

TRIPARTITE MODEL FOR IMPLEMENTATION OF SIMPLE PROCUREMENT PROCEDURES FOR A MORE RATIONAL USAGE OF PUBLIC MONEY

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ABSTRACT

Public money is public income that the state collects on the basis of ownership and financial sovereignty in the form of taxes, contributions, duties and/or fees. These above all include taxpayers' money that must be used in a transparent and rational manner.

One of the most important ways to dispose of public money is certainly the implementation of public procurement procedures, because according to the European Commission's report, the EU member states spend one fifth of the GDP annually on the procurement of goods, services and works.

An extremely important segment of public procurement in the Republic of Croatia, the youngest EU member, is the implementation of simple procurement procedures which on an annual basis amount to approximately 23% of the total value of public procurement. However, the regulatory framework in the area of public procurement in the Republic of Croatia does not lay down the rules and criteria for the implementation of procedures for simple procurement, but leaves the possibility for contracting authorities to determine their own rules and criteria by means of general acts.

Such a regulatory framework creates favourable conditions for various malversations and agreements, and especially for the development of corruption. This makes such a system ineffective and non-transparent, which does not comply with the EU directives and the general principles of public procurement.

The purpose of this document is to present a tripartite model of simple procurement procedures that has been developed as a result of research, enabling a more rational usage of public money. Proposed tripartite model is based on three categories: financial thresholds, transparency of procurement procedures, and criterion for selecting bids in the form of the most economically advantageous tender. Its application primarily affects the efficiency and transparency of the implementation of simple procurement procedures, the reduction of risk from corruption.

Furthermore, by applying this model one respects the principles of public procurement and what is even more important, the usage of public or taxpayer's money is more rational.

Keywords: public money, public procurement, corruption, economic development, transparency, rationality.

1. INTRODUCTION

Public procurement is the key segment of public investments. It is an important element for strengthening the unique market that promotes economic development in Europe, which encourages the investments and contributes to growth and job creation. According to the European Commission report¹, public authorities and public bodies spend one fifth of the GDP each year on procurement of goods, services and works. 20% of this sum relates to public procurement that exceeds the threshold for which the EU created rules.

Public procurement is an important part of the government spending and the basic objective of the regulatory framework in the area of public procurement of all EU member states is to implement procedures that are efficient and transparent in order to achieve a positive interaction between the state and the economic subjects, creating a benefit for the society as a whole.

Within the framework of the European Union law, a significant start of public procurement was initiated by the regulatory framework in 2004², on the basis of which the public procurement procedure had a limited scope. The new regulatory framework for public procurement³ was adopted in February 2014. It aims to increase the transparency and flexibility of public procurement procedures, reduce the administrative burden by using electronic communication and unique European procurement documentation. Also, the new regulatory framework establishes that bids are selected solely on the basis of the most economically advantageous tender criteria with the aim of achieving the "best value for money" principle.

¹ Report of the European Commission to the Council and the European Parliament on the Suppression of Corruption from 3 February 2014, pg. 21.

² Directive 2004/17/EZ of the European Parliament and of the Council from 31 March 2004 on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; Directive 2004/18/EZ of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

³ Directive 2014/23/EU of the European Parliament and of the Council, of 26 February, on the award of concession contracts; Directive 2014/24/EU of the European Parliament and of the Council, of 26 February, on public procurement that repeals the Directive 2004/18/EZ; Directive 2014/25/EU of the European Parliament and of the Council, of 26 February, on procurement by entities operating in the water, energy, transport and postal services sectors that repeals the Directive 2004/17/EZ.

The new regulatory framework for public procurement in the Republic of Croatia⁴ (further referred to as: PPL) entered into force on 1 January 2017. It represents the general normative framework, regulating the system of public procurement, and also regulating the procedures for concluding public procurement contracts and framework agreements for the procurement of goods, services and works, legal protection with regards to these procedures and the competence of the central governmental administration body, responsible for the public procurement system.

PPL is aligned with the EU legislation, including the provisions of the new Directives, which is very important because the same public procurement rules apply to the implementation of projects, funded from the European Structural and Investment Funds.

