



COMPETITIVE DIALOGUE AS AN INSTRUMENT FOR THE IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIPS IN THE REPUBLIC OF SERBIA

Sladana Sredojević

Association of Serbian Banks, Republic of Serbia

✉ sladjana.sredojevic@gmail.com

Predrag N. Cvetković

University of Nis, Faculty of Law, Republic of Serbia

✉ pepicvetkovic@gmail.com

UDC
334.752
338.49:336.13
Original
scientific
paper

Abstract: The competitive dialogue ("CD") as a method of procurement of public-private partnership ("PPP") is relevant method of selecting a private partner in cases where the public sector knows the goal wanted to be achieved by the project, but lacks the knowledge about the means and methods necessary to be applied for its achievement. Both PPP and CD as one of the instruments for their implementation are novelties in the Republic of Serbia. Therefore, the paper analyzes legal and institutional framework for PPPs, as well as the procedures for their realization, emphasizing the procedure of CD. The aim of the research is to contribute and to encourage the public sector to use CD as complex but useful concept, particularly in countries in transition, by analyzing important legal and economic aspects as main drivers and advantages of CD.

Received:
18.10.2013.
Accepted:
26.12.2013.

Keywords: Public-Private Partnership, Competitive Dialogue, public sector.

1. Introduction - Public Private Partnership (PPP)

What is PPP? - During the 1970s and 1980s known as a period of macroeconomic dislocation, there was a growing concern about the level of public debt which grew rapidly. At the same time, this concern triggered the awareness on methods of public procurement (spending) used traditionally as well as on necessity to reduce public spending while providing public goods and services. Governments were eager to find an alternative method of

procurement, involving more and more private sector potentials. In that way, most of the projects implemented in partnership between public and private sector were negotiated individually, as one-off deals, and much of this activity began in the early 1990s. The success of the approach, known later as “Public-Private Partnerships” (PPP), spread from one country to another with variations linked mostly to the national legislation framework. However, in the EU there is no common explicit legal framework that would regulate PPP and also, there is no single definition of PPP. According to the Green Paper on PPPs and Community Law on Public Contracts and Concessions, “... *the term (PPP) refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service* “ (Green Paper on PPP and Concessions, 2004, p. 3).

PPP in Serbian Legislation. Serbian legislation related to PPP is based on two main pillars: the Law on Public-Private Partnership and Concessions (2011) and Law on Public Procurement (2012). The Law on Public-Private Partnership and Concessions is stipulating the definition of PPP as “...*long-term cooperation between public and private partner with aim to provide financing, construction, reconstruction, management or operation of infrastructure and other objects of public interest as well as delivery of services of public interest which may be contractual and institutional*” (Official Gazette of the Republic of Serbia, No. 88/2011). In both contractual and institutional form of PPP, before entering the process of private partner selection (public tender), public body is obliged to have a consent or positive opinion on whether the project proposal can be implemented through PPP concept or not issued by the Commission for PPP of the Republic of Serbia, the main PPP Task Force and base of the national institutional framework for PPP.

According to which procedures PPP is implemented? Serbian Legislation distinguishes two ways of procedures of PPP implementation, depending on the types of PPP:

a) If the project comprises elements of concessions, the procedure to be implemented for the award of the public contract is the one defined by the Law on Public Private Partnerships and Concessions.

b) If the project does not have elements of concessions, then the procedure to be applied for the contract award is the one stipulated by the Law on Public Procurement.

What is common to both of these procedures are general terms and conditions that apply to contract award procedure. That starts with a general requirement that the following principles should be applied to all public procurements: equal treatment, non-discrimination, transparency. These

principles are followed by the requirement for public procurement of an appropriate type and value to be advertised openly in domestic and international arena. Eventually, fairness and openness of bidding criteria and criteria for selecting and awarding projects, as well as dispute resolution systems, are very important standards that are defined and have to be met in both procedures described in the Law on Public-Private Partnerships and Concessions and Law on Public Procurement. Both laws set the following procedures for contract award:

- Open procedure
- Restricted procedure
- Qualification procedure
- Negotiated procedure with public announcement for submission of proposals
- Negotiated procedure without public announcement for submission of proposals
- Competitive dialogue
- Concourse for design
- Procedure for public procurement of small value.

