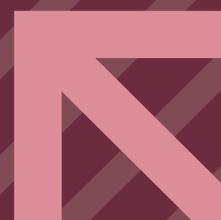




ANALITIKA

Center for Social Research

Analysis of the E-Procurement System in Bosnia and Herzegovina



This project is funded
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Analysis of the E-Procurement System in Bosnia and Herzegovina

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Sarajevo, May 2016

Title:

Analysis of the E-Procurement System in Bosnia and Herzegovina

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Editor:

Tarik Jusić

Published by:

Analitika – Center for Social Research

Year: 2016.

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Address of the Publisher:

Hamdije Kreševljakovića 50, 71000 Sarajevo, Bosnia and Herzegovina

info@analitika.ba

www.analitika.ba

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This publication is published within the project “Open Public Procurement in Bosnia and Herzegovina” jointly implemented by Centre for Investigative Reporting (CIN), Analitika - Center for Social Research and Public Interest Advocacy Centre (CPI).



The project is funded by the European Union. Responsibility for the views set out in this publication lies entirely with the Analitika - Center for Social Research, and they do not reflect the official opinion of the European Union.



This project is funded
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1.

Introduction

Development of new technologies and growing access to the Internet created conditions for the transformation of the manner in which public government functions. That resulted in the implementation of electronic government (hereinafter: e-government), which is based on the utilisation of information-communication technologies for better and more efficient provision of public services¹. Used in a wider sense, the term e-government implies total reorganisation of management in the public sector in order to increase efficiency, transparency and citizens' participation in decision-making, using the advantages of information-communication technologies².

An important segment of development of e-government is the establishment of an electronic public procurement system, which is used as a tool for the improvement of the efficiency of the procurement process for goods, services and works, and for savings in the public sector³. Electronic procurement (hereinafter: e-procurement) is the universal name for the application of electronic means of communication in public procurement procedures, as a substitute for procedures that are based on paper documents⁴. More concretely, e-procurement implies the introduction of electronic processes as support for different phases of the procurement process, and they are comprised of following modules:

- e-notification, which implies notifications on procurements,
- e-tendering, which implies publication and takeover of tender documentation, submission and evaluation of bids and documentation,

¹ A detailed definition of the term "e-government" is available at the European Commission website: <https://ec.europa.eu/digital-single-market/en/public-services-egovernment> (Accessed on February 23, 2016).

² Ibid.

³ SIGMA, *e-Procurement* (Paris: SIGMA, 2011), p. 2.

⁴ Ibid. European Commission, Green Paper on Expanding the Use of e-Procurement in the EU (Brussels: European Commission, October 18, 2010), p. 4.

- e-awarding, which incorporates contract awarding or ordering,⁵ invoicing and payment⁶.

Along with the modules, e-procurement is complemented with different mechanisms and tools. One of them is the e-catalogue, which implies an electronic form of the bid for certain types of procedures. E-auction is a mechanism used for completing the procedure of e-procurement (an open, limited, negotiation procedure with publication of procurement notification and competitive request for bid submission).

E-procurement is not just an important segment of e-government reform within the European Union, but its development and level of compliance are also subject to monitoring and evaluation report on the progress of the transition of Bosnia and Herzegovina (BiH) towards membership in the EU. In the BiH Progress Report for 2015, it is emphasised that the information system for e-procurement was put into function in late 2014 but that it is still in the very early stages of development⁷. This early phase implies that conditions for application of e-notification are realised, since notifications on procurement referred to in Article 35 of the Law on Public Procurement are published on a single portal for public procurement (www.ejn.gov.ba/),⁸ and also that a basis for development of e-tendering was created in a manner that electronic access to tender documentation is enabled for certain procurements. However, there still remains a lot to be implemented in order for BiH to have a fully functional system of e-procurement.

Starting from the above, the main purpose of the paper is to give a systematic analysis of the current level of development of electronic public procurement in BiH. The aim of the study is to provide an answer to the questions, what challenges are there in the development of e-procurement in BiH and what improvement is possible in this field so the system of e-procurement will completely take hold. Finally, the objective of the analysis is to offer a detailed

⁵ Ordering is a separate procedure that needs to be differentiated from contract awarding. Ordering is regularly happening as a part of operations from the framework agreement, when contracting authorities order concrete goods / works / services and on the basis of the Decision on the awarding framework agreement and concluded Framework agreement. A new contract is not awarded then, but individual contracts take place, and they don't undergo the procedure that is implied with *contract awarding*. Ordering is also possible in the event of direct agreements of small value. In line with the "Ordinance on Direct Agreement Procedure" (*Official Gazette of BiH* 90/14), direct agreement is considered as concluded with procurements whose value amounts up to 1.000,00 BAM with an enclosed receipt or other appropriate documentation. In such procedures, the contracting authority can, on the basis of a previously examined market, *order* certain goods / works / services without going through the contract awarding procedure, because the enclosed receipt/invoice has a status of a contract for that procedure.

⁶ European Commission, Green Paper on Expanding the Use of e-Procurement in the EU, p. 4.

⁷ European Commission, Bosnia and Herzegovina 2015 Report (Brussels: European Commission, November 10, 2015), p. 43.

⁸ This portal has to be differentiated from the portal <https://www.javnabavke.ba/>, which is the joint portal of the institutions of the Procurement Review Body and Public Procurement Agency.

overview of the key aspects of the e-procurement system and thus create a basis for progress monitoring in the sector and define clear guidelines for improving the functionality of the e-procurement system in BiH.

In order to provide answers to research questions and make an assessment of the level of development of the e-procurement system in BiH, this report relies on analytical categories and standards for assessment of e-procurement development from the study “e-Procurement, Golden Book of Good Practice”,⁹ which, among other things, defines a series of parameters for public procurement system assessment and points out numerous good practices in European Union Member States.

In this context, the structure of the paper will consist of an overview of the situation of e-procurement in the European Union, with presentation of legal sources, the current state of development and challenges faced by the European Union in this area. After that, the paper will present a development path for e-procurement and the current legal and institutional framework in BiH. Later on, the study analyzes the degree to which the e-procurement system corresponds to the principles and standards of good practice identified in “e-Procurement: The Golden Book of Good Practice”. After comparison, the study yields conclusions and recommendations for further development of e-procurement in BiH.

⁹ Bausà Peris et al., *e-Procurement: Golden Book of Good Practice: Final Report* (Brussels: Directorate General Internal Market and Services [DG MARKT] of the European Commission, 2013).

2.

E-Procurement Principles and Legal Sources

2.1. Significance and Principles of E-Procurement

E-procurement is the term used to describe the use of electronic methods, typically over the Internet, to conduct transactions between contracting authorities and bidders within the public procurement process. The process of e-procurement covers every stage of purchasing from the initial identification of a requirement through the tendering process to the payment and potentially contract management¹⁰.

The benefits of e-procurement are in the strengthening of the principles of transparency, efficiency, cost-effectiveness, healthy competition and the best value for money. Replacing paper-based procedures electronically enhances the quality of services of contracting authorities and establishes a system of publication, awarding and managing contracts, which is a function of the principle of transparency. E-procurement also means faster order and shortened deadlines for the submission of tenders, evaluation and awarding of the contract, thereby increasing the efficiency of the contracting authority. It also increases cost-effectiveness, as contracting authorities realize cost savings through reduction of transaction costs and the amount of waste, because e-procurement reduces paperwork and provides better control over expenditures for procurement. E-procurement is also conducive to healthy competition, given that in that manner public contracts are potentially available to a larger number of bidders, including bidders from outside the country. Finally, e-procurement is also serving the principle of best value for money, because it increases the variety of available goods, works and services, thus increasing the chances for increasing quality and reducing cost.

These benefits of e-procurement produce measureable results. For example, within the European Union, contracting authorities that implement e-procurement reported savings between 5% and 20% of the procurement budget. Given that the value of the public procurement market in the EU is estimated to be more than three trillion EUR, savings of 5% results with savings of almost 100 billion

¹⁰ Marcella Corsi, "E-procurement Overview", 2006.

EUR per year, which is the equivalent to building more than 150 hospitals¹¹. As an illustration, the following are several examples of good practice from the Green paper on expanding the use of e-procurement in the EU, which show the significance of savings realised by the implementation of an e-procurement system:

- The Austrian federal public procurement agency centralised the procurement for federal services through e-procurement. In 2008, they reported savings of 178 million EUR, compared to the total amount of procurement of 830 million;
- The public government in Norway makes 20-40% savings in the processing of orders with the platform *Ehandel*, which is 2-10% of the total procurement budget per year;
- Through the web platform *Buying Solutions* in the United Kingdom, which handles mediation, 732 million pounds were saved in buying and selling in the amount of 5 billion pounds.
- Using e-auction in Great Britain, savings of a minimum of 10% of public funds were made;
- 50 hospitals in Portugal transferred to e-procurement in 2010 and reduced expenditures by 18% in comparison to same works in 2009.
- In Denmark, through processing of e-accounts used by all contracting authorities, including public procurement procedures, savings of 100 million EUR per year were made¹².

In order to understand the development of e-procurement within a public procurement system, one should understand that e-procurement is not a type of procedure. Its development can be seen in relation to the availability of electronic procedures at different stages of the process when compared to conventional procurement. In particular, if one carried out an open procedure, it may begin as e-procurement in the area of e-notification, or be set in the traditional sense in terms of delivery, evaluation, award and payment. E-procurement differs from traditional procurement in relation to the “paper form” and the carrying out of the procedure process electronically, but all the rules that apply to an open procedure remain the same, regardless of whether the process is carried out as e-procurement or not. As an eventual change, there may be a shortening of deadlines, but the manner of interpretation of the terms remain the same. This means that e-procurement does not produce substantial change in the nature of the proceedings, but only in the way in which this process is carried out.

¹¹ European Commission, “Delivering Savings for Europe: Moving to Full E-Procurement for All Public Purchases by 2016: Press Release” (Brussels: European Commission, April 20, 2012).

¹² European Commission, Green Paper on Expanding the Use of e-Procurement in the EU, p. 5.

To build an effective system of e-procurement it is necessary to understand the principles underlying its development. This is mainly the task of the management, which goes beyond information and communications technology, because it requires building legal and institutional frameworks for the implementation of e-procurement. In this sense, e-procurement cannot be reduced only to the digitization of data and the use of information and communication technologies. They are, in fact, an opportunity for a comprehensive modernization of the financial system, public administration and related purchases (purchases that are similar per the subject of procurement). The integration of public financial systems and e-procurement is needed in order to allow the full development of e-procurement (from e-notification to e-payment). However, to begin the reform of e-procurement, this kind of integration is not necessary¹³.

E-procurement cannot guarantee the complete elimination of corrupt practices, but it can be an obstacle to corruption and thus become an instrument of effective and efficient public administration¹⁴. With e-tendering and e-evaluation enabled, all stakeholders would be enabled with more effective review of bids and the work of evaluation committees, which would reduce the space for corrupt activities.

There are a variety of strategies, approaches, standards and recommendations for the development of each phase of e-procurement (the phase prior to contract award, the contract award phase and the phase after contract award)¹⁵. An adequate development strategy for each phase depends on the public procurement system in general (centralized, decentralized system), but also on the structure of the entire state apparatus and constitutional structure of each country.

The development of e-procurement in developing and underdeveloped countries may require combined online and off-line approaches to the establishment of the system¹⁶. This primarily means that the development of e-procurement is gradual and gives the possibility to combine electronic and paper-based procedures, depending on the degree of development. In this way, it is possible that an acquisition begins as an e-procurement in terms of e-notification and that in the subsequent stages in the supply chain, it continues by using traditional paper-based procedures.

The development of e-procurement is more dependent on public administration and its development capacity than the availability of technology¹⁷. First of all, public administration needs to recognize electronic procedures as valid and, in

¹³ Ibid.

¹⁴ United Nations, Department of Economic and Social Affairs, *E-Procurement: Towards Transparency and Efficiency in Public Service Delivery* (New York: United Nations, 2011), p. 10.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

this context, to strengthen human resources in terms of usage of e-procedures. It would be wrong to invest large investments in infrastructure of e-procurement if there are no facilities for managing different purchasing stages. Also, it is important in the development process to include the existence of political will in terms of transparency and the involvement of bidders and civil society in the process of developing e-procurement. Political will in this context mostly concerns the process of adopting and implementing laws that would increase transparency and the possibility for all stakeholders to participate in the monitoring process and have legal protection.

Implementation of e-procurement is not a short-term project related only to information and communication technology¹⁸. It is a business process of redesigning administration, which should be planned for a period of at least 10 to 20 years. On one hand, government should create legal and technical conditions for the implementation of each stage, and on the other hand, the market must be given enough time to adapt to new methods in order not to undermine healthy competition and fair competition. Both processes require time.

Long-term benefits of e-procurement are evident from the analysis of data collected through a system of consumption patterns, market and applied processes¹⁹. Governments must consider the information available for analytical reporting in order to achieve maximum benefit from the system of e-procurement²⁰. Considering that public procurement is a very changeable category, information that is collected within the system of e-procurement should be used by legislative and executive bodies in order to, in a timely way, change and upgrade the legal and bylaw framework and to respond appropriately to market requirements.

2.2. E-Procurement, Legal Sources, Goals and Challenges

The European Union has adopted programmes for the development of e-procurement gradually²¹. A significant document that initiated the debate on procurement is the “Green Paper on Expanding the Use of e-Procurement

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ United Nations, Department of Economic and Social Affairs, *E-Procurement: Towards Transparency and Efficiency in Public Service Delivery*, p. 10.

²¹ Commission of the European Communities, *eEurope - An Information Society for All* (Brussels: Commission of the European Communities, December 8, 1999); Commission of the European Communities, *eEurope 2005: An Information Society for All* (Brussels: Commission of the European Communities, May 28, 2002); European Commission, *Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth* (Brussels: European Commission, March 3, 2010).

in the EU.”²² This Green Paper²³ from 2010 came before the adoption of the Directive 2014/24/EU,²⁴ which compiles in one place rules on e-procurement for contracting authorities from the classical sector²⁵. Directive 2014/25/EU,²⁶ which implements novelties, is also important, but in relation to sectoral²⁷ contracting authorities, and in the sense of e-procurement, it is compatible with changes introduced with Directive 2014/24. These new Directives implement more modern and more flexible tools, which are more market oriented. Obsolete and redundant provisions are removed and replaced by new provisions, which have the purpose of modernising public procurement.

