

# SHADOW REPORT

ON PUBLIC PROCUREMENT IN  
BOSNIA AND HERZEGOVINA 2023





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December 2023



This report is developed as part of the project “Balkan Tender Watch” implemented by the Center for Civil Communications and the Balkan Tender Watch Coalition and financially supported by the Foundation Open Society – Macedonia.

Balkan Tender Watch is a regional coalition of CSOs working on fight against corruption in public procurement in the Western Balkans.



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Electronic edition

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## HIGHLIGHTS

KEY PUBLIC PROCUREMENT FIGURES, 2022	
Annual value of public procurement:	2.25 billion EUR
Public procurement as share of GDP:	10.65%
Public procurement as share of state budget expenditure:	23.49%
Average number of bids per tender procedure:	1.93
Share of tender procedures with one bid:	51.37%
Value share of open procedures:	71,42%
Value share of public procurements for goods:	39.47%

- The European Commission assessed that Bosnia and Herzegovina has some level of preparation in the area of public procurement and limited progress;
- The latest legislative changes from August 2022 entered into effect without any significant impact on the public procurement system;
- A set of 20 bylaws makes the public procurement system complex;
- Key procurement institutions such as the Public Procurement Agency (PPA), Public Procurement Review Body (PRB), and Administrative Department at the Court of Bosnia and Herzegovina lack sufficient capacity for quality, efficient, and adequate performance of their responsibilities.
- The legal protection system in Bosnia and Herzegovina allows a very high number of appeals, which affects legal certainty, reduces trust in the public procurement system, and delays project implementation.
- The last Anti-Corruption Strategy was prepared for the period 2015-2019 and the last Anti-Corruption Plan for years 2018 and 2019, which negatively impacts integrity processes and anticorruption efforts in public procurement.
- According to the most significant indicators, the level of competition in public procurement is low. The average number of bids has decreased almost every year since 2016 when it was 2.54 to 1.93 in 2022. Similarly, in 2016, the share of procedures with only one bid was 41.66%, while in 2022 it was 51.37%.
- Further development of digitalization in public procurement is necessary to increase transparency, enhance market competitiveness, and improve integrity in public procurement procedures.
- Compromised integrity in public procurement and, consequently, corruption, can occur in all stages of public procurement procedures and processes in Bosnia and Herzegovina. This is the general conclusion inferred from monitoring public procurement procedures in 2023.
- The impunity related to abuses and corruption in public procurement remains present, but there is visible progress in sanctioning certain high-ranking officials.

## INTRODUCTION

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Starting from 2018, Balkan Tender Watch - a regional coalition of civil society organizations working on fight against corruption in public procurement - assesses the state-of-affairs in public procurement in the Western Balkans.

Based on the unique monitoring methodology comprised of 68 indicators, the average score for all six WB countries related to public procurement performance in terms of application of legislative, institutional, systemic and practical anticorruption measures is calculated at 67%, which means that 33% of all public procurements are still implemented under serious threat of corruption.

In 2022, the total value of public procurement in all WB countries amounted to total of 11.6 billion EUR. The average share of public procurement in the gross domestic product (GDP) of WB countries stands at 8.78%, while its share in total budget expenditure averages at 25.7%. When this amount is correlated to the calculated score of 67%, it could be inferred that, annually, 3.8 billion EUR are under direct threat of corruption.

As regards the general preparedness of WB countries in the area of public procurement, the European Commission has assessed Montenegro as the best prepared and Bosnia and Herzegovina as the least prepared country. Montenegro has moderate-to-good and Bosnia and Herzegovina has some level of preparedness. Kosovo is assessed as some-to-moderately prepared, with the remaining WB countries (Albania, North Macedonia and Serbia) falling within the range of moderate preparedness. All WB countries are recommended to improve integrity, fight against corruption and conflict of interests in public procurement, and to ensure consistent implementation of public procurement rules.

Public procurement in the Western Balkans is characterized by absence of/insufficient competition, incomplete transparency, lack of efficient control across the entire public procurement cycle, especially in respect to contract performance, and lack of integrity.

Almost all WB countries suffer some form of non-alignment of their respective legislative and institutional frameworks, which creates problems in implementation of public procurements.