It is important to mention that these laws introduced new technique in the field of public procurement in the Republic of Serbia - Competitive Dialogue procedure. In other words, the Republic of Serbia introduced the CD procedure through enacting the Law on Public-Private Partnership and Concessions (Official Gazette of Republic of Serbia, No. 88/2011) and elaborated in the Law on Public Procurement (Official Gazette of Republic of Serbia, No. 124/12).

2. Competitive Dialogue as an Instrument of Implementation of Public-Private Partnership (PPP)

3. *About Competitive Dialogue (CD)*

There were many findings that the “old” Directives, Directives 92/50/EEC, 93/36/EEC and 93/37/EEC, “do not offer sufficient flexibility with certain particularly complex projects due to the fact that the use of negotiated procedures with publication of a contract note is limited solely on the cases exhaustively listed in those Directives” (Explanatory Note – Competitive Dialogue – Classic Directive, EC Directorate General Internal Market and Services, p.1). In March 2004, the European Commission published Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (Public Service Directive, hereinafter also: “Classic Directive”). The term “Classic Directive” is used extensively in order to differentiate Public Service Directive from the

Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (“Special Directive”). Special Directive applies to public procurement contracts concluded by a contracting authority in the sectors in question for supplies, services, works, which are not exceptionally excluded by this Directive. However, in contrast to the Classic Directive, this Directive does not apply to works concessions.

Classic Directive beside other issues, introduced the new procurement procedure – Competitive Dialogue procedure. In that time, it was foreseen that it would largely replace the negotiated procedure except for “*the most exceptional projects*” (OGC/HMT Guidance on Competitive Dialogue, 2008, pp. 3). The main goal of competitive dialogue procedure (hereinafter: CD procedure) is to provide the procurement procedure suitable for the complex project for which established and common modalities of procurement are not eligible. The target of CD procedure is, among others, the realization of projects involving public authorities and private partner in the framework of public private partnership concept.

Therefore, CD procedure is used for major computer networks, integrated transport systems, complex framework agreements, Private Finance Initiative and other forms of Public Private Partnerships. The legislation “...*has therefore set itself the objective of providing for a flexible procedure which provides not only competition between economic operators but also the need for the contracting authorities to discuss all aspects of the contract with each candidate*” (Classic Directive, 2004, Recital 31).

Since the introduction through Classic Directive, CD process acquired the legitimacy in the discourse of PPP procurement. For example, in France at the moment 88 projects are in the phase of CD procedure. In the Netherlands during the period from 2006 to 2012, the competitive dialogue was applied 27 times, while CD procedure was applied for the “*procurement of most Danish PPP projects to date*” (PPP in Transport, 2013, p. 47). Competitive Dialogue is also elaborated as the tool for procurement of PPP project on the universal level, not only in the EU.

According to the study on the procurement procedures used in PPP procurement across Europe with a particular focus on CD conducted by the European PPP Expertise Centre, 24 EPEC members in Europe were asked to fill in the questionnaire on PPP procurement practices in their jurisdictions. The outcome of the questionnaire is: 17 responses were received as answer to Part I of the questionnaire (General Procurement issues) and 12 responses to Part II (Competitive Dialogue). The outcome received includes “*most of the countries in Europe that have significant experience in the use of CD*” (A review of the public sector’s practices across the EU, 2010, pp.4).

Table 1 How Frequently CD Appear to be in Use to Procure PPPs in EU Countries?

Level of frequency (measured by number of deals)	Respondents (percentage)
1. Frequently	60% of the respondents report using CD frequently
2. At least occasionally	12%
3. Never use CD	28%

Source: EPEC/European Investment Bank

As the results of the study show, all of the procurement procedures provided for in the Procurement Directive appear to be in use to procure PPPs. Most frequently used procedure is the CD procedure, as presented in the Table 1.

