

**UNIVERSITY OF SARAJEVO
SCHOOL OF ECONOMICS AND BUSINESS
AND
UNIVERSITY OF LJUBLJANA
FACULTY OF ECONOMICS**

MASTER'S THESIS

SAMRA OMERSPAHIĆ

UNIVERSITY OF SARAJEVO
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**AN ANALYSIS OF PUBLIC PROCUREMENT IN BOSNIA AND
HERZEGOVINA IN COMPARISON WITH THE EU**

Sarajevo, January 2013

SAMRA OMERSPAHIĆ

AUTHORSHIP STATEMENT

The undersigned Samra Omerspahić a student at the University of Ljubljana, Faculty of Economics, (hereafter: FELU), declare that I am the author of the master's thesis entitled AN ANALYSIS OF PUBLIC PROCUREMENT IN BOSNIA AND HERZEGOVINA IN COMPARISON WITH THE EU written under supervision of Prof.dr. Veljko Trivun and co-supervision of Prof.dr. Nevenka Hrovatin.

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INTRODUCTION

Public procurement can be defined as the purchase of goods, services and public works by governments and public utilities. Transactions of this nature are public undertakings and, therefore, are governed by Civil, Community or International Law. It is also emphasized that in the European Union such purchases are very significant, with approximately 16 % of the EU's GDP being accounted for the public procurement contracts.

Bovis (2012, pp.11) outlines two main reasons for the regulation of public procurement in the European Union. The first reason reveals the importance of public and utilities procurement for the proper function of the common market and the attainment of the objectives provided by the European Union law. The second reason reflects the need to bring respectively public sector and utilities procurement markets in parallel operation to that of private markets. Public tenders must be published in the Official Journal if their value exceeds certain threshold values. The aims of the EU directives are to avoid discrimination on grounds of nationality and to ensure transparency by requiring publication in the Official Journal as well as the spreading of information through the Tenders Electronic Daily (TED). The public authority's choice of a supplier must be based on one of these two criteria: lowest price or the most economically advantageous tender.

According to Koninck and Ronse (2008, pp.17) contracts should be awarded on the basis of objective criteria which ensure compliance with the principles of transparency, non-discrimination and equal treatment and which guarantee that tenders are assessed in conditions of effective competition. The Directive applies only to contracts above certain financial values. So Gelderman, Ghijsen and Brugman (2006, p.4) explain that contracts below the financial thresholds are excluded from the Directives, as are some contracts for national security, defense or international procedure. Similarly, Thai (2008, p.262) claims that thresholds are stated in euros. They are revised every two years to align them with the thresholds in the Government Procurement Agreement (GPA). For countries that are not in the euro-zone, the euro thresholds are converted into national currencies when the euro rates are established, and that conversion value is applied for the next two years.

Genderen-Naar (n.d.) gives an overview of the EU Public Procurement Directive. In 2004 the European Union updated and simplified the legislation on the public procurement procedures and revised the four European directives on Public contracts into two legal instruments: the „traditional” Directive for public works contracts, public supply contracts and public service contracts, and the Directive on the „special sectors” of water, energy, transport and postal services. The fundamental principle underlying the EU public procurement rules is that a qualifying contract must be opened up through the tender. To award contract to suppliers, there are several steps which must be fulfilled in tender procedure.

In the study Corruption in public procurement by Council of Europe (1998, pp.7), it is emphasized that corruption is a serious problem in the whole world. Corruption in procurement affects the efficiency of public spending and donor's resources, creates waste and ultimately affects the quality of health and education services and the opportunities they present to improve quality of life. So it is very important to develop a program for the prevention of corruption. By the study of OECD (2007, p.3), public procurement has been identified as the activity most vulnerable to corruption.

In the Public Procurement Law of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 49/04), which came into force in November 2004, all characteristics and procedures concerning public procurement it is stated. This law has an aim to bring public procurement legislation in line with the standards of the EU member states. Bosnia and Herzegovina on the road to European integration has an obligation to harmonize legislation with EU directives in all areas, as well as in public procurement. European Union Directives of public procurement cover the internal market of the EU, so member states are obliged to include the directives regulations in their national legislation. Bosnia and Herzegovina committed to harmonize Public Procurement Law with EU directives and it is one of the preconditions for the accession of negotiations.

The scope of study is to show what are EU procurement rules which ensure the public procurement market and that open up free movement of supplies, services and works within the EU. The public procurement directives and principles derived from EU Treaty are intended to ensure that contracts are awarded in an open air and transparent manner, allowing domestic and non-domestic firms to compete for business on an equal basis. The purpose of research is to provide a comprehensive analysis of legal regime of EU public procurement and its interrelation with European national policies. What makes this topic more interesting is to describe tender procedure in detail.

The objectives of the study are given below:

- To show how public procurement is regulated in the EU;
- Which are Public Procurement Directives?
- What are the possible Procurement Procedures?
- Preparation and announcement of a tender;
- How much corruption is present in public procurement?
- Adjustment with the system of public procurement in Bosnia and Herzegovina.

Methods that are used in the thesis are the comparative method, analytical, statistical, descriptive, classification and historical method. Beside these methods, there is an analysis of public procurement system in Bosnia and Herzegovina for the period 2006 - 2010. Some of the items include: value of contracts awarded; the view of concluded contracts for the procurement of goods, services and works; the most and the least frequent type of

procurement; the most common types of public procurement procedures etc. The focus will be on how the law is implemented, the extent to which public procurement in Bosnia and Herzegovina is harmonized with those in European Union as well as the function of Public Procurement Agency (PPA) and how much corruption is presented in the tenders. Publications and reports of a Public Procurement Agency are also one of sources that will be used.

Broadly, the thesis is separated into two parts, theoretical and empirical. The theoretical part includes literature reviews through a research from the University of Sarajevo library, internet search for e-book, official journal and publication of public institutions and various government departments. It is consisted of three chapters. In the empirical part, analysis of public procurement system has been done. Analysis refers on concluded public procurement contracts on different bases for the period 2006 – 2010. In this part appropriate statistical methods have been used. The empirical part contains one chapter.

The first chapter, **Public Procurement Regulation**, shows the analysis of public procurement in EU. Public procurement is regulated by two separate EU Directives: the Public Sector Directive on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and the Utilities Directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. It is very important that the public procurement contracts fulfill the main principles which are non-discrimination and equality of treatment, transparency and competition. This chapter also explains procurement procedures that contracting authorities select in order to award contract. The main types of procedures established in the Law are open procedure, restricted procedure, and negotiated procedure with prior publication of a contract notice, negotiated procedure without prior publication of a contract notice, competitive dialogue and design contest. The end of this chapter describes different steps in procurement process that need to be completed in order to award the contract.

The second chapter deals with the **corruption in public procurement** as the main problem of public procurement. This chapter explains different forms and risks of corruption as well as anti-corruption strategies and initiatives in public procurement to minimize corruption.

Third chapter, **public procurement in Bosnia and Herzegovina**, consists of an analysis of the public procurement in B&H and its harmonization with the European Union, as well as their major differences. It especially emphasizes that corruption in B&H is highly present in public procurement.

Fourth chapter refers to **analysis of concluded contract on public procurement**. The results of empirical research have been presented and analyzed using the graphical method, base index, chain index and average annual growth rate.

1 GENERAL PRINCIPLES OF THE EU PROCUREMENT REGIME

The creation of common market for public-sector procurement and construction contracts come as result of the obligations of Member States to remove restrictions on foreign goods, services and works. Community legislation was necessary to make sure that government contracts were open to all nationalities on equal terms and to make tendering procedures more transparent so that compliance with the principles laid down in the Treaties could be monitored and enforced as it is mentioned in “Public procurement in the European Union” (European Commission, 1998, p.1). According to the guidebook “An Introduction to Public Procurement”, (Office of Government Commerce, 2008, p. 3) public procurement is the process whereby public sector organizations acquire goods, services and works from third parties.

The basic framework for public procurement regulation in Europe is determined by EC Treaty. The EC founding document is actually an international treaty amongst the Member States. The Treaty has an economic focus which establishes an internal market. Firstly, this involves the restriction of all customs duties, quotas on goods and measures that have equivalent effect to customs duties and quotas between Member States. The free movement of goods regime is directed at deleting the borders among the Member States concerning trade barriers, thus creating the EU as a single market for all products. Secondly, it involves the prohibition of restrictions of the free movement of workers, services, capital, payments, and the establishment of the self-employed and companies. The following focus includes a number of important EU policies, especially on competition law, State aids, and agriculture. Lastly, twelve of the Member States share Euro as a common currency.

Numerous governments have followed protectionist practices in public procurement which can have a significant impact on trade. The objective of European Community (EC) procurement regime is to eliminate such practices and to open up public procurement for trade between the EC member states. Thai (2008, pp. 252-253) emphasizes that the EC’s system is of important interest for several reasons:

- **First**, although many trade regimes now deal with public procurement the EC’s is one of the oldest and certainly the most comprehensive, and its experience is valuable for other trade regimes. The value of the EC’s experience is limited by different economic and political circumstances that prevail in different regions, and the unique nature of the EC enterprise itself. Nevertheless, other regimes can benefit from studying the EC’s experience;
- **Second**, several non-EC states are affected by the EC rules, either because the same rules apply under trade agreements with EC because they aspire to membership of the EC or because they are expected to follow at least the basic principles of EC procurement law under trade agreements;

- **Third**, the EC's regime has influenced the design of other regimes notably the World Trade Organization (WTO), Agreement on Government Procurement (GPA). This is both because it was one of the first available models and because the EC was an influential participant in the GPA;
- **Fourth**, the EC system is of the obvious interest to those wishing to supply the public procurement markets of EC member states, including under access granted under the GPA. Knowledge of the EC regime is also important for governments wishing to access the EC market in the future. For both groups, it is important to note that the extent and nature of contracts that the EC is willing to open up to trade, including under the GPA, is substantially influenced by the coverage rules of its internal regime, and is much better understood with knowledge of that regime;
- **Finally**, whilst the EC's objective is to open up procurement for trade reasons, the regime is interesting from the perspective of trade. This is because the EC legislation is the product of pooled experience of a number of states that have considered how to regulate particular issues - including new issues, such as electronic auctions - in a manner that is acceptable to all of them.

The explanation for regulating public procurement on international level is that harmonizing national rules and policies in this area should achieve substantial economic benefits through liberalizing the domestic procurement markets.

1.1 Introduction to Directives

For many years the EU Treaty was considered to impose only negative obligations in public procurement prohibiting discrimination and many other restrictions on approach to markets. Nevertheless, negative obligations itself are not sufficient to open up procurement markets. One of the reasons is proving discrimination difficulty. Many contracts are likely to be awarded to national companies since they are the most competitive suppliers because of the market advantages such as proximity, language skills, etc. It may be difficult for a competitive foreign supplier to show that discrimination, rather than other factors, has led to awards to national suppliers. Subsequently, trade barriers as well emerge for many reasons other than deliberate discrimination.

EU has adopted directives on public procurement that regulate the procedures for awarding major contracts as well as for providing the means to enforce these procedures in order to deal with these issues. This requires public bodies to award contracts using procedures that are transparent. The aim of the transparency rules is to ensure that member states cannot hide discrimination and should take positive steps to improve access to company contracts from other member states, such as advertising contracts. These directives are a form of secondary legislation that has been adopted by the EU under the EU Treaty. Each member state must adopt legislation to follow the directives procedures. Some states, as United Kingdom did not

previously regulate procurement through legal instruments but through the guidance which means introducing significant legislation on procurement for the first time. France required the integration process with existing procurement codes. Normally, a period of at least a year is given to member states to implement directives after they enter into force.

All tenders that are above the specified thresholds have to be published in the Official Journal of the European Union (OJEU) and the Tenders Electronic Daily (TED) database is required by Directive. Contracts which are below the financial thresholds are excluded from the directives, as are some contracts for national security reasons, defense or international procedure reasons. Civil goods that are purchased by the defense procurement authorities, such as office equipment, are also covered (Gelderman et al., 2006, p.4). In the context of above submission Hansen and Nielsen (2001, p.256) also emphasis that the aims of the EU directives are, firstly, to avoid discrimination on the grounds of nationality, and secondly, to ensure transparency by requiring publication in the Official Journal and the dissemination of information through TED.

Genderen-Naar (n.d.) states that in order to improve the quality of information on public procurement and the development of new electronic procurement procedures, the Commission has launched the SIMAP public-procurement information system and allowed free consultation of the TED database, which informs potential suppliers of the many tender invitations issued by contracting entities. Potential suppliers will be able on the SIMAP website to use as a search tool to identify tenders in TED and other databases that may be of interest to them. Most important information about public procurement in Europe is contributed by the SIMAP portal. TED is the online version of the Supplement to the Official Journal of the European Union, devoted to European public procurement. On TED website, which is the only official source of public contracts in Europe, tender notices are published.

In the 1970s first procurement directives were adopted to regulate works and supply contracts of public bodies, whether central, provincial, or local. According to the European Commission (2011, pp.7-8) report “Impact and Effectiveness of EU Public Procurement Legislation” objectives of the first Directive (71/305/EEC) were inscribed in the logic of the gradual abolition of restrictions to the fundamental freedoms. They are focused to address trade barriers in the markets for public contracts for works and supply by coordinating national procedures and as if it is possible taking into account existing procedures and practices.

This report also notices following basic principles:

- Prohibition of technical specifications that could have a discriminatory effect;
- Adequate advertising of contracts;
- Fixing of objective criteria for participation;

- Introduction of a procedure of joint supervision to ensure the observation of these principles.

The second Directive 77/62/EEC affirmed these objectives and also brought into the second freedom - free movement for goods. The concept of "introducing equal conditions of competition" was also added in the case for supplies contracts. These directives were also seen as the predecessors of current public sector Directives which regulated the procurement of public bodies such as government departments, regional governments and local authorities. These rules and their later amendments which consist of various legal instruments were adopted between 1971 and 1980, resulted in a complex body of Community law.

The European Commission recognized the foregoing malfunction of early procurement rules in its 1985 White Paper „Completing the Internal Market” as part of its review of the Community's single market policies. As a result of the 1985 White Paper, the Commission adopted not only measures to improve the existing Directive and enforcement mechanisms but also extended the existing regime to the four important „utilities“ sectors of water, energy, transport and telecommunications. A set of new Directive was adopted in the late 1980's, namely Directive 89/90 amending Directive 71/305 for works contracts and Directive 88/295, which amended Directive 77/62 as amended by Directive 80/767 for supplies contracts. Two main innovations of the Directives at this stage were the inclusion of the definition of the Directive's scope and more transparent procedures. Both Public Sector Directives only amended the original Works and Supplies Directive but did not implement a consolidated text (Braun, pp. 54-55).

Adoption of remedies directive was a further step for an effective regulatory regime. Remedies are legal actions available to economic operators which participate in contract award procedures, allowing them to demand the enforcement of public procurement regulations and their rights under those regulations in cases where contracting authorities, either intentionally or unintentionally, fail to comply with the legal framework for public procurement. According to SIGMA report (2010, p.1110) the legal framework on remedies is found in the following directives:

- Directive 89/665/EEC regulates remedies available to economic operators during the public sector contract award procedures and
- Directive 92/13/EEC regulates remedies available to economic operators during utilities contract award procedures.

The outcome of this second round of legislator activity had been that legal framework on public procurement was scattered over several instruments and as such not easily accessible for the participants in the market. The above-outlined legislation was finally replaced by three public sector Directive 93/36 (supplies), 93/37 (works) and 92/50 (services), which aligned in a single text the stricter and more detailed rules of their respective area (Braun, p. 55).

In May 2000, the European Commission published proposals for modifying the regime and in April 2004 two new EC public procurement Directives came into force, with a requirement that they are implemented into the national law of EC Member States by the end of January 2006.

Current EU public procurement Directives are:

- The **Public Sector Directive (2004/18)** - it applies to service, supply or works contracts entered into by public bodies other than utilities in relation to a utility activity;
- The **Utilities Directive (2004/17)** - it applies to service, supply or works contracts entered into by utilities (i.e. public and certain private bodies operating in the water, energy, transport and postal services sectors) which relate to a utility activity (Global Legal Group, n.d., p.1).

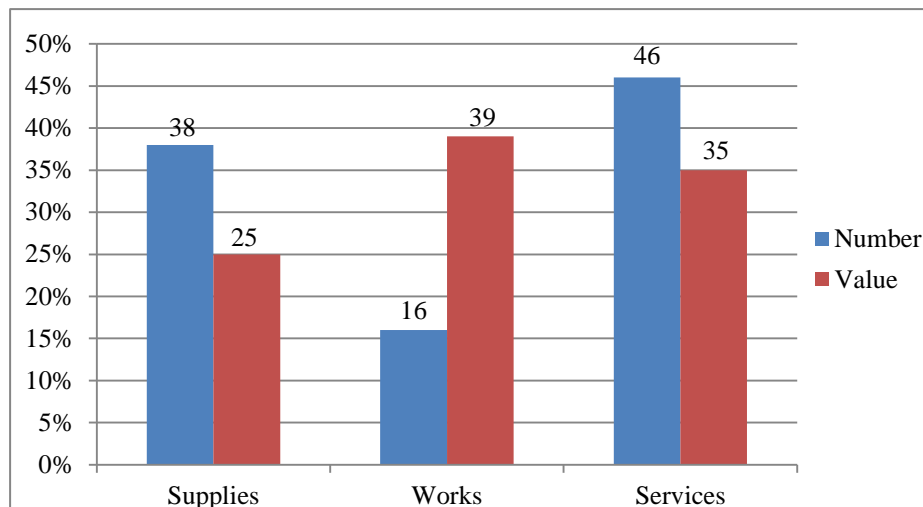
And also both Remedies Directives were amended by **Directive 2007/66**.

Contracts can be for works, supplies or services. Public works contracts are contracts whose aim is the execution, or the design and execution of works, or the realization of a work corresponding to the requirements specified by the contracting authority. Public supply contracts are contracts whose aim is the purchase, lease, rental or hire purchase of goods. Public service contracts are public contracts whose objective is the provision of services. They are further sub-divided in priority services, which are subject to the directive's full rules and non-priority services, which are subject only to very limited rules (on technical specifications, award notices, and statistics). Priority services include some manual services such as vehicle maintenance and refuse collection, as well as various professional services such as accountancy, IT services, and consultancy. They have been selected on the basis of potential scope for cross-border trade, potential savings, and availability of information on the service.

In the case of non-priority services, the requirement is that they should be awarded without using restrictive technical specifications. For example, the use of specifically branded products should be avoided. In addition, information on 'non-priority' awarded contracts should be notified to the Commission in the form of an award notice, indicating whether the notice should be published in the OJEU. The purpose of this provision is to help determine whether some or all of those services might be made as a subject to the full provisions of the Directive at a future date (Fhoilsiu, 2009, p.21).

In **Figure 1** the analysis of numbers and values of contract published in OJEU is shown.

Figure 1: Number and value of contracts published in 2006-2010 by type of contract (in %)



Source: European Commission, *Evaluation Report - Impact and Effectiveness of EU Public Procurement Legislation, 2011*, p.113.

Considering the distinction between different types of contracts, works contracts accounts 39 % of value of all awarded contracts that are published in the OJEU, services account 35 % and supplies account 25 %. Works contracts have significantly higher values included per contract award notice than supplies or services. This was expected, because of the nature of activities and of the regulatory effect of financial threshold levels for application of the directives. The threshold level for works contracts is higher than those for services/supplies.

Whereas the number of contract award notices, the shares are very different, where for instance much higher average contract value (EUR 6.9 million) have works contracts than the supplies contract (EUR 2.1 million) or services contract (EUR 2.4 million). That is why these services appear with the highest number of contract award notice 46 %, while the number for contract notice for works is the smallest (16 %).

1.1.1 Public sector Directives

The first set of Regulations which is consisted of Works, Supply and Services Directives is implemented to contracting authorities. This category of entities includes the state, meaning central, regional and local governments, as well as bodies governed by public law. Definite subsidized contracts, when the element of subsidy exceeds 50 % of the contract value, are regulated by Works and Services Directives, even though the purchaser can be a private entity. According to Thai (2008, p.261) the directive applies very broadly to all types of procurement contracts - it applies in principle to works contracts, supply contracts, and services contracts.

1.1.1.1 Exclusions

Thai (2008, pp.261-262) explains the main exclusions of this Directive:

- Concessions. Services concession contracts are excluded. These are contracts in which the contractor is remunerated by exploiting the service - for example, a contract to build and operate a leisure center where remuneration comes from charging users. Works concessions are subject to only very limited rules, namely to advertise the contract in the EU's Official Journal and to give at least 52 days for firms to respond;
- Certain contracts awarded to another contracting authority;
- Certain contracts for hard defense equipment and other contracts affected by various concerns relating to secrecy or security;
- Contracts governed by different procedural rules connected with joint projects with non-member states, those by international bodies (e.g., the United Nations or World Bank), and those made pursuant to international agreements on the stationing of troops;
- Contracts for certain services. Apart from the fact that non-priority services are subject only to limited rules, some services contracts are excluded altogether, each for different reasons. These are arbitration or conciliation services, certain financial services, and certain research and development services;
- Utility contracts. Contracts awarded by contracting authorities connected with the activities regulated under the Utilities Directive are excluded—these are subject to that directive instead. Contracts connected with telecommunications activities (which were previously regulated by the Utilities Directive but are now excluded from regulation altogether) are also excluded.

1.1.1.2 Financial thresholds

Directive 2004/18/EC in the Article 17 stated that this directive applies only to contracts above certain financial thresholds. This is because the legislator decided to regulate only contracts large enough to interest firms from other member states. The thresholds for applying the directive have been simplified in the 2004 directive. They are stated in euros. They are revised every two years to make sure that they are in line with the thresholds in the GPA (which are set out in SDR, not euros). For countries not in the Euro-zone, the Euro thresholds are converted into national currencies when the euro rates are established, and that conversion value (which is based on the exchange rate in the previous two years) is applied for the next two year (Thai, 2008, pp.262-263). The value of each contract is the relevant value for determining the threshold. In certain cases purchasers split contracts into smaller amounts, to bring them below regulatory thresholds, and this phenomenon has also seen in the EC regime.

Thai (2008, pp.263-263) explains that the Public Sector Directive includes two sets of provisions. Firstly, the directive prohibits purchasers from splitting up purchases with the intention of bringing the value of contracts below the threshold to avoid the directives.

However, this is very difficult to prove. Secondly, the directive also includes an additional set of provisions that are more stringent than those in other trade agreements, such as the GPA. They require a purchaser to add together the value of purchases made under a number of similar contracts: the directive will apply if the value of these added together exceeds the threshold.

