

Opportunities for Prevention of Corruption in Public procurement in Electricity distribution companies in Bulgaria

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Abstract—This article discusses the possibilities of reducing corruption in public procurement in electricity distribution companies. Despite the clear wording of the Public Service Law, due to the high public interest, various organizational management actions are indispensable, leading to more effectiveness in the prevention of corruption in public procurement in electrical distribution companies. This report aims to analyse the different possibilities via information and communication technologies to implement the rules enshrined in the law and on this basis proposing a model preventing potential corrupt practices.

Keywords—Prevention of corruption, electricity distributional companies, public procurements

I. INTRODUCTION

Under current legislation in Bulgaria, the prices of public services and electrical energy shall be determined in accordance with the underlying activity costs. In this regard, art. 1, al. 1, item 3 and art. 125 of the law on public procurement [4] obliges electricity distribution companies to carry all the costs for works, supplies or services and to conduct competitions for the project by contracting authorities on the basis of the law procedures. This obligation is a consequence of the objects of the electricity distribution companies. They operate on "the basis of special or exclusive rights to carry out one or more sectoral activities" (art. 5, al. 4, item 2) [4]. Control functions are assigned to the Public procurement agency (ex ante control), the Court of Auditors and the Agency for state fiscal inspection (a posteriori external control). On one hand, during the period of validity of the relevant legislation, Public financial inspection agency has made a row of non-sporadic findings of circumvention of the procedures of the law. On the other hand, the society has a strong sensitivity regarding not only the prices of electricity, but also to the way of their formation. All this determines the need for search of new more efficient practices that minimize the risk of various corrupt acts relating to public procurement in electricity distribution companies. This report aims to analyse the various indicators for circumvention of the rules laid down in the law and to offer a model for preventing potential corrupt practices. Implementation of these proposals will lead to the result, on the one hand, to greater confidence in society to the electric companies, and on the other to more security on the legality of the procedures for the selection of the contractor. Increasing the efficiency of public procurement also means increasing of the number of

potential candidates for contractors and reduction of the supply costs.

II. ANALYSIS OF THE SITUATION AND PREVIOUS RESEARCH

The law of Public procurement clearly sets out procedures for the execution of the construction works, supplies or services and to conduct competitions for the project, contracted by electricity distributional companies. However, the control authorities still identify the following tendency to circumvent the procedures:

- Procurement of associated company. This is a classic approach, where the implementation is entrusted to an affiliated company without the requirement of "in house" procedure;
- Unnecessary fragmentation of the procurement, in order to be carried out with more streamlined procedure;
- Unnecessary elevation of criteria towards the contractor, which predetermines him. This is in contradiction with two basic principles of the law: equality and non-discrimination and free competition;
- Violation of the principle of publicity and transparency.

The development of European legislation through the setting of minimum harmonised rules can be seen in the context of preventing corrupt practices and increasing the effectiveness and efficiency of the public resource used. These rules are binding on the national laws of the Member States for public contracts above a certain threshold (817 524 BGN – for supplies and services и 5 000 000 BGN – for construction works) [6].

On the other hand, the development of national legislation in the area, besides the transposition of European legislation, includes the national strategy for the development of the public procurement sector in Bulgaria for the period 2014 – 2020r. [9]. One of the most important directions of the adopted strategy and respectively the implementation plan of the national strategy is related to the publicity and transparency of public procurement through the implementation of entirely electronic methods and means of public procurement [10].

For many years the author has been researching the issues of prevention of corruption in public procurement and the use of Information Telecommunication technologies to accomplish this goal [1, 2]. Increasing the opportunities for

corruption prevention is due to the following identified opportunities of information and communication technologies:

- improved publicity and communication with society;
- to reduce the discretion in the work of employees. ICT can significantly limit the autonomy of decision-making by employees, strictly regulating their actions on the basis of developed procedures that strengthen process automation.
- information security – When employees have valuable information for which it is in the public interest to be reserved for official use, ICT creates prerequisites for identifying the circle of persons with it at all times, opportunities to reduce their number, which leads to a strong difficulty in "trade" with it;
- information – One of the main features of ICT is the ability to create large databases of structured data, integrated into management systems. This possibility can be used in a specific way by the different ICS for prevention and counteraction of corruption: the establishment of early warning systems, integrated national databases, prohibition lists, databases, related to the prevention of conflicts of interest, etc. The information and control functions are in close synergy, supporting both prevention and countering of corruption.

- Controlling through ICT. Compared to the classic control, the difference is in the greater accountability and the ability to effectively control the synchronous ("real") time of a large number of employees at different hierarchical levels, working on one administrative process. In this regard, it shall be carried out:

1. archiving and storing every action of employees through ICT, i.e. documenting in an electronic form every activity of each employee in connection with the execution of an administrative process (leaving a clearly traceable track required by European regulations);

2. timely, in "real time" information about activities carried out in the administrative processes and comparing the expected results, determination of deviations and performance of corrective (regulatory) effects, for restoration of their conformity, where appropriate;

In addition to improving the prevention of corruption through the use of information and communication technologies, the achievement of economies of volume, as well as savings in time, human and financial resources, is achieved.