3.1. Terms and Conditions to Use CD

In order to benefit from potentials of the use of the CD procedure in PPP implementation, the projects have to meet certain “preconditions”, otherwise, the use of the CD will not be appropriate and the added cost of the CD procedure (compared to other procedures) will not be justified by the potential outcome improvements. Regarding the circumstances under which the CD can be used, commonly present are the following:

- When open or restricted procedure do not allow award of the contract, due to the extraordinary complexity of the project.
- Technical complexity of the project. CD is particularly useful for complex facilities or buildings where functional design or technology is critical to the success of a project but where many means to realize the goals are available, e.g. prisons, hospitals.
- Financial and legal complexity
- Additional requirements. In Serbian legislation, consent of the Public Procurement State Office is necessary.

The purpose of introducing the Competitive Dialogue is based on Classic Directive recitals and stems from the need the flexible procedure to be provided suitable to secure the competition between private economic actors, on the one side, and enabling at the same time the contracting authority to discuss the all relevant aspects of the project with every bidder.

The CD procedure applies by particularly complex contracts, as defined in the Classic Directive, Art. 29 § 1. Although the CD procedure is by the European Commission seen as the ideal method for the procurement of PPP

project and therefore enjoys impetus of political nature, the Classic Directive provides only the general direction for the national legislators.

The first direction is contained in Art. 1 § 11, Point c) of the Classic Directive prescribing that a public contract is considered to be 'particularly complex' where the contracting authorities: are not objectively able to define the technical means or capable of satisfying their needs or objectives, and/or are not objectively able to specify the legal and/or financial make-up of a project.

In order to define if contracting authority is lacking the capacity to realize the PPP project without participation of private parties, it is crucial to know what level of knowledge would be necessary for the third party in the similar situation. The incapacity is objective if, for example, PPP for which procurement the CD procedure is initiated is (alternatively): the first of the kind; causing unreasonable costs for the contracting authority; depending on the specific knowledge which could not be acquired by contracting authority without time and cost beyond reasonable considerations.

The contracting authority is not obliged to obtain countless expert opinion on whether the PPP objectives can be described sufficiently clearly from a technical perspective. The discretion on the side of contracting authority is borderless: contracting authority should take all necessary steps (judged in accordance with "best effort" criteria), to obtain the necessary knowledge before the start of procurement, not only during the tender procedure.

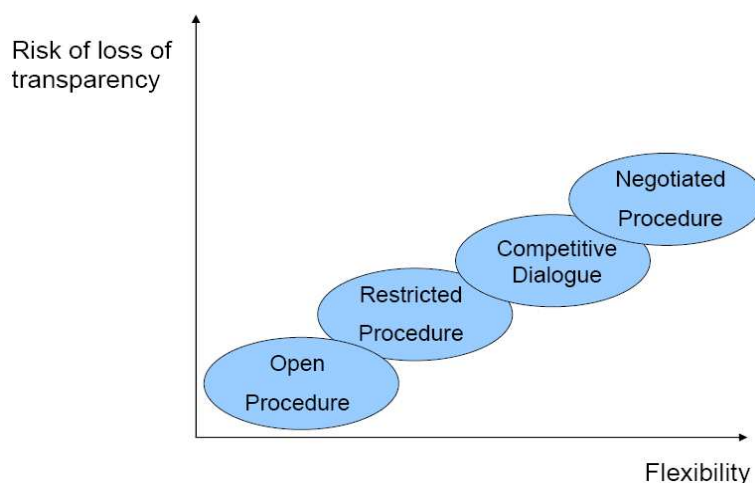
Second direction is contained in recital 31 of the Classical Directive Preamble. It is prescribed that "particularly complex contract" exists when it comes to important integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing. For those three types of projects there is rebuttable presumption that those projects are "particularly complex" in the sense of par. 2. Art. 29. of Classical Directive. Consequentially, the PPP projects intended to build schools, sport venues or similar objects are not presumably "particularly complex contracts" in the sense in which the projects which object is listed in the recital 31 of the Classic Directive Preamble are. Therefore, for the PPP projects placed outside definition of the abovementioned recital to be procured using the CD procedure, it is necessary to prove the "complexity" feature (on the basis of the circumstances of the concrete case at stake and comparison with the similar projects).