According to the Ministry of the Economy, the value of public procurement in the Republic of Croatia on an annual basis ranges from 12% to 13% of the GDP. In 2015 alone, the value of procurement amounted to 40.58 billion Kuna, 23.36% of which concerned the implementation of simple procurement procedures. This data shows that this is an extremely high amount of public money, i.e. taxpayers' funds that need to be used in line with the principles of efficient and rational spending of public money.

The procedure for the implementation of a simple procurement is not defined by the regulatory framework of the Republic of Croatia. It has been left to the contracting authorities to lay down rules and procedures for its processes in a general act⁵. By doing so, suitable conditions for mutual agreement and negotiations, or development of corruption have been created.

Contracting entities set their own rules and criteria in the implementation of the procedure of simple procurement, favouring certain interest groups due to the absence of the obligation to publish a call for tenders, receive three bids that have been agreed in advance, use the lowest price criterion and define specific terms that only apply to individual bidders. Public procurement is often split in several parts that are not subject to procurement procedures that apply to larger values, thus creating the possibility of contracting bidders directly.

The current procurement procedure in the Republic of Croatia does not contribute to the rational and balanced spending of public money, as stipulated by the EU Directives and the regulatory framework of the PPL, but only increases the possibility of corruptive behaviour. Supporting evidence is that according to the European Commission report, the Republic of Croatia has the highest degree of corruption in the process of public procurement⁶.

⁴ Public Procurement Act („Narodne novine“ No. 120/16).

⁵ Public Procurement Act („Narodne novine“ No. 120/16), Art 15. Para 2.

⁶ Report of the European Commission to the Council and the European Parliament on the Suppression of Corruption from 3 February 2014, pg. 6

Considering the level of financial flows, created by public procurement, the latter is seen as an area, subject to corrupt practices. The Organisation for Economic Cooperation and Development - OECD⁷ states the following in the principles of integrity in public procurement: *“Weak governance in public procurement hinders market competition and raises the price paid by the administration for goods and services, directly impacting public expenditures and therefore taxpayers’ resources. The financial interests at stake, and the close interaction between the public and private sectors, make public procurement a major risk area”*⁸.

2. ANALYSIS OF THE EXISTING SITUATION IN THE REPUBLIC OF CROATIA

The current regulatory framework for public procurement in the Republic of Croatia⁹, adopted in February 2017, is in line with the new EU directives. Transferring the solutions from the EU directives will result in significant reductions and simplification of procedures in the field of public procurement, reduction of administrative burden on the side of the contracting parties and bidders, and reduction of costs of participation in procurement procedures for small and medium-sized enterprises.

The regulatory framework defines two types of contracting, depending on the type of activity¹⁰, as well as three types of public procurement procedures, depending on the thresholds for the implementation of the procedure: simple procurement, low-value procurement and high-value procurement.

Table 1 shows the level of threshold for the implementation of public procurement procedures according to type, subject and type of contractor.

⁷ Organization for Economic Cooperation and Development – OECD.

⁸ OECD Principles for Integrity in Public Procurement: <http://www.oecd.org/gov/ethics/48994520.pdf>.

⁹ Public Procurement Act („Narodne novine“ No. 120/16).

¹⁰ Public Procurement Act („Narodne novine“ No. 120/16), Art 5., 6. and 7.

Table 1. The level of thresholds for the implementation of public procurement procedures

Type of public procurement	Level of threshold / purchase value (in KN)	Subject	Type of contractor
Simple procurement	Up to 20,000.00	Goods, services and works	Public authorities and sector contractors
	From 20,000.00 to 200,000.00	Goods and services	
	From 20,000.00 to 500,000.00	Works	
Low-value procurement	From 200,000 to the value of EU thresholds	Goods and services	Public authorities and sector contractors
	From 500,000 to the value of EU thresholds	Works	
High-value procurement	From 1,029,416.00	Goods and services	RH and state bodies
	From 1,593,688.00		Units of local and regional self-government ¹¹ , legal entities
	From 3,187,375.00		Sector contractors
	From 39,842,193.00	Works	Public authorities and sector contractors

The amount of threshold for the implementation of the procedure of simple procurement and purchase of low-value is defined by the PPL¹², while the threshold value of high-value public procurement is determined as an estimated value, equal or higher than the value of the European

¹¹ Local and Regional Self-government Units, Local and Regional Self-Government Act (“Narodne novine“ No. 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 150/11, 144/12, 19/13 and 137/15), Art: 3., 4., 5. and 6.