That is how the role of e-Certis (<http://ec.europa.eu/markt/ecertis/login.do>) was strengthened as a unique online place where potential bidders can find the types of documents and certificates that Member States might request from contracting authorities in the procedures²⁸. A significant change is that these documents are available prior to contracting authorities’ deciding whether or not they will participate in the procedure. In this way, potential cross-border bidders are provided with easier access to public procurement in the event they are not familiar with the contracting authorities’ requests. Aside from that, contracting authorities are no longer obliged to deliver an annual statistical report on public procurement²⁹. The European Commission will gather information on the basis of the online system of each Member State. This will facilitate the work of contracting authorities and save time.

The new Directives require electronic submission of notification to the Official Journal of the EU, electronic availability of tender documentation in the period of publication, electronic communication and exchange of information for all contracting authorities. The Directives exclusively emphasise that an

²² European Commission, Green Paper on Expanding the Use of e-Procurement in the EU.

²³ “Green paper is a type of document published by the European Commission. Purpose of the document is to induce a discussion and set in motion advising on European level on certain issue”. Directorate for European Integration of Bosnia and Herzegovina, *Pojmovnik evropskih integracija* [Glossary of European Integration] (Sarajevo: Directorate for European Integration of Bosnia and Herzegovina, 2010), p. 266.

²⁴ “Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC”, *Official Journal of the European Union* L 64/95, March 28, 2014.

²⁵ Contracting authority from classical sector are all contracting authorities that are not sectoral.

²⁶ “Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC”, *Official Journal of the European Union* L 94/243, March 28, 2014.

²⁷ Sectoral contracting authorities are authorities that operate in the fields of water supply, energy, transportation and postal services.

²⁸ Crown Commercial Service, *A Brief Guide to the EU Public Contracts Directive (2014)* (London: Crown Commercial Service, 2015).

²⁹ *Ibid.*

electronic version of the tender documentation must be available on the Internet immediately after publication of Notification on procurement in the Official Journal of the European Union³⁰. Complete electronic communication (with certain exceptions) shall become obligatory four and half years after the new Directives enter into force (October 2018)³¹. The deadline for central procurement bodies is April 2017.

The new Directives encourage the contracting authorities to purchase through the Central procurement body. The Central procurement body is also enabled to act as a “wholesaler” that can supply the contracting authorities via individual contracts or be provided with access to a dynamic procurement system³².

When the procedure is carried out as an e-procurement, the new Directives provide for shorter deadlines for submission of tenders. The regular deadline in the open procedure for submission of bids is 35 days, but in the case of an electronic implementation process, the period is shortened to 30 days. In the case of restricted procedures, the deadline is shortened to 25 days. The same applies in the application of competitive dialogue. It should be noted that these Directives provide a new type of procedure – an innovation partnership, which also may be performed electronically. This procedure seeks to bring contracting authorities closer to innovative ideas and solutions. In this procedure, the bidder is competing for partnership with contracting authorities with the aim of developing a new product or service³³.

Rules of Dynamic Purchasing System (DSP)³⁴ are significantly facilitated. In the event of an implementing procedure using DSP tools, contracting authorities are not obliged to publish in the Official Journal of the EU the call for procurement awarded within the DSP³⁵.

³⁰ “Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC”, Articles 51, 52, 53 and 54.

³¹ Ibid., Articles 8, 22 and 53.

³² Crown Commercial Service, A Brief Guide to the EU Public Contracts Directive (2014).

³³ Ibid.

³⁴ Dynamic purchasing system (DPS) is a completely electronic process, which is available throughout the procurement to all bidders that meet selection criteria. DPS is not a type of procedure; it is a tool within the e-procurement which follows the rule of limited procedure. The subject of procurement is essential for its application, since DPS can be organised only for the usual subjects of procurement. It functions as an online catalogue; bidders can access it in any phase. The application of DPS is possible with a strong electronic basis, which represents a functional web portal. The basic purpose of DPS is savings and efficacy. “Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC”, Article 34.

³⁵ Ibid., Articles 34, 37, 51, 55 and 84.

Electronic catalogues³⁶ for public procurement are exclusively allowed, which removes all doubts regarding their legality. Aside from electronic catalogues in Chapter 2, other techniques and instruments for electronic and common procurement are defined (dynamic purchasing system and electronic auctions)³⁷.

The European Union treats e-procurement as the basic instrument to achieve a single public procurement market in the entire territory of the European Union³⁸. The efforts of the European Commission are aimed at making e-procurement become a binding rule, not the exception, and by the middle of 2016, to move to full e-procurement, which includes linking all segments of the supply chain, from e-notification to e-payments³⁹. This involves the transfer of procedure of the supply chain into the electronic space.

Along with the adoption of provisions of the Directives on Public Procurement, EU Member States are working intensively on the transposition into national legislation of the objectives of Directive 2014/55/EU of the European Parliament and the Council on electronic invoicing in public procurement. This Directive entered into force in May 2014, with a period of application of 18 months and the possibility to postpone it for up to 30 months after entry into force⁴⁰. When implementing its objectives, the Directive will enable the development of e-payments in the European Union as part of the last phase of the supply chain in e-procurement. The application of this Directive will result in faster transactions, which will reduce the cost of printing and postage; faster and cheaper data processing, since the information from the electronic invoice can be entered directly into the payment and accounting system of companies; and it will reduce

³⁶ E-catalogues imply a format bids can be submitted in, if the contracting authority decides so. Given format is set forth by the contracting authority, it is the same for all bidders and allows electronic processing. Application of electronic catalogues is possible for all procedures and all subjects of procurement, including complex subjects of procurement. The application of e-catalogue is possible for all procedures and all subjects of procurement, including complex subjects of procurement. The usage of e-catalogue stimulates market competitiveness and simplifies public procurement. Contracting authorities can award contracts based on a dynamic procurement system, with request to present bids for special contracts in a form of electronic catalogue. "Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC", Article 36.

³⁷ Ibid., Articles 33, 34, 35, 36, 37, 38 and 39.

³⁸ Sangeeta Khorana, Kirsten Ferguson-Boucher and William A. Kerr, "Governance Issues in the EU's e-Procurement Framework", *Journal of Common Market Studies* 53, no. 2 (2015), pp. 292–310.

³⁹ Ibid.

⁴⁰ "Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on Electronic Invoicing in Public Procurement", *Official Journal of the European Union* L 133/1, May 6, 2014. Article 11.

storage costs and costs for training and the development of a cost accounting system⁴¹.

The Stabilisation and Association Agreement (SAA) as a secondary source of EU law is also significant for BiH. This Agreement, which entered into force on June 1, 2015, does not address e-procurement explicitly but indirectly speaks to the obligations that BiH needs to fulfill in terms of e-procurement and in relation to potential membership in the European Union. Article 104 of the Agreement emphasizes that the Parties to the Agreement will, in particular, strengthen cooperation in the field of electronic communications networks and electronic communications services with the ultimate goal of BiH's adopting the *acquis* of the EU in the sector one year after the entry into force of this Agreement⁴². In the section of the Agreement dealing with public procurement, BiH is, among other things, obliged to implement procurement procedures on the basis of non-discrimination, reciprocity and facilitating access to public contracts and bidders from the European Union⁴³. The construction of such a procurement system is only possible with the use of a set of e-procurement instruments. Although this article does not explicitly mention e-procurement, resulting from it are the obligations relating to e-procurement, especially in terms of cross-border cooperation, because e-procurement makes public procurement become available beyond the borders of Bosnia and Herzegovina.

The practice of the courts of the European Union is an important source of law, which directs the work of institutions and creates conditions for the development of new secondary sources. In the court institutional framework of the European Union, there are two courts: the Court of First Instance and the European Court of Justice. In most cases that deal with public procurement, the address is the European Court of Justice⁴⁴. The so-called functional approach is characteristic for this Court, which implies extensive interpretation in terms of looking at the function that a specific body performs and avoiding formalism or the formal position of entities within the national hierarchy. Given that e-procurement is most often a set of tools with a focus on the technical aspect and that it is there to support existing legal institutions, and that the Court acts as a guardian of

⁴¹ For detailed information, refer to the European Commission website: http://ec.europa.eu/growth/single-market/public-procurement/e-procurement/e-invoicing/index_en.htm (E-Invoicing); http://ec.europa.eu/growth/single-market/index_en.htm (Single Market Growth and Standards); http://ec.europa.eu/growth/single-market/public-procurement/e-procurement/index_en.htm (E-procurement), (Accessed on February 6, 2016).

⁴² "Sporazum o stabilizaciji i pridruživanju između evropskih zajednica i njihovih država članica, s jedne strane i Bosne i Hercegovine, s druge strane" [Stabilisation and Association Agreement between Bosnia and Herzegovina, of the one part, and the European Communities and their member states, of the other part], Article 104.

⁴³ *Ibid.*, Article 74.

⁴⁴ Support for Improvement in Governance and Management, SIGMA 2012, Obuka o javnim nabavkama za korisnike IPA-e: Modul A [Training in Field of Public Procurement Purposed for Users of Instruments of Pre-accession Assistance, IPA: Module A], p. 35.

the EU law, there are no cases that deal with e-procurement exclusively, as the court settles disputes related to the implementation of legal institutions and the interpretation of law. Therefore, the importance of the Court of the European Union in the development of e-procurement is indirect, because all rulings aimed at improving the general principles of public procurement indirectly create space for the development of e-procurement. In that context, the ruling in the case C-31/87⁴⁵ is significant, as the Court took a stance on understanding contracting authorities outside of strictly formal definitions in national legislation. In the e-procurement context, rulings C-107/98⁴⁶ and C-480/06⁴⁷ are also important, and they highlight that directives on public contracts are applied to all contracts that are awarded by the contracting authority and explain possible exceptions to the application. These rulings, even though they don't explicitly mention e-procurement, can be used as a basis for its protection. So, the court took a stance on who the contracting authorities are and who is obliged to implement directives. If it happens that the application of the provision on e-procurement defined by directives is disputable in relation to the concrete contracting authority or the contract, then the Court will use the same logic and argumentation used in these cases in order to resolve that issue.

The EU member states have different levels of development of e-procurement. Portugal stands out as a positive example, where e-procurement is mandatory for all phases prior to the award of the contract (e-publication, e-accessibility, e-tendering, and e-evaluation). Denmark has gone further also in relation to the European Union law, as it also adopted e-invoicing, which is the final stage of the supply chain. Comparing the countries in the region, e-publication and e-accessibility for all procedures are required in Croatia. E-auction is not required but is possible. In order to transition to the next stage, or e-submission, Croatia has established its legislative framework related to electronic signature through the Law on electronic signature ("Official Gazette", number 10/02, 80/08) and related bylaws, and has established also the infrastructure for its use. Web portal www.eojn.nn.hr was established as technical support for this possibility (electronic advertiser for public procurement of Republic of Croatia). Strategy for the development of electronic public procurement in the Republic of Croatia 2013-2016 set transition into the next phase by late 2016 as a goal⁴⁸.

⁴⁵ European Court of Justice, *Beentjes v State of the Netherlands*, November 18, 1999.

⁴⁶ European Court of Justice, *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*, June 9, 1999.

⁴⁷ European Court of Justice, *Commission of the European Communities v Federal Republic of Germany*, June 13, 2013.

⁴⁸ Government of Republic of Croatia, *Strategija razvoja elektroničke javne nabave u Republici Hrvatskoj 2013. – 2016*. [Strategy for Development of Electronic Public Procurement in Republic of Croatia 2013 – 2016] (Government of Republic of Croatia, 2013), pp. 14-20.

However, the European Union also faces challenges in the area of e-procurement. The popularization of e-procurement among SMEs is a very slow process, which is explained by lack of motivation and knowledge. Data protection is also a very sensitive issue as well as the unification of electronic processes. In the European Union, as a result of public-private partnerships, there are 300 e-portals, and their unification is a complex process, starting from language barriers to the difference between centralized and decentralized systems of public procurement. Unification of these portals is a challenge, because the countries not only have different systems of public procurement, but within these systems, they are at different stages of development of e-procurement. Therefore, the alignment of all the forms, procedures and requirements in countries with different levels of development is a challenge which the European Union is trying to solve. E-Certis is one of the tools of unification which is also recognized in the new Directive.

3.

Methodology

Assessment of the level of development of e-procurement in Bosnia and Herzegovina is modelled after the 24 analytical categories, i.e., best practices within the system of e-procurement, presented in the report “e-Procurement, the Golden Book of Good Practice”, which gives a systematic analysis of 28 e-procurement portals in the 18 European Union Member States⁴⁹. The analysis assesses the availability of e-procurement in relation to the bidders, the process of publication, registration, searchability, and simplicity in use and the overall transparency and quality of published data. Each of the 24 identified analytical categories is estimated based on a set of indicators of positive and negative practices. Table 1 provides an overview of the 24 analytical categories.

⁴⁹ In order to identify good practices, research covered 300 web portals on the pan-European level. Using three sets of criteria, selection was narrowed to 28 portals from 14 Member States. Used criteria for the reduction of the number of portals that are the subject of detailed analysis are the criteria for exclusion from analysis, which incorporate the sub criteria of support of the web portal in the procedure of e-submission, relevance for public procurement and unifications of the platform. After the identification of the portal that is the subject of detailed analysis, the criteria of relevance was used, with the purpose of determining the potential of the portal for the development of good practices by applying two weighted significance criteria – the potential and universality of the portal. The potential of the portal for the development of e-procurement included also analysis of process and tools available on the portal, analysis of the contracting tools and types of procedures. Universality included analysis of the language and online presence. In the end, the third criterion is the criterion for inclusion, with the purpose of ensuring the selection of different and representative samples. For that purpose, sub criteria of geographic coverage, type of procurement, sectors/branches of procurement, procedure participation models, e-submission models and commercial and operative models were used. This document is a result of detailed expert analysis of 28 portals for e-procurement in 18 EU Member States and represents an orientation point for the development of a functional e-procurement system.