Impunity for violations, abuses and criminal offences committed as part of tender procedures remains the biggest problem in the fight against corruption in public procurement and hinders all and any efforts made towards more efficient public spending.

WB countries are recommended to further improve transparency, accountability and liability in public procurement, take specific measures aimed at detecting and preventing conflict of interests, promote integrity in public procurement, as well as process and monitor cases of malpractice and abuse.

WB countries should take urgent and enhanced efforts to ensure and promote competition, equal treatment and non-discrimination in public procurement, as well as to provide further professional and continuous training for persons involved in public procurement.

In addition to the Comparative Evaluation Report, the state-of-affairs in the field of public procurement at the level of individual WB countries is covered under annual shadow reports aimed to offer country-specific and evidence-based insight into and “local” view of public procurements – how effective is the public procurement system, is the legislative and institutional setup appropriate and do the practical measures taken safeguard against corruption.

This Shadow Report is developed as part of the Balkan Tender Watch Initiative aimed at establishing the state of public procurement in Bosnia and Herzegovina, particularly from the perspective of identifying abuses, corruption, and corrupt practices, as well as effectiveness of existing control mechanisms, integrity, and anticorruption efforts. As previously underlined in similar reports, the section on public procurement under the EU Progress Reports (Chapter 5) barely addresses the issue of corruption in public procurement and mostly focuses on technical aspects of aligning current legislation with the EU acquis. However, this practice has slowly changed in the last two years with the issue of corruption in public procurement receiving significant attention. The European Commission's 2023 Country Report notes that *"Bosnia and Herzegovina has some level of preparation in the area of public procurement. There was limited progress... public procurement remains prone to irregularities and vulnerable to corruption. Selective and non-transparent judicial follow-up in cases of corruption in public procurement is a cause of significant concern. The country needs to ensure continued equal treatment of domestic and EU bidders in awarding public contracts in line with SAA provisions."*

General findings indicate that the public procurement system in Bosnia and Herzegovina is characterized by significant presence of corruption, pronounced distrust among stakeholders, inadequate transparency levels, low competition levels, open favouritism towards certain suppliers through discriminatory practices in tender documents, absence of any accountability even in cases of identified unlawfulness, and many other deviations that undermine integrity of public procurement. Compromised integrity in public procurement and, consequently, corruption, can occur in all stages of public procurement procedures, requiring considerable efforts to detect and prevent corruption.

The most recent EC Report reiterated recommendations repeated for several years now, as follows:

- *further align the public procurement law with the EU public procurement acquis, including in the area of concessions;*
- *adopt a new 2023-2027 public procurement strategy and an accompanying action plan that supports its implementation;*
- *increase staffing level and strengthen capacity at the Public Procurement Agency and the Public Procurement Review Body.*

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<sup>1</sup> The latest strategic document is the Development Strategy of Public Procurement in Bosnia and Herzegovina for the period 2016-2020, adopted by the Council of Ministers of Bosnia and Herzegovina in October 2016. This strategy expired in 2020.

## STATE OF AFFAIRS

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### **The EC's 2023 Progress Report highlights further alignment of the Public Procurement Law with the EU public procurement acquis, including in the area of concessions.**

The current law was adopted in 2014 and entered into force in November 2014. The legal framework was designed in line with the 2004 EU Directives on Public Procurement, 2007 Directives on Legal Remedies in Public Procurement and 2009 Directive on Procurement in the Defence and Security Sector. In 2018, the Public Procurement Agency (PPA) drafted amendments to the law to address several shortcomings and further align it with the EU acquis, in particular the 2014 EU Directives on Public Procurement. The law amendments were adopted in August 2022. The law is largely aligned with the EU acquis, except for few minor differences in contract award criteria, types of procurement procedures (innovation partnerships), in-house procurements, and in respect to amendments and changes to bids and changes to contracts.

### **Bosnia and Herzegovina has not have a defined strategic framework for development of the public procurement system for over three years. This certainly illustrates the situation in which this area finds itself.**

From various documents (Transparency International's 2021 Corruption Perception Index, the latest EU Country Report, and the SIGMA 2021 Monitoring Report), it could be inferred that Bosnia and Herzegovina made little progress in establishing a public procurement system free from undue interference and influence. The public procurement system continues to be governed by overly complex procedures that do not prevent corruption.