¹² Public Procurement Act („Narodne novine“ No. 120/16), Art 12.

thresholds from the EU directives¹³, depending on the type of the contracting authority and the procurement subject.

The implementation of the public procurement procedure for low and high values is set in the PPL provisions. The said regulatory framework in Article 85 defines six different procedures of public procurement: open procedure, restricted procedure, competitive procedure, negotiation, open dialogue, partnership for innovation and negotiation without prior announcement of a call for tenders.

Table 2. Overview of the number and value of public procurement contracts in 2015 according to the type of procedure

Amounts are given in million Kuna (KN)

Procedure	No.	%	Value (KN)	%
Open procedure	13,168	85.04	25,835.84	83.05
Restricted procedure	234	1.51	1,510.17	4.85
Negotiated procedure with prior announcement	231	1.49	1,392.72	4.48
Negotiated procedure without prior announcement	1,176	7.59	2,087.32	6.71
Open dialogue	1	0.01	44.71	0.14
Conclusion of a public service contract, referred to in Annex II B	673	4.35	231.09	0.74
Exemption from the Application	2	0.01	8.71	0.03

¹³ Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (SL EU L-307 from 25.11.2015.); Commission Delegated Regulation (EU) 2015/2171 of 24 November 2015 amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (SL EU L-307 from 25.11.2015.); Commission Delegated Regulation (EU) 2015/2172 of 24 November 2015 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the application thresholds for the procedures for the award of contracts (SL EU L-307 from 25.11.2015.).

of the Law				
TOTAL	15,485	100.00	31,110.56	100.00

According to the data of the Ministry of the Economy, Public Procurement Directorate¹⁴ as shown in Table 2, 85.04% of all contracts, concluded in 2015 refer to the implementation of the open public procurement procedure. For that reason, the open procurement procedure will be subject of further research.

The basic steps preceding the implementation of the open public procurement process, while guaranteeing a transparent and efficient implementation, include planning the position and provision of funds for the subject of procurement in the budget for the current year. This is followed by the appointment of the expert commission¹⁵, preliminary market analysis, public consultation with the interested public¹⁶, preparation of documentation, description of subjects and technical specifications of public procurement¹⁷. Further steps of open public procurement procedures for small and high values are shown in Figure 1.

¹⁴ Ministry of the Economy, Public Procurement Directorate: *“Statistical report on public procurement in the Republic of Croatia”* (2015.).

¹⁵ Public Procurement Act („Narodne novine“ No. 120/16), Art 197.

¹⁶ Public Procurement Act („Narodne novine“ No. 120/16), Art 198.

¹⁷ Public Procurement Act („Narodne novine“ No. 120/16), Art 200-213.