Commission Regulation No 1251/2011 was adopted on 30 November 2011. This Regulation amends Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council with regard to their application thresholds for the awards of contract procedures. Below is a table in relation to thresholds for Works, Supplies and Services which is published in the Official Journal of the EU:

Table 1: Threshold for Public Sector Directive 2004/18/EC (in €)

Works contract	Threshold applies to Government Departments and Offices, Local and Regional Authorities and public bodies	5,000,000.00
Supplies and Services contract	Threshold applies to Government Departments and Offices	130,000.00
	Threshold applies to Local and Regional Authorities and public bodies outside the Utilities sector	200,000.00

Source: Commission Regulation No 1251/2011, Official Journal of the European Union, 2011.

1.1.2 The Utilities Directive

The Utilities Directive regulates procurement in four sectors, especially water, energy, and transport (since 1990, under Directive 90/531) and postal services which are added in 2004 (Directive 2004/18/EC). As a result of liberalization of the sector, the directive which regulated bodies providing telecommunications services were accepted from the 2004 directive. The fact that the initial sectors, covered by the Utilities Directive, were not regulated until 1991, and postal services until the 2004 Utilities Directive led to the utilities sectors sometimes being referred to as “excluded” sectors (Arrowsmith, 2010, pp.217-218).

According to Thai (2008, pp.264-265) the Utilities Directive covers contracts related to the following activities:

- **Water sector:** The directive covers mainly the following: contracts relating to the provision or operation of a fixed network for supplying drinking water to the public, contracts relating to the supply of water to fixed networks, and contracts relating to the disposal or treatment of sewage;

- **Energy sector:** The directive covers contracts relating to provision or operation of a fixed network for the supply of electricity, gas, or heat to the public (i.e., generation of electricity, and the supply of electricity to homes and industry) and contracts relating to exploitation of a geographical area for the purpose of exploration for, or extraction of, oil, gas, and solid fuels. There is an exemption for contracts for the purchase of energy and of fuel for the production of energy, as with purchases of water, it was considered that the absence of a cross-border competitive market for the supply of this fuel would make the directive's application pointless;
- **Transport sector:** The directive covers contracts relating to the provision of air terminal facilities, and the provision of port and similar facilities (e.g., construction of new runways and airport terminal buildings). The activity of transportation is not included - for example, purchases of airplanes and uniforms by air carriers such as British Airways are not regulated. The directive also covers contracts relating to the operation of transport networks in the field of transport by railway, automated systems, tramway, trolleybus, bus, and cable.
- **Postal sector:** The directive also covers postal services, namely the clearance, sorting, routing, and delivery of postal items. It also covers various other services (e.g. transmission of registered electronic mail) when provided by an entity that also provides the above services as defined in the new directive; these were included because it is feared that entities might use their special position in respect of postal services to gain a competitive advantage in providing other services (e.g. because of the special access they have to postal customers).

As it stated in Directive 2004/17/EC it covers a broader group of entities than the Public Sector Directive. Precisely it covers three groups of entities:

- **Contracting authorities.** Entities that are contracting authorities under the Public Sector Directive. These entities contracts relating to utility activities are, in general, excluded from that directive and governed instead by the Utilities Directive. For example, if a local authority is responsible for water supply and sewage treatment for its area, its contracts relating to this activity (e.g. to build a sewage treatment plant) are governed by the Utilities Directive;
- **Public undertakings.** The directive applies to public undertakings, defined as undertakings over which public authorities may exercise, directly or indirectly, a dominant influence, by virtue their ownership, financial participation in the entity, or the rules which govern it. A dominant influence is presumed when contracting authorities hold the majority of the subscribed capital, where they control the majority of the votes attached to the shares, or where they can appoint more than half the members of its administrative, managerial, or supervisory body. However, it is not limited to these cases (e.g. a lesser shareholding may in practice result in a dominant influence);
- **Entities with special or exclusive rights.** The third category of regulated entities comprises those which operate on the basis of special or exclusive rights. The directive

defines “special or exclusive rights” as rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of the utility activities to one or more entities, and which substantially affects the ability of other entities to carry out such activity”. This covers, for example, an entity with a monopoly license to supply water to homes in a particular area, even if that entity is governed by ordinary company law with 100 % of its shares in private ownership.

A private entity is not covered by the directive because it requires a license from government to carry out its activities. It is unusual for a domestic procurement regime to regulate private entities - in many regimes even state companies are not regulated. The EC’s decision to regulate these companies is based specifically on the purpose of the rules as being to prevent discrimination and on the premise that these entities are susceptible to discriminatory behavior. Other countries have not been so willing to submit their private companies to regulation under trade agreements, perhaps because they do not share the view that such companies are subject to real pressure to discriminate or perhaps because of the political difficulty of bringing them under trade agreements. Thus, although the EC was prepared to commit to open up the purchasing of these private purchasers to suppliers from GPA parties under the GPA, it did not do so, because other GPA parties were not willing to bring their own private entities within the GPA’s regulatory regime. Under the GPA, the EC has thus undertaken to open up only the markets of utilities that are contracting authorities or public undertakings under the directive (Thai, 2008, p.266).

1.1.2.1 Exclusion

The Utilities Directive provides for sector specific exemptions in a number of utility sectors based on practical considerations relating to supply or on the degree of competition in these markets. These exemptions apply in respect of the procurement of fuel and energy for the production of energy, procurement of water for the provision of water services, certain services for bus transport as well as upstream oil and gas exploration and exploitation.

The Utilities Directive contains various exclusions which parallel those in the public sector. They cover:

- Secrecy and security;
- Contracts connected with joint projects with certain non-member states, those awarded by international bodies and those made pursuant to international agreements on the stationing of troops;
- Contracts for services which are provided by a public authority which has an exclusive right to provide them. (Arrowsmith, 2010, p.227).

Arrowsmith (2010, pp.228-230) notices that there are also some further additional exemptions not found under the Public Sector Directive:

- For activities involving the physical use of a network or geographic area outside the Communities;
- For contracts made for the purpose of acquiring goods, works or services in order to resell them, or to hire or provide them to another (unless the purchaser has a special or exclusive right to re-sell, hire etc, or others that are not free to do so on the same terms);
- For contracts with companies in the same group as the purchaser - referred to as "affiliated undertakings" and for joint ventures:
 - Affiliated Undertakings Exemption - Where „undertakings“ are made up of a number of mutually owned or mutually dependant companies, the Utilities Directive provides a specific exemption for purchases made between them under certain conditions. They are treated like „in - house“ contracts known as intra-group transactions;
 - The exemption for joint ventures - This exemption covers contracts between entities which do not have any "group" connection, but which have joined together for a particular activity. This could be, for example, for a one-off project, a project extending over a period of years (for example, operation of a transport concession over a fixed term), or a collaboration of unspecified duration in a particular utility activity – for example, ongoing collaboration in exploring for fuel.

1.1.2.1 Financial thresholds

Utilities Directive financial thresholds are higher than the thresholds applying to contracts covered by the Public Sector Directive. There are detailed provisions covering the way where the value of contracts is calculated for specific types of contract and specific situations. The main objectives of the provisions relating to the calculation of the contract's value are to ensure that there is a transparent and genuine pre-estimate of the contract awarded value, and that the contracting entity does not intend to avoid the application of the Utilities Directive, for example by splitting a requirement or a contract into smaller sub-threshold packages or contracts.

Table 2: Threshold for Utilities Directive 2004/17/EC (in €)

Works contract	For entities in Utilities sector covered by Government Procurement Agency	5,000,000.00
Supplies and Services contract	For entities in Utilities sector covered by GPA	400,000.00

Source: Commission Regulation No 1251/2011, Official Journal of the European Union, 2011.

1.1.3 Implementation of EU Directives

Directives 2004/17/EC188 and 2004/18/EC were adopted on 31 March 2004, with a deadline for each Member States for transposition of these Directives into national legislation until 31 January 2006. Deadline to implement the Directives for Romania and Bulgaria was 01 January 2007 - the date of their accession to the EU. A list of each Member State and their respective date of adoption and implementations are presented in the tables below.

Table 3: Overview of national implementation – timeliness- 2004/18/EC

Member State	Procedure opened	Closed	Comments	Implemented by
Belgium	03.2006.	03.2010.	Judgment	09.2009.
Bulgaria		-		01.2007.
Czech Republic	03.2006.	10.2006.		07.2006.
Denmark		-		01.2005.
Germany	03.2006.	12.2006.		11.2006.
Estonia	03.2006.	03.2007.		05.2007.
Ireland	03.2006.	10.2006.		06.2006.
Greece	03.2006.	06.2007.	Referral decided	03.2007.
Spain	03.2006.	12.2007.	Referral executed	10.2007.
France	03.2006.	10.2006.		08.2006.
Italy	03.2006.	10.2006.		07.2006.
Republic of Cyprus		-		02.2006.
Latvia	03.2006.	12.2006.		05.2006.
Lithuania	03.2006.	10.2006.		07.2006.
Luxembourg	03.2006.	10.2009.	Judgment	08.2009.
Hungary	03.2006.	12.2006.		10.2006.
Malta		-		06.2006.
Netherlands		-		01.2006.
Austria		-		01.2007.
Poland	03.2006.	10.2006.		05.2006.
Portugal	03.2006.	09.2008.	Referral decided	07.2008.
Romania		-		02.2007.
Slovenia	03.2006.	06.2007.		03.2007.
Slovakia		-		02.2006.
Finland	03.2006.	06.2007.	Referral decided	06.2007.
Sweden	03.2006.	04.2008.	Judgment	01.2008.
United Kingdom		-		01.2006.

Source: European Commission, Evaluation Report - Impact and Effectiveness of EU Public Procurement Legislation, 2011, p.42.

As we can see in the **Table 3** transposition has been delayed in few Member States, which resulted the launch of 18 infringement non-transposition procedures. All procedures were opened in March 2006, nine of them were closed by the end of 2006, while five procedures

were closed in the end of 2007. Two procedures were closed in 2008, one in 2009 and the last one in 2010. Currently the Public Directive has been fully transmitted in each Member State. The last country which transmitted the directive was Belgium. In four Member States, six infringement procedures, at various procedural levels, are currently in process concerning the incompatibility of national implementations for particular provisions of the Public Directive.

Table 4: Overview of national implementation – timeliness- 2004/17/EC

Member State	Procedure opened	Closed	Comments	Implemented by
Belgium	03.2006.	03.2010.	Judgment	02.2010.
Bulgaria		-		01.2007.
Czech Republic	03.2006.	10.2006.		07.2006.
Denmark		-		01.2005.
Germany	03.2006.	12.2006.		11.2006.
Estonia	03.2006.	03.2007.		05.2007.
Ireland	03.2006.	03.2007.		03.2007.
Greece	03.2006.	06.2007.	Referral decided	03.2007.
Spain	03.2006.	12.2007.	Referral executed	10.2007.
France	03.2006.	12.2006.		08.2006.
Italy	03.2006.	10.2006.		07.2006.
Republic of Cyprus		-		02.2006.
Latvia		-		12.2004.
Lithuania	03.2006.	10.2006.		07.2006.
Luxembourg	03.2006.	10.2009.	Judgment	08.2009.
Hungary		-		05.2004.
Malta		-		06.2005.
Netherlands		-		01.2006.
Austria		-		02.2006.
Poland	03.2006.	10.2006.		05.2006.
Portugal	03.2006.	09.2008.	Judgment	07.2008.
Romania		-		02.2007.
Slovenia	03.2006.	06.2007.		03.2007.
Slovakia		-		02.2006.
Finland	03.2006.	06.2007.	Referral decided	06.2007.
Sweden	03.2006.	04.2008.	Judgment	01.2008.
United Kingdom		-		01.2006.

Source: European Commission, Evaluation Report - Impact and Effectiveness of EU Public Procurement Legislation, 2011, p.43.

From the **Table 4** we can see that in several Member States in the case of the Utilities Directive the transposition has been delayed and it resulted with the launch of 16 infringement non-transposition procedures. All procedures were opened in March 2006, six were closed in the end of 2006 while another six in the end of 2007. Two of the remaining four procedures were closed in 2008, one in 2009 and the last one in 2010. Currently, the Utilities Directive has been fully transmitted in each Member State - the last country that transmitted this

directive was Belgium. Furthermore, it should mention that two infringement procedures are currently in process concerning the incompatibility of national implementations for particular provisions of the Utilities Directive in two Member States.

Most of the Member States regulate Public Procurement above EU financial threshold by law or regulation. There are two exceptions, and they are Denmark and Belgium. EU Directives on public procurement in Denmark were incorporated directly by Government orders to which the Directives were annexed. In Belgium, the obligatory elements of the Directives have been implemented through several acts, which includes two Royal Decrees and the rest of the provisions were pending another Royal Decree to be implemented (European Commission, 2011, p.44).

The same legal instrument for the public and utilities sectors in the regulation of procurement above EU threshold use most of the Member States, namely Austria, Bulgaria, Czech Republic, Estonia, France, Germany, Hungary, Italy, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovak Republic and Sweden. The other Member States have separate regulatory instruments for the public and utilities sector rules. All Member States have the same regulatory instrument which covers the supply, services and work contracts with the exception of Germany and Greece.

The most of Member States regulate Public Procurement below EU financial threshold by law or regulation in the public sector. In United Kingdom and Ireland where the contracting authorities are led by guidance document, but the Netherlands has voluntary regulation and guidance. Furthermore, Member States which have public procurement below EU threshold regime they set it out either through the law covering above EU threshold procurement, or other national legislation or through a combination of these two (European Commission, 2011, pp.53-54).

The same legislative instrument for the public and utilities sectors in their regulation of procurement below the EU thresholds use Austria, Bulgaria, Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Portugal and Romania. Although separate rules for the utilities sectors have Belgium, Slovenia, Spain and Sweden. Some countries do not have detailed rules for the utilities sector below threshold. Contracts in these countries are covered in separate acts. These are the Czech Republic, Cyprus, Denmark, Finland, Latvia, Poland, Malta and Slovak Republic. Denmark does not have a specific law for below threshold procurement in the utilities sector and contracting entities are obliged to have internal procedures for this. The utilities sector for below EU threshold is voluntary in the Netherlands.

1.2 Principle of public procurement

Creating a common market that eliminates barriers to trade in goods and services between EU Member States has been one of the EU main objectives. That means removing all barriers to trade arising from the procurement context.

In SIGMA (2011b, p.4) brief it is noticed that barriers to trade can be erected by means of legislation or by the actions of contracting authorities or economic operators. Legislation can create barriers by imposing “buy national” requirements. Contracting authorities can impose barriers by making discriminatory award decisions. Economic operators can also create barriers by colluding together to rig the tender prices. All of these barriers have the effect of distorting competition in the common procurement market. One of the primary purposes of public procurement legislation is to eliminate existing barriers and prevent the erection of new barriers. It does so by applying the basic principles flowing through the legislation.

According to the guidebook of USAID (2007, p.16) the award of public contracts is governed by the main following general principles:

- Non-discrimination and equality of treatment;
- Transparency;
- Confidentiality.

1.2.1 Non-Discrimination and equality of treatment

The principle of non-discrimination is a key element of public procurement. This principle prohibits any discrimination on grounds of nationality, meaning that all participants shall be treated in the same manner, unless the difference is objectively justified. Both direct and indirect discrimination is prohibited, and no national preferences are allowed. Contracting authorities must remain non-biased and impartial toward all participants (USAID, 2007, p. 16). Arrowsmith (2010, p.130) defines equal treatment as principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified.

In a sense, it implies that contracting authorities do not take into account the different abilities or difficulties faced by individual economic operators but judge them only on the results of their efforts, i.e. on the basis of the tenders that they submit. It ignores any considerations that are not relevant to the analysis of the economically efficient tender and provides an objective assessment of tender prices and tender qualities. The principles of equal treatment and non-discrimination are not the same. Generally, all procurement legislation will seek to maintain equality between economic operators. In the European context that equality will also be based on nationality.

1.2.2 Transparency

According to SIGMA brief (2011b, pp.5-6) transparency has only recently emerged as a principle in its own right, although it is probably better to think of it as a tool to be used to achieve other objectives. For example:

- Publication and accessibility of the legislation provides clarity and certainty for all stakeholders and enables contracting authorities and economic operators to be aware of the rules of the game;
- Requirements of advertising guarantee transparency in the discovery process;
- Publicizing in advance the technical specifications and the selection and award criteria permits stakeholders to check that they are fair and non-discriminatory;
- Recording and reporting requirements ensure that the actions of the contracting authorities may be verified where appropriate.

Arrowsmith (2010, p.131) suggests however, that in general in public procurement this concept has four distinct dimensions, namely:

- Publicity for contracts;
- Publicity for the rules of the process;
- Limits on discretion;
- Provision for verification and enforcement.

The principle seems able to cover all four dimensions as it applies in the EU procurement directives. In the context of public procurement, transparency refers to the ability of all interested parties so they would know and understand the actual methods and processes of awarded contracts. It represents a key pre-condition for promotion wide participation in procurement. Guidebook by USAID (2007, pp. 16-17) explains that the level of transparency and openness of the procurement procedure varies in practice according to:

- **The stage of the public procurement process:** Although the tender process is strictly regulated, the phases prior to and after the tender are less subject to transparency and accountability requirements;
- **The sensitivity of information:** There is also a limited number of restrictions on the information provided outside the government in order to protect commercially-sensitive information in tenders or security-sensitive information for the State (e.g. defense, national security) that could harm interests of the tenderers;
- **The specificity and value of the procurement:** A balance should be found between the need for transparency and other considerations, such as efficiency, depending on the type of contract at the stake. Therefore, the information made available and the means for its dissemination vary proportionally to the size of the contract and the specificity of the object to be procured.

1.2.3 Competition

From an economic perspective, competition operates as a discovery procedure by allowing different economic operators to communicate the prices at which goods and services are available on the market. Those prices act as guideposts and reflect the demand and supply conditions at any given moment. They also reflect the differences in quality and in terms and conditions of sale of the different products available (SIGMA, 2011b, pp.4-5). This is the reason why advertising is so important. It guarantees the widest possible publicity and competition that enable economic operators from all Member State to participate, and in that way ensure the greatest possible choice. Keeping competition fair is a key concern to achieve efficient and economic procurement results. Procurement legislation attempts to prevent any misuse or restrictions of competition within the Community as well as the attempts to prevent economic operators from being able to prohibit the tender.

By the same brief that was mentioned above, it is stated that such attempts can take many forms and can affect the products or services or the economic operator itself. As a result, the legislation prohibits:

- Barriers to free movement of goods such as import restrictions and buy national policies;
- Barriers to the freedom to provide services such as attempts to restrict foreign economic operators from tendering through the use of local registration requirements.

1.3 Tendering procedure

There are few types of tendering procedures. Contracts are awarded through one of the following procedures:

- Open procedure;
- Restricted procedure;
- Competitive dialogue procedure;
- Negotiated procedure;
- Design contest.

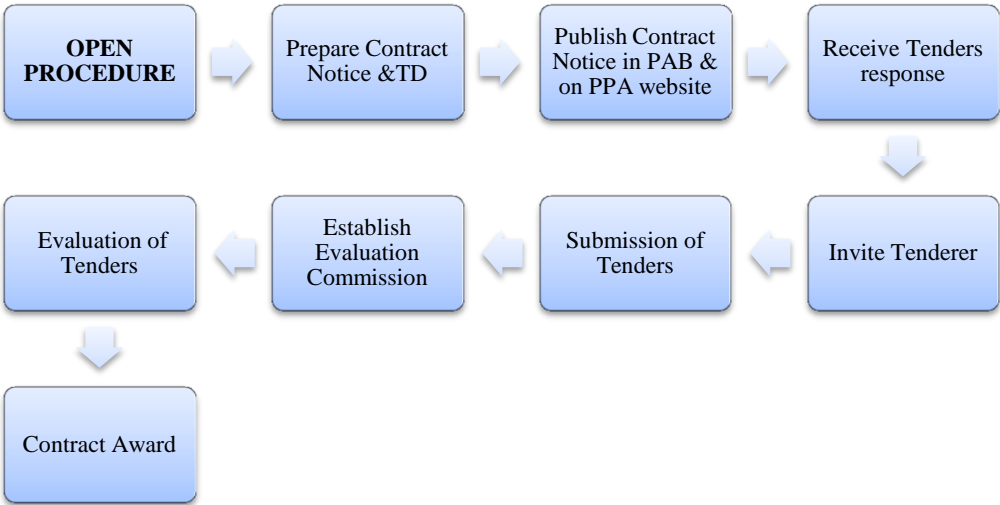
1.3.1 Open procedure

Open procedures can always be used for all public contracts. The open procedure is a single-stage process. A contracting authority advertises the contract opportunity and then issues full tender documents, including the specification and contract, to all economic operators that request to participate. Economic operators submit both selection information and tenders at the same time in response to the contracting authority's advertised requirements. The contracting authority may receive a large number of tenders, it cannot control the number of tenders that it receives, but not all of those tenders will necessarily be considered (SIGMA, 2010, p.463).

Only tenders of qualified economic operators which have submitted the required documents and have met the selection criteria will be considered. Tenders can be evaluated on the basis of either the lowest price or the most economically advantageous tender. Negotiations with economic operators are not permitted although contracting authorities may simplify aspects of the tender with tenderers.

Steps in open procedure are presented in **Figure 2**.

Figure 2: Steps in open procedure



Source: USAID, Public Procurement Manual, 2007, p.32.

1.3.2 Restricted procedure

According to Fhoilsiu (2009, p. 21) restricted procedure is a two-stage process where only those parties who meet minimum requirements in regard to professional or technical capability, experience and financial capacity to carry out a project are invited to tender:

- As a first step, the requirements of the contracting authority are set out through a contract notice in the OJEU and expressions of interest are invited from potential tenderers. The contract notice may indicate the relevant information to be submitted or the information may be sought via a detailed questionnaire to interested parties;
- The second step involves issuing the complete specifications and tender documents with an invitation to submit tenders only to those who possess the requisite level of professional, technical, financial expertise and capacity. It is important to note that, as a basis for pre - qualifying candidates, only the criteria relating to personal situation, financial capacity, technical capacity, relevant experience, expertise and competency of candidates set out in the Directive 2004/18/EC are permissible.