Given the aforementioned problems in the public procurement system in Bosnia and Herzegovina and the fact that the previous Public Procurement Development Strategy expired in 2020, the Public Procurement Agency, as the key institution in the field of public procurement, has approached the EU with a request for technical assistance in drafting a new public procurement strategy for the period 2024-2028 in order to fulfil its mandate in line with the six strategic priorities under EU public procurement regulations. This strategic document includes priorities in various areas of classic public procurement, sector-specific procurement, and complaint areas, but does not include areas of public-private partnerships and concessions and procurement in the area of defence and security.

It should be noted that the Procurement Development Strategy was initially planned for the period 2023-2027, but difficulties arose in its preparation and adoption. Currently, the draft strategy is undergoing consultations and is expected to be adopted soon.

### **Main problems in the public procurement system include weak capacity for managing procurement processes, insufficient staffing at the Public Procurement Agency (PPA), as well as problematic trend of increasing number of complaints that requires efforts to strengthen capacity of the Procurement Review Body (PRB).**

The urgent need to improve the institutional framework of the public procurement system is also based on the neglect of the main institutions within this system (PPA and PRB) over the years, and the desire for (political) control over the main 'controllers' of integrity and legality of public procurement in Bosnia and Herzegovina, which has opened way to numerous corrupt practices. For years, these institutions lacked staff and other material resources which, in turn, gives them an excuse for increasingly poor results. While one of PPA's main functions is to monitor and supervise implementation of public procurement procedures, it is evident that this function is underdeveloped and that the Public Procurement Agency does not have sufficient capacity for performance thereof. When these problems are added to PRB's track

record (from taking different positions in identical cases and making diametrically opposite decisions, to selecting members based on 'suitability' rather than integrity and qualifications, to 'nationally' coloured decisions in certain procurement cases and abuses by contracting authorities), it becomes evident that improving the institutional framework is also a priority for improving the public procurement system in Bosnia and Herzegovina.

Main institutions in public procurement are the Public Procurement Agency (PPA) and the Procurement Review Body (PRB), with audit offices, administrative department at the BiH Court and the Anti-Corruption Agency playing a significant role as well. The institutional framework for public procurement in Bosnia and Herzegovina serves as example of centralized key public procurement functions, as these are significantly concentrated within the purview of two independent institutions: PPA and PRB.

Weak capacity at PPA and PRB and lack of funds to recruit systematized positions serve as the main excuse by these institutions for issues in respect to performance of monitoring and control, as well as improving the public procurement system.

**Competition indicators in public procurement procedures show low average number of bids, high share of single-bid procedures, and decrease in participation by foreign companies which represents a significant challenge in the public procurement system in Bosnia and Herzegovina.**

While Bosnia and Herzegovina's public procurement sector showcases substantial financial figures, it is crucial to critically assess certain aspects of its functioning. The total annual procurement value exceeds 2.25 billion EUR and while significant, it prompts questions about efficiency and effectiveness of procurement processes. The average share of public procurement in GDP (10.65%) and budget expenditure (23.49%) raises concerns about allocation and utilization of public funds, calling for closer examination of economic impact and value for money. Examining the breakdown of procurement value across goods, services and works provides insights into diversity of economic activities in the country. Goods account for 39.47% of the total procurement value, services contribute 36.00%, and works represent 24.54%. This distribution reflects a balanced engagement across various sectors, showcasing the multifaceted nature of public procurement in Bosnia and Herzegovina.

The average number of bids per tender procedure is 1.93, indicating that competition is low although open procedures dominate the procurement landscape, constituting 71.42% of the total procurement value. Negotiating procedures and other procurement methods contribute 11.44% and 17.13%, respectively.