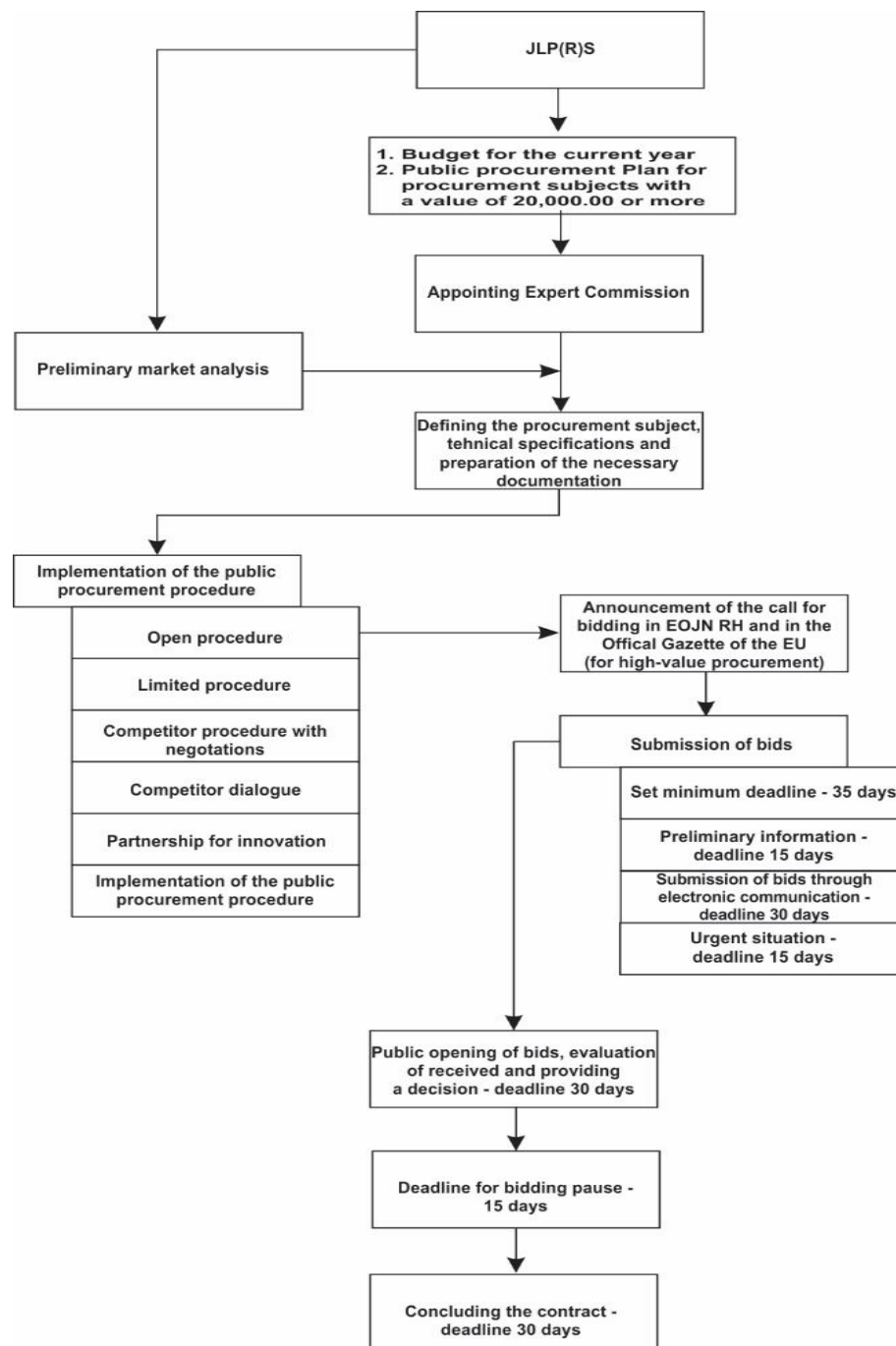


Figure 1. Implementation of an open public procurement procedure for small and large values

Simple procurement includes procurement that does not apply to the Public Procurement Law. The rules, conditions and procedures of simple procurement shall be set by each contracting authority in a general act, taking into account the principles of public procurement¹⁸ and the possibility of using electronic means of communication. Figure 2 shows the course of implementation of a simple procurement procedure, used by public contracting entities in the form of local and regional self-government authorities.