3.2. Relationship with Other Types of Procurement Procedure

EU legislation provides for four procurement procedures: open, restricted, negotiated and competitive dialogue. It should be noted that these procedures are not defined particularly for PPP: they apply to all goods, works or services contracts. Various factors lead contracting authority in the decision making

process of the preferred procurement procedure. The open and restricted procedures are used for simple projects; for the more complex projects - the more flexible competitive dialogue or negotiated procedure will be used. The presumably applicable procurement modalities are in the Classic Directive the open and restricted procedure, while negotiated procedure and the CD procedure are conducted under defined conditions. This range of choices is related also to the issue of the so-called „trade-off“ between the risk of transparency loss and flexibility, as shown below in Illustration 1:

Illustration 1 “Trade-off” between the Risk of Transparency Loss and Flexibility in Procurement Procedures



Source: EPEC/European Investment Bank

Beside the issue of trade-off between the risk of transparency loss and flexibility in general, particularly meaningful is the relationship between the CD and other procedures. Namely, in terms of PPP implementation the important issue is to find the hierarchy of implementation between the CD procedure and negotiated procedure. Both created to be the tool for procurement of complex, time-consuming, financially demanding projects with significant engagement of public interest, the abovementioned procedure differs in their course. Namely, the negotiated procedure allocates the responsibilities for and cost of determination of essential elements of PPP project proposal (elements relevant for the considerations and judging the quality and suitability of the proposal) on the contracting authority. By competitive dialogue, however, the costs and responsibilities are allocated on private actors participating at the procedure.

The Classic Directive gives the hierarchical advantage to the competitive dialogue in relation to the negotiated procedure. However, in the implementation procedure there are the examples (Germany) that national authorities did not

accepted the supremacy of competitive dialogue over negotiated procedure. The justification for the departure of the solution as defined in Classic directive is found in the wording of art. 29 of the Directive: “*In the case of particularly complex contracts, Member States may provide that where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract, the latter may make use of the competitive dialogue in accordance with this Article*”. There is no breach of the Classic Directive since the Article 29 introduces Competitive Dialogue with the words “may provide”. Hence the introduction of CD is not obligatory, but facultative. To secure and preserve *effet utile* of the Classic Directive, it is enough to provide the possibility of competitive dialogue, not to insist on its priority in application over the negotiated procedure.

So, the hierarchy between competitive dialogue and negotiated procedure is not the part of the requirement. In particular circumstances the CD procedure may have not been the part of the national legal instruments if the state finds negotiated procedure efficient and purposeful for the complex, long term and financially demanding projects such PPP.

4. The Analysis of the Course of the CD Procedure

According to the Classic Directive, the competitive dialogue begins with the publication of a notice in the EU Official Journal. Notice is the form for definition of ideas and requirements of contracting authority regarding the project which is the object of the procurement. In case that more elaborated data about project are available, it is possible for contracting authority to attach additional description of the projects features. The recommendation is to be cautious regarding the requirements directed toward potential bidders: namely, changing of once given procurement criteria is inadmissible. Consequently, it is also important to stress, the public body as a contracting authority is to the end bound to the (robust) award criteria set at the beginning of CD in the notice, in terms of content and ponderation. But, at that point (zero point in terms of knowledge) contracting authority is not objectively in the position to know which technical, legal or financial solution for its PPP could be suitable.

Just like in the negotiation process, there is also a pre-qualification phase of the competitive dialogue, during which contracting authority selects first favorite among the unlimited number of applicants. At this phase, also has the function of aptitude/eligibility test. The particular significance of the competitive dialogue, in contrast to the negotiation process, however, is that the goal of the dialogue is not only to identify those companies that promise a flawless performance, but also the bidders able to present the contract content and technological variations already in the preliminary stages of dialogue. The

filter is based on the criteria set out in the notice, criteria that have to be meticulously demonstrated by all applicants. The contracting authority is free to structure the dialogue. He can provide, for example, that the dialogue is conducted and completed in successive stages in order to successively reduce the number of solutions to be discussed during the dialogue stage.