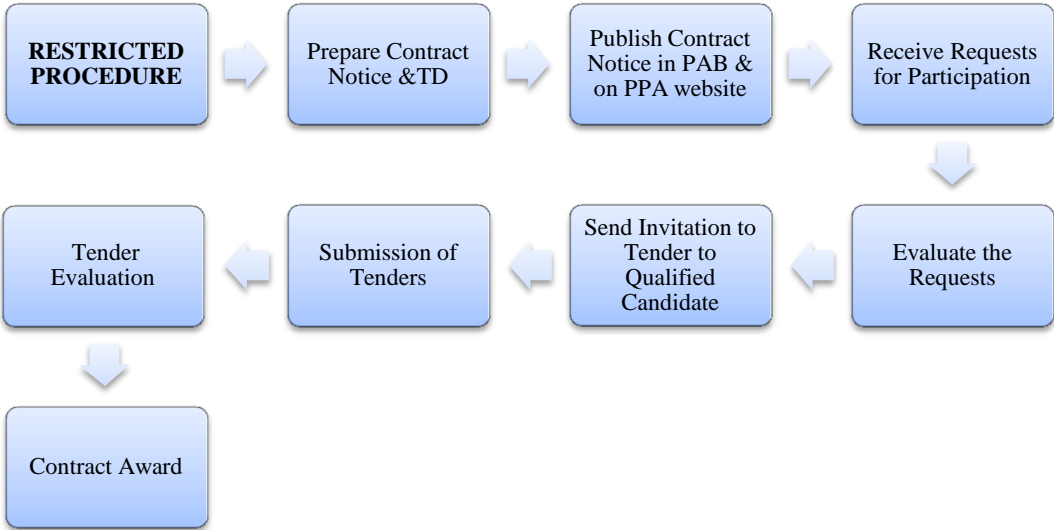
The restricted procedure allows the contracting authority to limit the number of tenders that it receives, unlike the open procedure. Tenders can be evaluated on the basis of either the lowest price or the most economically advantageous tender and no negotiations are permitted with economic operators (SIGMA, 2010, p.463). Contracting authorities can make decision to shortlist qualified candidates if this is indicated in the contract notice as well as the number or range of candidates. Shortlist of candidates that fulfils minimum qualification criteria must implement non - discriminatory and transparent rules and criteria which are known to candidates. The Directives require that a sufficient number to ensure adequate competition is invited to submit bids and indicate a minimum of five (provided there is at least this number who meet the qualification criteria) and up to a total of 20 (Fhoilsiu, 2009, p.23).

In USAID (2007, p.33) guideline it is emphasized that when making the decision to apply the restricted Procedure, the contracting authority will take into account:

- The nature of the contract;
- The time frame involved;
- The costs;
- The expected number of tenderers.

To award contract in restricted procedure, there are some steps to follow.

Figure 3: Steps in restricted procedure



Source: USAID, Public Procurement Manual, 2007, p.34.

1.3.3 Competitive dialogue procedure

Competitive dialogue is a new procedure that has been introduced in Directive 2004/18. According to SIGMA (2010, p.463) report „Public Procurement Training for IPA Beneficiaries“, the competitive dialogue procedure is a two-stage process. The contracting authority advertises the contract opportunity, and the economic operators first submit pre-qualification and selection stage information, which is used by the contracting authority to establish whether the economic operators are qualified to perform the contract and to select the economic operators that are to be invited to tender. The contracting authority is permitted to limit the number of economic operators that it invites to tender and to draw up a shortlist of economic operators.

Thai (2008, p.269) notices that competitive dialogue is a new procedure, introduced to provide more flexibility in awarding complex contracts, especially for major infrastructure projects, such as contracts for building and operating prisons and hospitals. The procedure involves the following:

- Advertisement of the contract in the Official Journal;
- Selection of a limited number of suppliers to participate, with the same rules as for restricted procedure;
- A dialogue phase, in which the entity may discuss with invited suppliers their proposed solution, including to reduce the number of suppliers involved;
- A final tender stage, in which the suppliers remaining in the competition submit final tenders.

In form it provides a halfway house between the relatively unstructured negotiated procedure as well as the rigid open and restricted procedures. In essence it provides a lot of flexibility in the first part of the procedure, including engaging in dialogue with providers – but, unlike the negotiated procedure with a notice, requires a formal and complete tender to be submitted at the end of the procedure as the basis for making the final choice of contracting partner (Arrowsmith, 2010, p.134).

1.3.4 Negotiated procedures

Fhoilsiu (2009, p.24) notices that this is an exceptional procedure, which may be used only in the limited circumstances set out in Articles 30 and 31 of the public sector Directive. There are two types of negotiated procedure:

- Negotiated procedure with prior publication of a contract notice;
- Negotiated procedure without prior publication of a contract notice.

1.3.4.1 Negotiated procedure with prior publication of a contract notice

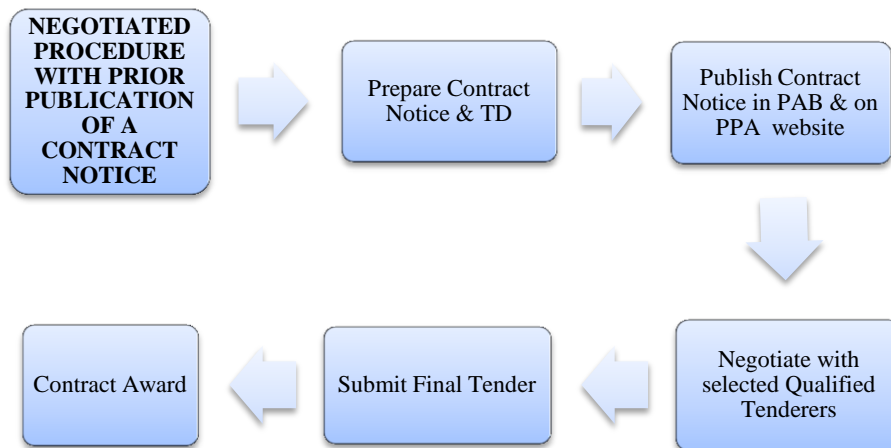
According to USAID (2007, pp.35-36) the conditions under which the contracting authority can carry out the negotiated procedure with the prior publication of a contract notice are described below:

- When the value of the awarded contract is above the low value thresholds, contracting authorities may use the negotiated procedure with prior publication of the contract notice, in the following cases:
 - In the event of irregular tenders or the submission of tenders which are unacceptable under the national legal provisions, in response to an open or restricted procedure, insofar as no substantial alteration is included in the contract as provided in the public procurement rules;
 - In exceptional cases, when the nature of the goods, works or services or the risks attaching there do not permit prior overall pricing.
- When the value of the contract is lower than the low value thresholds, contracting authorities may use negotiated procedures with prior publication of a contract notice in any case which they deem appropriate, provided that the procedure complies with the principles of equal treatment, proportionality and transparency;
- Contracting authorities shall negotiate with tenderers, the tenders submitted by the letter in order to adapt them to the requirements which they have set out in the contract notice, the specifications and additional documents to seek out the best tender;
- Contracting authorities may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications.

Arrowsmith (2010, p.135) emphasizes that under the negotiated procedure with prior publication of a contract notice the entity must advertise the contract and hold a competition, and must follow various strict rules on, for example, how to select firms, to invite on use and disclosure of award criteria which are the same or similar to those of open and restricted procedures. However, the form of the competition is very flexible and the procuring entity may simply hold discussions with firms if it wishes. It is more flexible than competitive dialogue in that it does not even require any detailed final tender from those participating in the process.

In **Figure 4** are steps that should be followed in order to award contract.

Figure 4: Steps in negotiated procedure with prior publication of a contract notice



Source: USAID, *Public Procurement Manual*, 2007, p.37.

1.3.4.2 Negotiated procedure without prior publication of a contract notice

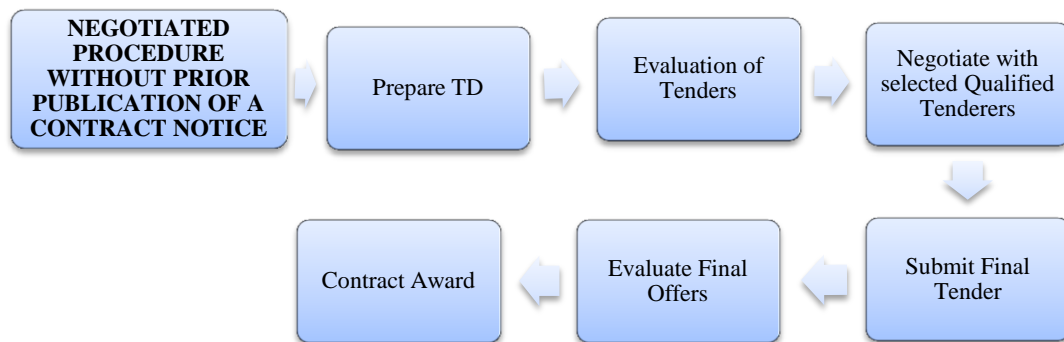
Under this procedure the authority may simply negotiate a contract with one or more providers, without any advertisement and usually without any kind of competition. This is allowed only in very exceptional cases (Arrowsmith, 2010, p.135).

USAID (2007, pp.38-39) guidelines it is emphasized that the negotiated procedure without the prior publication of a contract notice may be used for all types of public contracts:

- When no tenders, or no suitable tenders, or no application have been submitted in response to an open or restricted procedure, provided there is no substantial alteration to the initial conditions of the contract;
- When for technical or artistic reasons, or for reasons connected with the exclusive rights or intellectual property rights, the contract may be executed only by a particular economic operator;
- In case when it is strictly necessary, for reasons of urgency that are unforeseeable by the contracting authority, such as earthquakes, floods, and when the time limits provided for in open, restricted or negotiated procedures with publication cannot be complied with. The circumstances invoked to justify urgency must not in any event be attributed to the contracting authority and in no case must be used to justify the realization of complex investments, which have a longer duration than one budgetary year;
- For additional works or services which were not included in the initial contract, but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein.

Steps in negotiated procedure without the prior publication of a contract notice are presented below.

Figure 5: Steps in negotiated procedure without prior publication of a contract notice



Source: USAID, Public Procurement Manual, 2007, p.40.

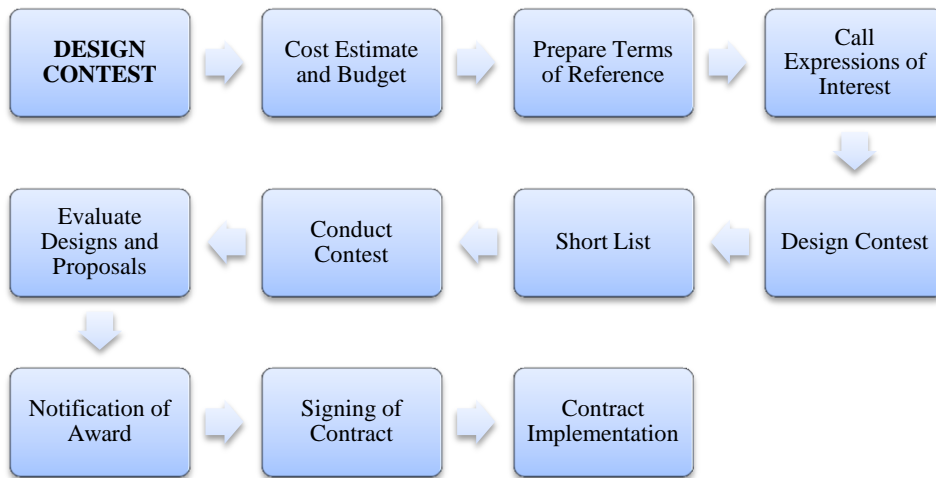
1.3.5 Design contest

The Design Contest (DC) is a procedure under which short listed firms are invited to submit their conceptual design of project (for example, a hospital or research centre). These contests can be part of a procedure that leads to the service contract award or held independently under separated procedure since there is nothing inevitable about realizing the results of a design contest. The rules only apply when the total amount of prizes and payments to participants meet the appropriate threshold.

On the other hand, where the contests form part of a procedure for the award of other contracts, the threshold value will consist both the value of contest prizes and payments and the value of the services contract which might be awarded to the winner where the rules of the competition provide that the resulting services must be awarded to one or the other of the winners of the design contest. The resulting services must be a direct functional link between the contest and the contract concerned so that a mere connection in terms of the subject matter of the contract is not enough. Further, this provision applies only where, under the rules of the competition provide that the resulting services must be awarded to one or the other of the winners of the design contest (SIGMA, 2010, p.1610).

To award contract design contest, there are some steps to follow.

Figure 6: Steps in design contest



Source: USAID, *Public Procurement Manual*, 2007, p.52.

1.3.6 Time-limits for Replies

Minimum time-limits are set down for the various stages of selected procurement procedure. In all cases, the time is specified in days which relate to calendar days. Contracting authorities should consider the contract complexity and allow sufficient time for submitting required information and preparing tenders, when it comes to setting the timescale for submitting requests for participation on tenders.

Bovis (2012, p.77) states that in open procedure, the minimum time limit for receipt of tenders must be 52 days from the date on which the contract notice was sent. When contracting authorities have published a prior information notice, the minimum time limit may be shortened to 36 days. In restricted procedures, negotiated procedures with publication of a contract notice and competitive dialogue:

- The minimum time limit for receipt of request to participate must be 37 days from the date when the contract notice is sent;
- In the case of restricted procedures, the minimum time limit for the receipt of tenders must be 40 days from the date when the invitation is sent.

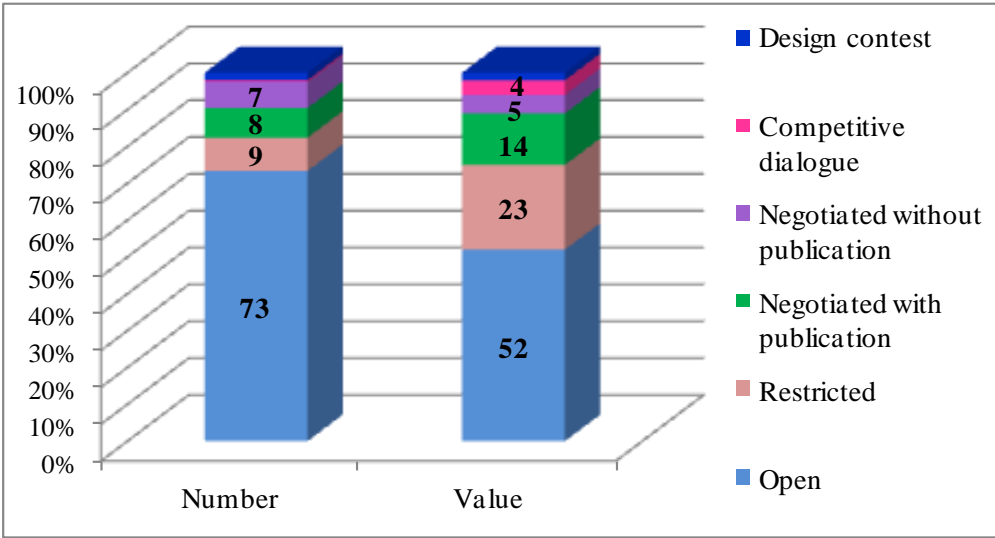
When contracting authorities have published a prior information notice, the minimum time limit for the receipt of tenders under restricted procedures may be shortened to 22 days. In the case of restricted and negotiated procedures with publication of a contract notice, because of urgency it becomes impracticable with the time limit specified in the directive, contracting authorities may accelerate the award procedure by specifying:

- A time limit for the receipt of request to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means;
- In the case of restricted procedures, a time limit for the receipt of tenders which must be not less than 10 days from the date of the invitation to tender;
- Under a negotiated procedure or in competitive dialogue the time allowed for receipt of tenders may be agreed between the parties involved (Bovis, 2012, p.78).

1.3.7 Use of procedures

Previous chapters explain in detail different types of procedures, while **Figure 7** shows which procedure is used the most and its values.

Figure 7: Use of procedures (number and value of contract award notice) from 2006 to 2010 (in %)



Source: PwC, Public procurement in Europe - Cost and effectiveness, 2011, p.15.

Open procedures make a large share of public procurement at about 73 % of all tender notice in the Official Journal over the last five years as it is shown in **Figure 7**. We can see that the values in the open procedure were lower - about half of the total. In 2010 this amounted about 106.000 contract award notices or about 460 notices every working day of the year. The second most used is the restricted procedure, for the contracts of much higher value. Restricted procedures amount to 9 % of award notices whereas 23 % of the contracts awarded value. Negotiated procedures with publication account for about 8 % of total value. The share of values is 14 %, which is also higher, indicating higher contract values than for the open procedure. This procedure has more correspondence with the open procedure, but is less structured and allows more flexibility.

Negotiated procedure without publication, a peculiar version of procedure, occurs in about 7 % of the cases whereas the authority is permitted to consult the contractor or contractors of its own choice and negotiate with one or several of them. Value of this procedure is about 5 %. Competitive dialogue is the least used procedure, about 500 cases across all countries in the previous years, which is less than half of a percent. We find that total values are involved a bit higher – approximately 4 % of total value of contracts awarded in 2006-2010. Data from the last five years show multiply use of the competitive dialogue since it was introduced during the last revision of the Directives in 2004. The procedure that is less used is the design contest whose share is minor.

1.4 Procedure below EU threshold values

In principle, EU Directives only apply to contracts which have a total estimated value exceeding the pre established thresholds set by the Directive 2004/18/EC17. Below EU Directives thresholds, Member States have national purchasing procedures that vary from country to country, yet there are, however, some very similar standard processes across the EU. Fundamental rules of EU law including without limitation of the free movement of goods, the freedom of establishment and the freedom to provide services in the EU as well as the principles of transparency, objectivity and non-discrimination must be respected in all cases also below the EU thresholds (EFTA, p.8). There are two types of procedure:

- **Direct Agreement** - Through this procedure, the contracting authority is free to purchase from any supplier without seeking a minimum number of quotes or conducting a tender procedure. Direct Agreement is intended for:
 - Purchase of low value, where the cost of the administration of a formal tender procedure is not in proportion to the value of the contract;
 - A single purchase of a supply or service which is not regularly used, and which is not within a framework agreement. (EFTA, 2007, p.1).

Where direct invitations are issued, firms from which tenders are sought should be a good representative sample of all potential bidders in the market concerned. The number invited to tender should be determined by the size and particular characteristics of the project should be undertaken. The number must be sufficient to ensure adequate competition, and should not be restricted for reasons of administrative convenience. At least five firms should normally be invited to submit tenders;

- **Quotation procedure** - Some Member States laws provide for a quotation procedure for contracts of low value. The contracting authority seeks a minimum number (usually 3-5) of quotes from market participants. No national-wide publication or formal procedures are required, and no complex drafting of technical specifications. Usually some kind of paper trail is required to demonstrate that several quotes have been sought. (EFTA, 2007, p.1).

1.5 Public procurement process

Public contracts are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services within the meaning of this Directive (Directive 2008/18/EC). In order to award a contract there are a few stages of procurement process that need to be fulfilled:

- Procurement planning;
- Preparing tender documentation;
- Notice of a tender;
- Selecting a tenders;
- Evaluating a tender and awarding a contract.

1.5.1 Procurement Planning

The procurement plan lays out the details of the procurement process, and the steps that will be required (OECD, 2010, p.97). According to the USAID (2007, p.23) the rules regulating the public acquisition of goods, works and services all require the advertisement of information about procurement plans, tenders and contract awards. The purpose of the preliminary notice is to provide potentially interested economic operators with:

- Information about a Contracting Authority's procurement plans;
- Notification that competition procedures for specific procurement have been released;
- Details and other information on the award of contracts.

1.5.2 Preparing tender documents

The directives include detailed rules on the selection, technical specifications and award process, but also it leaves to the member states to regulate the detailed content of the documentation for the pre-qualification and the tender award process.

SIGMA (2010, p.722) report explains that the tender documents are the focal point in the tendering process and shall furnish all information necessary for a prospective tenderer to prepare a responsive tender for the supplies, services and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the contract, they generally should include:

- Instructions to tenderers;
- General and special conditions of contract;
- Technical/services specifications;
- Tender form;
- Contract form.

1.5.2.1 Instructions to tenders

According to the USAID (2007, p.54) invitation to tenderers provides instructions covering such things as:

- Access to government information;
- Submission of tenders;
- Group bids;
- Alternative tenders.

The use of model document, which is composed to avoid the need for constant amendment, is mandatory. The style of the Instructions to Tenderers Model cannot be changed without consulting the Public Procurement Agency.

1.5.2.2 General and special conditions of contract

The conditions of contract are mandatory, and shall be used when tendering for the supply of goods, services and works. Contracting Authorities shall decide whether or not special conditions are applicable to their particular requirement except the mandatory ones. Contracting Authorities must consult the PPA before making any amendment or qualification to either the general or special conditions of contract (USAID, 2007, p.58).

1.5.2.3 Technical/services specifications

USAID (2007, p.54) in its guidelines defines specification as a statement of requirement. It is also sometimes referred to as a scope of work. The purpose of technical and service specifications is to give instructions and guidance to tenderers at the tendering stage about the nature of the tender they will need to submit, and to serve as the economic operator's mandate during the contract implementation.

The technical specifications will be included in the tender documents and will become an annex of the eventual awarded contract as a result of the tender. They should reflect correctly the needs of the contracting authority and the budget estimations made for the acquisition. Incorrect or unrealistic specifications are a common reason for many of the problems that later frequently occur during the tender and award process, such as the need for issuing amendments to the tender dossier, cancellation of tender proceedings, lodging of complaints and contract problems. Technical specifications must afford equal access for candidates and tenderers, and not have the effect of creating unjustified obstacles to competitive tendering. The directives provide that the technical specifications should be defined by the contracting authorities by reference to national standards implementing European standards, or by reference to European technical approvals, or by reference to common technical specifications (SIGMA, 2010, p.724).

1.5.2.4 Tender form

Tenderers must be asked to sign and return a tender form thereby confirming that their offer is made on the organization's terms and conditions. All those documents which will form the contract in the tender form should be included and the organization must ensure that the documents listed are correct and comprise the whole of the tender package. This list of documents together with an accepted offer will form the contract (USAID, 2007, p.57).

1.5.3 Notice of tender

Notices for contracts of a certain type and value, which means that they are subject to the Directive, must be advertised in the Supplement to the OJEU. Notices are published free of charge. As mentioned before free online version of the Supplement of the OJEU is called TED. TED is updated five times per week, and all notices are published in full and translated into all EU languages. TED provides free access to business opportunities for economic operators that use the TED database to search for tender opportunities by country, region, business sector or other categories (SIGMA, 2010, p.759).

The Directive includes permitting but not obliging provisions, a contracting authority to pre inform the marketplace about potential future contract opportunities by advertising, using a Prior Information Notice (PIN). Use of PIN is hence voluntary and not obligatory.