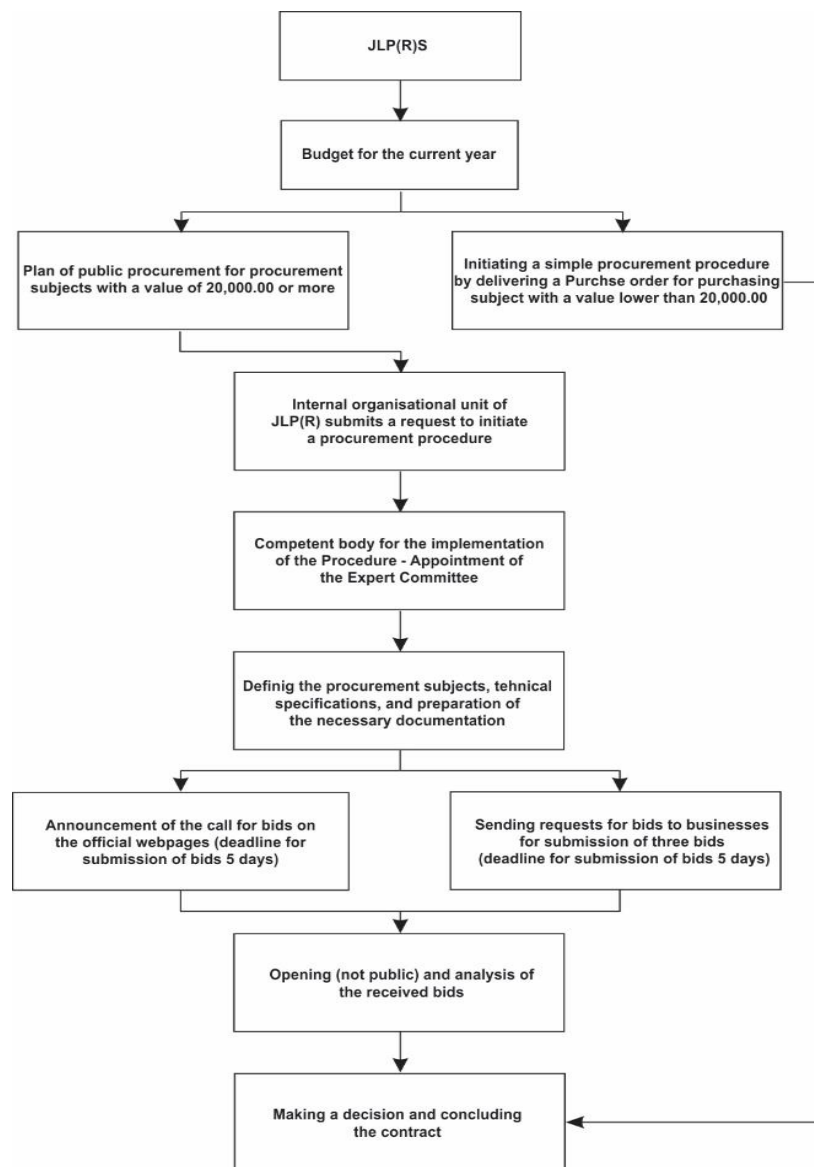


Figure 2. Implementation of the simple public procurement procedure.

¹⁸ Public Procurement Act („Narodne novine“ No. 120/16), Art 4. Para 1.

3. HYPOTHESIS

The regulatory framework of public procurement in the Republic of Croatia¹⁹ does not lay down the rules and criteria for the implementation of simple procurement procedures, but leaves the possibility for contracting parties to set their own rules and criteria by means of a general act, taking into account only the principles of public procurement. Such a simple procurement procedure provides contracting parties and interest groups with possibility of various malversations and concessions when contracting goods, services and works.

Such system is ineffective and non-transparent; it creates conditions for development of corruptive acts. The taxpayers' money is not used in accordance with the EU Directives and the general principles of public procurement.

4. METHODS

Research for this paper was carried out with help of a comparative statistical method of available financial indicators on the procedures of public procurement in the Republic of Croatia, conducted in the period between 2013 and 2015. An analysis of the existing state of the regulatory framework for public procurement in RH was also carried out, using the inductive method which resulted in the development of a new Tripartite model for implementation of a simple procurement procedure.

The confirmation method confirmed the inefficiency and non-transparency of the regulatory framework for simple procurement in RH, indicating that the existing system is not sustainable and thus needs to be changed.

5. RESULTS

Research resulted in the development of a Tripartite model for implementation of simple procurement procedures for a more rational usage of public money (hereinafter referred to as the Tripartite model).

According to data of the Ministry of the Economy,²⁰ the value of public procurement in RH between 2013 and 2015 amounted to 122.2 billion KN, of which 20.52% was related to procedures of simple procurement. The share of the total value of public procurement in GDP in 2013 was 12.08%, increasing to 12.82%, in 2014 and dropping to 12.14%²¹ in 2015. Considering

¹⁹ Public Procurement Act („Narodne novine“ No. 120/16).

²⁰ Ministry of the Economy, Public Procurement Directorate: „*Statistical report on public procurement in Republic of Croatia*“ (2013.; 2014. and 2015.).

²¹ National Bureau of Statistics: <http://www.dzs.hr>.

the high share of public procurement in GDP, the influence of public procurement consequently has a high impact on the overall economic activity of the Republic of Croatia.

