

Bid Ridding in Bosnia and Herzegovina: Highlights of the Recent Enforcement and Advocacy Activity of the Competition Council



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Introduction

Public procurement, a significant component of government spending, involves the acquisition of goods, services, and works by government agencies and other public entities. This process plays a crucial role in shaping a country's economic landscape. By channeling public funds, governments can stimulate economic activities, innovation, investment levels and promote market competition.

In general, the efficiency of public procurement depends on compliance with the principles of transparency, accountability and efficiency. Well-managed public procurement can stimulate economic growth and development. Inefficient practices lead to significant economic losses and hinder progress, often resulting in misallocation of funds intended for education, inclusivity programs, and sustainable development projects.

In Organisation for Economic Cooperation and Development countries (OECD), public procurement accounts for a substantial portion of GDP, typically ranging from 12% to 15%.²⁴ Due to the COVID-19 pandemic, with its associated supply chain disruptions and inflation, fiscal spending has further increased compared to the usual average.

Bosnia and Herzegovina's annual public procurement spending is estimated at 1.5 billion EUR (approximately 9% of the country's GDP). While this represents a slightly lower share of GDP compared to developed countries, the reason for this lies in the structure of spending. Bosnia and Herzegovina institutions typically allocate approximately 15% of their budgetary funds to procurement activities.²⁵

Given the significant amount of funds involved, public procurement processes are widely recognized as highly susceptible to corruption, a problem that is pervasive in both developing and developed nations.

Legal framework – Bosnia and Herzegovina

Public Procurement

Key institution responsible for overseeing the implementation of the Public Procurement Law in Bosnia and Herzegovina is the Public Procurement Agency. This agency plays a crucial role in ensuring transparency, fairness, and efficiency in public procurement processes. One of its primary responsibilities is to establish and maintain a system for monitoring of public procurement procedures. This includes collecting and analyzing data as well as monitoring compliance with the law.²⁶

Competition

The Competition Council of Bosnia and Herzegovina is mandated by the Competition Act to protect and promote market competition in the country. The Law²⁷ grants the Council broad mandate to combat anti-competitive practices, including prohibited agreements. According to the Article 4 of the Competition Act, agreements between businesses that could restrict competition, like price-fixing or market sharing are prohibited. For this reason, any agreement between suppliers in public procurement processes (bid rigging) is strictly forbidden, as it could lead to price fixing, market sharing, or other anti-competitive behaviors. If found guilty, companies can face severe penalties, including fines up to 10% of their annual revenue.²⁸

Detection and Proof: An Enduring Challenge

Collusive bidding is notoriously difficult to detect and prove. Participants often rely on verbal agreements and sharing of sensitive information to synchronize their bidding behavior. Such cooperation can persist for many years. Indeed, in free market economy, bid collusion is

²⁴ Government at a Glance, (2021), OECD

²⁵ Izvještaj revizije učinka, Problemi i nedostaci institucija Bosne i Hercegovine u sistemu javnih nabavki, (2021), Sarajevo

²⁶ Retrieved from the Public Procurement Agency's official website.

²⁷ Available at <https://bihkonk.gov.ba/zakon-o-konkurenciji-neslu%5c%bebeni-pre%5c%8di%5c%a1%5c%87eni-tekst/>

²⁸ Pursuant to Article 48(1)(a) of the Competition Act

such an unlimited phenomenon in terms of its form, the circle of entities it can encompass, and also the sector it can involve.²⁹

The most used bid-rigging detection tool is leniency. Unfortunately, many countries with underdeveloped market competition cultures lack a robust leniency system. The Competition Council of Bosnia and Herzegovina has a defined leniency program within its law and by-laws. However, in its previous practice, the Council relied more on other methods for assessing the existence of prohibited agreements such as: systematic market monitoring, public procurement monitoring, and information obtained from different entities (companies, individuals, institutions, and public procurement agencies).

While public disclosure of information is a valuable asset to antitrust agencies, research suggests that a significant portion of individuals would not provide such information, as they doubt the success of investigations.³⁰

Fortunately, in Bosnia and Herzegovina, there has been an increasing number of companies willing to come forward. To facilitate the reporting process, the Council have enabled anonymity for whistleblowers.