According to SIGMA (2010, p.761) the contract notice is an extremely important part of the procurement process. It marks the commencement of the formal procurement process for a specific contract and notifies potential economic operators of the opportunity to participate in the procurement process. To ensure as much competition as possible and to comply with the basic requirements for transparency, the contract notice must be drafted in a way that clearly describes the nature, scope and estimated value of the contract and how economic operators can apply to participate in the process. The contract notice must also be completed fully and correctly. Contract notice, that has already been published, needs to be amended before the closing date for the submission of tenders and a new contract notice must be published in the same form as the original. If necessary, the time allowed for submission of tenders or applications can be extended.

1.5.4 Selection of tenders

It is important for a contracting authority to ensure that it will enter into a contract with an economic operator that has the ability to perform and complete the contract. Thus a contracting authority may want to check, for example, economic operator's suitability in terms of compliance with basic legal requirements as well as the financial resources, experience, skills and technical resources and exclude from the procurement process those

economic operators that do not satisfy such checks. This is known as the selection or qualification process (SIGMA, 2011c, p.2).

In a significant way, the Directive restricts a contracting authority's discretion in this area: it lists the selection criteria which contracting authority may choose to use, it lays down the evidence or references that a contracting authority may require from economic operators to verify that the set of selection criteria are satisfied, and it also lays down general rules concerning the process of selection. The Directive seeks to ensure that fair opportunities of participation are given to economic operators and that the selection process does not provide opportunities for contracting authorities to cover discrimination.

Based on SIGMA (2010, p.924) the selection of economic operators and the award of a contract are two different operations in the procedure for the award of a public contract and they are governed by different rules and are distinct from a conceptual point of view:

- **Selection criteria** – are applied to determine which economic operators are qualified and able to perform the contract. They therefore relate to the economic operators (tenderers or candidates);
- **Award criteria** – are applied to determine which tender meets the set of specifications and requirements and choose the best one amongst them. These criteria therefore relate to the tenders.

According to SIGMA (2011c, p.2) only the following selection criteria may be used by a contracting authority to establish whether an economic operator is qualified to perform a specific contract:

- Personal situation of the economic operator:
 - mandatory grounds for exclusion;
 - optional grounds for exclusion;
- Suitability to pursue the professional activity;
- Economic and financial standing;
- Technical and/or professional ability.

The award criteria are the criteria that create the basis on which contracting authority chooses the best tender and awards a contract. They must be established in advance by the contracting authority and must not be unjust to fair competition. As it is stated in SIGMA (2011d, p.2) the Directive limits the criteria that a contracting authority may apply to award a public contract to either:

- The lowest-price criterion or
- The most economically advantageous tender (MEAT) criterion, which means applying other criteria in addition to price.

In case when a contracting authority chooses to apply criteria of lowest-price, the contract is awarded to the tenderer which offers the lowest price for a compliant tender. So the price is the only factor that is taken into consideration to choose the best compliant tender. Received tenders are evaluated according to the set of specifications and on the basis of a pass or fail system. Neither cost analysis nor quality considerations can come into play in this choice.

When contracting authority use the most economically advantageous tender (MEAT) criterion, they take into account other criteria in addition to the price, such as the quality, delivery time, and after-sales services. The aim of the MEAT criterion is to identify the tender which offers the best value-for-money.

1.5.5 Evaluation of tenders and contract award

The evaluation of tenders is the stage in the procurement process during which a contracting authority identifies which one of the tenders is meeting the set of requirements and which one is the best on the basis of the pre-announced award criteria (i.e. either the lowest-priced or the most economically advantageous tender). The qualified tenderer whose tender has been determined to be either the lowest-priced or the most economically advantageous, as the case may be, is awarded the contract (SIGMA, 2011e, p.2).

Economic operators have to submit both selection stage information and their tenders at the same time where the open procedure is used. The evaluation process will comprise two stages. First the contracting authority will evaluate the selection stage information in order to ensure that the economic operators are suitably qualified and, then go to the evaluation of the tenders that are received from suitably qualified economic operators. When the restricted, competitive dialogue or negotiated procedure with prior publication of a contract notice is used then the selection stage and the tender evaluation stage will comprised two separate processes. In general terms, the process of evaluation of tenders is carried out by a suitably competent evaluation panel, which may be either the relevant unit of the line organization of the contracting authority or a specifically established evaluation panel/tender committee (SIGMA, 2010, p.1004).

In SIGMA (2011e, pp.4-6) report “Procurement Brief 9 – Tender Evolution and Contract Award” it is stated that the evaluation panel will carry out the following activities:

- Formal compliance check - consists of establishing which tenders are compliant with the procedural requirements and formalities set by the contracting authority in the tender documents;
- Technical and substantive compliance check - check consists of identifying the tenders that are compliant with the specifications and the contract conditions and other fundamental substantive requirements;

- Choice of the best tender on the basis of the pre-announced award criteria (either the lowest-price criterion or the MEAT criterion);
- Recommendation for the award of the contract.

In general, non compliance with fundamental procedural requirements, specifications and other fundamental substantive requirements will result in the rejection of the non-compliant tenders. To accept tenders that do not comply with such requirements is against the principle of equal treatment. The reasons why the tender for non-compliance with specifications and other substantive requirements is rejected must be clearly and exhaustively explained and documented in the evaluation report. Generally speaking, non-compliance with non-fundamental procedural requirements and specifications and other non-fundamental substantive requirements would not constitute a reason for the rejection of a tender, but it would lead instead to a request for clarification (SIGMA, 2011e, p.6).

In SIGMA (2010, p.1021) report it is emphasized that the directive does not define what is meant by an abnormally low tender. However, it is generally recognized that the concept of an abnormally low tender refers to a situation where the price offered by a tenderer appears to be unreasonably low so it raises doubts whether the tenderer would be able to perform the contract for the tendered price. If this is the case, once the contract has been signed, the tenderer might, for example:

- Not deliver all of the goods, works or services that form the object of the contract or not deliver them in accordance with the terms of the contract;
- Interpret the contract in the narrowest possible way so as to compensate for what it has lost through pricing at such a low level and then asking for variations and extra payments.

The implications for the contract need to be considered very carefully if the evaluation panel suspects that a tender is abnormally low. Regarding the award of the contract the evaluation panel normally has the mandate to issue only a recommendation to the contracting authority, but cannot make the final award decision. The evaluation report contains the recommendation to award the contract. The evaluation report must have attached all of the documentation drawn up by the evaluation panel during the performance of its tasks.

Once the award approval has been given, the contracting authority notifies the successful tenderer in writing that its tender has been accepted for the contract award. The contracting authority must notify all tenderers and candidates of the contract award decision before it concludes the contract with the winning tenderer. This notification is followed by the ‘mandatory standstill period’. The mandatory standstill period means that a minimum number of calendar days (which, in very broad terms, may be either 10 or 15) must elapse between the written communication of the contract award decision to all tenderers and, where relevant, to candidates and the contract conclusion (SIGMA, 2011e, pp.9-10).

2 CORUPTION IN PUBLIC PROCUREMENT

Corruption can appear in each stage of the procurement procedure. It can arise through violations of general procurement rules or through abuse of legal authorization of discretionary decisions from the rules. Considering the involvement of the high level of funds, public procurement is especially vulnerable to corruption. Big amount of health and education costs are used for procurement of goods and services. For example general estimate is that between 20 and 50 percent of government health expenditure is spent on procurement of medicines (Heggstad, Froystad & Isaksen, 2010, pp.3-5).

Heggstad et al. (2010, pp. 3-5) define corruption as the abuse of public funds for private or political gain. This definition of corruption refers to interaction between the public and the private, corruption can also occurs among private sector parties. It may be useful to distinguish between administrative or bureaucratic corruption, and high level or political corruption (Heggstad et al., 2010., pp. 3-5):

- **Bureaucratic corruption** may be defined as corruption in the public administration. - This type of corruption is often considered low level, and can be encountered daily by citizens and firms in contact with public administration, police, and customs. One might be required to pay a fee, a facilitation payment, in order to procure or speed up the provision of services. One may be entitled to these services, but one must pay a bribe in order to get hold of them;
- **Political corruption** is considered to be high level, and more serious than petty corruption. Political corruption occurs when politicians at the highest level of political authority are corrupted. They are free to change and implement the laws in the name of the people. Politicians may provide illicit favors in order to for them to influence the formulation of laws, regulations and policies, in a manner which will give advantages to a particular group.

These are the ten sectors most vulnerable to corruption according to Transparency International:

- Public works, contracts and construction;
- Real estate and property development;
- Oil and gas;
- Heavy manufacturing;
- Mining;
- Pharmaceutical and medical care;
- Utilities;
- Civilian aerospace;
- Power generation and transmission;
- Forestry.

2.1 Forms of corruption and participants

According to Heggstad et al. (2010, pp.8-10) corruption in public procurement can happen in many different ways. This ranges from the most common form of upfront bribery and facilitation payments to more subtle forms of political corruption. These forms are as follows:

- **Bribery** is frequently seen as the most common type of corruption, and can be defined as an offer of money, goods or services in order to gain an advantage. Bribes can influence the government's choice of suppliers of goods and services. This can distort the allocation of resources and talents. Bribes can be used to avoid red tape and thereby speed up government's granting of different kinds of permissions. The choice of offering bribes is closely linked to risk. There is a risk of being detected in bribery, and the punishment can be severe. Since bribing is an illegal agreement, the benefits to be gained are uncertain;
- **Extortion** may entail to cause harm or to threaten a person in order to obtain something;
- **Embezzlement** is the illegal appropriation of property or money entrusted to someone, but owned by others;
- **Nepotism** is to favor relatives when granting jobs or benefits;
- **Patronage systems**: Patronage takes place when local public office holders grant favors, jobs and contracts in return for political support. Such systems tend to disregard formal rules, and instead give importance to personal channels;
- **Fraud** involves some kind of deceit and manipulation or distortion of information, by a public officer, with the intention to seek personal gain. Fraud is an economic crime which covers more than bribery and embezzlement. In procurement corruption fraud often takes the form of failure to meet contract specifications, or false, inflated or duplicated invoices;
- **Big rigging** takes places when companies conspire to fix the price for goods and services, purchased through a bidding process, to an artificially high level. One can distinguish between bid rigging where a public procurement officer take part in the bid rigging and situations where only companies take part in corruption. The additional funds obtained through the inflated contracted price tend to be distributed amongst the conspirators.

Depending on the form of corruption used, corruption requires the involvement of various actors. Bribe and facilitation payments require a giver and a taker, often a facilitator and, depending on the amount, someone providing a safe haven for the money or to facilitate a money laundering scheme.

Wiehen and Olaya (2006, pp.26-28) notice that are a few corruption participants:

- **Official** (representing a public authority, a government department) is usually called the employer. The employer either takes the criminal initiative and extorts a bribe from the bidders before making decisions in their favor, or is the recipient of a bribe initiative originating from one or more of the bidders and accepts a bribe in exchange for such a favorable decision;

- **Bidders** (suppliers, contractors, consultants) - Economic operators wishing to do business with the government, supplying goods or services, either take the initiative giving a bribe or any advantage to a government decision maker in order to obtain a favorable decision, or give in to extortion demands from a corrupt official;
- **Agents, consultants, joint venture partners, subsidiaries** - Economic operators wishing to manipulate a government decision-making process often refrain from committing the criminal acts directly themselves but utilize agents, “consultants”, “contractors”, other local middlemen, or local subsidiaries or joint venture partners for the actual bribe activity;
- **High share of managers** - Experience in industrial countries shows clearly that - apart from facilitation payments - the majority of corrupt people are not subordinate staff, but people in the higher echelons, including many senior managers;
- **Politicians** (especially at municipal level) - often have a double political-administrative function (e.g. City Councilors) that results in a complex legal position as regards corruption (i.e. whether they are regarded as “officials” under the penal code or not).

2.2 Corruption risks

In addition to the corruption risks and manifestations within the public procurement cycle, there are particular factors and circumstances that have the potential to increase such risk. So in the following is a description of the most salient ones (Wiehen and Olaya, 2006, pp.20-22):

- **Urgent Purchases at end of fiscal year** - Urgent purchases made at the end of a fiscal year are often subject to corrupt practices, most likely due to the fact that transactions in this period are less strictly controlled. The unspent portions of the public budget are lost at the end of the fiscal year in many public sector agencies. This creates pressure to spend unspent monies before this happens. Sometimes this is called an “emergency” situation in order to be able to use direct contracting procedures when otherwise only open bidding would be possible;
- **Emergency responses to natural disasters and other such events** - There is a widespread perception that procurement and logistics in disaster cases is particularly at risk from corruption because of the large sums of money usually involved, particularly in the case of capital intensive sectors such as the provision of shelter and water and sanitation. Procurement activities in emergency situations often takes place in difficult environments, including war zone in which aid may be caught up in the dynamics of the conflict, and with enormous pressure to deliver relief quickly, potentially increasing the risks of corruption;
- **Inadequate access to information** - Wherever a government has neither a dynamic proactive information policy nor a proper freedom of access to information law that is actually implemented and operational, the lack of information about government activity and decision-making can easily hide corrupt manipulation of such decisions.
- **Use of standard bidding documents** - Standardized bidding documents and other procurement documentation provide for predictability and systematic treatment. If non-

standard bidding documents are used instead, it opens the door to manipulation and leads to opaque decision-making;

- **Preferences to selected bidders** - Granting preferences of any kind to certain groups of bidders always risks undermining the fairness of the procurement process, and certainly adds costs to the purchaser. If preferences are to be provided, it is essential that they are clearly regulated and transparently administered strictly in accordance with clear enacted rules;
- **Participation of official-owned companies** - The participation of bidders owned fully or partly by government officials can introduce additional risks if appropriate systems for transparency and accountability are not ensured. Especially problematic is that sometimes the public ownership of a company is not disclosed. Special due diligence is required to make sure that such bidders are treated exactly like every other bidder, if it is possible that the publicly owned bidder had inside information available while preparing the bid, the company should be excluded;
- **Participation of front/shell companies** - Front or shell companies is corporate structures that are not really operational and are created basically to help mask or hide true ownership. They provide disguise for government officials, their families, sub-contractors or collusion agreements by bidders.

Risk of corruption is generally high especially during the evaluation phase of a procurement process, when offers are considered in order to select the contractor. But the risks are not limited just at this phase. Corruption can occur even before a procurement process begins, when it has been decided to award a contract. Some projects from the beginning are marked for award to a particular party. Underperformance, renegotiation of contract, change orders, over-billing, and non compliance are just some of the forms of corruption at this stage.

Council of Europe (1998, p.19) it is explained that after award of the contract has been decided in favor of a company, the execution phase is also a critical phase. The improper execution, the use of lower materials, the supply of goods not adjusted to the price and required quality, or rendering of contracted services in an improper way, are some of the most usual ways of defrauding the public budget. The insufficient intervention of the public service intended to control the quality of the materials, the meeting of deadlines, and the quality of the services, is one of the more relevant demonstrations of the power of corruption.

The table below synthesizes some of the corruption related risks at each stage of the process:

Table 5: Corruptions risks at each stage of the process

Description	Main risks (example)
Stage A: Decision to contract (identification of need)	
The government decides to purchase or sell goods or services, or to outsource the management of a unit	The decision does not follow a policy rational or an existing need but rather the desire to channel benefits to an individual or an organization. For example, demand is created for a good no one buys simply to benefit the company's owner.
Stage B: Identification/definition of contract characteristics (technical requirements, characteristics of goods and services, etc.)	
The government determines what it needs to buy or sell or privatize (technical requirements, specific characteristics) and how it will go about it (contracting method agency responsible, etc)	<p>Characteristics (technical or not) are made to favor a special supplier or contractor and not to properly address the need identified;</p> <p>Exceptions to an open bidding process are abused, leading to single source processes);</p> <p>Participation of relevant stakeholders is limited, making it difficult to assess the need and relevance of the characteristics as they are being defined;</p> <p>Evaluation criteria are not set from the start or are not objective, thereby making them prone to abuse</p>
Stage C: Contracting process	
A contracting process opens. It should take place according to what method the law determines be used to receive proposals(e.g. open bidding system) or evaluate contractors (e.g. single source)	<p>Invitation to tender (an open bid) is not publicized, thereby restricting the number of bidders that participate;</p> <p>When short-lists are used, companies bribe to be included or to gain access to them;</p> <p>Invitation to tender is publicized but very little time is given to present offers, making it difficult for bidders without prior knowledge of the contract to present bids;</p> <p>Abuse of confidentiality or lack of publicity creates unequal playing field for bidders;</p> <p>In single-source processes, lack of publicity or transparency leads to unjustifiable decisions;</p> <p>Bidders or contractors collude to influence prices or to share the market by artificially losing bids, or not presenting offers.</p>
Stage D: Contract award	
Contract process ends and a decision is made in order to select the winning bidder (in open bids) or the contractor (in single-source processes)	<p>Evaluation criteria are not clearly stated in tender documents, leaving no grounds to justify the decision;</p> <p>Evaluation of bids is subjective or leaves room for manipulation and biased assessments;</p> <p>Contract awards are not publicized (nor the grounds for the decision)</p>
Stage E: Contract implementation and supervision	
The contract is signed with the selected bidder or contractor.	<p>Contract changes and renegotiations after the award are of a nature that changes the substance of the contract itself;</p> <p>Supervising agencies/individuals are unduly influenced to alter the contents of their reports so changes in quality, performance, equipment and characteristics go unnoticed;</p> <p>Subcontractors and partners are chosen in a non-transparent way, are unaccountable or are used to channel bribes.</p>

Source: H.E. Winston, *Procurement management, logistics and contracting*, 2010, pp.15-17.

2.3 Anti-corruption strategies and initiatives in public procurement

All decision made on public procurement are based on the use of the principles of integrity, transparency, accountability, fairness and efficiency in order to minimize corruption and maximize the economic, financial, social, environmental and political benefits.

Williams (n.d., pp.4-6) states that the EU's anti-corruption program gained momentum in recent years, in parallel with increasingly firm international action against corruption. EU policy on corruption can be said to have three interrelated but distinct objectives:

- Initially, the policy was directed at protecting Community finances, in partial response to the widespread corruption that appeared to characterize EU institutions. Since then, corruption control has expanded in scope and is now an integral part of EU internal and external trade policies, to the extent that countries which obtain aid or trade concessions from the EU must undertake domestic anti-corruption reform;
- The second objective of EU corruption control is to provide Member States (MS) citizens with a high level of safety in an area of freedom, security and justice, devoid of criminal activity, corruption, fraud and terrorism. The power to act against corruption is derived from the Third Pillar of the EU by virtue of which the EU may pursue closer cooperation in judicial and criminal matters and the limited approximation of criminal laws;
- The third rationale for EU anti-corruption measures, relates to the liberalization of the internal market, although there is no explicit Treaty provision linking the elimination of corruption to market integration. Corruption is however at variance with the principles of non-discrimination and free competition advocated by the single market. The elimination of corruption facilitates competition by ensuring that corrupt practices do not hinder trade by interfering with the transparent and open conduct of international trade. In a free market, corruption might have cross-border implications possibly leading to the contagion of corruption where MS which would not normally condone corruption, do so, in order to compete for international business with countries that ignore such practices. Corruption also increases the costs of economic activity thereby reducing the optimal use of resources.

The linkage between procurement regulation and EU anti-corruption goals takes the following form. Firstly, the EU finances several large projects within and outside Europe and must protect its investments by ensuring the absence of corruption therein. Secondly, corruption is a large facet of activities such as money laundering and organized crime, eliminating these activities necessitates a comprehensive policy targeting them in the sphere of public finance, including public procurement. Thirdly, the adoption of measures to address corruption may possibly be justified by the adverse impact that corruption may have on the internal market. In addition, because open public procurement is an area with increased opportunities for corruption, the EU has an interest in ensuring that Community procurement regulation is designed in a manner that reduces the scope for corruption that may arise from opening up markets across borders. (Williams, n.d., pp.6-7).

The EU has produced several documents on fighting corruption (Europe, 2007):

- Article 29 of the Treaty on European Union mentions preventing and combating corruption as one of the ways of achieving the objective of creating and maintaining a European area of freedom, security and justice;
- The 1997 action program on organized crime calls for a comprehensive anti-corruption policy based on preventive measures;
- The first communication on an EU anti-corruption policy suggested banning the tax deductibility of bribes and introducing rules on public procurement procedures, accounting and auditing standards, and measures relating to external aid and assistance;
- The Council's 1998 Vienna Action Plan and the Tampere European Council in 1999 also identified corruption as a particularly important area where action was needed;
- The Millennium Strategy on the Prevention and Control of Organized Crime reiterated the need for approximation of national legislation and to develop multidisciplinary EU policy and urged Member States to ratify the EU and Council of Europe anti-corruption instruments;
- The Communication on the fight against fraud, which sought to establish an overall strategic approach.

2.4. European Anti-Fraud Office

The European Anti-Fraud Office (OLAF) is an independent investigatory body situated within the European Commission. Its main task is to protect the European Union's financial interests and to fight fraud, corruption and any other illegal activity affecting the Union's finances (Authority of the House of Lords, 2004, p.11). OLAF was set up by Decision of European Commission on April 28, 1999. Its predecessor was UCLAF, an anti-fraud unit which is dependent by European Commission, but OLAF has much more authority and independence in its work. As Authority of the House of Lords (2004, p.11) emphasizes OLAF also has responsibilities for the development of anti-fraud policies and as part of this "legislative" work undertakes so-called fraud-proofing of EC legislation, i.e. checking proposed legislation at an early stage to identify and try to avoid any specific risks of increased fraud.

According to IAACA (2012) the mission of OLAF is to protect the financial interests of the EU and to combat fraud, corruption and any other illegal activities, including serious misconduct within the European Institutions, which have financial consequences. OLAF is not competent to fight fraud that does not concern the budget of the EU. In other words, EU money has to be involved. The same goes for the fight against corruption: OLAF can only investigate cases where EU staff appears to be involved. OLAF achieves its mission by conducting, in full independence, internal and external investigations. It also organizes close and regular cooperation between the competent authorities of the Member States in order to co-ordinate their activities. OLAF supplies Member States with the necessary support and

technical know-how to help them in their anti-fraud activities. It contributes to the design of the anti-fraud strategy of the EU and takes the necessary initiatives to strengthen the relevant legislation.