A dialogue leads further in order to help the contracting authority and dialogue participants to negotiate about content and conditions for task realization until it is clear: how to achieve the wished performance; on what terms the dialogue partners should provide the mutual actions; allocation of duties and responsibilities. The dialogue is a dynamic process in which the contracting authority has to ensure the disclosure of project-specific information, but at the same time the information lie behind the particular approaches of the dialogue partners must be treated confidentially. Dialogue phase ends with one or more solutions eligible to achieve the object of PPP. The dialogue phase can also end with the finding that no suitable solution was identified.

The companies that have completed successfully the dialogue phase are invited to make the offer. The approaches and solutions reached during the dialogue are the basis for the bid. The offer shall contain all the details necessary for implementation of the project. The contracting authority may require clarifications and additional information to be included in the bid. The risk of incompleteness is burdened by the bidder. The know-how already rudimentarily disclosed during the dialogue phase must be fully disclosed in the bid, insofar as the content of the task this requires.

Contracting authority has to assess the bids within a reasonable time. The bid(s) should be made in writing and in accordance with the provisions laid down in the contract notice. The “preferred-bidder” is in position that even after it is characterized as the “chosen one” to explain certain details of the offer or to confirm the taken commitments. The award made to accept an *aliud* or “something-else-solution” which is not based on the results of the dialogue phase is excluded. The bid phase of the competitive dialogue ends with the decision of the contracting authority to determine the suitable offer. Before a contract is concluded the 14-day waiting (standstill, “Alcatel clause”) period must be complied with, in order competitors to be informed shortly before the end of the tender which company is awarded the contract and what is the justification of such award.

5. Legal and Economic Aspects of Strengths and Challenges of the Competitive Dialogue

From a public body (contracting authority) perspective, a number of positive aspects of CD are the motivation to launch it. According to the results

of the study conducted by the EPEC/EIB, the following positive aspects of the competitive dialogue procedure are reported by the countries that use it relatively frequently compared to alternative procurement procedures (European PPP Expertise Center, p. 5):

- Improved communication between the contracting authority and the bidders. This leads to result in final solutions that better fit the needs of the contracting authority.
- Enhanced competitive tension
- Better priced discipline
- Fostering and bringing innovations
- CD implementation in general does not expose the contracting authority to greater risk of legal challenges than alternative procurement procedure.

In comparison with other available procurement procedure, the CD procedure offers to the contracting authority the highest level of flexibility in finding the best solution for the proposed PPP. The contracting authority is in the course of the competitive dialogue completely free to make the allocation duties using the criteria of the particular knowledge of private bidders (actors). The need for coordination (including the development of extensive contract structures), which by other procurement methods (types) lays by the contracting authority: the coordination has to be provided in advance and in the preliminary phases of the procurement. The need for coordination (as well the cost of its conducting) is reduced significantly in the CD procedure since it is also partially handled by the private bidder. Thus, the competitive dialogue allows the government to behave in PPP almost like a private person, who wants to meet a specific need using the market and inquiring by various providers for potential solutions.

However, the procedure provided in this dialogue phase leads to a tension between the public interest emanated in the demand the best possible solution (from the public point of view) to be achieved, on the one side, and the interest of the CD participant to secure confidential treatment of their technological and managerial know-how on the other side. Of course, the contracting authority is obliged to confidentiality when it comes to conceptual, technical and pricing solution proposals by individual dialogue partners. Therefore, the contracting authority has to be careful not to interfere with the crypto-competition among bidders providing them with the information about the solution proposed by other competitors.

The knowledge of contracting authority during the competitive dialogue is much lower than in the negotiation process. In this premise lies the importance of CD procedure: it enables contracting authority to continuously improve its knowledge of a possible solution by exchanging the consideration with several partners in dialogue about the legal, technical and financial structure of PPP.