Table 3. Value of public procurement procedures in RH between 2013 and 2015

Values are in million Kuna (KN)

Time period	Type of public procurement			Total
	Total value of published contracts and framework agreements	Amounts of simple procurement procedures	Value of procurement for the needs of consular representations	
01.01.-31.12.2013.	33,148.04	6,335.25	2.47	39,485.76
01.01.-31.12.2014.	32,875.97	9,277.95	3.25	42,157.17
01.01.-31.12.2015.	31,110.56	9,470.93	2.20	40,583.69
Total	97,134.57	25,084.13	7.92	122,226.62

Implemented procedures for simple procurement in RH between 2013 and 2015 amount to approximately 1.6% of the GDP per annum.²² This totals to about 25.08 billion Kuna; this is the amount of contracted funds without the control of competent governmental bodies and without respecting the principles of transparency and rational spending of public money. The Tripartite model was developed because of inefficiency and non-transparency of the current system.

²² National Bureau of Statistics: <http://www.dzs.hr>.

Table 4. Realized values of simple public procurement procedures in RH between 2013 and 2015

Values are in million Kuna (KN)

Procurement subject	Total value of simple public procurement procedures			Total
	01.01.-31.12.2013.	01.01.-31.12.2014.	01.01.-31.12.2015.	
Works	901.81	3,302.21	1,682.66	5,886.68
Goods	2,620.40	4,328.97	3,638.13	10,587.50
Services	2,813.04	1,646.78	4,150.15	8,609.97
Total	6,335.25	9,277.96	9,470.94	25,084.15

This Tripartite model implies that simple procurement procedures be part of the regulatory framework in the area of public procurement in the Republic of Croatia,²³ including procurement of large and low values. It is based on the following categories:

1. Financial thresholds,
2. Transparent procurement process,
3. Criterion for the selection of bids (MEAT).

1. Financial thresholds

²³ Public Procurement Act („Narodne novine“ No. 120/16).

Table 5. Comparison of financial thresholds and the implementation of the regulatory framework procedure for simple procurement and Tripartite model

Values in Kuna (KN)

Procurement subject	Regulatory framework for simple procurement		Tripartite model	
	Level of threshold	Implementation of the procedure	Level of threshold	Implementation of the procedure
Goods	Up to 20,000	General act of the purchase order – Purchase order Delivery one/three bids	Up to 50,000	Purchase order Delivery of three bids
Services				
Works	Up to 20,000	Purchase order Delivery one/three bids	Up to 200,000	See Figure 3.
Goods	From 20,000	General act of the purchase order – Purchase order Delivery one/three bids	From 50,000 to 200,000	
Services	To 200,000			
Goods	From 20,000 to 500,000	Purchase order Delivery one/three bids	From 200,000 to 500,000	

The tripartite model related to the level of financial thresholds implies the division of simple procurement into two parts. Instead of the current threshold of up to 20,000.00 KN, the tripartite model increases the amount to 50,000.00 KN for the procurement of goods and services, and to

200,000.00 KN for the procurement of works. The simple procurement procedure to the level of such thresholds is executed by the contracting authorities in the form of a purchase order, submitted to at least three addresses, followed by the selection of the bid according to the lower price or economically most favourable tender and the conclusion of the contract.

In this way, a greater efficiency of public procurement system is achieved due to reduction of administrative costs; the implementation of public procurement process is accelerated and the contracting authorities are given the possibility of further activities due to the increase in the value of the minimum threshold.

The Tripartite model implies the implementation procedure as shown in Figure 3 for simple procurement within the financial threshold from 50,000.00 KN to 200,000.00 KN for procurement of goods and services; and from 200,000.00 KN to 500,000.00 KN for procurement of works.

2. Transparent procurement process

This Tripartite model requires the appointment of a three-member Expert Committee, responsible for preparation and implementation of the entire procurement procedure, as well as the obligation to publish a call for tenders in the Electronic Public Procurement Bulletin of the Republic of Croatia,²⁴ and on the official website of the contracting authority. This ensures transparency of the whole process, it is shown to the general public and to the interested business entities as opposed to the current practices where a bid is published on the customer's website or requests for bids are sent to three addresses, or very often to one address only.