Table 1: Analytical categories

1. Platforms automatically transmit all their notices to a single point of access for publication
2. Bidders and contracting authorities benefit from affordable training plans
3. Platforms have communication plans in place to promote the use of e-procurement
4. Bidders can access and retrieve contract notices and tender specifications as anonymous users
5. Bidders can register on the platform without having to provide country- specific information
6. Bidders complete their registration on a platform by clicking an activation link sent by e-mail
7. Platforms support English in addition to the official language(s) of the member state(s) where they operate
8. Bidders can use a username and a password to log in to a platform
9. Bidders can search contract notices using a set of search criteria
10. Bidders can evaluate whether tender specifications are relevant for them based on information available in contract notices
11. Bidders are notified of any changes to tender specifications
12. Platforms support automatic transmission of all types of notices to TED
13. Bidders and contracting authorities can search CPV categories based on their code or their description
14. Contracting authorities can re-use information contained in their profile or in previous notices to create contract notices, tender specifications and award notices
15. Bidders can choose to manually or electronically sign a submission report containing the hash value of each submitted document
16. Bidders receive a proof of delivery upon successful submission of their tender
17. Bidders can resubmit their tenders up until the submission deadline
18. Platforms keep tenders encrypted until the opening session
19. Contracting authorities can evaluate part of their tenders automatically based on pre-defined criteria
20. Platforms use European e-Signature validation services to validate e-Signatures during e-Submission
21. Platforms clearly indicate all costs related to use of the platform
22. Bidders can create tenders using a core set of structured data and unstructured documents
23. Bidders have the freedom to choose the platform of their preference without being locked in by the choice of the contracting authority
24. Platforms use standard specifications to structure their data and to promote interoperability

For each of 24 analysis dimensions, positive and negative indicators examples were defined. Indicators are integrated in subsection 4.4 of the next chapter and are presented in separate tables for each of the 24 categories of analysis and used for evaluation of the level of development of e-government in BiH.

Special focus was given to the analysis of the application of defined categories within the BiH portal for public procurement: www.ejn.gov.ba. The practice in BiH in relation to specific indicators was marked with «YES» when the indicator matches the practice on BiH public procurement portal, with «NO» when there is no such practice, with «PARTIALLY» when the practice takes place but not completely, and with «N/A» when the indicator is not applicable, given that BiH is not an EU Member State and therefore doesn't have access to certain resources, processes and institutions.

Please note that some practices are not applicable in BiH for objective reasons, as will be explained below. However, even these practices are included in the report so the results of the analysis would be compatible with the results of the original study for EU countries. In this way, in this study we shall determine the initial status, in comparison to which it will be possible to measure the progress of the development of e-procurement in the future, but we will also get the guidelines for the further development of the e-procurement portal and the institutional and legal framework that regulates this area in BiH.

During the assessment of the level of development of e-procurement in BiH, laws⁵⁰ and bylaws⁵¹ from this field were taken into consideration, as well as the existing secondary literature on this topic. That is why Chapter 4 foremost provides the analysis of the institutional and legal framework (sections 4.1 and 4.2) of the public procurement system in BiH, which is followed by review of basic characteristics of the e-procurement system in BiH (section 4.3). Results of the technical level of e-procurement development analysis within the www.ejn.gov.ba portal and on the basis of predefined analytical categories and positive and negative practice indicators are presented in section 4.4.

⁵⁰ “Zakon o javnim nabavkama” [Law on Public Procurement], *Official Gazette of BiH* 39/14. “Zakon o elektronskom potpisu” [Law on Electronic Signature], *Official Gazette of BiH* 91/06.

⁵¹ “Uputstvo o dopunama Uputstva o uslovima i načinu objavljivanja obavještenja i dostavljanja izvještaja u postupcima javnih nabavki u informacionom sistemu e-nabavke” [Instruction on Addenda to Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of ‘e-Procurement’], *Official Gazette of BiH* 53/15; “Uputstvo o uslovima i načinu objavljivanja obavještenja i dostavljanja izvještaja u postupcima javnih nabavki u informacijskom sistemu e-nabavke” [Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of ‘e-Procurement’], *Official Gazette of BiH* 90/14; “Uputstvo o objavi osnovnih elemenata ugovora i izmjena ugovora” [Instruction on Publication of Basic Elements of the Contract and Addenda to the Contract], *Official Gazette of BiH* 56/15; “Pravilnik o uspostavljanju i radu komisije za nabavke” [Ordinance on Establishment and Operation of the Procurement Committee], *Official Gazette of BiH* 103/14.

4.

The E-Procurement System in Bosnia and Herzegovina: Analysis of Politics and Practices

4.1. Institutional Framework for the Public Procurement System in BiH

The public procurement system in Bosnia and Herzegovina is decentralized, i.e., purchases, for the most part, are carried out individually by contracting authorities⁵² bound by the BiH Law on Public Procurement. In the process, the contracting authorities that are carrying out the procedures have the status of the first instance,⁵³ and therefore the appeals to the implementation of public procurement procedures come before them. If the contracting authority refuses or rejects the appeal, the current legal solution sends it before the appellate authority, the BiH Procurement Review Body (PRB).

PRB⁵⁴ is a collegial executive body representing the second instance in the public procurement appeal process. The headquarters are in Sarajevo, with two branches, one in Mostar and one in Banja Luka, which do not have the status of independent legal entities. PRB's decisions are final and binding; there is no further administrative appeal after the PRB issues a decision, and its solution must be heeded. However, the dissatisfied party has a legal remedy, but in an administrative procedure before the BiH Court, where it can launch a lawsuit against the decision.

⁵² "Law on Public Procurement", Article 4, para. 1: (1) A contracting authority shall be
a) any administrative authority at BiH, Entity, Brčko District, Cantonal, City or Municipal level (hereinafter referred to as authorities at State or local levels of administration);
b) Legal entity that was founded for a specific purpose in order to meet needs of common interest, and which have no industrial or commercial character and meet at least one of the following conditions: 1) financed mostly from public funds, 2) monitoring over management is done by contracting authority defined in items a) and b) of this paragraph, or 3) more than half of the assembly members, managing or supervising board are appointed or selected representatives of the contracting authority referred to in items a) and b) of this para;
c) an association formed by one or more institutions of authority or legal persons defined in items a) and b) of this para.

⁵³ Ibid, Article 99.

⁵⁴ Ibid., Article 93.

The BiH Public Procurement Agency (PPA) is an advisory body with headquarters in Sarajevo and two branches located in Mostar and Banja Luka, respectfully, without the status of legal entities. The PPA's competencies are quite broad⁵⁵ and include legal construction, monitoring and counselling in the overall public procurement system. One of the most relevant instruments the PPA has at its disposal is the ability to give opinions on specific procedures. However, PPA's opinions are not legally binding, although they do have a valued status of evidence in administrative proceedings and disputes. In addition to the PPA, PRB and BiH Court, audit bodies on all administrative levels with the ability to determine procedural irregularities also play a significant role in the procurement process.

4.2. Legal Framework for Public Procurement in Bosnia and Herzegovina

In order to understand the current state of public procurement in BiH, it is necessary to understand the legal framework within which public procurement, and therefore e-procurement, exists. The basis of the system lies in the BiH Law on Public Procurement, which by its character is a special procedural law (*lex specialis*) that regulates the area of public procurement. In its basis, public procurement is a special part of the administrative procedure, i.e., current administrative laws influence public procurement as *lex generalis*, i.e., general law. Between *lex specialis* and *lex generalis* there is an analogy and the principle of legality: for all that is not resolved by special law (*lex specialis*), by analogy the solution is found in *lex generalis*. However, when it comes to e-procurement, such a principle faces difficulties given the fact that the existing laws on administrative procedure do not recognize e-mails as a valid system of correspondence,⁵⁶ thus narrowing down the public procurement framework quite a bit, which will be further elaborated below.

Given that it is impossible for one procedural law to include all items relevant to procurement, the process, depending on the object of the procurement, needs to consult other relevant laws and regulations. E.g., in cases in which the object of the procurement are pharmaceuticals, the process and preparation of tender documentation will consult the BiH Law on Drugs and Medical Means⁵⁷. Such a case applies the norms of the aforementioned laws when defining the object or technical specifications, while the Law on Public Procurement is consulted on

⁵⁵ Ibid., Article 92.

⁵⁶ "Zakon o upravnom postupku" [Law on Administrative Procedure], *Official Gazette of BiH* 29/02, 12/04, 88/07, 93/09 and 41/13.

⁵⁷ "Zakon o lijekovima i medicinskim sredstvima" [Law on Drugs and Medicinal Means], *Official Gazette of BiH* 58/08.

the procedural issues. In this situation, the Law on Drugs and Medical Means holds the status of *lex specialis* in the procurement procedure, while the Law on Public Procurement has a status of *lex generalis*.

4.3. The E-Procurement System in BiH

The development of e-procurement in BiH began through introduction of the WisPPA (Web Information System for Public Procurement Agency) and GO PROCURE online systems, both of which were available on separate Web domains but could be accessed as of 2009 via the Public Procurement Agency's web site (www.javnenabavke.gov.ba). WisPPA was used for reports on the procedures, while GO PROCURE was utilized for the publication of public procurement procedures.

The BiH Public Procurement System Development Strategy for 2010 – 2015 included plans to develop an information system for electronic public procurement in BiH. The system has been designed as a comprehensive portal, on the national level, which would cover all phases of e-procurement, from e-notifications to e-payments. The portal became operational on 27 November 2014 under the name of “The e-procurement information system” (www.ejn.gov.ba). In its first development phase, the e-procurement information system entailed the integration of three applications, namely, the register of contracting authorities and bidders, WisPPA and Go Procure system with all its functions. The second phase includes plans to upgrade the e-procurement system with two new modules, e-tender and e-auctions⁵⁸. Currently, www.ejn.gov.ba portal is a platform where contracting authorities and bidders can register; it holds searchable information on procurements, as well as decisions made by the BiH Court and PRB, and on registered and activated contracting authorities and bidders in the country.

Under the new regulations, all contracting authorities⁵⁹ are obligated to publish all information on the www.ejn.gov.ba portal. However, so far the publication of tender documentation has been mostly voluntary because the law has prescribed the aforementioned obligation as an alternative, i.e., if the contracting authority decides to utilize this option and if it is emphasized in the Procurement Notice,⁶⁰ it is one possible option of the delivery of tender documentation. In that regard, BiH PPA has defined the dynamics of the publication of tender documentation on the public procurement portal. By an implementing regulation,⁶¹ adopted in 2015,

⁵⁸ <https://www.ejn.gov.ba/> (Accessed on April 8, 2016).

⁵⁹ “Law on Public Procurement”, Article 36.

⁶⁰ *Ibid.*, Article 55.

⁶¹ “Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of e-Procurement”, Article 9, pg. 9, 10.

the PPA has obliged all contracting authorities to release, in 2016, relevant tender documentation in the e-procurement system for at least 30% of the procedures for which procurement notices must be made; in 2017, they must publish 60%, and as of 1 January 2018, the publication of tender documentation on the portal will become binding for all the procedures which are published in the procurement notices. The number of published tender documents, in the same period, was 1.801, meaning that documentation for 9,6% of procedures has been published. The module for the management of tender documentation was released on 1 July 2015 and until 31 December 2015 a total of 10.308 procurement notices were published. In the same period, a total of 1.801 tender documentation sets were published, meaning that the publishing percentage was 17,47%. Until mid-May 2016, 6.620 procurement notices and 2.829 tender documentation were published, representing 42,73% of the total percentage of published information⁶².

Electronic communication between the contracting authorities and bidders is possible, if the contracting authority chooses to do so, i.e., if the authority chooses to publish tender documentation online⁶³. If it is not published, then the electronic communication between the contracting authorities and bidders, within the e-procurement system, will not be established. Executive decision has allowed for bidders who have downloaded the tender documentation⁶⁴ to ask for clarification related to it. On the other hand, it is not possible to submit bids and evaluation of bids electronically. The Law on Public Procurement does not provide for the possibility; lack of adequate legal framework thus makes it impossible for the portal and e-procurement system to further develop in that direction. Given that the electronic means of communication are not recognized as an option for official correspondence by the current administrative rules and regulations, it is not possible to deliver bids electronically (e.g., through a special module within the e-procurement system).

It is impossible to evaluate electronic bids because there is no option for providing valid electronic signature, i.e., documents with electronic signatures are not legally recognized given that, in the context of current law, they are not duly and properly signed. In other words, a pre-requisite for further development of e-procurement is the application of the Law on Electronic Signature. In BiH, this Law came into force on 16 April 2007 and was published in the Official Gazette No. 91/06 (14 November 2006). However, given that the rules and regulations which would facilitate the application of the Law have yet to be adopted, it never became functional⁶⁵.

⁶² Data for calculation of percentages taken from <https://www.ejn.gov.ba/> (Accessed on May 25, 2016).

⁶³ "Law on Public Procurement", Article 70 and 99.

⁶⁴ "Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of e-Procurement", Article 10.

⁶⁵ "Law on Electronic Signature", Article 26.

Notices of awarded contracts, as referred to in Article 35, paragraph 1 of the Law, as well as annual reports for all contracts and framework agreements are made available on the portal. However, electronic payment is not available, and there is no mechanism for monitoring on the implementation of contracts awarded. Given that there is no legal basis for secure electronic signature or electronic signature for qualified confirmation, it is not possible to utilize online invoices. Given the above, the next stage of development of e-procurement in BiH necessitates changes in the existing budget laws in order to allow the contracting authorities to accept/allow direct online payments.

The Law on Public Procurement provides for the possibility of electronic auctions⁶⁶ as well as a dynamic purchasing system,⁶⁷ but the use of it is only possibly with new rules and regulations which, at the time of this report, have not been adopted. PPA has published the “preliminary draft” of the Rules and Regulations on conditions and use of e-auctions, which defines object of e-auction, conditions for its utilization and the entry of acceptable bids, as well as duration, terms and obligations of the PPA in relation to it. Article 9⁶⁸ of the Law is also significant, given that it proposes a schedule for introduction of e-auction into the BiH public procurement system. According to the proposal, e-auction will become binding for all procedures that can utilize it, as of 1 January 2020, while being optional for the most economically advantageous bidding. It should be noted that currently the aforementioned rules and regulations have the status of “preliminary draft”, i.e., having no legal effect. The provisions contained by it have been written in accordance with the Directive 2014/24EU.

Given the possibilities for the development of e-procurement and the current legal framework, BiH has created conditions for e-notifications, given that the review and search for relevant notices, as per Article 35 of the Law, is available on a single portal. Download of electronic documents is available, while other phases of e-procurement, such as e-deliver, e-evaluation, e-award, as well as e-payments, remain challenges in further development of the e-procurement system.