It could be concluded that some data, such as the trend on decreased use of negotiating procedure without previously announced procurement notice, the trend on increasing number of registered contracting authorities and the trend in respect to the share of public procurement in GDP, indicate to improvement in the public procurement system in Bosnia and Herzegovina, but insufficient when compared to the decreased average number of bids and the share of foreign bidders. The average number of bids has decreased almost every year since 2016 when it was 2.54 to 1.93 in 2022. Similarly, in 2016, the share of procedures with only one bid was 41.66%, while in 2022 it was 51.37%. Despite the elimination of preferential treatment for domestic suppliers and decreased share of negotiating procedures without previously announced procurement notice, there is a noticeable decrease in the level of competition and the share of foreign bidders. The level of competition in public procurement in Bosnia and Herzegovina is low, making the system uneconomical and inefficient and increasing the possibility for abuse and collusion among bidders.



## MAIN CHALLENGES

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**The EC's 2023 Progress Report highlights that Bosnia and Herzegovina needs to introduce a comprehensive and effective system for electronic public procurement to enhance transparency and mitigate the misuse of public resources.**

The Public Procurement Law specifies the use of electronic public procurement in multiple instances. It defines the use of the Public Procurement Portal, the possible use of dynamic purchasing systems, and electronic auctions. Contracting authorities are required by law to publish all notifications in electronic form. Moreover, secondary legislation mandates all tender documents to be made available on the Public Procurement Portal, exclusively downloadable from the portal, clarifications about tender documents to be conducted through the portal, and bidders to be informed about complaints received through the portal. The Electronic Public Procurement System (e-procurement) was launched into production at the start of PPL enforcement in 2014. The e-procurement system integrated three existing systems: the registers of contracting authorities and bidders, the system for submission of reports on conducted public procurement procedures, and the system for publication of notifications in public procurement procedures, which include registration, notification publication, submission, and publication of reports in public procurement procedures. By the end of 2022, the Public Procurement Agency started work on upgrading the system to introduce open data, e-audits, support for small and medium-sized enterprises (SMEs), and enhancing the search function for published decisions of the Procurement Review Body (PRB) and judgments of the Court of Bosnia and Herzegovina. This upgrade involves introduction of additional search parameters, classifying key words by procedures, and improving search capabilities.

The Public Procurement Agency worked on upgrading the information system with modules for electronic submission of bids by bidders, electronic bid opening, electronic bid evaluation, and electronic generation and publication of decisions on completed procurement procedure. However, due to technical and legal issues related to electronic signatures, no secondary regulation was issued to enable deployment of the aforementioned modules and, as a result, they were not launched into production. Additionally, there is no capability for electronic verification of personal qualifications (e-dossier module) from databases of other institutions (e.g., data on direct and indirect taxes paid, certificate from criminal records on absence of criminal offense convictions, etc.). An analysis has already shown that most authorities have some form of electronic records, which is the first prerequisite for interoperability. However, there is lack of computerization of all registers used in public procurement. Currently, the IT group at PPA, comprised of four officers, is responsible for computerization of public procurement procedures and development of relevant tools.

Bosnia and Herzegovina's obligation under the Action Plan of the Council of Ministers of Bosnia and Herzegovina for implementation of the Open Government Partnership in the period 2022-2024 envisages implementation of the measure titled "Open Data on Public Procurement in BiH". According to this measure, publicly available data on public procurement in Bosnia and Herzegovina, collected through the national portal for public procurement ([www.ejn.gov.ba](http://www.ejn.gov.ba)), should be made available in additional formats, not just read-only format. The deadline for this measure was the end of 2023, but in December 2023, PPA has only partially complied with this obligation and created a new interface within the national portal (<https://next.ejn.gov.ba/en/open-data>). However, public data made available contain only a small portion of those envisaged under OGP measure which PPA was obliged to publish, including:

1. data from the register of contracting authorities;
2. data from the register of suppliers (domestic and foreign);
3. data on published notices;
4. data on contract awards (Chapters I and V);
5. data on awards under annual notices (Annex II Part B, Framework Agreements);
6. data on exceptions from application of the Public Procurement Law;
7. data on auctions.