By the article of EU4Journalist (2011) “Strengthening OLAF, OLAF – The European Anti-Fraud Office” each year OLAF investigates several hundred cases, where the EU is being cheated out of revenue or where its funds have been misused. Consequences may include prosecution by national authorities, disciplinary proceedings, administrative or financial sanctions, or changes to the legislation. One of OLAF’s key roles is to ensure coordination between the different national investigation and judicial systems. The Office also helps train fraud specialists in Member States and candidate countries. Broadly speaking, the powers of OLAF are:

- To carry out external administrative investigations in the Member States and certain non-member countries with which the Community has cooperation agreements with the aim of combating fraud, corruption and other illegal activities that adversely affect the Community’s financial interests;
- To carry out internal administrative investigations inside the European institutions with the same purpose;
- To help strengthen cooperation with the Member States in the field of fraud prevention;
- To develop strategies for the fight against fraud (including preparing legislative and regulatory initiatives);
- Maintain direct contacts with the police and judicial authorities;
- Represent the Commission in the field of fraud prevention (EU4Journalist, 2011).

OLAF works under a Supervisory Committee consisting of five independent experts from outside the European Institutions appointed by a common agreement between the European Parliament, the Council and the Commission. These experts are mostly senior public lawyers with a high level of experience in prosecution and investigations. Investigations can be launched either by OLAF’s director or at the request of a member state with vested interest (for external investigations) or of the institution concerned (for internal investigations). During external investigations, OLAF can carry out on the spot checks. During internal investigations, the Office has the right of immediate and unannounced access to any information held by the Community institutions, bodies, offices and agencies. It may also ask anyone concerned for oral information and carry out on-the-spot checks on economic operators. If so requested by OLAF, the Member States, institutions and bodies are required to provide it with any document or information they hold which relates to an investigation under way. On completion of an investigation, or sometimes when it is still under way, the Office draws up a report including recommendations as to the action to be taken. The report is sent to the Member States in the case of external investigations and to the institution concerned in the case of internal investigations (EU4Journalist, 2011).

The biggest single category of fraud, when measuring financial impact, is the diversion of funds from the EU's Structural Funds, which finances projects for regional and social development (EU4Journalist, 2011). Another main target is cigarette-smuggling, where the hundreds of millions of cigarettes have been seized annually. Irregularities in agricultural expenditure are the third-largest category. The total EU budget is more than €100 billion annually, and it has been estimated that more than one billion ends up in the wrong pockets. OLAF also succeeded to return money for the EU.

OLAF had budget of € 77.645 million in 2010. It is comprised of two parts - operational (20.500 million €) and administration (57.145 million €). The OLAF budget is directly managed and Member States or non-member countries in which the recipients of the expenditure reside are not involved. More than 98 % of the 2010 budget was disposed. During 2010, OLAF received 46 % of its incoming information from the public sector (at EU and Member State level). 52 % came from citizens and the private sector. In 2010, € 67.9 million was recovered in respect of OLAF's investigative and operational cases. The highest amounts were recovered in the structural funds sector (€ 32.9 million), followed by agriculture (€ 11.9 million) and direct expenditure (€ 10.6 million). A further € 351.2 million has also been recovered to date in respect of financial follow-up cases which are still ongoing (European Union, 2011, pp.5-7).

Table 6: Clearance rate

Year	2006	2007	2008	2009	2010
Total cases opened	195	2.410	204	220	225
Total cases closed	217	232	187	188	189
CLEARANCE RATE	0.90	0.91	1.09	1.17	1.19

Source: European Union, Eleventh operational report of the European Anti-fraud Office, 2011, p.36.

OLAF aims to secure the long-term sustainability of its case-load by ensuring that the number of cases it opens each year is closely matched by the number of cases closed (clearance rate close to one). For the third year running the gap between the numbers of cases opened and those closed has been on the increase. In 2010, OLAF opened a total of 225 cases and closed 189, bringing the clearance rate to 1.19 compared with 1.17 in 2009. The average duration of investigations and operations is lower than in recent years: below 23 months in 2010 compared to just above 25 months in 2009 (European Union, 2011, p.36).

3 PROCUREMENT IN BOSNIA AND HERZEGOVINA

The Public Procurement Law (PPL) was adopted in 2004. In general, this Law complies the requirements of the acquires (with the exception of domestic preferences), despite several differences and deviations. The basic legal act regulating the award of public contracts in Bosnia and Herzegovina is the Law on Public Procurement of Bosnia and Herzegovina published in the Official Gazette (OG) of B&H on 2 November 2004. The PPL mainly:

- Provides a uniform public procurement regulation for the whole country;
- Establishes a fully decentralized public procurement system, which grants the responsibility for public procurement to contracting authorities;
- Requires transparency through the mandatory publication of procurement opportunities and procedures;
- Modeled on, but not fully compliant with, (pre-2004) EC procurement legislation;
- Aimed at promoting cost-effective public procurement and the economical use of public funds;
- Safeguards the legitimate interests of tenders by introducing review mechanisms and procedures;
- Ensures implementation of public procurement legislation by setting up two institutions, the Public Procurement Agency (PPA) and the Procurement Review Body (PRB). (SIGMA, 2009, pp.5-6).

This legislative framework is completed by a number of secondary legislative acts issued on the basis of the PPL, implementing regulations, instructions, and standard forms, such as the following (SIGMA, 2009, pp.5-6).

- Decision on Implementation of Public Procurement Law for B&H– published in the Official Gazette of B&H no. 3/05 on 24 January 2005;
- List of categories of contracting entities obliged to apply the Public Procurement Law for B&H – published in the Official Gazette of B&H no. 3/05 on 24 January 2005;
- Standard forms of procurement notices (contract notices, contract award notices and cancellation notices) along with instructions on their application – published in the Official Gazette of B&H no. 17/05;
- Template for the minutes of tender opening meeting along with instructions on its application – published in the Official Gazette of B&H no. 17/05, then amended in 2008;
- Decision on the obligatory application of domestic preferences, published in the Official Gazette of B&H no. 105/06, amended in 2009;
- Rulebook on monitoring of public procurement procedures.

According to the Public Procurement Law of Bosnia and Herzegovina (Official Gazette of B&H 49/04) contracting authority shall be:

- Any administrative authority at B&H, entities, District of Brcko, cantonal, city or municipal level;
- Any public entity;
- Any public enterprise.

Another report elaborated by SIGMA (2011a, p.15) identifies the most significant differences with EU public procurement law includes:

- Existence of mandatory domestic preferences. When calculating the price, contracting authorities are obliged to reduce the prices of domestic products with preference factor, in the amount of 10 %, which results in discrimination against foreign companies. The decision that was adopted by the Council of Ministers B&H on 26 February 2009 extends the duration of domestic preferences until the end of 2014, except for companies from CEFTA countries. From the point of tenderers group, the right to apply domestic preference has a group of tenderers where all the members of the group are located in Bosnia and Herzegovina and whose companies are established according to the laws of Bosnia and Herzegovina. Hence, the consortium which is consisted of tenderers from Bosnia and Herzegovina and tenderers from CEFTA countries has no domestic preference. Domestic tenders do not have the right to domestic preference when compared to the CEFTA countries, neither CEFTA countries do not have right to domestic preference when compared to other countries;
- Lack of the new procurement techniques and instruments that were introduced in the EU in 2004 (framework agreements, competitive dialogue, electronic auction, social and environmental considerations);
- Slightly different scope of application (private utilities operating on the basis of special or exclusive rights are not included, whereas all public undertakings are included, regardless of the sector in which they are dealing, including state-owned companies operating on a commercial basis in a competitive market);
- Lack of a more flexible system for the utilities sector, as allowed by EC Directive 2004/17;
- Differences in procurement award procedures (e.g. the restricted procedure).

Public procurement in B&H applies the same principles as in the EU member states:

- The principle of equal treatment and non-discrimination;
- Transparency;
- Competition.

Principles mentioned above apply to all public contracts that are subject of this Law regardless of their value.

3.1 Threshold values

There are three different types of thresholds

- Primary i.e. domestic thresholds;
- International thresholds;
- For contracts below the Primary Threshold Value.

Table 7: Threshold for goods, services and works (BAM)

Types	Goods and services	Works
Primary i.e. domestic thresholds	50,000.00	80,000.00
International thresholds	for State authorities 500,000.00 for local authorities or public entities 700,000.00	2,000,000.00

Source: Official Gazette of B&H, Amendments to the Public Procurement Law, 2009.

When the contract value, in the case of goods and services, amounts to or exceeds 500,000 BAM for State authorities or 700,000 BAM for local authorities or public entities, or in the case of works amounts to or exceeds 2,000,000 BAM the procedure will be opened to international competition (Public Procurement Law of Bosnia and Herzegovina, Official Gazette of B&H 49/04).

3.2 Public procurement procedure and process

Public Procurement Law of B&H establishes four different procurement procedures for the award of contract which are harmonized with the procedures that are established in EU Public Procurement. Conditions and implementation of procedures for the contract award of Public Procurement Law of B&H are simplified in certain points in comparison with the EU Directives of public procurement, but they are not fully in contradiction with them.

According to the Public Procurement Law of Bosnia and Herzegovina (Official Gazette of B&H 49/04, Article 11) public procurement procedures are as follows:

- Open procedure;
- Restricted procedure;
- Negotiated procedure (with publication of the notice and without publication of notice);
- Design contest.

The Law does not define the procedure for competitive dialogue as a separate procedure. This procedure is used for complex public procurement with special conditions and requirements that must be fulfilled to make this kind of procedure applicable.

The PPL defines the open procedure as the basic award procedure. Every public entity which meets the specified criteria by the contracting authority is qualified as bidder, competing for the contract submitting tenders. It is common to use the open procedure, while using other procedures it depends on whether certain circumstances are presented or fulfill certain conditions. Restricted procedure in the Public Procurement Law of B&H is not really limited, since contracting authority will invite all qualified candidates and participate to submit in a tender. The contracting authority cannot choose only a few qualified candidates - it must invite all the candidates. According to EU public procurement, contracting authorities may choose a limited number of qualified candidates, which means that some qualified candidates will not be invited to submit the offer. Restricted procedure may, in certain cases, require urgent implementation and it is called accelerated procedure with shorten time limits for receipt of requests for participation and for receipt of tenders. Only in specific circumstances (which are modeled on EU law, but with minor deviations) the PPL also allows for the application of the negotiated procedure with and without publication of notice. According to the EU public procurement public companies, usually called "utility operators", are free to choose negotiated procedure with publication of notice instead of open or restricted procedure. But Public Procurement Law of B&H does not provide utility operators freedom to choose negotiated procedure with publication. The design contest is procedure that is conducted to determine the participant who submitted the best design proposal in order to conclude the contract.

Minimum time limit for receipt of tenders or requests whose value of contract is equal or greater than the primary threshold value is determined by the Public Procurement Law of Bosnia and Herzegovina (Official Gazette of B&H 49/04, Article 21):

- In open procedure, the minimum time limit for receipt of tenders cannot be less than 28 days from the date of publication of the notice. In the case where the value of contracts is equal or greater than the international threshold value the minimum time period is 40 days;
- In the case of restricted procedure, the minimum time limit for receipt of requests for participation cannot be less than 18 days from the date of publication of the notice and the deadline for receipt of tenders cannot be less than 28 days from the date for submission of bids. In the case of contracts whose value is greater than the international threshold value for both time periods are extended at least 30 and 40 days respectively;
- In the case of accelerated restricted procedure, the contracting authority has the right to determine the time limit for receipt of request not less than 8 days and the deadline for receipt of tenders not less than 5 days. In the case of contracts whose value is greater than international threshold value both are extended at least 20 and 15 individually;

- In the case of negotiated procedure with publication the time limit is set for receipt of requests cannot be less than 18 days from the date of procurement notice publication (extended to at least 30 days in the case of contracts whose value is greater than the international threshold value). Law does not determine the minimum time limit for receiving or for receipt of initial or final offer.

The Law does not determine the time limit for negotiated procedure without publication. In SIGMA (2009, pp.6-8) report it is stated that the coverage of the PPL includes all public undertakings, regardless of the sector of the economy they deal with. On the other hand, the PPL does not cover any private utilities that carry out their activities within the utility areas of Directive 2004/17 on the basis of special or exclusive rights granted by a public authority. Since such bodies do not yet exist, this does not create any practical difficulties at present, but in this respect the PPL is not harmonized with these acquires. It is of such greater concern that the PPL does not include the exemptions specifically laid down by Directive 2004/17, which are intended to allow greater flexibility for bodies operating in a commercial and operational environment. Examples of this are very restrictive provisions on framework contracts and the inability to rely on standing lists of qualified suppliers (qualification systems) as well as some special exemptions, such as for purchases of energy or products purchased in order to produce energy. This over-regulation can have significant effects on the efficiency of operations of such bodies in B&H.

In addition to these basic procedures, contracts whose value is lower than the threshold are awarded through one of the following procedures:

- Quotation procedure and
- Direct Agreement (for the amount to 6,000 BAM).

Public procurement contract is defined in the Law as a written contract for pecuniary interest involving the purchase, lease, rental or hire purchase. In the tender documents, the contracting authority gives comprehensive information about the contract conditions and awards procedures sufficient for the tenderers to prepare their tenders on a competitive basis. The tender documents are drawn up according to the models and/or standard tender documents prepared by the Public Procurement Agency (Public Procurement Law of Bosnia and Herzegovina, Official Gazette of B&H 49/04).

PPL includes rules on how contracting authorities set technical specifications of contract and principles for assessing whether received tenders meet defined specifications. Technical specifications, of course, respect the mandatory technical regulations defined in the law on standardization in Bosnia and Herzegovina, for example in the field of construction, fire protection, safety of machinery etc. Secondly, the technical specifications will be established relying to "standards". The highest priority has BH standards that are in line with European standards, technical approvals or common technical specifications that are used in the EU.

European standard refers to the standard that was adopted by the Organization for European standards and made it available to the general public. These standards for B&H are currently under construction. In cases where the above mentioned standards for B&H are not available or applicable, internationally accepted standards or technical regulations or standards may be used. International standard is a standard which is adopted by international standards organization and it is available to the public.

Tender is valid for the period of time that is specified by the contracting authority. The period should be the same as the one set in tender documents and must be longer than 30 days. If the tender does not specify the period of its validity, it will be considered valid only for the period indicated in the tender documents. By the Public Procurement Law of Bosnia and Herzegovina (Official Gazette of B&H 49/04) the contracting authority publish a procurement notice of the contract, except in cases where the contract is awarded by negotiated procedure without publication of a notice. The procurement notice give interested suppliers sufficient information to enable them to assess whether they wish to tender for the contract.

All procurement notices are published in the Official Gazette, and also on the website. Public contracts are awarded only to supplier who is professionally and technically prepared to perform it adequately. Therefore, the Law requires from a contracting authority to establish the minimum requirements when it comes to technical and professional capacity that applicants or tenderers must accomplish. If contracts value exceeds the international threshold values, the procurement notice must be published in a journal or in international newspapers or on the procurement website which guarantees international access.

The contracting authority must evaluate and compare the tenders of qualified bidders, applying criteria for the awarding contract specified in the tender documents. Only suitable tenders can be evaluated and compared according to the criteria for awarding contracts. Tender is suitable when it fulfills all mandatory specifications and requirements specified by the contracting authority in the tender documents. Unsuitable tenders are rejected. If it happens that the tender offers abnormally low costs or price for the goods, services or works, the contracting authority must require from the bidder to justify the cost of the tender by providing explanations, analysis and / or budget of the respective prices. All tenders are evaluated for suitable grades and compared using the award criteria specified in the tender documents.

According to Public Procurement Law of Bosnia and Herzegovina (Official Gazette of B&H, 49/04) there are two different criteria for the award of the contract:

- **The most economically advantageous tender** for the contracting authority based on evaluation criteria which are identified according to the nature and scope of the public contract for example: quality, price, technical merit, functional and environmental

characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion;

- **Lowest price.** The lowest price is, without doubt, the most objective criteria for awarding contracts. In cases where the contracting authority, in an objective and non-discriminatory way, describe the mandatory requirements and specifications of the tender documents, which acceptable offer must satisfy, then the competition can be based only on the basis of price competition, and the contract is awarded to the evaluated lowest offer.

The contract award implies making decision by the contracting authority which bidder is successful or with who will conclude a final agreement. As soon as possible, within 7 days of the decision, it is important to inform the submitted tenderers, in writing form, about the decision of the award of contract. The bidders that are eliminated should be informed as well, due to insufficient qualifications or impropriety of the tender.

Finalization of the procurement process is offering the contract to the successful tendered and conclusion of the agreement. The contracting authority prepares and publishes a notice of award of contract, within 30 days after the conclusion of the contract, in accordance with Article 40 PPL. The conclusion of a contract represents signing the contract documents by the parties, after which agreement come into force.

The basic structure of the present PPL is accurate but its implementation must be improved. In regard to aligning B&H acquis rules there has not been any progress. The European Partnership requires B&H in general to make substantial progress on creating a single economic space in Bosnia and Herzegovina supporting the free movement of goods, capital and services. In the field of public procurement in particular, B&H is to ensure that the legal framework for public procurement is compatible with the acquis and that public procurement procedures are implemented properly. Bosnia and Herzegovina is now the only country in the region that has not yet implemented provisions of the new EC Directives in the area of public procurement. The bureaucratic nature of the PPL and its formalistic and simplistic implementation (for instance, unnecessarily extensive and detailed requirements relating to the qualification of suppliers and the frequent rejection of tenders for formalistic reasons, without an analysis of the content) adds to the cost of participation in public tenders (for economic operators) and therefore reduces competition. Non-harmonized regulations at the entity and canton levels and the lack of mutual recognition create additional problems. For example, a construction license issued in one entity is not accepted in another (SIGMA, 2011, pp.6-24).

The cost (for contracting authorities) of contract notices in the Official Gazette is disproportionally high (200 €, regardless of the value of the contract). Some e-procurement tools are introduced (electronic submission of procurement reports) or developed (electronic publication of procurement notices). The obligation about awarded contracts reports in public

procurement delivers exclusively through the electronic system for the submission of the reports started from 1 January 2010. This is performed through WisPPA information system for online submission of reports on the public procurement procedures. With these applications is a simpler and more reliable way to submit reports about public procurement procedures. Web forms are improved compared to the forms about report of public procurement procedures.

3.3 Public procurement institutions

Public Procurement Law has established two institutions at state level the Public Procurement Agency and the Procurement Review Body. They are responsible for implementation of the public procurement system.

3.3.1 Public Procurement Agency

The PPA was established as an independent administrative organization with legal personality and it is directly responsible to the government. The Agency's seat is in Sarajevo. It has two offices in Banja Luka and Mostar, but these offices are not authorized to make decisions without being approved from the PPA central office. As it is emphasized in SIGMA (2009, pp.8-10) that the PPA's functions are to ensure proper application of the PPL, in particular by proposing amendments to the PPL and its implementing regulations, raising awareness among contracting authorities and suppliers of the public procurement legislation and its objectives, procedures and methods, publishing procurement manuals, guidelines, standard forms and models, providing technical assistance and advice to both contracting authorities and suppliers, establishing systems for monitoring the compliance of contracting entities with the PPL, collecting, analyzing and publishing information on public procurement procedures, developing an information system to supplement the Official Gazette, initiating and supporting the development of electronic procurement, publishing training information and maintaining a register of accredited trainers in public procurement.

The PPA has a director and a board, comprised of seven members. The members are: the Minister of Finance and Treasury of B&H, the Minister of Finance of FB&H, the Minister of Finance of RS, and four experts selected by open competition as provided in the Implementing Regulations. The Director is appointed by the Council of Ministers of B&H for a period of 5 years with the possibility of a single reappointment. The members of the Board, by a majority vote, choose a Chairman amongst the members who will hold the position for a two-year term. The Board meets once every three months or more often if the Chairman deems it necessary. The Board must be provided by the Agency with adequate resources and personnel support, so as to enable it to carry out its duties under this Law. All contracting authorities throughout B&H are obliged to cooperate with the Agency and its Director and Board when they are carrying out their activities within the scope of the

responsibilities set in this Law and its Implementing Regulations. (Public Procurement Law of Bosnia and Herzegovina, Official Gazette of B&H 49/04).

It will be a real challenge for PPA to attain this capacity if you consider the current difficult budgetary situation. A twinning-light project with Germany, which started in June 2008 and ended in March 2009, gave some aid to the PPA capacity problems. At the same time PPA organized various training activities in a number of cities in Bosnia and Herzegovina and introduced a new brochure on procurement procedures. For example, it adopted a training methodology and a program which includes practical, case study-based training approach as well as a script of monitoring activities. One of the monitoring functions that PPA performs is to check compliance with legal requirements of notices which are published in the Official Gazette and request from contracting authorities to correct any irregularities.

3.3.2 Procurement Review Body

The Procurement Review Body is an independent administrative organization with a legal personality. It is situated in Sarajevo. The PRB is in charge for the safe enforcement of PPL rules as well as for acting as a second instance in the review procedure. According to article 49 of the PPL, the PRB should consist of 6 members. Three members are chosen amongst selected experts in administrative law and/or administrative procedure. Their status should be equal to the one of an independent judge, and their PRB membership is opposing to any direct or indirect, permanent or periodical duty, with the exception of academic activities. The other three members should be experts in the area of public purchases, work, transportation or strategic business management, and they are selected through open competition in accordance with the implementing regulations of the PPL. PRB members are proposed by the government and thus appointed by the parliament at state level (SIGMA, 2009, p.13).

PRB has the authority to:

- Suspend, remove the violation or cancel the procurement procedure;
- Assign the damages to the complainant;
- Impose a financial penalty;
- Submit a misdemeanor or a criminal complaint to the competent court.

What is important to mention is that the central public procurement institutions – the Public Procurement Agency (PPA) and the Procurement Review Body (PRB) – are not sufficiently proactive in disseminating information on the public procurement system and in providing contracting authorities and economic operators with practical assistance. Any attempts to reform the public procurement system are compounded by disagreements between the two leading B&H institutions responsible for public procurement: the PPA and the PRB. For proper functioning of the system of public procurement, it is essential that both institutions

co-operate and try to achieve coherent views on the interpretation of the most relevant provisions on public procurement (EUPPP, n.d., pp.28-29).

According to “Assessment Bosnia and Herzegovina” (SIGMA, 2011a, pp.23-24) the public procurement review system remains a key concern. It is strongly criticized by both contracting authorities and economic operators for being overly bureaucratic, time-consuming and costly. The quality of PRB decisions is often weak. In the opinion of business organizations, the decisions of the PRB are often too superficial, overlooking the real irregularities and focusing on irrelevant formal considerations, which are sometimes unclear and inconclusive. There are also several examples of inconsistent decisions (contradictory rulings in identical or similar situations).