⁶⁶ “Electronic auction/bidding (e-auction/ e-bid) is a method of implementation of a repeated procedure which includes an electronic system of introduction new prices, which have been decreased and/or new values concerning certain elements of the tender. E-auction occurs after initial, and full evaluation of bids, and enables their ranking through automatic evaluation methods. i.e. e-auction is not a separate procedure but a part of an open, restricted or negotiated procedure. It enables bidders to introduce new prices and decrease it (so called, negative auction). Ranking of prices is done automatically, based on pre-set rules, after the e-auction/e-bidding has been completed”, Elektronski oglasnik javne nabavke Republike Hrvatske [Electronic Journal for Public Procurement of Republic of Croatia], “eDražba” [eBid], <https://eojn.nn.hr/oglasnik/clanak/edrazba/0/175/> (Accessed on April 7, 2016).

⁶⁷ “Law on Public Procurement”, Article 123.

⁶⁸ Ibid., Article 9.

4.4. Analysis of the Level of Development of the E-Procurement System Online Portal in Bosnia and Herzegovina

Given the achievements made so far, as well as objective constraints e-procurement in BiH is facing, this section pays special attention to the analysis of the level of development of the e-procurement web portal in BiH. The analysis of practical and technical aspects of the e-procurement web portal system in BiH is based on 24 previously defined categories as well as a number of specific good and bad practice indicators for each of the categories of the analysis.

4.4.1. Practice 1: Platforms Automatically Transmit All Their Notices to a Single Point of Access for Publication

Good Practice Summary

Platforms for e-procurement need to make their contract notices and award notices, including award notices of direct awards, available at a single point of access. Also, the contract notices indicate clearly the platforms on which the tender specifications are available. In that case, the portal can either be a central platform or aggregate notices from all other platforms. It is free to use, searchable and does not require registration. There can be more than one, as long as each presents all notices. This way, it is possible for bidders to find all contracts and award notices below and above the threshold at all administrative levels (central, regional and local) in one place.

Practice in Bosnia and Herzegovina

Portal www.ejn.gov.ba is a unique portal for public procurement, and because of that, notices do not include the URL of other portals for download of notification and tender documentation. The portal provides the ability to search individual contracting authorities and generate their notifications in one place. Article 36 of the Law has defined that all procurement notices, contract awarding, cancellation of the procurement procedure, voluntary *ex ante* notification of transparency and prior information notice, as well as a summary of the procurement notice in English language, shall be published by the contracting authority on the Public Procurement Portal. Still, notices of direct agreements are not published on the portal because it is not a legal requirement. In addition, the portal gives insight

into *the annual notification of concluded contracts*,⁶⁹ which provide information on all contracts concluded in relation to the particular subject of procurement for each contracting authority. This option is a big step forwards in terms of transparency, because the data on the names of bidders who conclude contracts as well as the value of concluded contracts are public and easily searchable.

There is no obligation to send publications to TED, since Bosnia and Herzegovina is not an EU Member State. Comparing the content of notification on TED and on www.ejn.gov.ba, one has to highlight that in the sense of form, publications are not identical, but in regard to important elements, they are in compliance with the notifications on TED. Furthermore, the portal clearly indicates the deadline for submission of tenders with date, time, but no time zone. Time zone in the context of Bosnia and Herzegovina is not relevant, but in order to improve cross-border cooperation, this information is important in relation to potential bidders who are not in the same time zone with Bosnia and Herzegovina.

Although compliance with Practice 1 of the portal and identified indicators is visible, this practice in relation to BiH needs to be put in the context of e-procurement principles – primarily effectiveness and best value for the money. The problem is in aspect of Article 36, para. 1 of the Law on Public Procurement, which is completely contrary to the principle of best value for money. This paragraph shall be binding on all contracting authorities to publish a Summary of all notices in the Official Gazette, too, and all summaries of notifications cost 98 BAM including VAT, except for the correction of notification which costs 52 BAM with VAT⁷⁰. Considering the price and the number of notifications, the practice of publication of Summary notices in the Official Gazette is in no case a function of the best value for money. All notices are already searchable and available on the existing portal www.ejn.gov.ba, but the contracting authority is still expected to send the summary notification to the Official Gazette of Bosnia and Herzegovina. In this way, officers are exposed to additional unnecessary administration, which does not benefit the principle of efficiency, and contracting authorities suffer unnecessary expense.

⁶⁹ There are three types of annual notifications that are published on the e-procurement portal: Annual notification on contract awarding for non-priority services, Annual notification on DCM and Mission of BiH and Annual notification on contract awarding for framework agreement.

⁷⁰ Public Procurement Agency of Bosnia and Herzegovina data.

Table 2. Positive and negative practice indicators no. 1

Positive practice indicators	Practice in BiH
Notices include an URL (Uniform Resource Locator) pointing to the platform where the tender specifications are available for download	N/A
Notices show clearly the price of the call for tender documentation if they are not available free of charge	YES
Notices indicate clearly the submission deadline with a date, time and time zone	PARTIALLY
make publication at the portal as automatic as possible to avoid double encoding	YES
Publish contract award notices also for direct awards	NO
make notices sent to the portal as similar as possible to those sent to TED	PARTIALLY
Negative practice indicators	Practice in BiH
information about where the call for tenders is available for download is omitted	NO
provided information on submission period (number of days) instead of a submission deadline (date, time and time zone)	PARTIALLY
require registration to review/retrieve notice	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.2. Practice 2: Bidders and Contracting Authorities Benefit from Affordable Training Plans

Good Practice Summary

Platforms that apply this practice entice bidders and contracting authorities to use e-procurement. The training courses for bidders may be delivered by platforms, contracting authorities or other organisations such as chambers of commerce. The platforms should also be as user-friendly as possible to minimise the need for training. This way, bidders and contracting authorities are educated on the use of e-procurement platforms and can learn more quickly about the benefits of using e-procurement platforms.

Practice in Bosnia and Herzegovina

In the context of training tools, which are available on the portal, it is necessary to highlight that under the category “News,” there is “Brief manual on manner of usage of e-Procurement information system.”⁷¹ This manual of 27 pages is

⁷¹ Public Procurement Agency of Bosnia and Herzegovina, *Kratko uputstvo o načinu korištenja informacionog sistema e-nabavke* [Brief Manual on Manner of Usage of e-Procurement Information System] (Sarajevo: Public Procurement Agency).

not accompanied by visual explanation, but only textual ones, which makes it difficult to use. Technical support to users is offered by e-mail five days a week, eight hours a day, and via Call Centre two days a week, from 10:00 to 12:00.

However, online courses that would allow simulation of publication and tests for examination of knowledge on public procurement on the national level and on the level of the EU are not available on www.ejn.gov.ba. Even though the website www.javnenabavke.gov.ba provides an “online” course on public procurement, information on the course is not available, nor is there a link to www.ejn.gov.ba.

Also, there is no space where bidders and contracting authorities can exchange information and experiences. Although the portal is designed in a way that is easily searchable, there is a need to clarify certain tools, particularly with regard to registration, publication and advanced searches. This need is also apparent based on the commercial activities of various agencies in the private sector that provide training on the use of the portal.

Facilitating online courses would be in keeping with efficiency and the best value for money, as it would lead to saving public money. The average cost of one training for state officials in BiH is from 170 to 280 BAM, depending on the commercial agencies. The number of registered contracting authorities on the web portal, according to the Agency’s report for 2014 is 1.539⁷². The right to training is guaranteed to all government officials. The existence of such a course would have, in addition to savings, great benefits in the popularization of e-procurement among bidders and contracting authorities.

Finally, even though the portal doesn’t provide commercial education, lack of online courses indirectly creates conditions for the commercialisation of training on e-procurement by commercial companies.

Table 3. Positive and negative practice indicators no. 2

Positive practice indicators	Practice in BiH
Affordable online courses	NO
platform is user-friendly and minimises the need for training	PARTIALLY
Enabling joint sessions between bidders and contracting authorities	NO
Courses enable simulation of publication	NO
Courses include information about the EU legal Procurement framework	NO
offer the courses online	NO
Negative practice indicators	Practice in BiH
Platform created opportunity for commercialisation/sales of training on electronic procurement	PARTIALLY

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

⁷² Public Procurement Agency of Bosnia and Herzegovina, Godišnji izvještaj o zaključenim ugovorima u postupcima javnih nabavki u 2014. godini [Annual Report on Awarded Contracts in Public Procurement Procedures in 2014] (Sarajevo: Public Procurement Agency of Bosnia and Herzegovina, 2015), p. 4.

4.4.3. Practice 3: Platforms Have Communication Plans in Place to Promote the Use of E-Procurement

Good Practice Summary

Platforms that apply this practice incorporate communication programmes and channels between the bidder and contracting authorities, as well as the relevant public procurement institutions. This way, interest parties in public procurement can exchange experience, dilemmas and discuss unresolved issues. The platforms enable commercial advertising and carry news items in specialist publications. This contributes to building confidence among users about the platform and e-procurement as a whole.

Practice in Bosnia and Herzegovina

Portal www.ejn.gov.ba does foresee space or manner for mutual communication between contracting authority and bidders on issues related to public procurement, and at the moment, it doesn't have a commercial nature. However, the Instruction on e-procurement announced its commercialisation in Article 13, which defines that method and conditions for payment for publication of notification in the "E-procurement" system will be regulated by a special Ordinance, adopted by Council of Ministers of Bosnia and Herzegovina upon proposal by the Agency and with previous approval from the Ministry of Finance and the Treasury of Bosnia and Herzegovina⁷³. This Ordinance has still not been adopted.

The portal also does not provide space for the promotion of events in the field of public procurement, nor does it publish specialized publications and articles related to public procurement⁷⁴. Good practice and examples of successfully implemented procurement in the official languages in BiH, or in English, aren't available either. If positive examples for the development of sub-criteria for the evaluation of tenders were available on the portal, the criterion of "the most economically advantageous tender" would be popularized. In this way, e-procurement would indirectly produce savings, and the portal would be in keeping with the principle of best value for money. The portal also does not provide general information on the total value of public procurements in Bosnia and Herzegovina. Also, the portal does not provide for direct link connection with other institutions which have a strong interest in public procurement, such

⁷³ "Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement'", Article 13.

⁷⁴ Specialised publications are published on the website of Public Procurement Agency.

as chambers of commerce, nor is the portal promoted on social networks⁷⁵. In Bosnia and Herzegovina, CSOs / NGOs, as well as certified trainers, actively work to improve the public procurement system.

Publication of the results of their work on the portal is purely a technical issue, and there are no legal reasons to prevent this activity. In this way, the Public Procurement Agency of Bosnia and Herzegovina would align its actions with Article 92, para. 3. t. g) of the Law, which defines the development and establishment of electronic information systems in the field of public procurement in Bosnia and Herzegovina as one of the responsibilities of the Agency. This would build confidence among all stakeholders in public procurement, and the rhetoric in which governmental and non-governmental sectors are said to be on different sides would be abandoned.

Table 4. Positive and negative practice indicators no. 3

Positive practice indicators	Practice in BiH
promote the use of platforms by reporting success stories	NO
use social media and traditional media to advertise the platform	NO
take into consideration bidders beyond national borders by making promotional information available in other languages	NO
involve chambers of commerce and other similar organisations in promotion of the platform	NO
Promote affordable and quality public procurement events (trainings, seminars, conferences)	NO
Negative practice indicators	Practice in BiH
target only contracting authorities	NO
Omit the information on the value of e- Procurement as a whole	YES

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

⁷⁵ Public Procurement Agency and its services had last promotion in 2013 via classical and new media, including the Facebook profile of the Agency (<https://www.facebook.com/AgencijaZaJavneNabavke/?fref=ts>), which was not, since then, till mid-2016 updated. However, up until now, there was no special promotion of the public procurement portal, nor is it present in the social networks.

4.4.4. Practice 4: Bidders Can Access and Retrieve Contract Notices and Tender Specifications as Anonymous Users

Good Practice Summary

Platforms that apply this practice remove all technical and administrative prerequisites and barriers to accessing tender specifications. This way, it is possible to significantly ease access to calls for tenders and make public procurement more accessible in general.

Practice in Bosnia and Herzegovina

E-procurement in BiH platform enables anonymous review of notifications from Article 36 of the Law on Public Procurement, but the download of tender documentation, i.e., tender specifications, is available only to registered bidders⁷⁶. It is not possible to have a simple e-mail registration for reception of notifications on changes in tender documentation or to ask questions, since the system can only send notifications on changes in tender documentation to a registered bidder who has already downloaded the tender documentation. This practice is understandable in regard to downloading tender documentation and sending clarification questions. Namely, the time of tender documentation download and the clarification of tender documentation are important because deadlines for eventual appeals and clarifications are connected to it, as is the possible delay of the opening session for bids. That is why it is so important that the moment of takeover of these documents is clear and that it can be addressed to a concrete bidder. Legal security is accomplished in this way, for it prevents the misuse of procedure by malicious bidders.

However, the portal does not allow anonymous review of tender documentation before the interested party decides whether to participate in the tender and before registering in the system. This non-compliance with good practice could be solved through a simple technical solution, which would allow for anonymous review of tender documentation, and download of tender documentation should be available only to registered bidders. Given the fact that the portal registration requires submission of forms (see Practice 5), for which completion one needs to possess certain certificates / evidence, it is clear that the portal indirectly requires bidders to submit evidence before downloading the tender documentation.

⁷⁶ "Instruction on Addenda to Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement'", Article 10, para. 1.

Table 5. Positive and negative practice indicators no. 4

Positive practice indicators	Practice in BiH
offer light registration (e-mail address only) to bidders that want to keep up to date about changes to tender specifications	NO
offer light registration (e-mail only) to bidders that wish to ask the contracting authority questions	NO
provide access to calls for tenders through a web browser	YES
provide bidders to ask contact authorities questions	YES
Negative practice indicators	Practice in BiH
registration mandatory to retrieve contract notices or tender specifications	YES
require bidders to browse through several web pages to retrieve all the documents in a call for tenders	NO
require bidders to purchase digital certificates before being able to access tender specifications	NO
require bidders to provide certified translated copies of attestations or other forms of evidence before being able to access tender specifications	YES
require bidders to register before being able to access tender specifications	YES
require bidders to install applications before being able to access tender specifications	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.5. Practice 5: Bidders Can Register on the Platform without Having to Provide Country-Specific Information

Good Practice Summary

Platforms that apply this practice make country-specific information optional in the registration process. Platforms simplify the registration step by requesting information that bidders can provide without consulting third parties, such as Certification Authorities, chambers of commerce or other business organisations. This way, foreign bidders are able to have free registration.

Practice in Bosnia and Herzegovina

The E-procurement Instruction reads that bidders are obliged to submit a completed registration form, which is divided in five steps on the portal for local bidders and in four steps for foreign bidders and have a minimum requirement of the name, ID number, business activity, location, contact data and information on the operator⁷⁷.