***The EC's 2023 Progress Report highlights that an improved monitoring and inspection control system is deemed necessary to address corruption and irregularities in public procurement procedures.***

Employers, small and medium-sized enterprises, as well as civil society organizations, constantly highlight problems that arise in implementation of the law, indicating the need for its improvement. Additionally, the law needs continuous alignment with the principles and procedures of the European Union (EU) in the area of public procurement and should ensure control over the procurement system in Bosnia and Herzegovina. The Directive on Public Sector Procurement<sup>2</sup> introduces additional requirements in respect to monitoring the public procurement system's operation. Article 83 of the Directive requires Member States to ensure that the application of public procurement rules is monitored by "one or more bodies, authorities, or structures" (monitoring bodies). These monitoring bodies must be authorized to report on "certain violations or systemic problems" they identify. These reports can be prepared for reporting to "national audit bodies, courts, or other relevant bodies or structures, such as ombudsmen, national parliaments, or their committees". Therefore, Member States have some discretion to decide on the most appropriate reporting structure when certain violations or systemic problems are identified, but they must allow monitoring bodies to report on these issues.

The Public Procurement Agency (PPA) and the Procurement Review Body (PRB) are responsible for monitoring implementation of the Public Procurement Law and its secondary regulations. PPA is responsible for establishing a monitoring system for procedures conducted by contracting authorities, addressing identified irregularities, collecting data, and monitoring work of authorized lecturers. In its latest analysis, PPA identified certain deviations in the public procurement system, including poor procurement planning, organization of negotiating procedures without published procurement notice even when conditions for such procedure are not met, division of public procurements to avoid organization of adequate procurement procedures, failure to publish notifications, lack of educated staff, and bidders withdrawing from contract signing. PPA has signed cooperation agreements with 18 prosecution offices in Bosnia and Herzegovina and established cooperation with the Office of the Auditor General of Bosnia and Herzegovina for provision of advisory opinions. In 2022, PPA filed 18 motions for initiation of misdemeanour proceedings, and charges for criminal offenses in 2 cases were forwarded to the competent prosecution office. PRB conducts monitoring through the complaint process and offense proceedings. In 2022, PRB filed 4 misdemeanour reports and one criminal report.

Public procurement is also monitored as part of work conducted by the audit offices. At the end of 2021, the Office of the Auditor General of Bosnia and Herzegovina conducted a performance

<sup>2</sup> 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 94/65, 28.3. 2014. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>

audit of the public procurement system and highlighted, among other things, that nearly 20% of planned public procurement procedures were initiated late, that institutions often change plans and do not fully adhere to them. Also, institutions have not established monitoring of contract implementation; most institutions face capacity issues for conducting procurement activities; key institutions have not adopted action plans; misdemeanour reports are rarely filed; and key institutions face challenges in ensuring staff capacity.

The Regulation on Monitoring Public Procurement Procedures<sup>3</sup> defines the monitoring system for application of the Public Procurement Law and secondary regulations in Bosnia and Herzegovina by the Public Procurement Agency. It is based on examining compliance of individual public procurement procedures conducted by contracting authorities in Bosnia and Herzegovina with the law and secondary regulations.

The most problematic aspect of this regulation relates to the fact that civil society and the media are almost excluded as sources of information that provide basis for PPA to conduct monitoring of public procurement. Namely, analysis of contracting authorities' procurement plans by non-governmental organizations is mentioned as sole basis for monitoring of public procurement. Hence, the 2016 Regulation represents a 'step back' in terms of enabling civil society and the media to have their reports serve as the basis for monitoring by the Public Procurement Agency. In 2019, there was an intention to adopt an even more restrictive regulation that only refers to 'publicly available reports', further derogating the watchdog role of non-governmental organizations and the media, especially in legislation that regulates whistleblowing.

**The EC's 2023 Progress Report notes that the capacity to manage public procurement processes is weak, while specialized procurement functions need to be established in each contracting authority and staffed with officers who have the relevant skills and expertise.**

2014 EU Directives on Public Procurement do not provide straightforward stipulation of rules in respect to professionalization or natural persons (officers) qualified to conduct public procurement procedures, but professionalization has been recognized as an extremely important area by the European Commission. More specifically, professionalization has a recognized role in respect to efficiency of the public procurement system in Bosnia and Herzegovina, as it is enlisted among important competencies of the Public Procurement Agency. Article 92, paragraph (3), point i) of the Public Procurement Law establishes the competences of the Public Procurement Agency to organize and conduct training for authorized lecturers and public procurement officers, publish information related to such training, and design manuals and other accompanying materials for professional development in the field of public procurement. The Regulation on Training Public Procurement Officers stipulates the manner of training organization and delivery, as well as the manner of testing their knowledge.