The deadline for submission of bids is five days, which is sufficient time for submitting timely and correct bids. Bids are open publicly, in the presence of interested bidders, including the administrative verification, evaluation and decision-making. The bidders have the option, in case they think that an administrative error has been made in the implementation of the procurement procedure or if they have an objection to the assessment, to submit an oral complaint / written complaint with minutes on the same day when the decision was made. The complaint must be resolved within two days from the date of the decision, followed by the conclusion of the contract.

Figure 3 shows the overview of the simple procurement procedure through the Tripartite model.

²⁴ Electronic public procurement Bulletin (EOJN) - <https://eojn.nn.hr/Oglasnik/>.

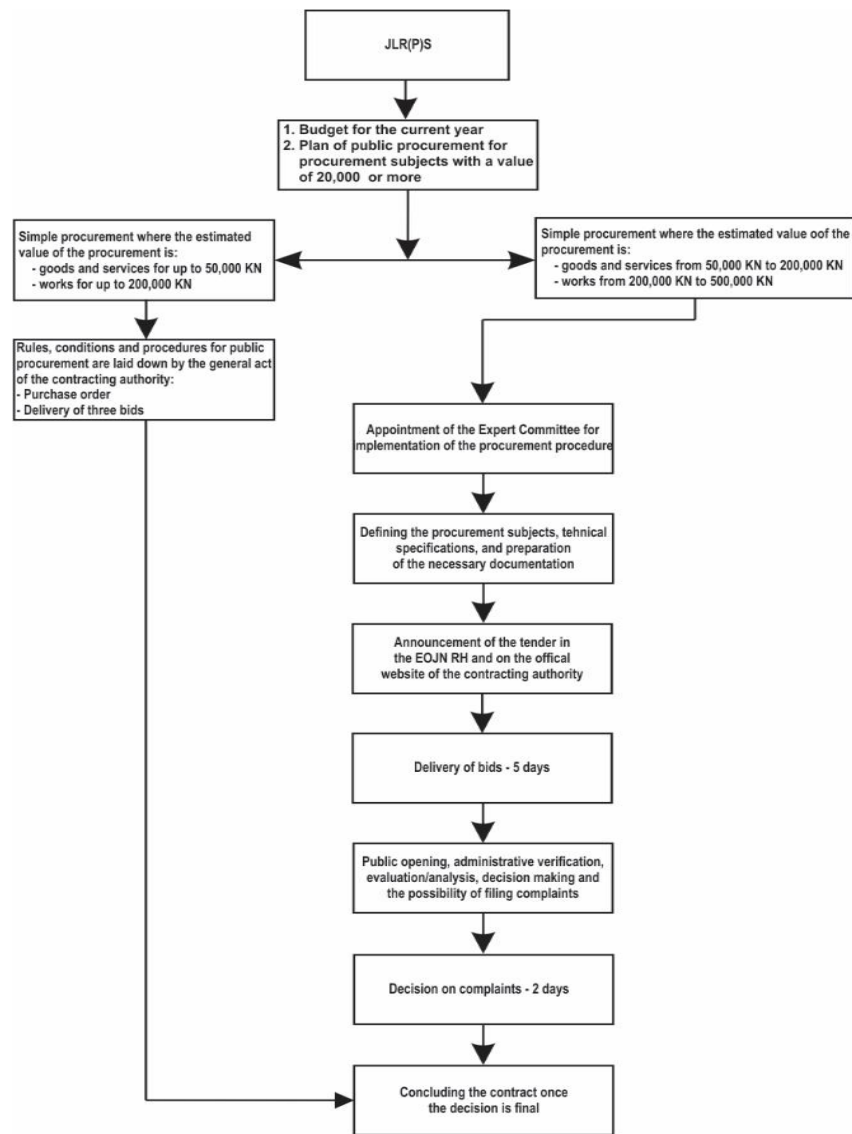


Figure 3. Implementation of a simple procurement procedure under the Tripartite model

3. Bid selection criteria (MEAT)

Bid selection criteria in the Tripartite Model are based on the most economically advantageous tender²⁵ (further referred to as: MEAT) in accordance with the EU Directives. The purpose of the MEAT criterion is to select the best bid of a capable bidder and the most capable bidder.