⁷⁷ “Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of ‘e-Procurement’”, Article 3, para. 2.

The www.ejn.gov.ba portal automatically classifies, in the registration option, bidders into two categories by providing registration options as “Bidder in BiH” and “Foreign bidder”. Registration for foreign bidders is divided into four obligatory steps, one of them being the entry of the location of the bidder.

The existence of division into domestic and foreign bidders opens the possibility for the different treatment of bidders on the basis of citizenship and for the benefit of protection of domestic bidders. In that context, the European Commission’s monitoring of the transition path of Bosnia and Herzegovina will probably point out the need of adjusting this option in a manner that prevents preferential treatment of bidders on the basis of citizenship.

In regard to the protection of personal data and identified criteria, it is necessary to emphasise that BiH is not obliged to apply the EU Directive on Protection of Personal Data, but the form is in compliance with the Law on Protection of Personal Data⁷⁸.

The portal also doesn’t allow the usage of the “OpenID”⁷⁹ service. Regarding this service, this is also a technical issue, and there are no legal barriers to this connection.

The bidder registration process is complex; foreign bidder registration takes four steps, and domestic bidder registration takes five. Namely, after the user (contracting authority or bidder) completes the registration form, the system generates the registration form which is sent to the e-mail of the user who registered following the instructions for steps needed for the completion of the registration process: the user should print the form received by e-mail, the responsible person should sign and stamp it and send it back to the Agency by fax or mail. The bidder should also attach to the registration form the Tax Registration Certificate issued by the Taxation Authority. The Agency checks the documents, and if everything is all right, the Agency activates the bidder in the system. However, if it is a foreign bidder, they have to submit only the registration form and the user is immediately activated in the system. Evidently, requesting additional information from domestic bidders is an unnecessary step, given that the same request doesn’t exist for foreign bidders and given that good practices show the only sufficient condition is having a valid e-mail address. Furthermore, E-procurement Instruction defines that bidders are obliged to submit a minimum of information as follows: name, ID, business activity, location, contact data, information on the operator. Based on the requested data and documents (especially on domestic

⁷⁸ “Zakon o zaštiti ličnih podataka” [Law on Protection of Personal Data], *Official Gazette of BiH* 49/06, 76/11 and 89/11.

⁷⁹ The OpenID – is a non-profit international organisation of individuals for standardisation, whose standardised protocol for validation of authenticity is publicly available. It enables users to be recognised on different websites in a manner that administrators of concrete websites don’t need to request additional registration, and users are allowed to log in to different web portals without providing additional identifications and passwords for each of the sites. More information available at: <http://openid.net/connect/faq/> (Accessed on February 4, 2016).

bidders), one can conclude that the process of registration requires additional data that is not necessary and is specific to Bosnia and Herzegovina.

Aside from that, during registration, the portal doesn't provide information on the timeframe needed for registration, but the Instruction highlights that it will be completed within three days after the Public Procurement Agency BiH receives the completed registration form⁸⁰. A password and username are automatically generated; the password can be changed but not the username. During completion of the registration form, the portal signals eventual errors but doesn't provide instruction on how to correctly complete the form.

Table 6. Positive and negative practice indicators no. 5

Positive practice indicators	Practice in BiH
clearly indicate which fields are mandatory, and which are not	YES
protect user data according to EU personal data protection directives	PARTIALLY
simplify the registration process by reducing the number of mandatory fields and the number of steps required to complete registration	NO
indicate clearly how long the registration process normally takes	NO
allow validation checks on the requested information where possible	YES
provide clear error messages to the user when data is missing or violates validation rules	YES
provide clear guidance on how to correctly fill in the form	NO
allow bidders to use OpenID or other digital identity services	NO
allow bidders to choose their username and password	PARTIALLY
Negative practice indicators	Practice in BiH
require a digital certificate to register on the platform	NO
require individuals representing bidders to provide evidence of their relationship to the bidder (during the registration process)	YES
require a full extract from the business register to register on the platform	YES
require a power of attorney to register on the platform	NO
require a copy of the identity or citizen card to register in the platform	NO
don't require information that is not absolutely necessary for the registration process, e.g. mobile phone number	YES
require bidders to provide identifiers or other data specific to the country where the platform operates	YES
require bidders to consult third parties such as Certification Authorities, chambers of commerce or other business organisations to register on the platform	NO
count on workarounds for foreign bidders to be able to register	YES
oblige bidders to fill in the complete registration form again if an error occurs due to violation of validation rules	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

⁸⁰ "Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement'", Article 3, para. 3.

4.4.6. Practice 6: Bidders Complete Their Registration on a Platform by Clicking an Activation Link Sent by E-Mail

Good Practice Summary

Platforms that apply this practice allow users to complete their registration process by clicking a unique URL that is sent to them in an activation e-mail. This e-mail address is provided by the user in the registration process. This way, it is possible to ensure that the e-mail provided by users during their registration is valid. The point of this practice is maximum simplification of the registration process. The process is designed in a manner so that an interested bidder uses a valid e-mail address to send a registration request to the platform, after which the administrators send an activation URL, namely the link that the operator needs to click in order to confirm successful registration.

Practice in Bosnia and Herzegovina

In the case of BiH, E-procurement Instruction states that the user is obliged to complete registration by filling in the registration form prior to usage of the system. After completion of the registration form, the form is generated so that the user prints it and sends it, signed and stamped by a responsible person, together with the appropriate attachment, to the Public Procurement Agency⁸¹ (by mail or fax).

Given that registration requires paper submission of the registration form, registration via an activation URL is not possible. Registration is confirmed by the PPA after reception of the printed completed registration form.

After submission, and at the latest, within three days after reception of the complete file, the Agency is obliged to activate the registration⁸². Possibilities given by online business and that define positive practice don't treat three days as a reasonable deadline, since objectively, the process of registration can be completed instantly after confirmation of the validity of an e-mail account via an activation link sent to the e-mail address of the user.

The intention of legislators is to protect the e-procurement system from malicious bidders through the process of registration and required data. However, this complex process (see section 4.4.5, Practice 5) is legally not justified given that evaluation committees during bid evaluation examine submitted evidence for each bidder, including the information required by the portal. That is why there is no realistic possibility of misusing the data of registered bidders, since the information on the portal should be public, and the eventual responsibility

⁸¹ Ibid., Article 3, para. 2.

⁸² Ibid., Article 3, para. 3.

of unscrupulous bidders is determined through individual procedures. The Instruction also defines that the Agency withholds the right to delete any inappropriate content that is publically available on the portal,⁸³ which means that its regular and adequate administration would reduce the possibility of misuse to a minimum. This practice is detrimental, because making the registration process more complex is not in keeping with popularization of e-procurement, and could discourage bidders such as SMEs, which could provide goods, works and services in compliance with best value for money in public competition procedures.

Table 7. Positive and negative practice indicators no. 6

Positive practice indicators	Practice in BiH
include a clickable URL which includes a unique hash or activation key in the activation e-mail	NO
limit the activation time-frame, it should expire if not clicked within a reasonable time period	NO
require the bidder to provide a valid e-mail account	YES
Negative practice indicators	Practice in BiH
don't grant access until the account has been activated	YES
require a digital certificate to complete the registration process	NO
require bidders to send a form by post to complete the registration process	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.7. Practice 7: Platforms Support English in Addition to the Official Language(S) of the Member State(S) where They Operate

Good Practice Summary

Platforms that apply this practice make the user interface available in at least English, in addition to their official language(s). This way, it is possible to make access easier for foreign bidders, because English is the “de facto” business language in Europe.

Practice in Bosnia and Herzegovina

The public procurement portal is available in official languages in Bosnia and Herzegovina and in English. However, translations of concrete notifications are not available in English, except for those that have the Notification Summary in English. The Law on Public Procurement obliges the contracting authorities to publish the summary in English, but only for procedures that have an estimated

⁸³ “Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of ‘e-Procurement’”, Article 6, para. 4.

value equal to or larger than 250.000,00 BAM for contracting authorities referred to in Article 4 para. (1) items a) and c) of the Law; then for the procedures that have an estimated value equal to or larger than 400.000,00 BAM for contracting authorities referred to in Article 4 para. (1) item b) of the Law; and 800.000,00 BAM for sectoral contracting authorities referred to in Article 5 of the Law and in the event when the value of procurement is equal to or larger than 9.000.000,00 BAM⁸⁴. In the period 1 January 2015 to 1 January 2016, the number of notifications that included a summary in English was 711, and the total number of all publications was 18.735⁸⁵. The total number of notifications that included a summary in English in 2015 was 3,8%. So although the portal provides translations in line with the Law on Public Procurement, it doesn't provide a complete translation of relevant information.

Table 8. Positive and negative practice indicators no. 7

Positive practice indicators	Practice in BiH
Platform ensures that translations are of good quality and complete	NO
provide phone numbers and other contact points that are accessible from abroad	YES
consider the trade-off between increased use of the platform by supporting additional languages and the effort to maintain them	YES
Negative practice indicators	Practice in BiH
limit translations to English; consider also translating into the language(s) of your neighbouring countries	NO
Platforms are monolingual	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.8. Practice 8: Bidders Can Use a Username and a Password to Log in to a Platform

Good Practice Summary

Platforms that apply this practice allow bidders to log in with a simple set of credentials, such as username and password. As a result, it is possible to facilitate access for registered economic operators.

Practice in Bosnia and Herzegovina

The www.ejn.gov.ba portal is roughly in compliance with identified positive practice. Deviation is visible in relation to the usage of digital identification services for authenticity check, such as OpenID function. Given that it is a

⁸⁴ "Law on Public Procurement", Article 14, paras. 2 and 3.

⁸⁵ Data taken from <https://www.ejn.gov.ba>

public service and that it is organized as a non-profit international organization of individuals for standardization, there are no legal obstacles to accessing these services, and this is solely a technical issue that can be resolved without intervention of the legislators.

Table 9. Positive and negative practice indicators no. 8

Positive practice indicators	Practice in BiH
implement a strong password policy	YES
provide a password recovery functionality to users	YES
allow bidders to use OpenID ⁸⁶ or other digital identity services	NO
Negative practice indicators	Practice in BiH
require the use of digital certificates to log in to the platform	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.9. Practice 9: Bidders can search contract notices using a set of search criteria

Good Practice Summary

Platforms that apply this practice support advanced search with at least the following searchable criteria: the name of the contracting authority; the object of the contract; the type of contract (goods, services, or works); the publication date; the submission deadline; the place of delivery and the contract value.

Practice in Bosnia and Herzegovina

The www.ejn.gov.ba portal, in relation to the first two identified positive indicators, provides the possibility to search “active procedures”, which provide information on deadline and time for submission, but not the time zone, since that information is not in the data base. The portal also allows searching notifications in regard to the time span, i.e., the dates “from-to”, but not the search per estimated contract value. NUTS⁸⁷ codes are still not applicable in Bosnia and Herzegovina, since BiH is not an EU Member State. Options for advance search on the portal are possible, but they have to be entered for every search. In this way, bidders specialized in specific works, goods and services need to re-enter search criteria every time they search. The portal doesn’t provide information on the possibility of submission of bids electronically, since e-submission is not in the Law, which is not in compliance with good practices.

⁸⁶ More information available at: <http://openid.net/connect/faq/> (Accessed on February 4, 2016).

⁸⁷ NUTS – *Nomenclature of Territorial Units for Statistics*, developed by the Eurostat in order to provide unified division of territorial units for collection of regional statistics for the European Union. Available at: <http://simap.ted.europa.eu/web/simap/nuts> (Accessed on February 1, 2016).

Table 10. Positive and negative practice indicators no. 9

Positive practice indicators	Practice in BiH
allow bidders to search for contract notices based on submission deadline using date, time and time zone	PARTIALLY
allow bidders to search for contract notices based on a range of dates and a range of contract values	PARTIALLY
allow bidders to search for contract notices based on CPV codes for the subject-matter of contracts	YES
allow bidders to search for contract notices based on NUTS codes for the place of delivery	N/A
support free-text search for the subject-matter of the contract and contracting authority name	YES
indicate clearly in the search results, by means of a short text or icon, whether the tenders can be submitted electronically	NO
allow bidders to save a default set of search criteria	NO
Negative practice indicators	Practice in BiH
provide a long list of contract notices which cannot be searched or filtered	NO
provide a submission period (number of days) instead of a submission deadline (date, time and time zone)	NO
make basic search a chargeable service	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.10. Practice 10: Bidders Can Evaluate whether Tender Specifications are Relevant for Them Based on Information Available in Contract Notices

Good Practice Summary

Platforms that apply this practice clearly indicate whether tenders can be submitted electronically; where the tender documentation can be found; the name, national ID and main activity of the contracting authority; the subject-matter of the contract; the type of contract (goods, services or works); the publication date; the submission deadline without needing to calculate it; the place of delivery; the contract value; the procedure.

Practice in Bosnia and Herzegovina

Although the prescribed form of procurement notice is adequately designed and under the assumption that it is fulfilled as such, it could be a source of relevant information. Unfortunately, the contracting authorities or officials working on filling in the prescribed form answered the ‘The essential conditions of financing and payment or referral to the appropriate address’; ‘The ability to perform professional services’; ‘The economic and financial capacity’; ‘technical

or professional ability” with the phrase “As defined in the tender documentation.” Given that the publication of tender documentation is not required in full for all tenders (see section 4.3. The e-procurement system in Bosnia and Herzegovina) and in combination with the practice of filling in the procurement notice with the wording “as defined in the tender documentation” for key aspects of a particular tender, it can be concluded that although there are legal and technical prerequisites, this practice was not accepted. In this case, bidders cannot have all the information based on which they could make a decision on participation in a particular tender without physically taking over the tender documentation or downloading it from the portal.

Furthermore, in the case of BiH, the Law on Public Procurement does not provide for the electronic submission of bids, and the absence of bylaws from the Law on Electronic Signature prevents changes to the Law on Public Procurement in this direction. Date and time of the delivery deadline is available but no time zone. The content of procurement notices is prescribed by bylaws. By their form, the notices are different from the notifications on TED, but the essential elements of the notice are not. Here we emphasize that the obligation to send the TED does not exist, because the TED is an annex to the EU Official Journal, where they publish public procurement notifications.

