

## **A problem of crisis management in public procurement**

Assist. Prof. Dr. Tarik Rahić<sup>1</sup>

<sup>1</sup>(University of Sarajevo/ Faculty of Administration, Bosnia and Herzegovina)

---

**Abstract:** Security challenges and crises are particularly intriguing in the field of public procurement. In this regard, very important issue is crisis management and prompt response in the organization of the contracting authority to a specific crisis situation which has an impact on the interests of the contracting authority, as well as the public interest. Crisis situation can be determined by a variety of internal and external factors. The specific case of such situation represents acceptance, care and accommodation of migrants. In such cases efficient organization and management of the crisis of the contracting organs are crucial, as well as the identification of the instruments for its prevention and elimination. In this sense, the goal of this paper is to show the organization mechanisms and instruments available to the contracting authority in the prevention, as well as the response to the crisis situation in the case of procurement of services by hiring additional executors on the acceptance, care and accommodation of migrants.

**Keywords:** crisis management, public procurement, migration crisis, prevention, organization

---

### **I. INTRODUCTION**

A specific type of procurement are public procurement. The construct of "procurement" lexical is composed of two words, ie concept, namely: "public" and "procurement". The word "procurement" is used in legal transactions to designate a specific type of commercial transaction between the person who purchased the one who supplies (1).

On the other hand, the term "public" reminds us of something that is transparent, open, visible, and essentially linked to the source of funds that financed the procurement, ie. public or taxpayers' funds.

In the simplest terms, procurement, conceptually, includes a set of actions and the activities carried out by the client, as a subject to the application of public procurement regulations, in order to obtain the corresponding distance, the execution of service or execution of works, and allocated to this purpose is determined and provided with means, which has the characteristic public or budgetary funds (2).

To resolve the crisis situations in public procurement the specific type of procedure is provided. It is a negotiated procedure without prior publication for reasons of extreme urgency that can be caused by a variety of emergency and security sensitive situations or natural disasters.

Generally speaking, the word crisis is often used in everyday speech, in describing different situations, but more often in describing the state of the potential negative effects in which the company, organization or individual systems within it. Despite frequent application there is no unambiguous definition of the term crisis, but many, often contradictory interpretations (3).

It can be said that crises like wildfire. They begin quietly in a corner. If you feel the smell of smoke and the time you notice the fire will prevent large-scale crisis. If no action is taken, the problems that have smoldered can flare up in fire (4).

Security challenges and crises are particularly intriguing in the field of public procurement. In this regard, very important issue is crisis management and prompt response in the organization of the contracting authority to a specific crisis situation which has an impact on the interests of the contracting authority, as well as the public interest.

Crisis situation can be determined by a variety of internal and external factors. The specific case of such situation represents acceptance, care and accommodation of migrants. In such cases efficient organization and management of the crisis of the contracting organs are crucial, as well as the identification of the instruments for its prevention and elimination.

The influx of migrants poses a risk to the overall as well as private citizens' safety. In fact, safety and security is one of the fundamental preconditions for the existence of the community (5).

In this sense, the goal of this paper is to show the organization mechanisms and instruments available to the contracting authority in the prevention, as well as the response to the crisis situation in the case of procurement of services by hiring additional executors on the acceptance, care and accommodation of migrants.

## **II. THE NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION FOR REASONS OF EXTREME URGENCY**

Negotiated procedure without prior publication of a procurement process due to the lack of obligations of the contracting authority to publish a procurement notice is characterized by the complete absence of competition or competition is minimal.

The meaning of existence of a procedure which is counter to the principle to ensure competition is that there are situations where it is, in terms of the principles of efficiency, it is reasonable to conclude a contract directly with a particular supplier (6).

Also, even though they are not required to publish procurement notice, contracting authorities are nevertheless bound to comply with the principle of insurance schemes competition, and at least attempt to ensure effective competition forwarding a call for proposals to more potential bidders, except in cases where the Public Procurement Law expressly provides the possibility of negotiations with one bidder.