When applying the aforementioned methods to detect cartels, the Competition Council focuses on identifying behavioral patterns such as joint bids, suspiciously low prices, and sudden withdrawals from tenders as well as other traces recommended by the OECD. The introduction of an electronic public procurement system in Bosnia and Herzegovina has significantly facilitated this type of search.

Advocacy activities

Recognizing the need to further enhance the work in this area, the Competition Council has initiated a series of activities aimed at detecting a greater number of collusions in the future. These activities are divided into two groups:

- raising stakeholder awareness about the risk of bid-rigging in procurement,
- increased cooperation with other institutions and organizations.

The Competition Council has identified public procurement officials as a crucial target group for this campaign. These officials require continuous training to

recognize indicators of bid-rigging and understand the role of the Council. Additionally, the Council has included companies that appear as suppliers in public procurement as a secondary target group.

Following the definition of the goal and target groups, we have developed new informative brochures and pamphlets with a specific visual identity, divided into three well-known categories: bid-rigging schemes, markets that are conducive to the formation of cartels, and indicators of bid-rigging.

It is planned to distribute them through:

- a network of public procurement officials,
- the Foreign Trade Chamber of Bosnia and Herzegovina and entity chambers of commerce, intended for their member companies,
- the Public Procurement Agency of Bosnia and Herzegovina and the Center for the Development of Media and Analysis (CRMA), to distribute them through their communication channels (this will be further explained).

The next step in this campaign is to create a checklist document designed for public procurement officers which will support their work during procurement procedures to help them quickly identify potential red flags suggesting collusive behavior among bidders. This document will be distributed to public procurement officers through the previously mentioned communication channels.

Considering the significance of inter-institutional cooperation, a joint meeting took place with Public Procurement Agency and CRMA Association regarding the future cooperation. Namely, as the Agency is able to facilitate the access to data through its public monitoring system, this significantly improves the quality of Council's investigations. CRMA, the association specialised in public procurement monitoring, will refer any suspected collusion cases it identifies to the agency and the Competition Council, in the coming period.

Instead of a conclusion – recent bid-rigging findings

In conclusion, I would like to emphasize that after an extensive investigation, the Competition Council recently issued decisions discovering bid-rigging infringements in two separate cases. In the first case, three companies col-

²⁹ Skrobotowicz, Martyna. *Ekonomia XXI Wieku*. 2023, Vol. 26 Issue 1, p27-37. 11p. DOI: 10.15611/e21.2023.03.

³⁰ From silence to vigilance: overcoming barriers in public reporting of bid-rigging and cartel violations, Koki Arai, (2024) *Journal of Antitrust Enforcement*, Oxford University Press.

luded on a road reconstruction tender. In the second case, a much larger group of eleven companies were involved in rigging bids on numerous tenders for computer equipment.

Given that a more thorough analysis of these cases would require additional time, I will briefly explain only one of them on this occasion.

In April 2023, the Competition Council received a complaint from a company, whose identity remains confidential (“Company X”). The complaint concerned a tender for the road reconstruction in a local municipality. “Company X” claimed that other three companies had allegedly entered into a prohibited agreement to exclude competition.

Based on the complaint, the Council initiated proceedings and established the following:

Several companies submitted bids for a road reconstruction tender. During the bidding process two bidders synchronously and significantly lowered their prices in a very short time frame, reducing their prices far below the estimated costs, until they won the tender. These actions, coupled with their subsequent withdrawal from the con-

tract without valid justification, strongly suggest a collusive agreement.

Suspiciously, the third company involved in prohibited arrangement did not change its bid and was awarded a contract in the end. Despite repeated requests from the Council to explain their auction behavior, the companies failed to provide any evidence to justify their conduct with legitimate business reasons.

Furthermore, investigators discovered an additional clue, suggesting that one and the same individual had submitted tender bids as well as signed confirmations for the two companies under investigation. A forensic expert’s analysis confirmed that the signatures on both documents were written by the same person. This finding provided concrete proof of a connection between the two companies.

Ultimately, the Competition Council concluded that the three companies involved had colluded and coordinated their business strategies through direct or indirect exchange of information, thereby entering a prohibited agreement that significantly restricted and distorted market competition. They were fined a total of 209,801.00 BAM (approximately 107,000 EUR).