

THE DEVELOPMENT OF AN E-PROCUREMENT SYSTEM IN BOSNIA AND HERZEGOVINA¹

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The establishment of a single portal for e-procurement (www.ejn.gov.ba) in late 2014 is a good basis for the development of an efficient e-procurement system in BiH. However, so far, approximately one half of the functional modules needed for a completed system of electronic public procurement have been implemented, and important formal-legal preconditions, primarily bylaws from the Law on Electronic Signature and the Law on Public Procurement, are missing. Those bylaws would enable electronic submission and bid evaluation. All of this indicates the electronic procurement system is still in an early developmental phase. That is why it is crucial that all elements of an electronic public procurement system are established as soon as possible, because they can significantly contribute to the improvement of transparency, efficiency and cost-effectiveness in public procurement in Bosnia and Herzegovina.

EXECUTIVE SUMMARY

1. INTRODUCTION

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 the contract management². 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 the services of contracting authorities and establishes a system of publication, awarding and man-

aging contracts, which is a function of the principle of transparency.

E-procurement also means faster order, 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 the reduction of transaction costs and the amount of waste, because e-procurement reduces paperwork and provides better control over expenditure 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



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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 have reported savings of 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 EUR per year, which is equivalent to building more than 150 hospitals³.

2. E-PROCUREMENT IN BOSNIA AND HERZEGOVINA: LEGAL FRAMEWORK

The legal basis for the development of an e-procurement system in Bosnia and Herzegovina (BiH) is the Law on Public Procurement⁴. The development of e-procurement in BiH began in 2009 through the introduction of the WisPPA (Web Information System for Public Procurement Agency) for the submission of reports and the GO PROCURE online system for the publication of notifications on public procurement procedures.

An integrated e-procurement information system became operational in late 2014. The system was designed as a comprehensive portal, on the national level, which would enable development of 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, the WisPPA and the Go Procure system with all its func-

tions. The second phase includes plans to upgrade the e-procurement system with two new modules, e-tender and e-auctions⁵. Currently www.ejn.gov.ba portal is a platform where contracting authorities and bidders can register and search information on procurements, on decisions made by the Procurement Review Body and BiH Court, and on registered and activated contracting authorities and bidders in BiH.

Under the new regulations, all contracting authorities⁶ 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, but by an implementing regulation,⁷ adopted in 2015, the Agency has obliged all contracting authorities to release, in 2016, relevant procurement 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 notifications on procurement on the public procurement portal in 2015 was in total 18.735. The number of published tender documentation sets in the same period was 1.801, meaning that documentation for 9,6% of procedures was published in one year. However, given that the module for 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 procurement documents were published, meaning that the publishing percentage was 17,47%. Until mid-May of 2016, a total of 6.620 procurement notices and 2.829 tender documents were published, representing 42,73% of the total percentage of published information⁸.

Electronic communication between the contracting authorities and bidders is possible, if the contracting authority chooses to engage, i.e., if the authority chooses to publish procurement documents online⁹. If the documents are not published, then 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 documents,¹⁰ to ask for clarification related to them. 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 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 a 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 prerequisite for further development of e-procurement is the application of the Law on Electronic Signature. In BiH, this law went 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 functional¹¹.

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 published on

the portal. However, electronic payment is not available at the moment, and there is no mechanism for monitoring 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 requires changes in the existing budget laws in order to allow the contracting authorities to accept/allow direct online payments.

The Law on Public Procurement also provides for the possibility of electronic auctions¹² as well as a dynamic purchasing system,¹³ but its use is only possible with new rules and regulations which, at the time of this report, have not been adopted. The Agency has published the “preliminary draft” of the Rules and Regulations on the conditions and use of e-auctions, defining the objectives of e-auction, the conditions for its utilization and conditions for entry of acceptable bids, as well as the duration, terms and obligations of the PPA. Article 9¹⁴ of the Law is also significant, given that it proposes a schedule for the introduction of e-auctions into the BiH public procurement system. According to the proposal, e-auctions 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., it has no legal effect. The provisions contained by it have been written in accordance with the Directive 2014/24EU.

3. DEVELOPMENT OF AN E-PROCUREMENT INFORMATION SYSTEM

The establishment of a single e-procurement portal www.ejn.gov.ba has created a solid foundation for the establishment



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of an effective e-procurement system in BiH. The modules¹⁵ established so far and the modules that were developed and now have to be implemented¹⁶ represent approximately one half of the work necessary for 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 deadlines and to a 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 contracting authorities, as well as the transparency of small-value procurements and the 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 full application of electronic means of communication in public procurement procedures as an alternative to procedures based on paper documents.