Table 11. Positive and negative practice indicators no. 10

Positive practice indicators	Practice in BiH
make contract notices on the platform as similar as possible to those sent to TED and to the platform	PARTIALLY
platforms indicate whether the tenders can be submitted electronically by means of a short text or an icon in the contract notices	NO
allow a clickable URL to the tender documentation	PARTIALLY
include a direct link to the Official Journal ⁸⁸	NO
indicate the currency of the contract value	YES
indicate submission deadline using date, time and time zone	PARTIALLY
indicate the subject-matter of the contracts based on CPV codes	YES
indicate the place of delivery based on NUTS codes	N/A
Negative practice indicators	Practice in BiH
provide a submission period (number of day s) instead of a submission deadline (date, time and time zone)	NO
neglect to provide a legend for icons which are not clearly understandable across Europe	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

⁸⁸ If the bidder or any interested party want to check if the notification was published also in the Official Gazette.

4.4.11. Practice 11: Bidders are Notified of Any Changes to Tender Specifications

Good Practice Summary

Platforms that apply this practice notify interested parties and publish on the platform changes to published tender specifications or to a bidding procedure. Such changes could include questions and answers, corrigenda, extra documents, etc. Interested parties can access the changes without registering or choose to be notified, preferably by e-mail and free of charge, following light registration.

Practice in Bosnia and Herzegovina

In the case of BiH, the Instruction on addenda to the instructions on e-procurement⁸⁹ prescribed that changes in tender documentation are published as a new document and that requests for explanations and clarifications are available only to bidders who physically took tender documentation and are pre-registered.

Table 12. Positive and negative practice indicators no. 11

Positive practice indicators	Practice in BiH
allow bidders to provide contact information without having to register if they want to be notified of changes, preferably by e-mail	NO
send notifications only to bidders who have expressed an interest in being informed	NO
support the aggregation of notifications in one e-mail for all tender specifications the bidder is interested in	NO
include in notifications a link allowing the recipient to opt to no longer receive notifications	NO
Negative practice indicators	Practice in BiH
use contact information provided by bidders for being notified of changes for other purposes	NO
send notifications to bidders who have not expressed an interest in being informed	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

⁸⁹ "Instruction on Addenda to Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement'", Article 9, para. 8, Article 10, paras. 1 and 3.

4.4.12. Practice 12: Platforms Support Automatic Transmission of All Types of Notices to TED

Good Practice Summary

Platforms that apply this practice make it possible for contracting authorities to publish all types of notices automatically on TED, the Official Journal of the European Union. This way, contracting authorities can increase the visibility of their tender specifications and possible cross-border cooperation, since aside from publication on national platforms, all notices are available on TED.

Practice in Bosnia and Herzegovina

Given that Bosnia and Herzegovina is not a member of the European Union, there is no obligation to publish information on the contracts on TED⁹⁰. Exceptions are the procurements carried out by the rules or guidelines of development banks and the result of the obligations under the framework of financial agreement with a particular bank, and not the Law on Public Procurement. However, it should be noted that publication on TED is possible also according to the current national legislation and that TED itself is not a real obstacle for non-members, since it is sufficient to register on TED in order to publish there. According to the author of the study, the publication of proceedings on TED in conditions when there is no obligation would be an additional administrative burden, and it would be prejudicial to national competition, because reciprocity is not guaranteed. Specifically, equal and mutual access to all public contracts would not be the same, since Bosnia and Herzegovina due to non-membership does not participate fully in the free movement of goods / works / services with the EU. Furthermore, in such circumstances, there would be no reciprocity in terms of the capacity of the public procurement market of the European Union and Bosnia and Herzegovina, due to the fact that the EU market is more competitive in relation to the BiH market.

Also, the EU public procurement market is more competitive than the market in BiH. However, in the case of high-value procedures or procedures which are subject to the procurement of goods / works / services that are not widely used, publication on TED would be very helpful. In this way, contracting authorities would increase the chances of getting a better quality of goods / works / services.

⁹⁰ TED (Tenders Electronic Daily) is an addition to the European Union Official Journal, dedicated to public procurement of the European Union. Available at: <http://ted.europa.eu/TED/main/HomePage.do> (Accessed on January 28, 2016).

Table 13. Positive and negative practice indicators no. 12

Positive practice indicators	Practice in BiH
implement an interface to TED eSenders	NO
automatic publication of any changes to the original notice on TED	NO
publish all contract award notices, including those for direct award contracts	NO
make it possible for the contracting authority to also use TED for contracts below the threshold	NO
Negative practice indicators	Practice in BiH
oblige the contracting authority to manually re-encode the contract notice on TED	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.13. Practice 13: Bidders and Contracting Authorities Can Search CPV Categories Based on Their Code or Their Description

Good Practice Summary

Platforms that apply this practice allow contracting authorities and bidders to search commodity classification categories based on the Common Procurement Vocabulary (CPV) codes⁹¹. The CPV codes search significantly accelerates the search so potential bidders can precisely narrow down the search options in relation to commodities / works / services they have to offer.

Practice in Bosnia and Herzegovina

The www.ejn.gov.ba portal provides the ability to search per CPV divisions, of which there are 45,⁹² with a total number of 9.454 of CPV codes. Search by CPV codes favours bidders specialized for certain goods / works / services and is a useful tool for cross-border bidders.

Given that the bylaw Decision on the Use of Unique Public Procurement Dictionary (Official Gazette of BiH no. 54/15) adopted the CPV codes, their full application on www.ejn.gov.ba is a technical issue, because all legal requirements for full implementation already exist. Defined indicators from Practice 13 treated

⁹¹ CPV: The “Common Procurement Vocabulary” (CPV), is a unique classification system for public procurement. It contains 9.454 codes structured in a five level tree hierarchy. Karin Attström et al., *Review of the Functioning of the CPV Codes/System: Final Report* (Berlin: Ramboll, 2012), p. 10.

⁹² CPV Structure: The CPV follows a tree structure, following a hierarchy of divisions (first 2 digits), groups (3rd digit), classes (4th digit), categories (5th digit) and subcategories (6th to 8th digits). Overall, there are 45 divisions, 272 groups, 1,002 classes, 2,379 categories and 5,756 subcategories (9,454 codes in total). *Ibid.*, p. 37.

the ease of CPV codes use. The practice in BiH is not in line with the best practices, because the CPV codes can be searched only per division by the principle of drop-down menus, with no instructions on how to search other categories.

Table 14. Positive and negative practice indicators no. 13

Positive practice indicators	Practice in BiH
return all the items within a category and its sub-categories following a search	NO
show the number of items contained within each matching category and its sub-categories, if a CPV tree is used	NO
help users to select the right CPV code(s)	NO
Negative practice indicators	Practice in BiH
require the bidder or the contracting authority to browse through the CPV tree to select a category	YES
require the bidder or the contracting authority to know the CPV structure	YES

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.14. Practice 14: Contracting Authorities Can Re-Use Information Contained in Their Profile or in Previous Notices to Create Contract Notices, Tender Specifications and Award Notices

Good Practice Summary

Platforms that apply this practice allow contracting authorities to create new tender specifications using forms which can be partially pre-filled with information contained in the profile of the contracting authority. Information from previous contract notices and tender specifications can also be saved as templates. The contracting authority can create, edit and save changes to templates.

Practice in Bosnia and Herzegovina

Current practice in Bosnia and Herzegovina is largely compliant. Contracting authorities are enabled with the easy creation of notification, in a way to create, save and edit forms. The portal indicates errors when creating the notification, which greatly reduces the possibility of failure during publishing, and it is not expected that the contracting authority should submit the same information multiple times. Compared to the indicators, the FAQ (“Frequently Asked Questions”) option is not available, which could eventually solve the doubts that the contracting authorities have when creating the notification. Alternatively, the portal contacts are available for technical assistance (phone: +38733251591, e-mail: ejn@javnenabavke.gov.ba) as well as a “Brief manual on how to use the e-procurement information system”.

Table 15. Positive and negative practice indicators no. 14

Positive practice indicators	Practice in BiH
allow contracting authorities to create, store, search, re-use and edit templates that help them in creating tender specifications and notices	YES
use frequently asked questions and other supporting information to help contracting authorities in creating tender specifications and notices	NO
use automatic data validation in the online forms with clear guidance on how to correct any mistake ⁹³	YES
store information about the contracting authority on the platform and allow the contracting authority to make use of it when creating calls for tenders and notices	YES
apply the “only once encoding” principle	YES
Negative practice indicators	Practice in BiH
prevent contracting authorities from editing information copied from a template or their profile	NO
ask the contracting authority to provide the same information more than once	NO

Source: Bausà Peris and et al., *e-Procurement: Golden Book of Good Practice*

4.4.15. Practice 15: Bidders Can Choose to Manually or Electronically Sign a Submission Report Containing the Hash Value of Each Submitted Document

Good Practice Summary

Platforms that apply this practice allow bidders to choose between signing a submission report manually or electronically. The submission report always contains the hash value⁹⁴ of each submitted document and is signed electronically by the platform. This way, it is possible to ensure integrity of content, non-repudiation⁹⁵ and authenticity of origin of the submitted tenders. Giving bidders the possibility to choose avoids the mandatory use of digital

⁹³ If the contracting authority during data entry, e.g., for open procedure, enters dates that are not harmonised with legal deadline, the system will warn of error.

⁹⁴ Hash value stands for Fingerprint data in the e-procurement system that is generated through usage of one-way algorithm and which remains constant all the time, except when the original data is modified. Value that ensures data integrity and non-repudiation when the document is digitally signed; Procurement Policy Office, Public Procurement: (Electronic Bidding System): Regulations (London: Procurement Policy Office, November 10, 2015), p. 1.

⁹⁵ Non-repudiation: principle where message recipient cannot claim that he has not received a message, nor can the sender claim that he has not sent the message. Source: “Eudict: evropski online rječnik” [Eudict: European Online Dictionary], <http://www.eudic.com> (Accessed on January 25, 2016).

signatures. Additionally, instead of having to sign each document separately, the bidder can sign them all in a single step.

Practice in Bosnia and Herzegovina

According to the Law, bid submission is possible only in writing, as is evident from the legal obligation *bid must be firmly bound and all bid pages numbered*⁹⁶. Amendments to the Law on Public Procurement in this context should be accompanied by the creation of new legislation and amendments to the existing legislation. Foremost by adopting the bylaws of the Law on Electronic Signature, which would create the legal basis for the recognition of electronic signatures, and by including the electronic correspondence as official in the context of the existing laws on administration.

Table 16. Positive and negative practice indicators no. 15

Positive practice indicators	Practice in BiH
give bidders the option to sign manually or electronically	NO
implement a submission report containing the hash values of the submitted documents	NO
use standard cryptographic hash functions such as the Secure Hash Algorithm SHA-2 ⁹⁷	NO
electronically sign the submission reports sent to bidders	NO
accept large attachments and clearly indicate the technical restrictions	NO
Negative practice indicators	Practice in BiH
require bidders to use digital signatures	NO
require bidders to sign every single document separately	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.16. Practice 16: Bidders Receive a Proof of Delivery upon Successful Submission of Their Tender

Good Practice Summary

Platforms that apply this practice confirm the receipt of tenders by providing a proof of delivery to bidders. This document always contains the hash value of each received document and a timestamp.

⁹⁶ “Law on Public Procurement”, Article 58, para. 2.

⁹⁷ Definition: SHA-2 is abbreviation for Secure Hash Algorithm and determines the algorithm used by certification bodies for the purpose of document signing. SHA -2 includes four *hash* functions: SHA224, SHA256, SHA384 and SHA512. SHA-2, available at: <https://www.tbs-certificates.co.uk/FAQ/en/sha256.html> (Accessed on February 1, 2016).

Practice in Bosnia and Herzegovina

Identified indicators in this practice treat good practice in e-delivery. Given that according to the current legislation there are no legal requirements for e-delivery, the answers are NO (see explanation of Practice 15).

Table 17. Positive and negative practice indicators no. 16

Positive practice indicators	Practice in BiH
provide the proof of delivery digitally signed by the platform	NO
include basic information about the contracting authority , tendering process and bidder on the proof of delivery	NO
use standard cryptographic hash functions such as Secure Hash Algorithm SHA-2	NO
state clearly that the tender was received in time	NO
Negative practice indicators	Practice in BiH
implement custom cryptographic hash functions preventing bidders from verifying the hash value	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.17. Practice 17: Bidders Can Resubmit Their Tenders up until the Submission Deadline

Good Practice Summary

Platforms that apply this practice allow bidders to resubmit electronic tenders up until their presentation deadline. In the opening process, only the last submitted tender is considered for evaluation. As long as no tender has been opened, the platform still accepts tenders. However, tenders submitted after the deadline are clearly marked as late and disqualified unless the contracting authority decides otherwise.

Practice in Bosnia and Herzegovina

Since there is no legal basis for e-delivery in Bosnia and Herzegovina (see Practice 15), the set of indicators that cover simplicity when creating and delivering an electronic bid is answered with NO.

Table 18. Positive and negative practice indicators no. 17

Positive practice indicators	Practice in BiH
allow bidders to save draft versions of their tenders on the platform	NO
allow bidders to resubmit their tenders up until submission deadline	NO
consider not automatically rejecting tenders submitted after the submission deadline but before the opening session	NO
receive tenders submitted after the deadline but mark them as late	NO
Negative practice indicators	Practice in BiH
don't allow partial submission of tenders (each submission should be complete)	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.18. Practice 18: Platforms Keep Tenders Encrypted until the Opening Session

Good Practice Summary

Platforms that apply this practice store tenders in encrypted form until the opening session. Tenders cannot be opened until the date set for the opening session. This mechanism is commonly known as a *tenderbox*. There are also organisational procedures in place to ensure appropriate access control to the private decryption key until the opening session. This way, it is possible to ensure the full confidentiality of tenders until the opening time.

Practice in Bosnia and Herzegovina

In order to accomplish this practice, it is necessary to create a legal basis in the Law on Public Procurement and related laws with respect to e-delivery (see Practice 15). According to the current Law, the bids will be opened at the public opening by *envelopes being opened by the Chairman of the Procurement Commission in open session or another member of the commission, regardless of whether bidders or their authorized representatives attend the meeting*⁹⁸.

⁹⁸ "Law on Public Procurement", Article 63, para. 3.