2023 amendments to the Law on Public Procurement introduced new Article 13a which stipulates an obligation for contracting authorities to, by means of internal acts that regulate their internal organization, establish the position of public procurement officers, as well as an obligation to enable them to attend training organized and conducted by the Public Procurement Agency. This is a significant step in respect to improving professionalization;

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<sup>3</sup> Official Gazette of Bosnia and Herzegovina no. 72/16

however, at the moment, it is difficult to find competency models for public procurement officers at the level of the public procurement system and, more broadly, at the level of the entire public sector in Bosnia and Herzegovina.

The analysis shows that, most institutions and especially small contracting authorities, still encounter problems in terms of preparation and implementation of public procurement procedures, and monitoring of contract implementation, resulting in unsuccessful procurement procedures that are repeated, thereby losing the momentum of activities planned and increasing the cost of public procurement procedures. It seems that the reason thereof is attributed to high turnover of public procurement officers, as well as the fact that small contracting authorities in particular do not have enough financial resources to participate in paid training sessions which are held in addition to training organized by the Public Procurement Agency. On the other hand, as mentioned earlier, the number of training sessions organized by PPA is very small and decreasing, and implies certain restrictions, i.e. limited number of participants. Another reason for poor performance among contracting authorities could be the fact that the legislative framework, including numerous bylaws and regulations in place, is too complex for efficient monitoring of legislative rules. Also, it has been found that more attention should be paid to training officials at the highest levels of government, as well as higher and middle management, who directly participate in implementation of public procurement procedures. Otherwise, the analysis shows that topics covered by such training are diverse and cover all provisions under the Public Procurement Law, as well as tools such as e-procurement. In addition, they cover other topics related to contract management, procurement planning, market research, etc.

***Impunity related to abuses and corruption in public procurement remains present, but there is visible progress in sanctioning certain high-ranking officials.***

Domestic and foreign reports from non-governmental organizations, audit institutions, the EU, etc. indicate to widespread and well-rooted corruption in public procurement. Although Bosnia and Herzegovina has largely harmonized its national regulations with the EU acquis, still there are legal loopholes contributing to corruption. Moreover, inconsistencies in practical implementation of regulations lead to corrupt behaviours that can only be identified by in-depth monitoring of tender procedures and analysis based on comprehensive research methodologies. Integration of the chapter of public procurement within the first negotiation cluster called “Fundamentals” from the new EU methodology underscores the severity of the issue of corruption in public procurement and the EU’s commitment to pressure Bosnia and Herzegovina to address this issue. This creates more opportunities for the civil society to actively combat corruption in public spending and have a more significant impact on positive changes in the everyday lives of citizens.

The main problem underlined year after year concerns absence of prosecution and sanctions for abuses in public procurement due to inadequate efforts on the part of judicial institutions. Impunity for these abuses undermines trust and competition and negatively affects bidders participating in public tenders. Furthermore, the slow pace of courts when resolving complaints lodged by participants in procurement procedures renders these protection mechanisms ineffective. Failure to prosecute abuses in public procurement procedures legitimizes corruption, erodes the citizens’ trust in public institutions, and sends the message that corruption and crime are tolerated. Investigative reporters and civil society organizations shed light on and document abuses in public procurement by various institutions and public enterprises in Bosnia and Herzegovina on daily basis. Despite this, most abuses go unpunished, while those involved in corruption continue to hold control over public spending. Shadow

Reports developed by the Balkan Tender Watch (BTW) Coalition in the last four years, for the first time, referred to the absence of sanctions for numerous acts of corruption in public procurement, aiming to ensure proper functioning of the overall anticorruption system in public procurement.

The Court of Bosnia and Herzegovina, under its first-instance verdict from April of last year, sentenced former Prime Minister of the Federation of Bosnia and Herzegovina Fadil Novalić, suspended the director of the Federal Civil Protection Administration (FUCZ) Fahrudin Solak, and the owner of the company *F. H. Silver Raspberry* Fikret Hodžić to a total of 15 years in prison for abuses in the procedure for procurement of ventilators worth 10.5 million BAM during the COVID-19 pandemic. Novalić was sentenced to four years in prison, Solak to six years, and Hodžić to five years. The legal entity *Silver Raspberry* was found responsible for disposing of unlawfully acquired property and was fined 200,000 BAM, which must be paid within 60 days from the date of the final verdict. This verdict was confirmed by the appellate division at the Court of Bosnia and Herzegovina in January 2024.