Number of complaints from year to year increases, so PRB in 2010 received 1831 complaints, the number of the decision issued is 1794, and the number of complaints against decisions is 115, by the end of 2010 bad practice was present, that PRB decisions on complaints are not published on the website of public procurement. At the beginning of December 2010 the PRB began to publish a decision on the website. However, the publication of Adobe documents can be seen as a first step towards transparency. As a second step, there is still a need for more sophisticated database of decisions, including all past decisions and with browsing and search facilities to allow for the search of individual legal issues.

3.4 Corruption in B&H

Economic development in the last 10 years seriously threatens growing corruption in public affairs (including the government, judiciary, police, schools, hospitals, etc.). While gross domestic product in the last 10 years almost doubled, the growing corruption prevents further spreading positive effects on the economy and society. Corruption is present in various segments of public procurement. Corruption means the unlawful use of social and political position and power to acquire own benefit. Procurement due to its characteristics is suitable ground for the development of corruption; this is an area that offers the best chance of corruption.

In the article “Reducing corruption by adopting new Public Procurement Law in B&H” by Magazine Intermezzo it is stated that even at the beginning of the implication of the Law on Public Procurement Law, certain elements are appeared pointed to the failures of the law. While many of these things eventually modified, still there is a large number of irregularities due to poor tender documentation, public procurement cycle, abnormally low number of penalties and/or responsibility of the body that are responsible for public procurement system – PPA and PRB. These are the main reasons for the widespread corruption in public procurement system, which negatively affects on the socio-economic situation in the country.

B&H spends 50% less public funds through public procurement than EU countries, which shows a large part of spending public funds which are not officially registered.

In order to understand the essence of the problems that leads to growth of corruption in public procurement, it is necessary to understand basic model of corruption. Corruption, like other forms of crime depends on several factors such as the provision of benefits, the price paid for the service, the size of the punishment that expects the parties. The greater benefit that can be gained, the need of control by an independent body is higher.

Some examples of corruption in public procurement are:

- Limited number of bids, and that the information on this project are kept secret as long as possible;
- The time interval between invitation to tender and selection of tender can be very small, so only the companies that had been previously informed has time to prepare the necessary documents;
- One of the methods used can also be that the tender is designed by requiring some special skills, while alluding some comparative advantages of the company that offers a bribe (so only that companies meet the requirements);
- Instead of choosing the least expensive project, the provider that is chosen is the one that gives the biggest bribe, no matter that the project would cost several times more than it should be;
- Technical specifications are one of the most critical points to corruption in public procurement, because they can favorite only one bidder;
- The corruption often occurs in conditions when it comes to emergency projects. For example, in cases of natural disaster or an unexpected event. Because of the urgency, it can be avoided the usual procedure, which leaves the possibility for the fitting of the tender and corruption.

In the article “Reducing corruption by adopting new Public Procurement Law in B&H” by Magazine *Intermezzo* it is stated that the Public Procurement Agency of Bosnia and Herzegovina is a key participant in these processes, which gives these activities very little importance, especially in terms of specified irregularities. It should be noted that the Agency should not be performing the daily operational duties, giving opinions and responses to contracting authorities and bidders, and the interpretation of certain laws and regulations with the aim of realizing activities in the field of public procurement. Without the Public Procurement Agency, which has a high rate of integrity of managers and employees, and a very strong analytical team that will prepare the foundation for the law improvement from the aspect of a larger Transparency and accountability, it can be said that the fight against the corruption in public procurement policies is lost.

By the article “Held corruption or not” of Citizens Association “Tender” an important role has also a Procurement Review Body as collateral controlling authority for consideration and resolving of complaints and appeals of bidders from the business sector. Concerning the fact that is almost 80% of the decision about justification of the appeal procedure bidder completes not in their favor, but in different ways, than often in irregular canceling the procurement by the contracting authority. However in 2009, the penalty imposed in only one case in the amount of KM 1,000, while in 2010 two penalties are imposed in the amount of 500 and 1,000 KM and also five criminal proceedings and one infringement procedure were initiated. Inadequate control mechanisms, followed by a very low penalty for violations of the Law on Public Procurement, are one of the main reasons of the irresponsible behavior of contracting authorities and bidders in public procurement procedures. And exactly the criminal penalty i.e. amount of penalty is one of the main elements that affects the development of corruption in a particular field.

Considering the failure and problems in the implementation of public procurement which are directly affected on the growth of corruption in Bosnia and Herzegovina, it is evident that the current situation is unsustainable. There is a Draft of Public Procurement Law from 2011 but it has not been sent to the Parliament of B&H for its consideration. Hence, the adoption of the new Law on Public Procurement in order to improve efficiency, transparency and accountability in public procurement procedures is of a great importance. A special segment is related to the strengthening of institutions that are responsible for the implementation of public procurement (PPA, PRB, and the Court), and also the institutions that are responsible for the prevention, detection and penalties of corruption in public procurement.

In the article “Reducing corruption by adopting new Public Procurement Law in B&H” by Magazine Intermezzo it is emphasizes that the most important measure from the point of tightening sanctions for failures and irregularities, and violations and evasions of the law on public procurement are:

- The intensification and broadening of responsibility measures against contracting authorities and bidders;
- Define and prescribe the right to compensation to the injured supplier;
- Strengthen the role of the Public Procurement Agency concerning monitoring;
- Increase responsibility and efficiency in the PRB;
- To strengthen personnel of the Court with the aim of training courses in the area of public procurement must decide on an expedited basis;
- Define the role of the Agency for the Prevention of Corruption and coordination fight against corruption in the field of corruption in public procurement, to strengthen personnel the relevant control authorities, and especially the service of public sector audit.

Finally, it should be noted that corruption in a society cannot eradicate administrative measures but involvement of all stakeholders in the fight against it can. Therefore, careful coordination of all stakeholders is crucial, especially in areas such as the spending of public funds in public procurement. As one of the UN slogans says: the guild of corruption pays society. Consequently, this behavior is generally sanctioned by the OECD where all Member States in 1998 committed to avoid corrupt practices. But unfortunately, Bosnia and Herzegovina has not yet become one of OECD countries or the EU members, but in order to become one of these countries it must start the fight against corruption.

4 EMPIRICAL ANALYSIS OF CONTRACTS CONCLUDED ON PUBLIC PROCUREMENT

The subject of analysis in this section is concluded public procurement contracts on different bases:

- Contract concluded on public procurement (Primary contract award procedure – II Chapter of the Law):
 - Values of contracts awarded;
 - Values of concluded contracts for the procurement of goods, services and works;
 - Values of concluded contracts for all types of procedures (for procurement of goods, services and works):
 - Values of concluded contracts in all procurement subjects in the case of open procedures;
 - Values of concluded contracts in all procurement subjects in the case of restricted procedure;
 - Values of concluded contracts in all procurement subjects in the case of negotiated procedure;
 - Values of concluded contracts on all procurement subjects in the case of design contest.
- Contract concluded on public procurement (Contract below the primary threshold values – III Chapter of Law)
 - Values of concluded contracts by quotation procedure;
 - Values of concluded contracts by direct agreement.

The collected data for this study was published by the Public Procurement Agency. Analysis refers to the period from 2006 to 2010. In this section, using appropriate statistical methods, analysis of concluded contracts trends has been done for a certain period in B&H. The results of empirical research have been presented and analyzed. In the analysis, we have used the graphical method, base index, chain index and average annual growth rate¹.

¹ Formula that was used: $r = \left(\sqrt[t-1]{\frac{V_t}{V_1}} - 1 \right) \cdot 100$

4.1 Trends of awarded contracts under Chapter II of PPL

This part includes analysis of contract concluded under Chapter II of Public Procurement Law, relating to primary contract award procedure.

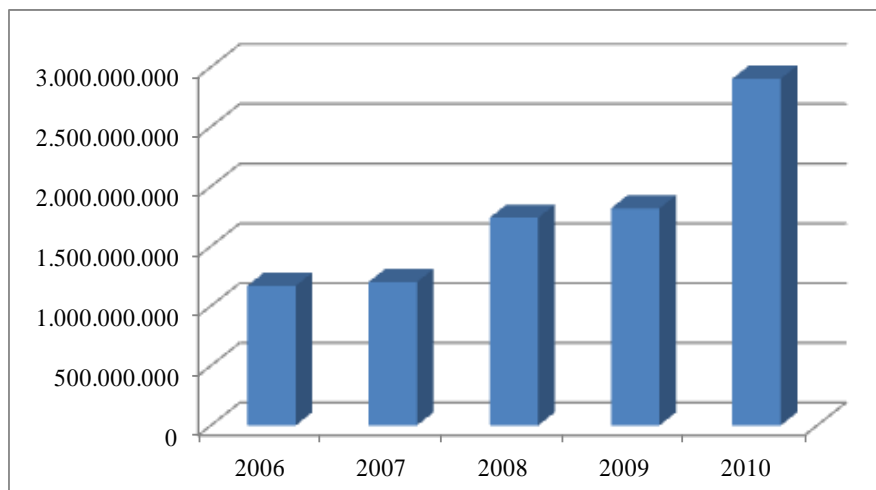
Values of awarded contracts for the period 2006 – 2010 are presented in the **Table 8** and **Figure 8**.

Table 8: Values of awarded contract (2006 – 2010)

Year	Values of contract awarded
2006	1,168,743,988.02
2007	1,200,533,654.23
2008	1,739,034,737.08
2009	1,817,254,786.58
2010	2,902,441,878.70
Total	8,828,009,044.61

Source: *Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.*

Figure 8: Review of awarded contract values (2006 – 2010)



In the period 2006 - 2010, the total value of awarded contracts amounts to 8,828,009,044.61 BAM. Based on data from the table and figure we can notice that most contracts were awarded in 2010 in the amount of 2,902,441,878.70 BAM, which represents an increase of

59.71 % compared in 2009 when value of awarded contracts was 1,817,254,786.58 BAM. The minimum value of the awarded contract was in 2007 and amounted to 1,200,533,654.23 BAM.

4.1.1 Trends of concluded contracts values for the procurement of goods, services, works and combined procurement

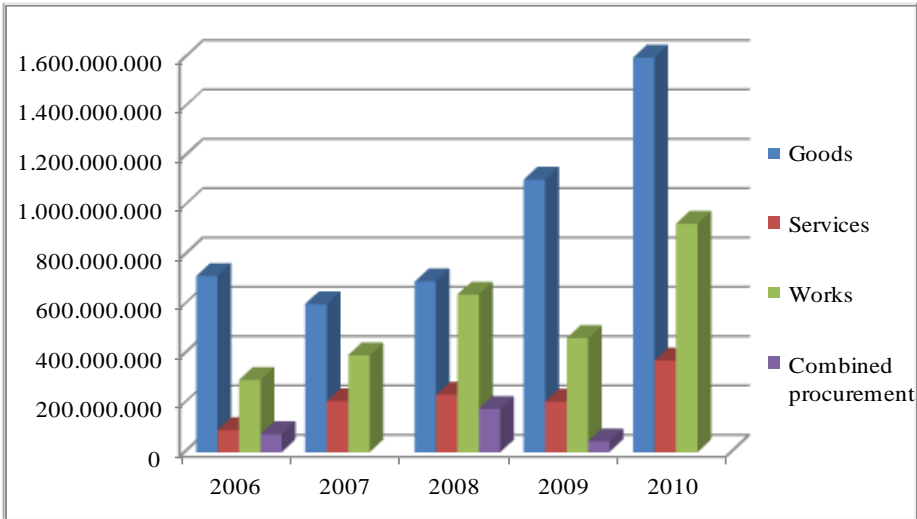
Here we analyzed values of awarded contracts for the procurement of goods, services, works and combined procurement. Combined procurement could happen if the contract for public procurement includes goods and services or the services or works at the same time. The data series used to describe the movement include the period from 2006 to 2010.

Table 9: Value of concluded contracts for the procurement of goods, services, works and combined procurement

Year	Goods	Services	Works	Combined procurement	Total
2006	714,644,251.87	88,684,545.34	292,105,812.74	73,309,378.07	1,168,743,988.02
2007	600,561,687.19	207,070,785.51	392,901,181.53	/	1,200,533,654.23
2008	692,374,351.95	233,536,519.54	638,518,448.87	174,605,416.72	1,739,034,737.08
2009	1,104,913,772.16	205,558,941.36	463,078,790.73	43,703,282.33	1,817,254,786.58
2010	1,604,754,695.05	371,420,855.80	926,266,327.90	/	2,902,441,878.75
Total	4,717,248,758.22	1,106,271,647.55	2,712,870,561.77	291,618,077.12	8,828,009,044.66

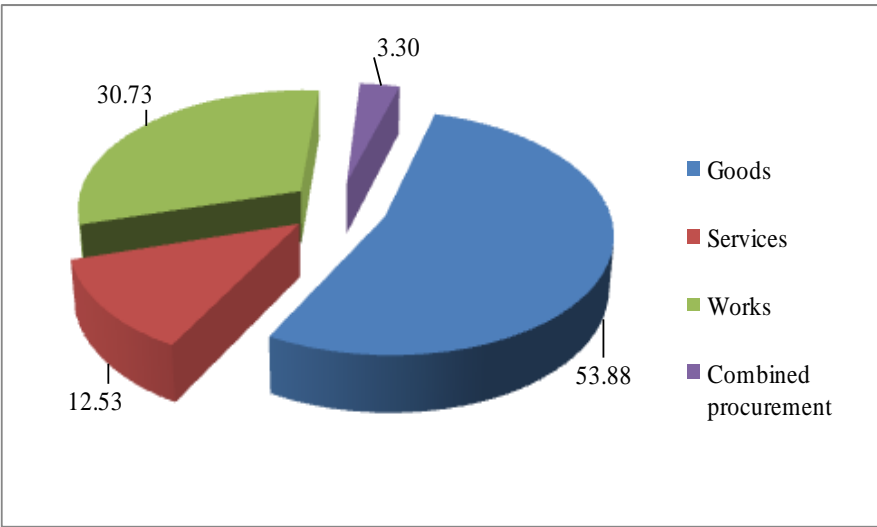
Source: Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.

Figure 9: Review of concluded contracts values for the procurement of goods, services, works and combined procurement



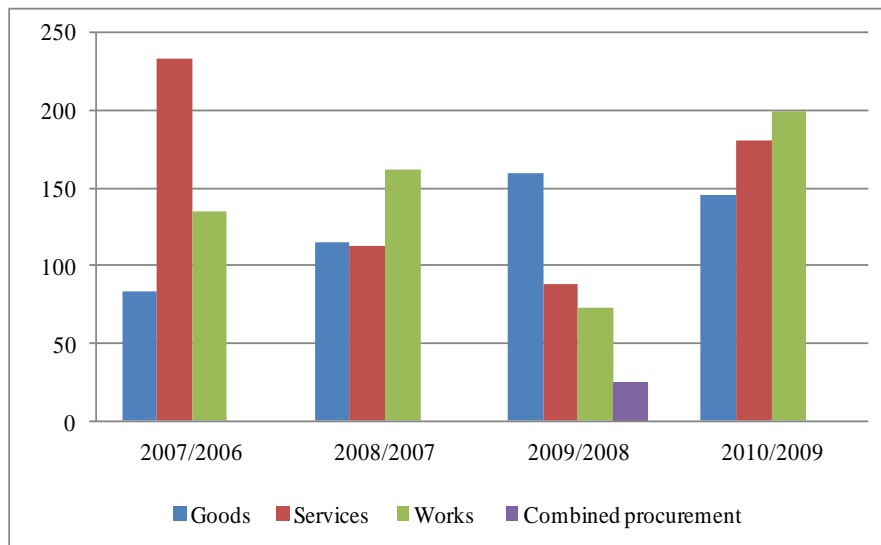
According to data relating to the period 2006 – 2010, the total amount of concluded contracts is 8,828,009,044.61 BAM. Annual average of concluded contracts was realized in the amount of 1,765,601,808.93 BAM. From the previous table and figure it can be concluded that the contracts concluded for all subject of procurement reached its maximum in 2010, thus contract concluded in goods amount to 1,604,754,695.05 BAM, while concluded contract in works amount to 926,266,327.90 BAM. Combined procurement occurs in 2006, 2008 and 2009, in the total amount of 291,618,077.12 BAM. The structure of concluded contract for this period is shown below.

Figure 10: Structure of concluded contracts values for the procurement of goods, services, works and combined procurement (in %)



From the total amount of concluded contracts in goods, services, works and combined procurement in B&H in the period from 2006 to 2010 the largest share goes to concluded contract in goods. In the analyzed period, concluded contract in goods amounted to 4,717,248,758.22 BAM or 53.88 % of the total. After that, concluded contract in works follows which amounted to 2,712,870,561.77 BAM or 30.73 % and concluded contract in services 1,106,271,647.55 BAM or 12.53 %. The smallest proportion has combined procurement in the amount of 291,618,077.12 BAM or 3.30 %. Dynamics of concluded contracts in goods, services, works and combined procurement was analyzed using the chain index.

Figure 11: Chain index of concluded contracts in goods, services, works and combined procurement



In **Figure 11**, it illustrated the chain index of concluded contracts in goods, services, works and combined procurement. We can conclude that concluded contracts in goods have general tendency of growth in the period from 2006 to 2010. Value of contract concluded in goods in 2010, increase in the amount of 499,840,922.89 BAM or 45.23 % compared to 2009 when it amounted to 1,104,913,772.16 BAM. In 2010 procurement of services increase in amount of 165,861,914.46 or 80.68 % compared to 2009. Procurement of works in 2009 decreased compared to 2008 for 27.48 % or in the amount of 175,439,658.14 BAM. The largest chain index is recorded in concluded contracts in services in 2007 and it was even 233.49 which imply that the concluded contracts in services in this year were higher for 133.49 % compared to 2006.

To determine how many concluded contracts were increased or decreased on average, we used an average annual rate of return. Approximately per year the most increase was in concluded contracts in services at a rate of 43.05 %, then in concluded contracts in works at a rate of 33.44 % and concluded contracts in goods at a rate of 22.41 %.

4.1.2 Trends of concluded contracts values for all types of procedures (for procurement of goods, services and works)

Procurement procedures are basically the same for the procurement of goods, services and works. The main types of procedures are: open procedure, restricted procedure, negotiated procedure and design contest.

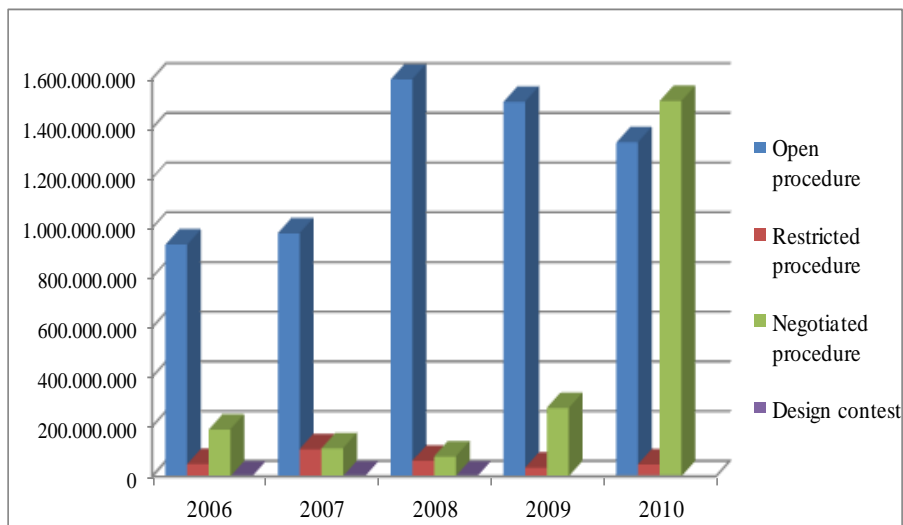
The table and graph contain a review of contracts concluded by the types of procedures.

Table 10: Values of concluded contracts for all types of procedures (2006-2010)

Year	Open procedure	Restricted procedure	Negotiated procedure	Design contest	Total
2006	932,429,019.20	48,888,589.32	187,334,379.50	92,000.00	1,168,743,988.02
2007	978,057,315.85	109,276,904.82	112,308,839.89	890,593.67	1,200,533,654.23
2008	1,598,037,250.83	62,150,500.68	78,788,985.57	58,000.00	1,739,034,737.08
2009	1,507,306,001.68	34,806,813.94	275,141,970.96	/	1,817,254,786.58
2010	1,343,821,679.58	47,762,312.35	1,510,857,886.84	/	2,902,441,878.77
Total	6,359,651,267.14	302,885,121.11	2,164,432,062.76	1,040,593.67	8,828,009,044.68

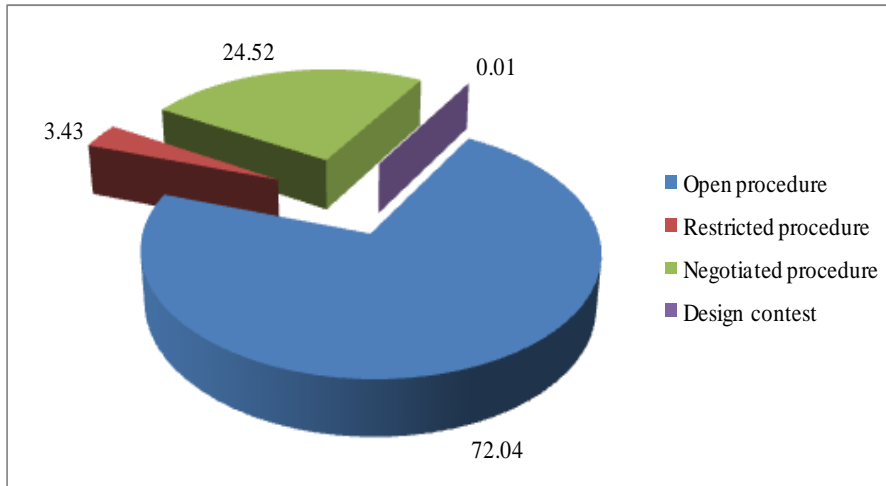
Source: *Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.*

Figure 12: Review of concluded contracts values for all types of procedures



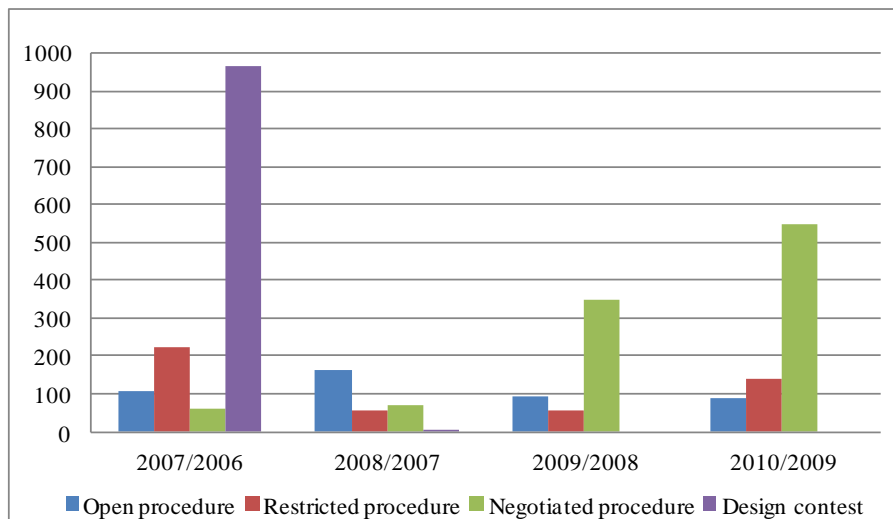
From 2006 to 2010 the total amount of concluded contracts by different type of procedures is in the amount of 8,828,009,044.68 BAM. Open procedure is the most represented in an amount of even 6,359,651,267.14 BAM. From the previous table and figure, we notice that in 2010 there is sudden increase in negotiated procedure in amount 1,235,715,915.88 BAM, while other procedures are used less. Thus, concluded contract in case of design contest in 2008 amounted to 58,000.00 BAM. Structure of the concluded contracts by all types of procedures is given below.