Table 19. Positive and negative practice indicators no. 18

Positive practice indicators	Practice in BiH
set a fixed deadline for opening tenders	NO
provide for a backup for each officer required to open tenders	NO
set down formal organisational procedures and non-disclosure agreements to ensure segregation of duties and full confidentiality of tenders	NO
use technologies like SSL/TLS ⁹⁹ to ensure confidentiality of tenders while in transit between the computer of the bidder and the platform	NO
Negative practice indicators	Practice in BiH
Don't provide control mechanism for at least two-person check during the opening session	NO
share the private decryption key with non-authorized people	N/A

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.19. Practice 19: Contracting Authorities can Evaluate Part of Their Tenders Automatically Based on Predefined Criteria

Good Practice Summary

Platforms that apply this practice allow contracting authorities to define the automatic evaluation criteria when creating calls for tenders. Automatic creation of evaluation criteria is in keeping with efficiency, since for all of the procurements that are in wide usage, the contracting authority doesn't need to create criteria from scratch. This tool also serves transparency, since it reduces the space for subjective actions of committee members, which reduces the possibility of corruptive behaviour, since criteria creators can calculate only with pre-defined criteria.

Practice in Bosnia and Herzegovina

For successful implementation of this practice it is necessary to create a legal basis for an e-evaluation. Under the current legal solution and the Regulation on the establishment of the Commission for Procurement (Official Gazette of BiH, no. 103/14), it doesn't explicitly exclude the possibility of an e-evaluation, since this legislation defines the principles, powers and duties of the members of the Commission for evaluation and not replacement mode from traditional to

⁹⁹ The Secure Sockets Layer (SSL) is a computer networking protocol that manages server authentication, client authentication and encrypted communication between servers and clients. The Secure Sockets Layer, available at: <http://searchsecurity.techtarget.com/definition/Secure-Sockets-Layer-SSL> (Accessed on February 5, 2016).

electronic form. But an e-evaluation is not possible because there is no e-delivery. In the context of enabling e-evaluation, modification of existing legislation requires minimum correction, provided that it creates the basis for e-delivery.

Table 20. Positive and negative practice indicators no. 19

Positive practice indicators	Practice in BiH
allow contracting authorities to manually input tenders submitted on paper to the platform	NO
present the results of the automatic evaluation in a clearly comprehensible, comparable, exportable way	NO
allow contracting authorities to override the results proposed automatically by the system and award the contract electronically to whomever they choose in accordance with predefined criteria	NO
allow contracting authorities to choose between automatic, manual or mixed evaluation of tenders	NO
clearly indicate the evaluation criteria together with the call for tenders	YES
log all the steps in the evaluation process to create an audit trail	NO
Negative practice indicators	Practice in BiH
make it a requirement that all competitions have to be evaluated automatically	NO
allow contracting authorities to modify submitted tenders	NO
allow contracting authorities to update the automatic evaluation criteria after a submission deadline	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.20. Practice 20: Platforms Use European E-Signature Validation Services to Validate E-Signatures during E-Submission

Good Practice Summary

Platforms that apply this practice verify digital signatures using European digital signature verification services, such as the DSS tool developed by DGMARKT. This way, it is possible for platforms to accept a wide range of digital signatures to avoid exclusion of foreign bidders.

Practice in Bosnia and Herzegovina

Successful implementation of this practice in Bosnia and Herzegovina is primarily conditioned by membership in the European Union. Nevertheless, a legislative framework for e-submission and e-evaluation has to be developed for its gradual actualization (see Practice numbers 15 and 19).

Table 21. Indicators of positive and negative practice no. 20

Positive practice indicators	Practice in BiH
Make use of European e-Signature validation services	N/A
Clearly indicate which digital certificates are supported	NO
Enable bidders to use the same digital certificate on different platforms	NO
Promote digital certificates which are supported by the EU Trusted Lists of Certification Service Providers	N/A
Negative practice indicators	Practice in BiH
Reject digital certificates which are on the EU Trusted Lists of Certification Service Providers	N/A
Exclusively promote national certification authorities	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.21. Practice 21: Platforms Clearly Indicate All Costs Related to Use of the Platform

Good Practice Summary

Platforms that apply this practice provide an overview of all the costs related to the use of the platform in a freely accessible document or webpage. This way, it is possible for bidders and contracting authorities to identify upfront all the costs linked to using the platform.

Practice in Bosnia and Herzegovina

Use of the portal in Bosnia and Herzegovina is still free. However, the Instruction on e-procurements has set forth that use will be charged once a special Rulebook, proposed by the Agency and approved by the Ministry of Finance and Treasury of Bosnia and Herzegovina, is adopted by the Council of Ministers of Bosnia and Herzegovina¹⁰⁰. The Rulebook, which still has not been enacted, will set forth the method of payment for use of the portal by contracting bodies when creating the notice and by bidders when using the service to search the notices.

¹⁰⁰ "Instructions on Conditions and Method of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement'", Article 13.

Table 22. Indicators of positive and negative practice no. 21

Positive practice indicators	Practice in BiH
Give clear information about costs per transaction	YES
Minimize the registration costs for bidders; free is preferable	YES
Negative practice indicators	Practice in BiH
Add timestamps as a hidden extra charge for bidders	NO
Add a hidden additional charge per additional user of the same organization accessing the platform	NO
Require bidders to provide attestations, certified translations or other documents that may entail costs for them when registering with the platform	NO

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.22. Practice 22: Bidders Can Create Tenders Using a Core Set of Structured Data and Unstructured Documents

Good Practice Summary

Platforms that apply this practice structure key data of tenders. Depending on the nature of the tender, non-structured documents are also supported. These options enable bidders to efficiently and easily create online tenders, since it is easier to view all requests concerning conditions and proofs to be submitted under a specific tender.

Practice in Bosnia and Herzegovina

Taking into consideration that the group of set indicators relates to e-submission, application in Bosnia and Herzegovina is not possible due to the non-existence of a legislative framework (see Practice 15).

Table 23. Indicators of positive and negative practice no. 22

Positive practice indicators	Practice in BiH
Use CEN BII ¹⁰¹ data models to structure the data and CEN BII controlled vocabularies to facilitate the automation of evaluation-related processes and reporting	N/A
Use online forms to capture the structured data	NO
Use frequently asked questions and other supporting information to help economic operators fill in the forms	NO
Use automatic data validation in the online forms with clear guidance on how to correct any mistakes	NO
Allow bidders to save draft versions of their tenders on the platform	NO
Negative practice indicators	Practice in BiH
Oblige bidders to create their tenders only with unstructured documents	NO
Use proprietary standards to structure data	NO
Use proprietary controlled vocabularies to structure data	NO
Design online forms as an XML-scheme document	NO

Source: Bausà Peris et al, *e-Procurement: Golden Book of Good Practice*

4.4.23. Practice 23: Bidders Have the Freedom to Choose the Platform of Their Preference without Being Locked in by the Choice of the Contracting Authority

Good Practice Summary

Platforms that apply this practice can accept tenders submitted by bidders registered on other platforms. This can be achieved by allowing the same platform to be used by bidders as a front office (e.g., for downloading notices and submitting tenders) and by contracting authorities as a back office (e.g., for preparing contract notices and evaluating tenders). The interconnection between front-office and back-office platforms developed independently depends on interoperability agreements at technical, semantic and organizational levels. Bidders can choose the platform of their preference without being locked in by the choice of the contracting authority.

¹⁰¹ European Committee for Standardization/Business Interoperability Interface for Procurement in Europe – Business Interoperability Interface for Procurement, developed by European Standardization Committee, is a set of tools that enables binding of different procurement portals and which includes Organizational interoperability (the CEN BII profile); Semantic interoperability (the CEN BII data model with the related information content) and Technical interoperability (syntax binding). “CEN WS/BII CEN Workshop on Business Interoperability Interfaces for Public Procurement in Europe”, <http://www.cenbii.eu/the-bii-approach-to-interoperability/key-features/> (Accessed on February 4, 2016).

This way, better cross-border cooperation between the EU Members States, but also within a specific Member State, is achieved, assuming that several public procurement portals exist in that country. Bidders can find notices for a concrete procurement from other interoperable portals by using advance search tools, such as CPV Codes.

Practice in Bosnia and Herzegovina

The portal www.ejn.gov.ba is a single e-procurement portal, and therefore, interoperability within Bosnia and Herzegovina cannot be applied, which is not the case in the countries where several public procurement portals exist. Interoperability with the EU Member States' portals still does not exist since BiH is not an EU Member State. The possibility of connecting the portals when there is no obligation is quite questionable, and the author of the study finds it to be inadvisable since there would not be any reciprocity in terms of capacities of the public procurement market of the European Union and Bosnia and Herzegovina, having in mind that the EU market is much more competitive than the BiH market.

Table 24. Indicators of positive and negative practice no. 23

Positive practice indicators	Practice in BiH
Promote separation between the front-office side of platforms for bidders and the back-office side for contracting authorities	YES
Promote interoperability agreements among platforms that cover organizational, semantic and technical dimensions	N/A
Negative practice indicators	Practice in BiH
Exclude bidders registered on other platforms from submitting tenders	N/A

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

4.4.24. Practice 24: Platforms Use Standard Specifications to Structure Their Data and to Promote Interoperability

Good Practice Summary

Platforms that apply this practice implement specifications such as those of CEN BII and PEPPOL¹⁰². This way, it is possible for platforms to benefit from increased interoperability by adopting the specifications of CEN BII and the building blocks and specifications developed by the PEPPOL project.

¹⁰² PEPPOL Pan-European Public Procurement Online is a project of the European Commission project aimed at elimination of difficulties for cross-border procurement by enabling every bidder to electronically communicate with any contracting authority in the Europe in the public procurement process. "PEPPOL Final Report", <http://www.peppol.eu/news/openpeppol-news-2013/peppol-final-report-a-story-of-success/peppol-final-report-pdf> (Accessed on February 5, 2016).

The recommendations of CEN's e-procurement workshop help platforms to establish interoperability agreements at organizational and semantic levels. The specifications of PEPPOL are complementary and support interoperability at the technical level.

By using these tools, cross-border bidders are provided with more accessible public procurement notices and easier online drafting of bids.

Membership of Bosnia and Herzegovina in the EU is necessary for the successful implementation of identified practice, since the set of indicators in this practice relates to the tools for improvement of interoperability of the EU Member States' portals. Eventual binding/interoperability of the portals, when there is no legal obligation, is not advisable, according to the author's view (see Practice 23).

Table 25. Indicators of positive and negative practice no. 24

Positive practice indicators	Practice in BiH
Consider implementing the specifications developed by CEN BII and the services from PEPPOL	N/A
Include a link to e-Certis ¹⁰³ so that bidders are able to identify which documents and certificates they need to submit, and to help contracting authorities establish what documents they need to request	N/A
Negative practice indicators	Practice in BiH
Implement <i>ad hoc</i> , proprietary specifications which are not intended to promote interoperability across borders	N/A

Source: Bausà Peris et al., *e-Procurement: Golden Book of Good Practice*

¹⁰³ e-Certis – the information system that helps identify the different certificates and attestations frequently requested in procurement procedures across the 28 Member States, one Candidate Country (Turkey) and the three EEA countries (Iceland, Liechtenstein and Norway). “e-Certis” European Commission, DG Internal Market and Services, last time amended on July 30, 2014, <http://ec.europa.eu/markt/ecertis/login.do> (Accessed on February 5, 2016).

5.

Conclusion: Overview of E-Procurement in Bosnia and Herzegovina

Establishment of a single e-procurement portal www.ejn.gov.ba has created a solid foundation for the establishment of an effective e-procurement system in BiH. The modules¹⁰⁴ established so far and modules that were developed and now have to be implemented¹⁰⁵ represent approximately one half of the work necessary for the establishment of a full e-procurement system. Other stages of e-procurement represent a challenge in terms of reforms of e-procurement and e-administration. Concretely, development of *e-submission* would enable electronic submission of tenders, which would lead to a shortening of the deadlines and to the reduction of submission costs. *E-evaluation* would enable electronic evaluation of tenders, which would increase transparency with regard to the work of the tender board. Development of *e-award* would reduce the contract award period, thus increasing efficiency. *E-ordering* would also increase the efficiency of the contracting authorities, as well as transparency of small-value procurements and transparency of framework agreements' implementation. Apart from increasing transparency, *e-invoicing* and *e-payment* would reduce transaction costs. Development of all e-procurement stages would lead to the full application of electronic means of communication in public procurement procedures as an alternative to procedures based on paper documents.

Good practices of the EU Member States clearly indicate that e-procurements can save a lot of public funds. However, e-procurements in Bosnia and Herzegovina with the existing portal are still not completely protecting and saving public funds due to technical and legislative limitations, since the release of summaries in the Official Gazette is still charged. Therefore, an upgrade of the e-procurement system in BiH has to be a priority. It is only then possible to respond to market demands and to achieve principles of public procurements in general.

The first step of the upgrade is already possible through implementation of good practice indicators, which have showed room for improvement in the existing legislative framework and which do not require extensive technological

¹⁰⁴ Module of contracting authorities' register, module of bidders' register, module for release of all notices and submission of reports and module for management of ongoing tenders.

¹⁰⁵ E-auction module.

investments. For example, a problematic aspect of the current portal is a lack of online training that would popularize e-procurement and bring it closer to the bidders, but also to the contracting authorities, or an unnecessarily complex registration process for bidders, where on one side, there are no legislative obstacles for its improvement, and on the other, there are technical solutions that could resolve this issue in an efficient way.

The next step in development of the portal and e-procurement system is conditioned by legislative improvements, without which no technical upgrade of the portal and e-procurement is possible. Namely, e-procurement is part of public procurements, and public procurements are part of public administration; and therefore, the second step of e-procurement development is only possible through enactment of bylaws under the Law on e-signature and amendments to the Law on Public Procurement that would enable e-submission and evaluation of bids.

The third step in e-procurement development involves the adoption of good practices in a legislative framework that is more enhanced than the current one and directed to adaptation of the portal to the legislation and practices of the European Union. Currently, the e-procurement system, as well as the portal, is far away from adopting and applying data models for structured data, controlled vocabularies and tools that enable interoperability. However, it is possible to avoid problems that might occur once the e-procurement system in Bosnia and Herzegovina is obligated to use these instruments through timely education of developers and users.

Experiences of the EU Member States show how an e-procurement system is exposed to constant change. Bosnia and Herzegovina is not an exception. It is necessary to constantly adjust practices and existing technical solutions, which must be accompanied by adaptation of new legislation and amendments of existing legislation in order to have efficient public procurement that serves the principle of the best value for money.

6.

Recommendations for Improvement of the E-Procurement System in Bosnia and Herzegovina

Based on the analysis of the degree of e-procurement development in BiH, recommendations for improvement of the entire e-procurement system are classified in three categories:

- A. Recommendations that can be implemented under the existing legislative framework;
- B. Recommendations for the upgrade of the legislative framework of Bosnia and Herzegovina; and
- C. Recommendations for adaptation to the legislative framework of the European Union.