## IDENTIFIED CORRUPTION RISKS

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*Compromised integrity in public procurement and, consequently, corruption can occur in all stages of public procurement procedures and processes.*

This is the general conclusion of the research conducted as part of monitoring public procurement procedures in 2023. Corruptive elements in implementation of public procurement can be identified in all stages - from needs assessment, through contract award, to contract management and final payment. A specific segment susceptible to corruption is formulation of institutional budgets and public investment plans, as this process is based on needs that are often unnecessarily exaggerated or influenced by potential bidders. Equally significant is the manner in which institutions define project tasks and procedures, as this further impacts all essential aspects of public procurement: efficiency in utilization of public funds, fairness, transparency, non-discrimination, and competitiveness. Ultimately, contract performance is another area where contracting authority's integrity can be compromised. Altering the method of contract performance, deadlines, prices, quantities delivered or quality thereof can practically undermine the previously conducted public procurement process.

It is difficult to enlist all illegalities and irregularities observed as part of monitoring public procurement, but below are the most prominent ones:

- 1. Non-transparency:** Some contracting authorities have not adopted and/or published procurement plans and organize procurement procedures that are not envisaged in their procurement plan or specific decision. As regards the public procurement process (tendering and decision-making), inadequate transparency was observed in implementation of direct agreements which, in the case of some contracting authorities, were almost the only type of public procurement procedure used. It can be concluded that the public procurement process becomes a 'black box' at the moment when the contract is signed between the contracting authority and the selected bidder.
- 2. Discrimination or favouritism of bidders:** This is one of the most pronounced risks to the integrity of public procurement. This risk is manifested in various ways, mostly in the form of eligibility criteria for tender participants (personal, professional, or financial capacity), but also as requirements defined under technical and other specifications for the procurement subject, or favouring criteria for contract award.
- 3. Selection of inadequate procedures as risk to integrity:** This primarily refers to illegal selection of non-transparent procedures such as direct agreement or negotiating procedure without previously announced procurement notice.
- 4. Abuse of e-auctions:** The electronic auction, announced as tool for eliminating corruption in public procurement in Bosnia and Herzegovina, is seen as major generator of abuses in the cases where cartelization or agreements among individual bidders in procurement procedures occur.
- 5. Abuses during contract performance:** These represent patterns whereby, due to the manner in which contracts are implemented, the previously conducted public procurement process under which the most favourable bidder was selected is devalued.

## RECOMMENDATIONS

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Based on assessment of state-of-affairs in public procurement, as well as findings from monitoring specific public procurement in terms of detecting risks and corruption suspicions, several recommendations are valid in respect to improving state-of-play and preventing corruption:

- Establish a defined strategic framework for development of the public procurement system in Bosnia and Herzegovina, incorporating the best practices and aligning with EU standards;
- Strengthen the capacity for managing procurement processes by providing adequate staffing and resources to the Public Procurement Agency (PPA), as well as enhancing capabilities of the Procurement Review Body (PRB) to effectively handle the increasing number of complaints;
- Implement measures to improve competition in public procurement procedures, such as promoting transparency, encouraging participation of multiple bidders, and addressing barriers to entry for foreign companies;
- Introduce a comprehensive and effective system for electronic public procurement to enhance transparency, streamline processes, and reduce misuse of public resources;
- Enhance monitoring and inspection control systems to detect and address corruption and irregularities in public procurement procedures, thereby increasing accountability and integrity;
- Establish specialized procurement functions at all contracting authorities, staffed with officers who possess relevant skills and expertise to ensure efficient and effective procurement processes;
- Ensure accountability and sanctioning mechanisms for abuses and corruption in public procurement, including holding high-ranking officials accountable for their actions;
- Implement measures to prevent and mitigate compromised integrity in public procurement, including robust oversight mechanisms, transparency measures, and ethical standards for all stakeholders involved in the public procurement process.