Figure 13: Structure of concluded contracts values for all types of procedures (in %)



For the period from 2006 to 2010 the total amount of contracts concluded by the different types of procedures is 8,828,009,044.68 BAM. Most concluded contracts were in case of open procedure was 72.04 %, then concluded contracts in case of negotiated procedure was 24.52 %, hence concluded contracts in case of restricted procedure was 3.43 %. While the minimum concluded contracts of design contest was only 0.01 %. Using the chain index, we analyzed concluded contracts by all types of procedures.

Figure 14: Chain index of total concluded contracts by all type of procedures



We used chain index to see which procedure was used the most for the period 2006 – 2010. Although the open procedure is used the most in the analyzed periods, in 2010 the value of concluded contracts in open process decreased in the amount of 163,484,322.09 BAM or 10.85 % compared to 2009, when amounted 1,507,306,001.68 BAM.

The total value of concluded contracts in case of negotiated procedure has been increased in 2010 for the amount 1,235,715,915.88 or 449.12 % compared to 2009. The trend of concluded contract increases in case of the negotiated procedure without publication is the result of procurement between related companies, such as electricity. In previous years, they did not submit reports for these types of procurement, because they are considered to represent exemptions, as it envisaged by the Draft Law on Public Procurement.

The analysis of 20 awarded contract with highest values in 2010 shows that Public enterprise *Elektroprivreda* Bosnia and Herzegovina, Public enterprise *Elektroprivreda Hrvatske zajednice Herceg Bosne in Mostar*, Public Enterprise "Roads of Republic of Srpska" Federal Directorate of civil aviation - Bosnia and Herzegovina have a maximum values of awarded contracts with suppliers such as Subsidiaries of Elektroprivreda's Concern - the mines *Kreka*, Brown Coal Mines *Banovici*, Brown Coal Mine *Durđevik* etc (Review of 20 awarded contracts with highest values in 2010 is shown in Appendix 2).

Also, one of the reasons which led to an increase in the value of the negotiated procedure is that all natural and legal monopolies are entire in Wisppa system as well as the negotiated procedure without publication. The new draft law represents a major progress in public procurement system in terms of better legislation and exempts specified type of procurement, which indicates the necessity of its adoption. Concluded contracts in case of restricted procedure in 2010 amounted to 47,762,312.35 BAM, which represents increase of 12,955,498.41 BAM or 37.21 % when compared to 2009.

To determine the rate at which concluded contracts by all type of procedures has been grown, we used the average annual rate. Approximately most concluded contract in case of negotiated procedure grew by the rate of 68.52 %, and then concluded contracts of open procedure grew by the rate of 9.57 %. The negative growth was recorded by the concluded contract in case of restricted procedure at the rate – 0.58 % and concluded contract in case of design contest at a rate of – 20.60 %.

4.1.2.1 Trends of concluded contracts values in all subjects procurement in the case of open procedures

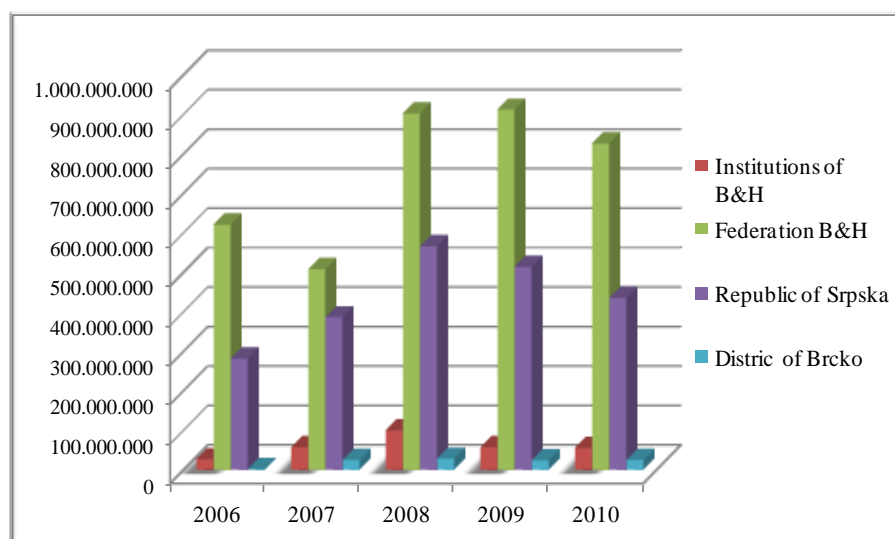
The analysis of concluded contracts by various types of procedure according to different levels of the state structure of Bosnia and Herzegovina is presented below. Changes in the value of concluded contracts are monitored at the state level (Institutions of B&H) and the three entities (Federation of Bosnia and Herzegovina, the Republic of Srpska and District of Brcko). Firstly, we analyzed concluded contract in the case of open procedure

Table 11: Values of concluded contracts in the case of open procedures (2006-2010)

Year	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko	Total
2006	27,081,957.27	621,153,161.73	282,057,764.02	2,136,136.18	932,429,019.20
2007	57,574,358.12	508,811,557.88	386,320,045.20	25,351,354.65	978,057,315.85
2008	100,370,484.79	902,873,645.00	566,719,006.23	28,074,114.81	1,598,037,250.83
2009	57,482,199.68	912,151,485.41	513,856,760.52	23,815,556.07	1,507,306,001.68
2010	55,430,370.44	826,818,730.26	436,365,788.10	25,206,790.79	1,343,821,679.59
Total	297,939,370.30	3,771,808,580.28	2,185,319,364.07	104,583,952.50	6,359,651,267.15

Source: Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.

Figure 15: Review of concluded contracts values in the case of open procedures



Based on data from tables and graph, we have concluded that from total amount of concluded contracts during the period from 2006 to 2010 the most concluded contracts in case of open procedure are implemented in the Federation B&H 3,771,808,580.28 BAM. Most concluded contracts in Federation B&H were in 2009 and amounted to 912,151,485.41 BAM. In Republic of Srpska concluded contracts grew from 2006 to 2008, but in 2009 there was a slight decrease, and in 2010 decrease again, so they amounted to 436,365,788.10 BAM. Whereas concluded contracts in case of open procedure were the smallest in District of Brcko.

Figure 16: Structure of concluded contracts values in the case of open procedures

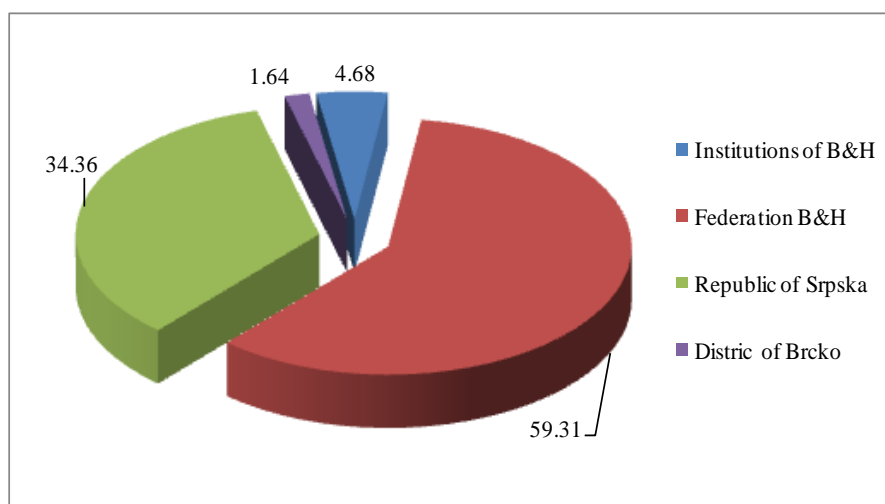
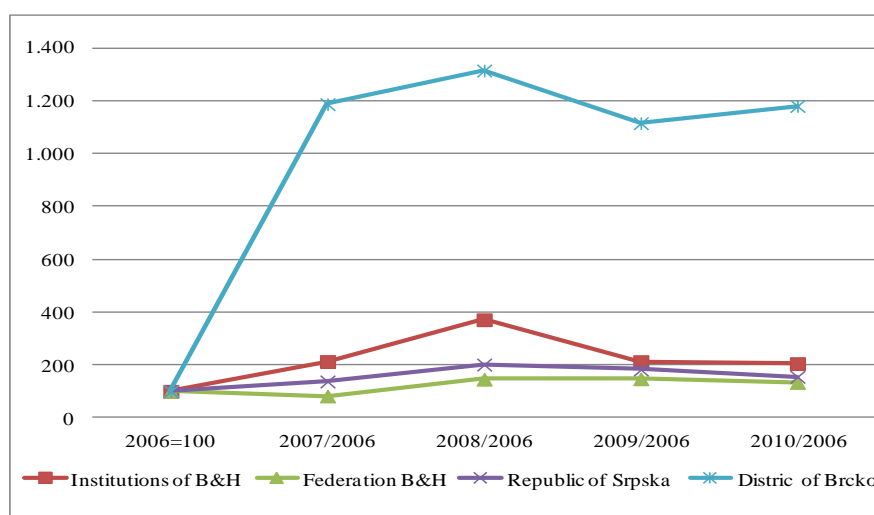


Figure 16 shows the structure of concluded contracts in case of open procedure at the state level and all three entities of B&H for the period from 2006 to 2010. From the total amount of concluded contracts in case of open procedure which amounts to 6,359,651,267.15BAM, Federation of B&H has the largest share of 59.31 %. Concluded contracts in the case of open procedure in the Republic of Srpska have share of 34.36 %, Institution of B&H constitute 4.68 %, while in District of Brcko only 1.64 % are concluded contracts in case of open procedure.

Figure 17: Base index of concluded contracts values in the case of open procedures



Dynamics of the concluded contracts in the case of open procedure in different state structures in B&H are followed by the base index. For the base year we chose 2006. Concluded contracts in the case of open procedure in FB&H grow in all observed years compared to the base year. In 2010, compared to the base year, the increase of concluded contracts in

Federation of BIH was 33.11 %, this represents in the absolute amount an increase of 28,348,413.17 BAM. In District of Brcko, there was a sudden increase in concluded contracts in case of open procedure in 2007, they increase the amount for 21,679,419.89 BAM, compared to the previous 2006. In 2010 concluded contracts in case of open procedure in Republic of Srpska increased by 54.71 % or 154,308,024.08 BAM, compared to the base year, and also they increased by 104.68 % or 28,348,413.17 BAM in Institutions of B&H.

The biggest average growth was in concluded contracts in the case of open procedure in District of Brcko at a rate of 85.34 %. This is followed by the concluded contracts in the case of open procedure in Institutions of B&H at a rate of 19.61 %, thus by the rate of 11.52 % in Republic of Srpska, and in Federation of B&H at a rate of 7.41 %.

4.1.2.2 Trends concluded contracts values in all procurement subjects in the case of restricted procedure

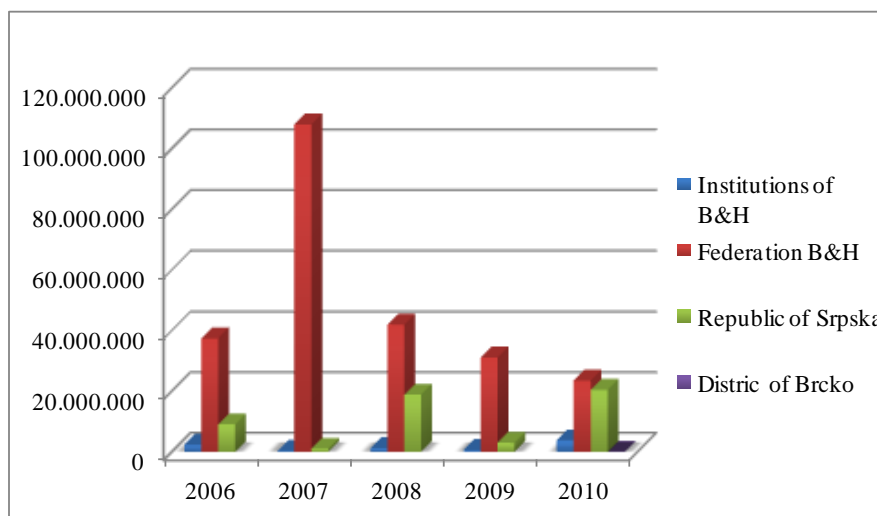
In the restricted procedure, tenders may be submitted only by those interested suppliers who were selected to participate in the procedure of prequalification. This procedure can be used for large or complex procurements, requiring prequalification process.

Table 12: Values of concluded contracts in the case of restricted procedure (2006-2010)

	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko	Total
2006	2,354,951.47	37,401,451.73	9,132,186.12	/	48,888,589.32
2007	307,808.46	107,919,643.56	1,049,452.80	/	109,276,904.82
2008	1,223,328.60	42,037,961.09	18,889,210.99	/	62,150,500.68
2009	662,526.00	31,119,037.49	3,025,250.45	/	34,806,813.94
2010	3,801,768.68	23,478,056.33	20,461,245.99	21,241.35	47,762,312.35
Total	8,350,383.21	241,956,150.20	52,557,346.35	21,241.35	302,885,121.11

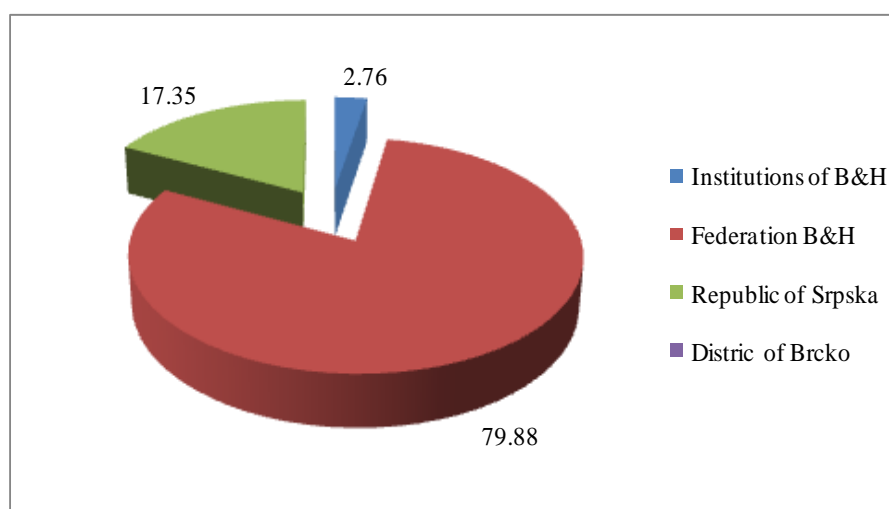
Source: *Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.*

Figure 18: Review of concluded contracts values in the case of restricted procedure



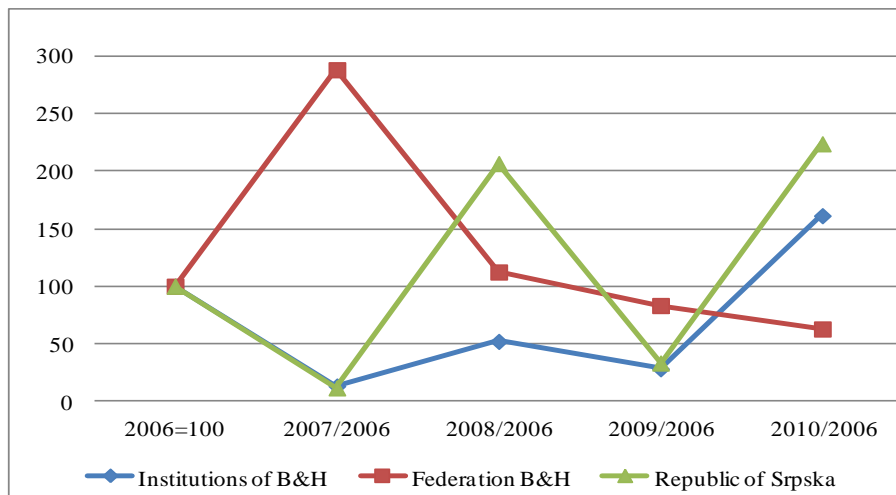
Based on data from table and figure, we can conclude that in Federation of B&H, in the period from 2006 to 2010, there was the largest number of concluded contracts in case of restricted procedures. In 2007 we see a rapid increase of concluded contracts in case of restricted procedure which amounted to 107,919,643.56 BAM, and then its decrease in 2008 as well as in 2009 and 2010. In Republic of Srpska the biggest number of concluded contracts in case of restricted procedure was in 2010 and it amounted to 20,461,245.99 BAM. In comparison with entities the concluded contracts in Institutions of B&H were very small. There were no concluded contracts in case restricted procedure in District of Brcko since 2006 to 2009, while in 2010 they amounted 21,241.35 BAM. Graph below shows the structures of concluded contracts in case of restricted procedure in the period from 2006 to 2010.

Figure 19: Structure of concluded contracts values in the case of restricted procedure (in %)



In the period 2006 - 2010 from the total amount of concluded contracts in case of restricted procedure (302,885,121.11 BAM), the largest share goes to the Federation of B&H (241,956,150.20 BAM) or 79.88 %. In RS, concluded contracts in case of restricted procedure amounted to 52,557,346.35 BAM or 17.35 %, while concluded contracts in this case was the least in Institutions of B&H in the amount of 8,350,383.21 BAM or 2.75 %. The concluded contract in District Brcko was minor 0.01 % Dynamics of concluded contracts in case of restricted procedure was analyzed using the base index.

Figure 20: Base index of concluded contracts values in the case of restricted procedure



Base index of concluded contracts in case of restricted procedure is illustrated in the **Figure 20** with the base in 2006. The largest increase of concluded contracts in case of restricted procedure was recorded in the Federation of B&H in 2007 where the base index was 288.54, which means that the rate of growth of concluded contracts was at 188.54% or in absolute amount of 70,518,191 BAM. After 2008 there was a decrease in concluded contracts in case of restricted procedure so in 2010 it decreases for 37.23 %, compared to the base year. When we observe concluded contracts in case of Republic of Srpska we notice that through years they decrease than increase, so in 2009 there was a decrease at a rate of 66.88 %, compared to the base 2006, and then in 2010 there was increase for 124.05 % compared to 2006. Concluded contracts in case of restricted procedures in Institutions of B&H have decreased till 2009, but in 2010 they increase for 61.44 % compared to base year.

Using the average annual growth rate, we calculated how much in average concluded contracts in case of restricted procedure grow annually. We can conclude that in period from 2006 to 2010 approximately most concluded contract in the case of restricted procedure was in the Republic of Srpska 22.34%, and in the Institutions of B&H 12.72%, while in Federation B&H there was negative growth rate -10.99%.

4.1.2.3 Trends of concluded contracts values in all procurement subjects in the case of negotiated procedure

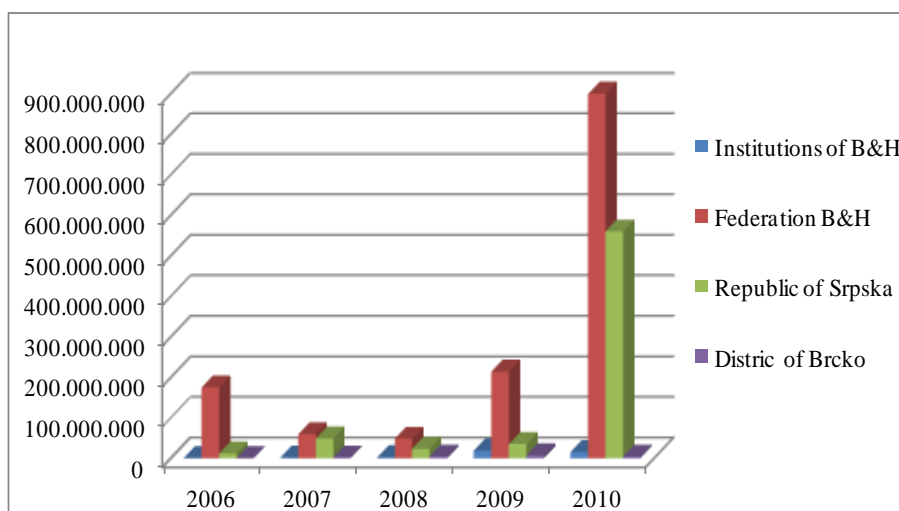
As previously explained negotiated procedure may be used only in exceptional and clearly defined circumstances. There are two types with or without prior publication of procurement.

Table 13: Values of concluded contracts in the case of negotiated procedure (2006-2010)

	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko	Total
2006	287,485.07	175,340,856.68	11,666,924.61	39,113.14	187,334,379.50
2007	1,778,332.38	59,715,531.94	48,989,459.43	1,825,516.14	112,308,839.89
2008	2,840,407.60	48,265,590.42	23,430,014.94	4,252,972.61	78,788,985.57
2009	18,687,358.31	213,706,788.65	35,580,937.19	7,166,886.81	275,141,970.96
2010	15,291,845.05	931,987,666.81	559,904,344.87	3,674,030.10	1,510,857,886.83
Total	38,885,428.41	1,429,016,434.50	679,571,681.04	16,958,518.80	2,164,432,062.75

Source: Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.