Thus, for example, in the case of procurement of additional works, given the possibility of concluding a contract with the original contractor. However, in case of "emergency procurement", ie. exceptional procurement for demonstrable reasons of extreme urgency, the contracting authority should address the more potential bidders to send invitations to tender, given that the legal norm does not bind the delivery of goods, execution of works or services to a particular potential bidder.

The term potential bidder here should be seen in terms of a person who is able to carry out the purchase. This means that an attempt to ensure competition will not be considered to send an invitation to tender for the parties that it is certain that they are not able to realize the subject of procurement since, for example, are not concerned with activity which is the subject of acquisition (7).

The negotiated procedure without publication of a procurement notice, in practice, is carried out through several stages, namely:

First phase - prequalification phase / phase checks the qualifications of candidates;

The second phase - Phase submit initial offers and negotiation of technical, economic, legal and other aspects of the contract with qualified / selected candidates;

The third phase - the phase of calling for the submission of final bids.

## **III. CONDITIONS FOR APPLYING THE NEGOTIATED PROCEDURE WITHOUT PUBLICATION FOR REASONS OF EXTREME URGENCY**

In this case the contracting entities can implement negotiation procedures without the publication, when the following conditions are fulfilled, ie. when extremely:

- for demonstrable reasons of extreme urgency brought about by events unforeseeable by the contracting authority,
- they can not comply with the Public Procurement Law established minimum time limits for the open, restricted or negotiated procedure with publication of
- the circumstances invoked to justify extreme urgency is not in no case should not be linked to the contracting authority.

Previous case applies to the urgent procurement, for which it is not possible to act within the time limits laid down for the open, restricted or negotiated procedure with publication of the notice.

This urgency should not be caused by the contracting authority, but it must be the result of special and unforeseen circumstances, the circumstances of the occurrence of which is not caused by the contracting body and the occurrence of which the contracting body may not prevent (7).

In BIH law negotiated procedure without prior publication for reasons of extreme urgency is governed by the article 21. d) of the Public Procurement Law of BIH.

As an example of such acquisition may be mentioned a situation in which the contracting body has a need to purchase works on the restoration of the water supply and sewage network, where it is spilled onto or from the sewer shaft, which is located in the area of the contracting body.

After the flood, the state sanitary installations threatens the security of the premises used by employees of the contracting authority, as well as other persons residing on the premises during the activity of the contracting authority. Sewage spills made much damage to floors and walls, and all rooms where the spill occurred were practically unusable.

The current situation is such that it threatens employees' work and performance of activities of the contracting authority. Therefore the need is extremely urgent repair drains inside the building contracting authority in order to protect employees of the contracting authority and other entities.

#### **IV. EXAMPLE OF PROCUREMENT FOR HIRING ADDITIONAL EXECUTORS FOR ACCEPTANCE, CARE AND ACCOMMODATION OF MIGRANTS**

In this section the example of procurement of services for hiring additional staff for acceptance, care and placement of migrants through negotiated procedure without prior publication for reasons of extreme urgency will be presented.

In our example, the contracting authority has a need to hire additional staff on the acceptance, care and accommodation of migrants. In the context of the respective needs of the contracting authority the competent authority for migration and refugees is addressed in order to assist overcoming crisis situations caused by unexpected mass arrival of migrants on the territory of the home municipality.

In fact, during the 24-hour pass through the territory of the municipality hundreds of migrants attempting to reach EU countries through border crossings, which the contracting authority has hired all available capacity to, in cooperation with relevant institutions to adequately and timely respond.

Since the contracting authority did not have the funds in the budget to cover the costs, the competent authority for migration and refugees granted him the funds to cover excessive expenses for help in overcoming crisis situations. In this regard, the contracting authority needs to purchase services hiring additional officers who would be able to accept migrants, care and accommodation on borders, as well as in associated facilities.

Competent authority for migration and refugees approves the payment for the engagement of additional employees. On the other hand that activity can be funded in the budget.

The contracting authority needs to purchase services hiring additional officers who would be able to accept migrants, their care and accommodation on borders, as well as associated facilities.

#### **V. SOLUTION IN THE REPUBLIC OF SERBIA**

Republic of Serbia legislator also recognizes the negotiated procedure without prior publication of a procurement notice for reasons of urgency, as a mechanism of action in crisis situations.