Further, the existing portal and established practices are still suffering due to technical and legislative weaknesses that limit positive effects, which are possible even in this phase, as a result of improvements made to public procurement systems in BiH. In addition, problematic technical aspects of the existing portal include a lack of online training, which would popularize and make e-procurement closer to bidders and contracting authorities, and unnecessarily complex bidders' registration procedures. There are no legal obstacles for the removal of these technical weaknesses, and technical solutions resulting in an efficient resolution of these problems are easily accessible.

4. CONCLUSION

Given all the aforementioned analysis, it is no surprise that the EC Progress Report for BiH for 2015 highlights that the e-procurement system is still in its early development¹⁷. Due to technical and legal limitations, the system is still not providing full function of protection or public funds savings. Good practices of the EU Member States clearly indicate that e-procurement can save a lot of public funds; 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 an upgrade is already possible through the implementation of good practices on a technical level, such as are already applied in other countries, for the simplest system utilization. Most of these changes are applicable in the existing legislative framework and require no extensive technological investments.

The next step in development of the portal and e-procurement system is conditioned on legislative improvements, without which no technical upgrade of the portal and e-procurement system 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 toward adaptation of the portal as per 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 the 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 adoption of new, and amendments of existing, legislation in order to have efficient public procurement that serves the principle of the best value for money.

5. 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. To include *online* courses about the use of portal www.ejn.gov.ba for bidders and contracting authorities. This would popu-

larize e-procurement and make use of the portal easier for bidders and contracting authorities that do not have access to training.

2. To develop joint *online* sessions of bidders and contracting authorities in order to eliminate misunderstandings in the e-procurement procedures.

3. To enable anonymous review of tender documentation published on the portal.

4. 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 legislation 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 specific procedures would also have multiple benefits.

5. 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 content¹⁸. Data accuracy and proof of validity is subject to tender board's evaluation¹⁹.

6. 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 justified²⁰.

7. 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.

8. To enable the search of notices by using the full CPV²¹ code, and not only parts of notices. In this way, the search can be narrowed down, thus enabling bidders to get information about subjects of the procurements in which they have a specialization, i.e., for which they can draw a bid.

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

9. To adopt bylaws set forth in Article 26 of the Law on e-signature²² that will enable electronic commerce and set the foundations for amendments to the Law on Public Procurement²³ 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.

10. 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/TLS²⁴ technologies. To use “Secure hash algorithms” that will make e-submission of documents easier for bidders.

11. 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

12. To upgrade the portal in line with the principles set in the Directives of the European Union on the protection of personal data.

Endnotes

1 This policy brief is a summary of the report: Ivan Kutleša, *Analysis of the e-Procurement System in Bosnia and Herzegovina* (Sarajevo: Analitika, 2016).

2 Marcella Corsi, “e-Procurement Overview”, 2006. <https://www.oecd.org/mena/governance/36238198.pdf> (Accessed on April 7, 2016).

3 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).

4 “Law on Public Procurement”, *Official Gazette of BiH* 39/14.

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

6 “Law on Public Procurement”, Article 36.

7 “Uputstvo o dopunama Uputstva o uslovima i načinu objavljivanja obavještenja i dostavljanja izvještaja u postupcima javnih nabavki u informacijskom 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, Article 9, paras. 9 and 10.

8 Data for percentage calculation taken from <http://www.ejn.gov.ba> (Accessed on May 25, 2016).

9 “Law on Public Procurement”, Articles 70 and 99.

10 “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.

11 "Law on Electronic Signature", *Official Gazette of BiH* 91/06, Article 26.

12 "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, "eDražba"* [Electronic Journal for Public Procurement of Republic of Croatia, eBid] <https://eojn.nn.hr/oglasnik/clanak/edrazba/0/175/> (Accessed on April 7, 2016).

13 "Law on Public Procurement", Article 123.

14 *Ibid.*, Article 9.

15 Module of contracting authorities register, module of bidders register, module for publication of all notifications and report submission and module for managing tenders in procedures.

16 Module for e-auction.

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

18 "Uputstvo o uslovima i načinu objavljivanja obavještenja i dostavljanja izvještaja u postupcima javnih nabavki u informacionom 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, Article 6, paras. 2 and 3.

19 "Pravilnik o uspostavljanju i radu komisije za nabavke" [Ordinance on Establishment and Operation of the Procurement Committee], *Official Gazette of BiH* 103/14, Article 5.

20 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 and C-16-77, October 19, 1977.

21 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.

22 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).

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