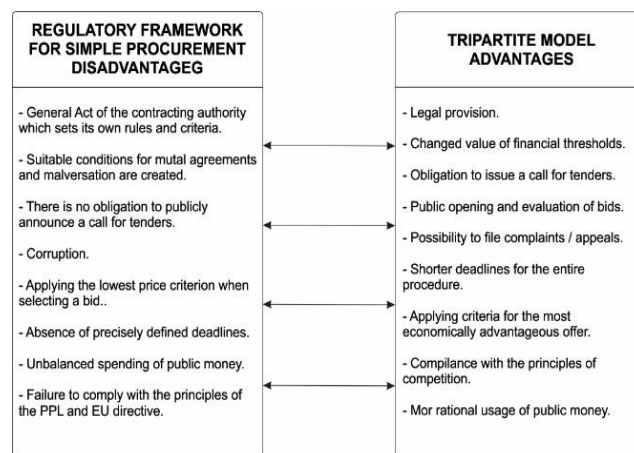
²⁵ Public Procurement Act („Narodne novine“ No. 120/16), article 284. para 1. defines the most economically advantageous tender as follows: “The most economically advantageous tender is based on the costs or expenses, using cost-effectiveness approaches such as the cost of ownership, and may include the best price-quality ratio that

When using the MEAT criterion within the Tripartite model, the price or costs are the main criterion for selection of the bid, with the relative weighting of the cost or expenses that should not exceed 60%. Other criteria depend on the subject of procurement, they may relate to technical specifications, aesthetic and functional features, environmental or social features, innovative features, economical value, technical assistance, delivery date, or execution time.

When compiling a document, the contracting authorities are obliged to determine the relative weights for each criterion that is to be chosen²⁶ depending on the subject of procurement, with the exception of a price that should not exceed 60%. The selection criteria must not be discriminatory. They must be connected to the procurement subject and must enable effective bidding.

The implementation of the simple procurement procedure in the current model allows the contracting authorities to apply the lowest price criterion. The lowest price criterion is not satisfactory and is not the best choice, because experience and practice have shown that after the contract is completed, additional services, such as maintenance will be paid, creating additional cost, making the final price more expensive than in the case that a more expensive bid were initially selected.

The application of the tripartite model for implementation of simple procurement procedures for a more rational public spending will have positive effects on increasing the efficiency of the implementation of the procedure, reducing the degree of risk of corruption, respecting the principle of market competition and ultimately resulting in spending taxpayers' money more efficiently and rationally.



is assessed on the basis of criteria, including qualitative, environmental or social features, related to the subject of procurement.“

²⁶ Discretionary right to select criteria, related to the subject of procurement.

6. CONCLUSION

We conclude that the currently valid public procurement procedure does not prescribe the rules, conditions and implementation procedures for simple procurement. It allows contracting authorities to create their own rules, which ultimately leaves much room to interest groups for manipulation and mutual agreements.

Such rules and criteria allow for implementation of procurement procedures without the knowledge of other interested entities, which is against the principle of market competition, as recognized by the European Commission in its report when finding out that Republic of Croatia had the highest degree of risk of corruption in the public procurement process.

Analysing research results from publicly accessible financial indicators on implemented public procurement procedures in the Republic of Croatia, one can conclude that simple procurement procedures have a significant impact on the activities of the economic sector in RH; for this reason they have to be in the focus of control of competent authorities.

Considering the above arguments, it is necessary to change the legal procedure for public procurement by introducing a new tripartite model for implementation of simple procurement procedures, which above all guarantees a more rational consumption of taxpayers' money and respect for the principles of competition, equal treatment, transparency and other principles, as defined by the Public Procurement Act and the EU Directive.

Acronyms

GDP	Gross Domestic Product
DZS	National Bureau of Statistics
MEAT	Most Economically Advantageous Tender
EOJN	Electronic Public Procurement Bulletin
EU	European Union
EZ	European Community
JLP(R)S	Local and regional self-government authorities
NN	Narodne novine (National newspaper)
OECD	Organisation for Economic Cooperation and Development
RH	Republic of Croatia

SL EU	Official Gazette of the European Union
ZJN	Public Procurement Act

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