The contracting authority uses the knowledge gained from a dialogue in the ensuing dialogue, thus gaining the necessary detailed knowledge about the object of procurement. In this procedure a know-how transfer takes place, inevitably taking into consideration the structure and conditions on the application of competitive dialogue. Namely, by the CD procedure it is impossible for the contracting authority at the beginning of the procurement to determine sufficiently specific the content of PPP-performance. Therefore, contracting authority rather must rely on the knowledge of the bidder to determine sufficiently and concretely the content of PPP-performance.

The abovementioned conditions for the use of CD causes the following: the preparation of offer and the whole procedure is much more expensive for the bidder than in the negotiated procedure. Namely, the contracting authority is not (and should not be) able to create a full and exhaustive data sheet about the project performance and features. Rather it is the bidder the one who must conceptualize all particularities necessary for the implementation of the project in the competitive bid. What is by the other procurement result of external consultant's involvement or the task for the mobilized in-house professionals, in CD option is on the burden of private actor. Therefore, its cost rises. This may imply that SMEs are often not in the position to participate in a PPP tender. The reversal of cost characteristics for the CD procedure toward the private party (in comparison with the other types of procedure) increase and emphasize the tendency of restricted circle of companies eligible to be part of PPP - the large ones.

To conclude with, the Competitive Dialogue raises the question of how different offer content should be properly assessed, for example, if A and B are equally acceptable solution for the realization of the same PPP. The variety of offers makes their evaluation even more difficult and increases the risk of legal challenges in the competitive dialogue. No other procurement procedure is therefore more predestined to incline toward judicial and administrative review proceedings. The taxes and attorney's fees for such a verification procedure that must be carried by either the public or the private side, increase the risks and transaction costs of the PPP.

6. Main Considerations – Potentials for CD Implementation in the Republic of Serbia

All procurement procedures provided for in the legislation should be used to procure PPP projects in Serbia, as it is the practice in other countries. Which procedure will be used, depends mostly on the complexity of the project and other factors.

From a bidder perspective, the motivation to participate in a PPP project is usually defined by his/her expectations regarding the experience and the extent of preparedness of the public body as a contracting authority, the perceived project certainty and bid cost estimates rather than by the procurement procedure chosen. But, from a public body (contracting authority) perspective, a number of positive aspects of CD are the motivation to launch this procedure and not alternative ones. CD allows:

- Improved communication between the contracting authority and the bidders.
- Final solutions that better fit the needs of the contracting authority
- Enhanced competitive tension
- Better priced discipline
- Fostering and bringing innovations
- CD implementation in general does not expose the contracting authority to greater risk of legal challenges than alternative procurement procedure.

However, CD should not be taken as a “one fits all“ option for PPP implementation. Furthermore, there are some concerns regarding the use of CD and the main are: a) CD is perceived as a complex procedure, with a negative impact on procurement cost and time, and b) CD is perceived as lacking flexibility and/or clarity and having insufficient capacity to adjust to changed circumstances.

For these reasons, the public sector in the Republic of Serbia should be encouraged to take a case by case approach on whether CD is likely to deliver the best results and to be objective in decision-making process. Although the PPP implementation through the CD procedure has various challenges, it is crucial to keep strengthening the public sector awareness and knowledge of the CD procedure and its potential and advantages. In addition, it is very important to support capacity and ability of the public sector, particularly at the level of the local self-governments to deal with CD as a novelty in terms of qualifications, training and staff resources.

References

- Bult-Spiering, M. and Dewulf, G. (2008) *Strategic Issues in Public-Private Partnerships*, London: Blackwell Publishing.
- Christiansen, H. (March 7–8, 2007), *The OECD Principles for Private Sector Participation in Infrastructure. Proceedings of the International Seminar on Strengthening Public Investment and Managing Fiscal Risks from Public-Private Partnerships*. Budapest: IMF, Hungarian Ministry of Finance, International Center for Economic Growth—European Center.