III. PROPOSAL FOR E-PROCUREMENT

The main opportunities for corruption in public procurement are related to the choice of contractor. In turn, this is related to:

- lack of information on the award of a public procurement contract;
- preparation of the specification according to the possibilities of a particular contractor;
- manipulating the work of the contractor selection committee;
- shredding of uniform orders to reach a lighter procedure;

All these problems can be found through electronic assignment.

I. Establishing the obligation of E-Procurement.

By evaluating the above-mentioned advantages, it should be expected that e-procurement should be carried out whenever it is permissible. From 1 July 2006, when there is a legal possibility to award public contracts by electronic auctions, the lack of compulsory nature of this type of award results on their small number [1]. According to art. 16b of the Public Procurement Act of 2006 'contracting entities may designate a contractor in an open, restricted or negotiated procedure with a notice, using an electronic auction, when the technical specifications of the contract may be clearly defined.'

In the current Public Procurement Act [4], in line with the national strategy [9], the legislation has been extended to a significant extent, which may be considered as a developed regulatory framework in this area. The electronic platform shall provide the following minimum requirements:

- preparation and publication of decisions, notices and public procurement documents;
- preparing and receiving inquiries and providing clarifications;
- preparation and submission of requests for participation and offers;
- evaluation of the offers;
- signing a contract;
- preparation and submission of applications under contracts
- acceptance and processing of electronic invoices;
- connection with electronic payment systems;
- preparation and publication of the protocols and final reports of the commissions for the conduct of procedures
- possibility of exchanging other information and documents relating to e-procurement

The architecture of such an information system should include the following structural units:

1. System module responsible for the basic functionalities of the system, related to configuring the global settings, editing the nomenclatures, managing content and help menus, defining the rights of individual users in the system carried out on the basis of the place of every subject in the procurement process. The system unit must provide detailed information about every single event in the system, thus providing the functions "anti-discretion", "information security" and "controlling". The realization of the possibilities for achieving the anti-corruption effect and the effectiveness and efficiency of the funds spent strongly depend on the organization and management of this module. It is due to the fact that it forms the basis of the overall information about electronic award system.

2. Module of participants in e-procurement. Store and manage the basic data for each of the legal entities that have declared potential participation in electronic auctions. This information must be available whenever necessary from

other modules of the operational process. Unification is achieved in the presentation of the different groups of participants in the process.

3. Electronic auction module for electronic award. Includes all commented requirements for an e-procurement system.

The interrelation between the modules is presented in Figure 1. Variants of the individual sub-modules in the system and counterfactual analysis from the point of view of corruption prevention will be provided in a subsequent publication of the author.

II. Use of a centralized electronic auction for all public procurement, delivery of standardized materials and services to Bulgarian electricity distribution companies in the role of consumer. In this connection, it is necessary to fulfil the following three conditions:

1. Indication of a regulatory obligation to centralise standardised materials and services. Regulatory requirements related to the implementation of centralised procurement are required;

2. Technical development of an e-procurement information system. In this regard, the system unit should acquire more functions related to the aggregation of orders planned by the contracting entities. The procedure changes must be reflected in the system.

3. Providing of administrative capacity for the implementation of centralised auctions.

Under the conditions of the Republic of Bulgaria it is possible to perform electronic auctions through the use of ICT and through the organizational potential of the public procurement agency also for very small as a volume of public procurement funding. The organisational and technical feasibility of the effective conduct of tendering procedures with ICT is also justified by successful practice in a number of countries, with successes in the fight against corruption. In a subsequent publication, the author will comment on possible variations of a centralised award with a counterfactual analysis between them.

CONCLUSIONS

This article discusses the possibilities of reducing corruption in public procurement in electricity distribution companies. The significance of the problem is presented. The European and national regulatory framework is indicated. The main functions of information and communication technologies are described in the prevention of corruption.

Regarding prevention of corruption, the main features of the administrative process of procurement management, built on the principles of electronic auctions, are the following:

1. The strongest possible limitation of the human factor. Anti-discretion.
2. Increasing accountability and control.
3. Maximum possible publicity of the procedure for awarding a public contract.

In this context, two options have been analysed: to create the obligation of e-procurement and to use a centralised electronic auction for standardised materials and services.

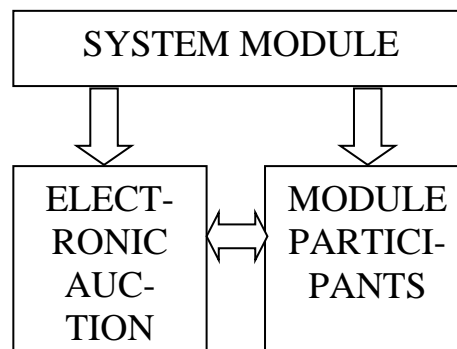


Fig. 1 Interconnections in an e-procurement information system

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