts or documents. [↑](#footnote-ref-2)
2. The National System of Electronic Public Procurement is a central online system offering e-access, e-notification, and e-business services, where public contracts are conducted electronically (e.g. potential bidders can participate to online awarding procedures using e-signatures). [↑](#footnote-ref-3)
3. Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots. They may also decide whether tenders may be submitted for one, for several or for all of the lots. Even where tenders may be submitted for several or all lots, the contracting authorities may still limit the number of lots that may be awarded to one tenderer. Sub-division of public purchases into lots facilitates access by SME's, both quantitatively (the size of the lots may better correspond to the productive capacity of the SME) and qualitatively (the content of the lots may correspond more closely to the specialised sector of the SME). [↑](#footnote-ref-4)
4. Contracting authorities may impose certain criteria on economic operators as requirements for participation, to ensure that the economic operator has necessary economic and financial capacity, as well as human and technical resources, or experience to perform the contract to an appropriate quality standard. All such requirements shall be related and proportionate to the subject-matter of the contract, otherwise they may be considered excessive. [↑](#footnote-ref-5)
5. Subcontracting in this context means entrusting, by the winning bidder, the execution of a part or parts of the contract to a third party (or parties) - subcontractors. [↑](#footnote-ref-6)
6. In accordance with EU provisions, in principle, economic operators submit as a prelimianry proof self declarations (ESPD) to proof compliance with rules on exlusion, qualification and selection - certificates and documents issued by third parties are then required only from bidders whose offers were evaluated as the most advantageous [↑](#footnote-ref-7)
7. Centralised in this context means that there is one single place (national gazette, national portal) where this information is available. [↑](#footnote-ref-8)
8. The Central Electronic Registry for Public Procurement is a registry supporting the transparency of public procurement processes, where all contracting authorities are obligated to publish all acts or documents related to the entire life-cycle of a public contract (i.e. requests for procurements, tender documents, contract award decisions, signed contracts and payment orders). [↑](#footnote-ref-9)
9. The National System of Electronic Public Procurement is a central online system offering e-access, e-notification, and e-business services, where public contracts are conducted electronically (e.g. potential bidders can participate to online awarding procedures using e-signatures). [↑](#footnote-ref-10)