- Cvetković, P. and Sredojević, S. (2013) *Public-Private Partnership: Guidelines for implementation for the local self-government*. Belgrade: Standing Conference of Cities and Municipalities and Swiss Agency for Development and Cooperation – SDC.
- Cvetkovic, P. (2011) The Determinants of Regulatory Framework for the Public Private Partnership in the Western Balkan Countries (original: Determinante regulatornog okvira javno-privatnog partnerstva u zamljama Zapadnog Balkana). *Balkan u procesu evrointegracije: modernizacija i razvoj* /ed. Milorad Božić, pp. 130-147. Niš: Filozofski fakultet, Centar za sociološka istraživanja.
- Delmon, Jeffrey (2009) *Private Sector Investment in Infrastructure: Project Finance, PPP Projects and Risk*. The Netherlands: Kluwer Law International.
- Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (Public Service Directive: http://europa.eu/legislation_summaries/internal_market/businesses/public_procurement/122009_en.htm, (1.07.2013).
- Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (“Special” directive). http://europa.eu/legislation_summaries/internal_market/businesses/public_procurement/122010_en.htm (1.07.2013).
- European Investment Bank (2004), *The EIB and PPPs*, EIB Information, No.116: 22-34.
- Explanatory Note – Competitive Dialogue – Classic Directive, EC Directorate General Internal Market and Services, http://ec.europa.eu/internal_market/publicprocurement/docs/explan-notes/classic-dir-dialogue_en.pdf (05.06.2013).
- Green Paper on PPPs and Community Law on Public Contracts and Concessions, Commission of the European Communities, COM(2004) 327 final. http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0327en01.pdf (24.06.2013).
- Grimsey, D. and Lewis, Mervyn K. (2007), *Public Private Partnerships: The Worldwide Revolution in Infrastructure Provision and Project Finance*, USA: Edward Elgar Publishing Inc.
- Law on Public-Private Partnership and Concessions (Official Gazette of the Republic of Serbia No. 88/2011). http://www.paragraf.rs/propisi/zakon_o_javno_privatnom_partnerstvu_i_koncesijama.html (24.06.2013).
- Law on Public Procurement (Official Gazette of the Republic of Serbia No. 124/2012). http://www.paragraf.rs/propisi/zakon_o_javnim_nabavkama-new.html (26.06.2013).
- Office of Government Commerce, HM Treasury (2008) *Guidance on Competitive Dialogue: OGC/HMT joint guidance on using the procedure*. Norwich: Office of Government Commerce.
- Procurement of PPP and the use of Competitive Dialogue in Europe - A review of public sector practices across the EU (2010). European PPP Expertise Center, <http://www.eib.org/epcc/resources/epcc-procurement-and-cd-public.pdf> (05.06.2013).

Public Private Partnerships in Transport: Trends & Theory P3T3, 2013 Discussion Papers, Part I Country Profiles (PPP in Transport). http://www.ppptransport.eu/docs/Book_part_1.pdf (28.06.2013).

Sredojevic, G.S. (2010) *Public-Private Partnership*. Belgrade: Arhipelag and Institute of Economic Sciences.

Veličković, M. (2013) Competitive Dialogue in Public Procurement. *Journal for economic-legal theory and practice*, 7-9/2013: 526-538.

KONKURENTSKI DIJALOG KAO INSTRUMENT PRIMENE JAVNO-PRIVATNOG PARTNERSTVA U REPUBLICI SRBIJI

Apstrakt: *Konkurentski dijalog (competitive dialogue - "CD") kao način nabavke u javno-privatnom partnerstvu (public-private partnership - "PPP") je značajan metod za izbor privatnog partnera u slučajevima kada javni sektor zna ciljeve koje želi da postigne projektom, ali ne raspolaže znanjima o načinima i metodima koji se moraju primeniti za dostizanje istih. I PPP i CD kao jedan od načina za njihovo sprovođenje predstavljaju novitete u Republici Srbiji. Zato, ovaj rad analizira zakonski i institucionalni okvir za PPPs, kao i procedure za njihovo sprovođenje, posebno naglašavajući procedure CD. Cilj istraživanja je da pruži doprinos javnom sektoru i da ga ohrabri da primenjuje CD kao kompleksan ali vrlo koristan koncept, naročito u zemljama u tranziciji, analizirajući važne pravne i ekonomske aspekte kao glavne pokretače i prednosti CD.*

Ključne reči: *Javno-privatno partnerstvo, konkurentski dijalog, javni sektor.*