A. Recommendations that can be implemented under the existing legislative framework:

1. Time zone to be included in the category “deadline for submission of bids/participation request”, which is an integral part of the Procurement Notice. This will help the foreign bidders that are interested in high value procedures to easily understand conditions for submission of bids/tender;
2. To include *online* courses about the use of portal www.ejn.gov.ba for bidders and contracting authorities. This would popularize e-procurement and make use of the portal easier for bidders and contracting authorities that do not have access to training;
3. To develop joint *online* sessions of bidders and contracting authorities in order to eliminate misunderstandings in the e-procurement procedures;
4. To enable anonymous review of tender documentations published on the portal;
5. To promote good practices of e-procurement on the portal aimed at the popularization of e-procurement. This can be achieved by publicizing domestic and international experts’ articles, as well as by making the domestic and EU legislative available. It would be desirable to include reports prepared by the Public Procurement Agency and the Procurement Review Board. Links to the opinions of the Public Procurement Agency in concrete procedures would also have multiple benefits;

6. To maximally simplify the process of bidders' registration where bidders would provide a valid e-mail and where unnecessary requests for the submission of printed forms and accompanying documents during the registration process would be eliminated. The possibility of abuse of the portal is minimized, having in mind that the user/bidder is responsible for the data entered into portal, and the BiH Public Procurement Agency reserves the right to delete any inappropriate content¹⁰⁶. Data accuracy and proof of validity is subject to tender board's evaluation¹⁰⁷.
7. To equally treat domestic and international economic operations by eliminating the submission of data on operators' location and country of origin. In this way, the portal's operation would be harmonized with the legal practice set by the Court of the European Union that finds the prohibition of discrimination and equal treatment to be an exact formulation of the principle of equality, which is one of the principles of European Union law and means that similar situations are not treated differently, except if differentiation is objectively justified¹⁰⁸.
8. To develop an option to search notices against estimated contract value. This will enable bidders to very clearly and in a short period of time assess whether there is an economic interest to participate in the procedure without having to open each procurement notice for procurements they are interested in.
9. To provide English translation of not only search categories and options on the portal but also the notice title at least, i.e., translation of the notice's subject matter. In this way, foreign economic operations will easily select tenders to which they can apply.
10. To enable the search of notices by using the full CPV code, and not only their parts. In this way, the search can be narrowed down, thus enabling the bidders to get information about subjects of the procurements for which they are specialized, i.e., for which they can draw a bid.

B. Recommendations for the upgrade of the legislative framework of Bosnia and Herzegovina

1. To adopt bylaws set forth in Article 26 of the Law on e-signature ("Official Gazette of BiH", 91/06) that will enable electronic commerce and set the foundations for amendments to the Law on Public Procurement ("Official

¹⁰⁶ "Instruction on Conditions and Method of Publishing Notices and Submitting Reports in the Public Procurement Procedures under the e-Procurement Information System", Article 6, paras. 2 and 3.

¹⁰⁷ "Pravilnik o uspostavljanju i radu komisije za nabavke" [Ordinance on Establishment and Operation of the Procurement Committee], Article 5.

¹⁰⁸ European Court of Justice, *Albert Ruckdeschel & Co. and Hansa-Lagerhaus Ströh & Co. v Hauptzollamt Hamburg-St. Annen ; Diamalt AG v Hauptzollamt Itzehoe*, October 19, 1977.

Gazette of BiH”, no. 39/14) aimed at the popularization of e-procurement. In this context, we recommend amending the Law on Public Procurement in line with recognized positive indicators, which will enable e-submission and e-evaluation of the bids.

2. Following improvement of the legislative framework that enables e-submission of the bids, and in the context of bidders, we recommend the upgrade of the portal that would ensure data protection using SSL/TLS technologies. To use “Secure hash algorithms” that will make e-submission of the documents easier for bidders.
3. In the context of contracting authorities and with regard to recommended amendments to the Law, we recommend the upgrade of the portal that would enable contracting authorities to electronically evaluate bids. This would require the establishment of a clear management and decision-making system where decisions would be founded on developed bylaws on rules of electronic bid evaluation and reporting on received bids and evaluation results.

C. Recommendations for adaptation to the legislative framework of the European Union

1. All interested parties have to be informed through the portal about the tools used in the European Union in order to adequately adjust the e-procurement system. Primarily, to disseminate information about CEN BII data models for structured data and controlled vocabularies and about PEPPOL standards for the elimination of difficulties in the interoperability process. It is also necessary to inform interested parties about e-Certis, which will make identification of certificates and attestations easier.
2. To present and to develop forms that should be available on the portal and that are harmonized with the ones to be published on TED once publishing of the notices on TEC becomes mandatory for Bosnia and Herzegovina.
3. To upgrade the portal in line with the principles set in the Directives of the European Union on the protection of personal data.

7.

Bibliography

Publications and Reports

1. Attström, Karin, Robert Kröber, Jan Christoph Jähne, Jost Bergschneider, Jakob Thomä, Tristan Swysen, Felix-Sebastian Scholzen and Thomas Träutenmüller. *Review of the Functioning of the CPV Codes/System: Final Report*. Berlin: Ramboll, 2012. http://ec.europa.eu/internal_market/publicprocurement/docs/rules/cpv/121219_report-review-cpv-codes-functioning_en.pdf (Accessed on April 7, 2016).
2. Corsi, Marcella. "e-Procurement Overview", 2006. <https://www.oecd.org/mena/governance/36238198.pdf> (Accessed on April 7, 2016).
3. Crown Commercial Service. A Brief Guide to the EU Public Contracts Directive (2014). London: Crown Commercial Service, 2015. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472985/A_Brief_Guide_to_the_EU_Public_Contract_Directive_2014_-_Oct_2015__1_.pdf (Accessed on May 28, 2016).
4. Ćurčić, Fuad, Vedad Silajdžić, Mirna Jusić and Sanela Hodžić. *Razvoj lokalne e-uprave u Bosni i Hercegovini* [Development of Local e-Government]. Sarajevo: Mediacentar, 2011. http://www.media.ba/mcsonline/files/shared/Integralni_izvjestaj_lokalna_e-uprava_u_BiH_-_za_web_0.pdf (Accessed on May 25, 2016).
5. Directorate for European Integration of Bosnia and Herzegovina. *Pojmovnik evropskih integracija* [Glossary of European Integration]. Sarajevo: Directorate for European Integration of Bosnia and Herzegovina, 2010.
6. European Commission. "Delivering Savings for Europe: Moving to Full E-procurement for All Public Purchases by 2016: Press Release". Brussels: European Commission, April 20, 2012. http://europa.eu/rapid/press-release_IP-12-389_en.htm (Accessed on April 7, 2016).
7. Government of Republic of Croatia. Strategija razvoja elektroničke javne nabave u Republici Hrvatskoj 2013. – 2016. [Strategy for Development of Electronic Public Procurement in Republic of Croatia 2013. – 2016]. Government of Republic of Croatia, 2013. <https://vlada.gov.hr/UserDocsImages/ZPPI/Strategije%20-%20OGP/branitelj/Strategija%20razvoja%20elektroni%C4%8Dke%20javne%20nabave%20u%20Republici%20Hrvatskoj%202013.%20%E2%80%93%202016.pdf> (Accessed on May 26, 2016).
8. Khorana, Sangeeta, Kirsten Ferguson-Boucher and William A. Kerr. "Governance Issues in the EU's e-Procurement Framework", *Journal of Common Market Studies* 53, no. 2 (2015), pp. 292–310.
9. Peris, Bausà, Saky Kourtidis, Kelly Liljemo, Nicolas Loozen, Frade Rodrigues and João Snaprud. *e-Procurement: Golden Book of Good Practice: Final Report*. Brussels: Directorate General Internal Market and Services (DG MARKET) of the European Commission, 2013.

10. Procurement Policy Office. Public Procurement: (Electronic Bidding System): Regulations. London: Crown Commercial Service, November 10, 2015. [http://ppo.govmu.org/English/Documents/Public%20Procurement%20\(Electronic%20Bidding%20System\)%20Regulation%202015-Amended.pdf](http://ppo.govmu.org/English/Documents/Public%20Procurement%20(Electronic%20Bidding%20System)%20Regulation%202015-Amended.pdf) (Accessed on May 25, 2016).
11. Public Procurement Agency of Bosnia and Herzegovina. Godišnji izvještaj o zaključenim ugovorima u postupcima javnih nabavki u 2014. godini [Annual Report on Awarded Contracts in Public Procurement Procedures in 2014]. Sarajevo: Public Procurement Agency of Bosnia and Herzegovina, 2015. https://www.javnenabavke.gov.ba/izvjestaji/godisnji%20izvjestaj/Godisnji_izvjestaj_2014_bs.pdf (Accessed on January 25, 2016).
12. Public Procurement Agency of Bosnia and Herzegovina. *Kratko uputstvo o načinu korištenja informacionog sistema e-nabavke* [Brief Manual on Manner of Usage of e-Procurement Information System]. Sarajevo: Public Procurement Agency. https://www.ejn.gov.ba/content/manual/Pomoc%20e-Nabavke_bs.pdf (Accessed on January 15, 2016).
13. SIGMA. *e-Procurement*. Paris: SIGMA, 2011.
14. Support for Improvement in Governance and Management, SIGMA 2012. Obuka o javnim nabavkama za korisnike IPA-e: Modul A [Training in Field of Public Procurement Purposed for Users of Instruments of Pre-Accession Assistance, IPA. Module A].
15. United Nations, Department of Economic and Social Affairs. *E-Procurement: Towards Transparency and Efficiency in Public Service Delivery*. New York: United Nations, 2011. <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan047627.pdf> (Accessed on May 28, 2016).

Laws and Bylaws in Bosnia and Herzegovina

1. "Odluka o korištenju jedinstvenog rječnika javnih nabavki" [Decision on Usage of Unified Public Procurement Dictionary]. *Official Gazette of BiH* 54/15.
2. "Pravilnik o postupku direktnog sporazuma" [Ordinance on Direct Agreement Procedure]. *Official Gazette of BiH* 90/14.
3. "Pravilnik o uspostavljanju i radu komisije za nabavke" [Ordinance on Establishment and Operation of the Procurement Committee]. *Official Gazette of BiH* 103/14.
4. "Uputstvo o dopunama Uputstva o uslovima i načinu objavljivanja obavještenja i dostavljanja izvještaja u postupcima javnih nabavki u informacionom sistemu e-nabavke" [Instruction on Addenda to Instructions on Conditions and Manner of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement']. *Official Gazette of BiH* 53/15.
5. "Uputstvo o objavi osnovnih elemenata ugovora i izmjena ugovora" [Instruction on Publication of Basic Elements of the Contract and Addenda to the Contract]. *Official Gazette of BiH* 56/15.
6. "Uputstvo o uslovima i načinu objavljivanja obavještenja i dostavljanja izvještaja u postupcima javnih nabavki u informacijskom sistemu e-nabavke" [Instructions on Conditions and Manner of Publication of Notifications and Report Delivery in Public Procurement Procedures in Information System of 'e-Procurement']. *Official Gazette of BiH* 90/14.

7. "Zakon o elektronskom potpisu" [Law on Electronic Signature]. *Official Gazette of BiH* 91/06.
8. "Zakon o javnim nabavkama" [Law on Public Procurement]. *Official Gazette of BiH* 39/14.
9. "Zakon o lijekovima i medicinskim sredstvima" [Law on Drugs and Medicinal Means]. *Official Gazette of BiH* 58/08.
10. "Zakon o upravnom postupku" [Law on Administrative Procedure]. *Official Gazette of BiH* 29/02, 12/04, 88/07, 93/09 and 41/13.
11. "Zakon o zaštiti ličnih podataka" [Law on Protection of Personal Data]. *Official Gazette of BiH* 49/06, 76/11 and 89/11.

European Union Acts

1. Commission of the European Communities. eEurope - An Information Society for All. Brussels: Commission of the European Communities, December 8, 1999. <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l24221&from=EN> (Accessed on May 25, 2016).
2. Commission of the European Communities. eEurope 2005: An Information Society for All. Brussels: Commission of the European Communities, February 28, 2002. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al24221> (Accessed on May 25, 2016).
3. Commission of the European Communities. i2010 – A European Information Society for Growth and Employment. Brussels: Commission of the European Communities, June 1, 2005. <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0229:FIN:EN:PDF> (Accessed on May 27, 2016).
4. "Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC". *Official Journal of the European Union* L 64/95, March 28, 2014. <http://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32014L0024&from=HR> (Accessed on May 30, 2016).
5. "Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC". *Official Journal of the European Union* L 94/243, March 28, 2014.
6. "Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on Electronic Invoicing in Public Procurement". *Official Journal of the European Union* L 133/1, May 6, 2014. <http://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32014L0055> (Accessed on May 27, 2016).
7. European Commission. Bosnia and Herzegovina 2015 Report. Brussels: European Commission, November 10, 2015.
8. European Commission. Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth. Brussels: European Commission, March 3, 2010. http://aei.pitt.edu/42633/1/com2010_2020en01_straetry.pdf (Accessed on May 29, 2016).

9. European Commission. Green Paper on Expanding the Use of e-Procurement in the EU. Brussels: European Commission, October 18, 2010. http://ec.europa.eu/internal_market/consultations/docs/2010/e-procurement/green-paper_en.pdf (Accessed on May 29, 2016).

10. "Sporazum o stabilizaciji i pridruživanju između evropskih zajednica i njihovih država članica, s jedne strane i Bosne i Hercegovine, s druge strane" [Stabilisation and association agreement between Bosnia and Herzegovina, of the one part, and the European Communities and their member states, of the other part]. http://www.dei.gov.ba/bih_i_eu/ssp/default.aspx?id=1172&langTag=bs-BA (Accessed on April 9, 2016).

Rulings

1. European Court of Justice. *Albert Ruckdeschel & Co. and Hansa-Lagerhaus Ströh & Co. v Hauptzollamt Hamburg-St. Annen ; Diamalt AG v Hauptzollamt Itzehoe*, C-117-76 i C-16-77, October 19, 1977.

2. European Court of Justice. *Beentjes v State of the Netherlands*, C-31/87, November 18, 1999.

3. European Court of Justice. *Commission of the European Communities v Federal Republic of Germany*, C-480/06, June 13, 2013.

4. European Court of Justice. *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*, C-107/98, June 9, 1999.

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