In this sense, it is determined that the procuring entity may conduct a negotiated procedure without publication of a call for proposals for the case that because of extreme urgency caused by extraordinary circumstances or unforeseen events, the occurrence of which in any case does not depend on the will of the contracting authority, the contracting authority could not act in time required to open or restricted procedure.

In Serbian law negotiated procedure without prior publication for reasons of extreme urgency is governed by the article 36. d) of the Public Procurement Law of Serbia.

The circumstances justifying the urgency can not be in any way connected with the client. It is remarkable that in the Republic of Serbia to carry out this type of procedure is subject to prior favorable on the rationale for the urgent need of procurement of the local Public procurement office, as the competent authority in the public procurement system.

#### **VI. THE NEGOTIATED PROCEDURE FOR REASONS OF URGENCY IN THE REPUBLIC OF MACEDONIA**

The Macedonian legislator recognizes negotiated procedure for reasons of urgency, as a special instrument for crisis response.

Assumptions for its implementation are the same as in the Republic of Serbia. Thus, the contracting authority shall apply negotiated procedure without prior publication of a contract notice in the following cases:

For public supply, service and works contracts (article 99):

- a. when no tender in an open procedure or no request to participate in the first phase of a restricted procedure has been submitted, provided that the initial conditions of contract are not significantly altered;
- b. when due to technical or artistic reasons, or for reasons connected with protection of exclusive rights (patents etc), the contract may be executed only by a particular economic operator;
- c. for reasons of extreme urgency caused by events unforeseeable by the contracting authority, nor attributable to it as an omission, as a result of which the time limit for open procedure, restricted procedure, negotiated procedure with prior publication of contract notice or request for quotations cannot be complied with.

#### **VII. CONCLUSION**

Crisis situations require a specific approach and way of solving problems. In the context of public procurement has already crisis management through the application of a specific procedure. In this context, it is a negotiated procedure without publication for reasons of extreme urgency.

In order to resolve the crisis situations in public procurement the specific type of procedure is provided. It is a negotiated procedure without prior publication for reasons of extreme urgency that can be caused by a variety of emergency and security sensitive situations or natural disasters.

Security challenges and crises are particularly intriguing in the field of public procurement. In this regard, it is very important issue of crisis management and prompt response in the organization of the contracting authority to a specific crisis situation which have an impact on how the interests of the contracting authority, and the public interest. Crisis situation can be determined by a variety of internal and external factors. The specific form of such a situation constitutes acceptance, care and accommodation of migrants. In such cases it is crucial efficient organization and management of the crisis of the contracting organs, as well as the identification of the instruments for the prevention and elimination. In this sense, this paper presents mechanisms for organizing and instruments available to the body in the prevention of the crisis situation in the case of procurement of services by hiring additional executors on the acceptance, care and accommodation of migrants.

It is very important to understand that the „negotiated procedure without prior publication“ is not the only option in the case of emergency situations. It is only one of a set of options.

#### REFERENCES

- [1]. *Pravni leksikon* (Zagreb: Leksikografski zavod „Miroslav Krleža“, 2007).
- [2]. C. Bovis, *EU Public Procurement Law* (Cheltenham Glos: Edward Elgar Publishing, 2016).
- [3]. Ž. Kešetović, N. Korajlić, and I. Toth, *Krizni menadžment* (Sarajevo: Fakultet za kriminalistiku, kriminologiju i sigurnosne studije, 2013).
- [4]. R. Luecke, *Upravljanje kriznim situacijama* (Zagreb: Zgombić & partneri, 2005).
- [5]. N. Korajlić, *Istraživanje krivičnih djela* (Sarajevo: Pravni fakultet Univerziteta u Sarajevu, 2012).
- [6]. T. Rahić, F. Kozadra and M. Hadžimusić, *Priručnik za praktičnu primjenu Zakona o javnim nabavkama BIH* (Sarajevo: Privredna štampa, 2016).
- [7]. T. Rahić, F. Kozadra, J. Jakovac and I. Grgić, *Priručnik za provođenje pregovaračkog postupka u javnim nabavkama* (Sarajevo: Rec, 2016).