Figure 21: Review of concluded contracts values in the case of negotiated procedure

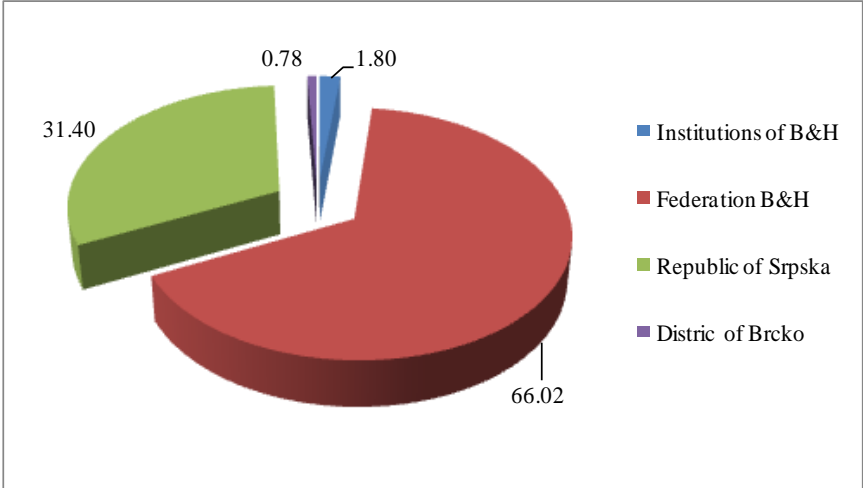


According to data which relate to the period 2006 - 2010 the total amount of concluded contracts in case of negotiated procedure amounted was 2,164,432,062.75 BAM. Realized average annual concluded contracts were in the amount of 432,886,412.55 BAM.

From the previous table and figure, we can conclude that the largest number of concluded contracts in case of negotiated procedure was in Federation B&H, which reached its peak in 2010 to the amount of 931,987,666.81 BAM, while in Republic of Srpska amounted to

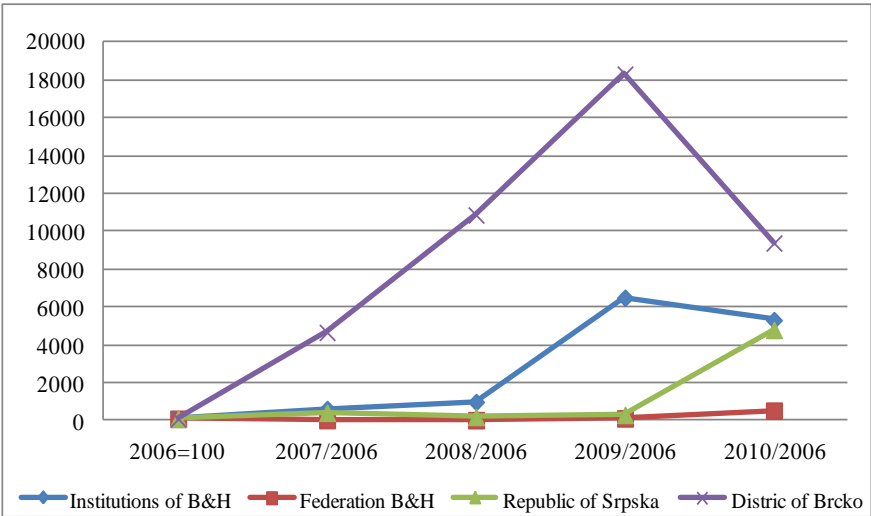
559,904,344.87 BAM. The concluded contracts in different state structures were much smaller. The following shows the structures of concluded contracts in the case of negotiated procedure.

Figure 22: Structure of concluded contracts values in the case of negotiated procedure (in %)



From the total amount of concluded contracts in case of negotiated procedure for the period 2006 – 2010 the largest share goes to the Federation of Bosnia and Herzegovina. Concluded contracts in the case of negotiated procedure in FB&H amounted to 1,429,016,434.50 BAM which makes 66.02 % of the total. This is followed by concluded contracts in Republic of Srpska which amounted to 679,571,681.04 BAM or 31.40 %, while the smallest share of concluded contracts was in Institutions of B&H 38,885,428.41BAM or 1.80 %, and in District of Brcko 16,958,518.80 BAM or 0.78 %. Dynamic of concluded contracts in case of negotiated procedure was analyzed using the base index.

Figure 23: Base index of concluded contracts values in the case of negotiated procedure



The **Figure 23** illustrates concluded contracts in the case of negotiated procedure with base 100 in 2006. For the analyzed period the highest growth of concluded contracts in the case of negotiated procedure was recorded in District of Brcko. In 2009 base index was 18,323.47 which imply that the growth rate of concluded contracts was 18,223.47 %. From the amount of 39,113.14 BAM as is was in 2006 it has been increased to the amount of 7,166,886.81 BAM in 2009. Concluded contracts in the case of negotiated procedure in Institutions of B&H for this period, increased constantly and reached its maximum in 2009 when they increased for 6,400.28%. It is worth mentioning that concluded contracts in Republic of Srpska increased each year compared to the base year and in 2010 it rated 4,799.07 which implies that the rate of growth of these contracts was 4,699.07 % compared to the base year. While in FB&H contract concluded in the case of negotiated procedure decreased in 2007 and 2008 compared to the base year, and then in 2009 and again in 2010 increased for 431.53 % in comparison with the base year.

To determine how much concluded contracts in case of negotiated procedure increased or decreased approximately, we used an average annual rate of change. The highest average annual rate of change was in concluded contracts in case of negotiated in the District of Brcko at a rate of 211.31 %, followed by concluded contracts in the Institutions of B&H at a rate of 170.06 %, in Republic of Srpska at rate 163.20 %, while least growth was in concluded contracts in Federation BH at a rate of 51.84 %.

4.1.2.4 Trends of concluded contracts values in all procurement subjects in the case of design contest.

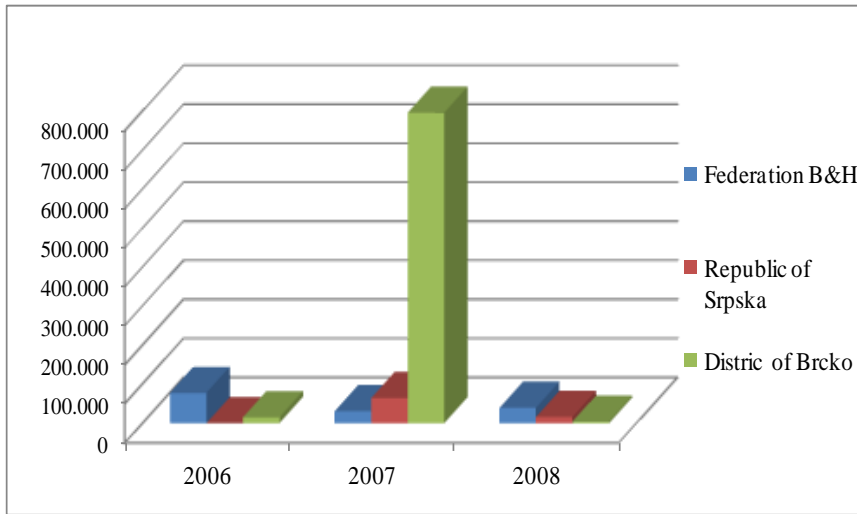
The design contest is a procedure that allows the contracting authority to come up with a plan or solution proposed by the selection committee for completion of competitive bidding. This procedure is mainly applied in the fields of architecture, engineering or data processing.

Table 14: Values of concluded contracts in the case of design contest (2006-2010)

	Federation B&H	Republic of Srpska	District of Brcko	Total
2006	77,000.00	/	15,000.00	92,000.00
2007	31,000.00	64,542.39	795,051.28	890,593.67
2008	39,000.00	16,000.00	3,000.00	58,000.00
Total	147,000.00	80,542.39	813,051.28	1,040,593.67

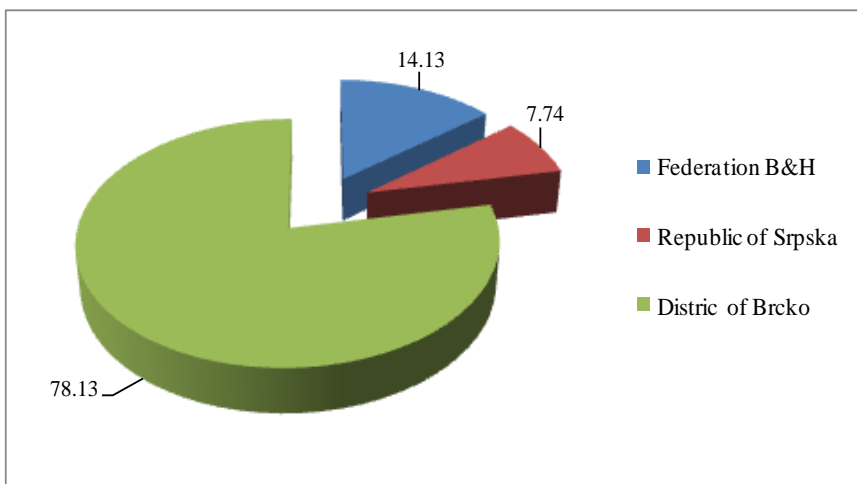
Source: *Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.*

Figure 24: Review of concluded contracts values in the case of design contest



On the basis of figure and table we can conclude that in the period from 2006 to 2008 the majority of concluded contracts in the case of design contest were in District of Brcko. We have a specific situation where the value of concluded contracts in case of design contest in other state structures during the observed period was approximately equal. However, in 2007 there was a sudden increase of concluded contracts in District of Brcko where from total value of concluded contracts in that year (890,593.67 BAM), in District of Brcko were even 795,051.28 BAM, and then a sharp decline in 2008, where concluded contracts in District of Brcko were only 3,000.00 BAM.

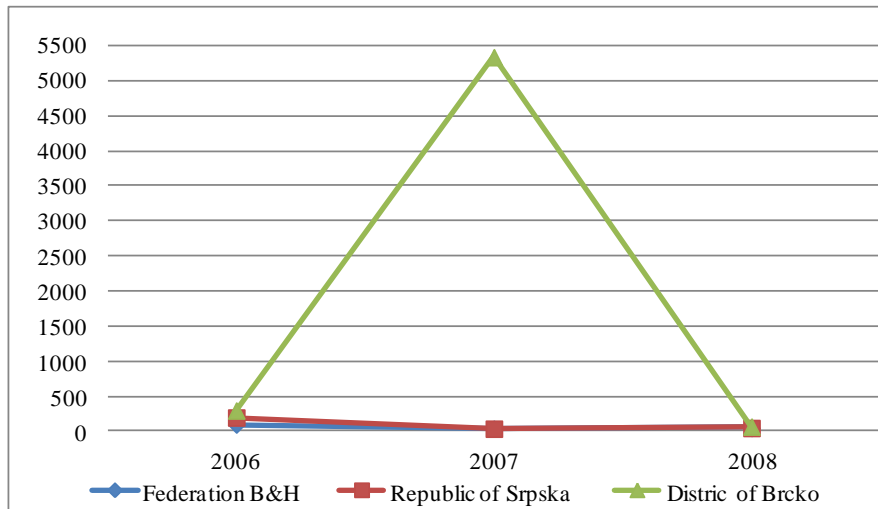
Figure 25: Structure of concluded contracts values in the case of design contest (in %)



In the period from 2006 to 2008, the total amount of concluded contracts in case of design contest was 1,040,593.67 BAM. The largest share was in District of Brcko, where the total

value of concluded contracts in case of design contest was 813,051.28 BAM or 78.13 %, followed with the Federation B&H 14.13% and RS was 7.74 %.

Figure 26: Base index of concluded contracts values in the case of design contest



Based on data from the table, we calculated and graphically displayed the base index of concluded contracts in case of design contest for the period 2006 - 2009. We took 2006 as the base year. The index of concluded contracts in case of design contest in Federation B&H in 2008 was 50.65 so we recorded a negative growth rate of 49.35 %. When we talk about the concluded contracts in District of Brcko we can see a specific situation, whereas in 2007 the highest growth for the analyzed period was recorded. The index of concluded contracts that year amounted to 5,300.34 which imply a growth rate of 5,200.34 %. Speaking about concluded contracts in case of design contest in Federation B&H base index is impossible to calculate because there are not enough data for it.

Using the average annual growth rate, we calculated how much in average concluded contracts in case of design contest grew. In the period from 2006 to 2008 there was a negative growth rate for Federation B&H and District of Brcko. Concluded contracts in case of design contest in Federation B&H have a negative growth rate of 28.83 % as well as District of Brcko with the amount of 55.27 %.

4.2 Trends of awarded contracts under Chapter III of PPL

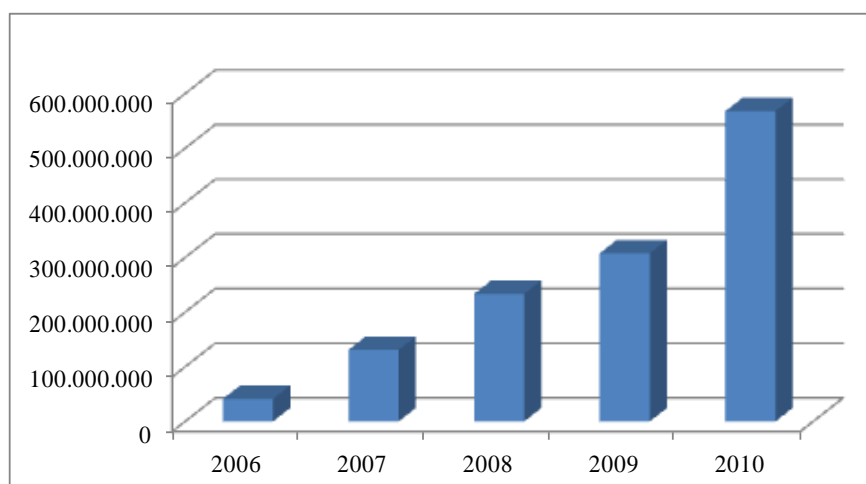
This part includes analysis of concluded contract under Chapter III of Public Procurement Law, relating to contract below the primary threshold values. Chapter III of PPL covers contracts whose value is lower than the threshold and they are awarded through one of the procedures: quotation procedure or direct agreement.

Table 15: Values of awarded contract (2006 – 2010)

Year	Values of contract awarded
2006	41,115,797.70
2007	130,839,443.93
2008	233,295,310.20
2009	307,559,130.83
2010	567,539,788.82
Total	1,280,349,471.48

Source: Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.

Figure 27: Review of awarded contract values (2006 – 2010)



In the period 2006 - 2010, the total value of awarded contracts amounts to 1,280,349,471.48 BAM. We noticed that during the years there was an increase of awarded contracts, so in 2010 there was a sudden increase of 84.53 % compared with the value in 2009, when amounted to 307,559,130.83 BAM. The minimum value of the awarded contract was in 2006 and amounted to 41,115,797.70 BAM.

4.2.1 Trends of concluded contracts by quotation procedure

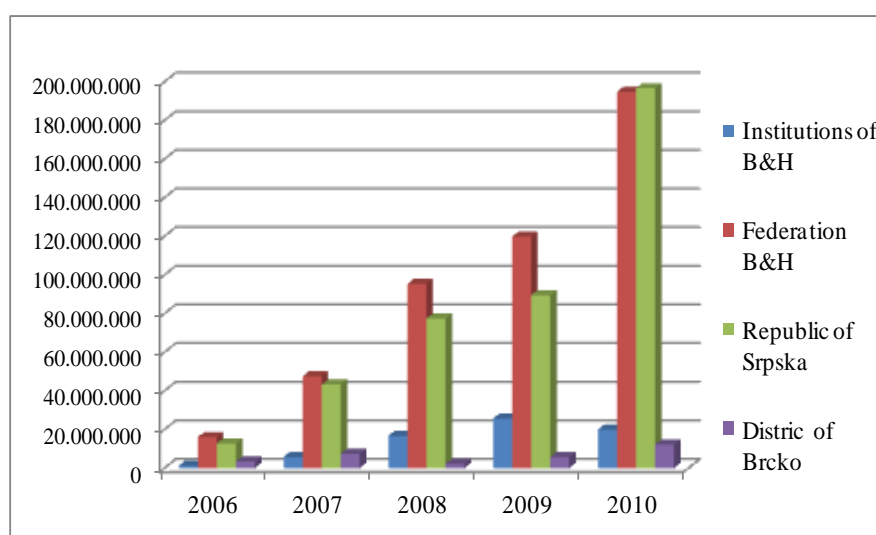
Quotation procedure is a procedure in which the contracting authority sends a request for quotations for the supply of goods, services or works to the number which is not less than 3 suppliers, service providers or contractors for the purpose of awarding the contract.

Table 16: Values of concluded contracts procurement by quotation procedure (2006-2010)

Year	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko	Total
2006	1,263,021.95	15,996,449.98	12,730,496.08	3,318,285.50	33,308,253.51
2007	5,747,083.03	47,440,061.21	43,204,778.52	7,324,622.18	103,716,544.94
2008	16,655,500.57	95,319,216.53	77,366,039.30	2,124,572.17	191,465,328.57
2009	25,640,600.65	119,776,023.18	89,458,260.53	5,590,613.68	240,465,498.04
2010	19,922,080.89	194,733,373.06	196,618,936.96	12,085,212.92	423,359,603.83
Total	69,228,287.09	473,265,123.96	419,378,511.39	30,443,306.45	992,315,228.89

Source: Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.

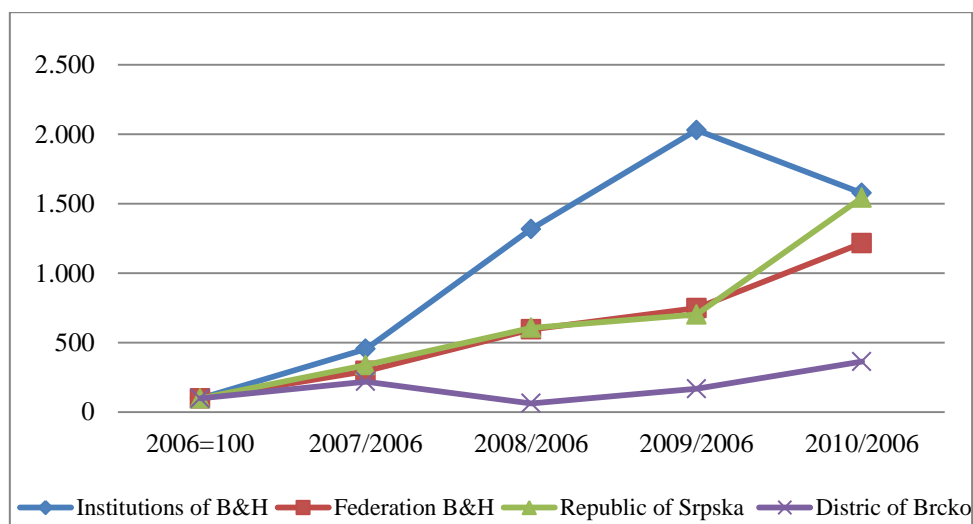
Figure 28: Review of concluded contracts value by quotation procedure



From 2006 to 2010 the total amount of concluded contracts in quotation procedure at the state level and in all three entities of B&H is in the amount of 992,316,228.89 BAM. Based on data from table and figure, we have concluded that most concluded contract by quotation procedure was in Federation B&H and Republic of Srpska. In 2010 there was high increase of concluded contract in Federation B&H for 74,975,349.88 BAM compared to 2009, and in Republic of Srpska in the amount of 107,160,676.43 BAM. The smallest number of concluded contract by quotation procedure was in District of Brcko.

From the total amount of concluded contract by quotation procedure, at the state level and in three different entities in B&H for the period 2006 – 2010, the largest share is in Federation B&H (47.69 % or 473,265,123.96 BAM) and in Republic of Srpska (42.26 % or 419,378,511.39). While District of Brcko has the smallest proportion in the amount of 30,443,306.45 or 3.07 %.

Figure 29: Base index of concluded contracts values by quotation procedure



Dynamics of the concluded contracts in case of quotation procedure in different state structures in B&H are followed by the base index. For the base year we chose 2006. Concluded contracts by quotation procedure in FB&H, Republic of Srpska and Institution of B&H grow in all observed years compared to the base year. In 2010, the increase of concluded contracts in Federation of B&H was even 1,117.35 %, which represents an increase in absolute amount of 178,736,923.08 BAM. The largest increase of concluded contracts in case of quotation procedure was recorded in the Institutions of B&H in 2009 where the base index was 2,030.10 which means that the rate of growth for concluded contracts was at 1,930.10 % or in absolute amount of 24,377,578.70 BAM.

Using the average annual growth rate, we calculated how much in average concluded contracts in case of quotation procedure grow annually. We can conclude that in period from 2006 to 2010 concluded contract grew at the state level and in all three entities of B&H in high rate. So in Institutions of B&H average annual growth rate was 99.29 %, in Federation B&H was 86.79 %, in the Republic of Srpska 98.24 %, and in District of Brcko 38.14 %.

4.2.2 Trends of concluded contract by direct agreement

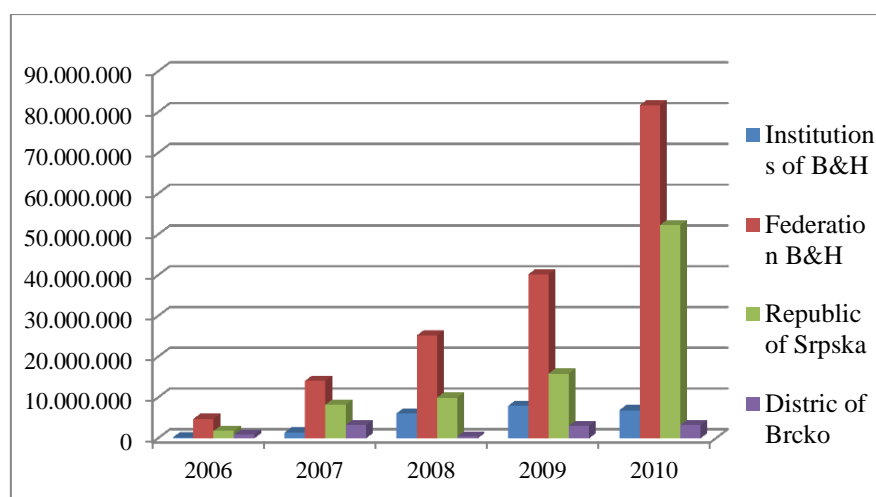
Direct agreement is a procedure in which the contracting authority collects a price proposal or quotation from a single supplier, service provider or contractor and negotiates or accepts that price as a condition for the final agreement.

Table 17: Values of concluded contracts procurement by direct agreement (2006-2010)

Year	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko	Total
2006	281,771.04	4,782,602.20	1,850,843.35	892,327.60	7,807,544.19
2007	1,470,747.72	14,126,333.77	8,265,985.03	3,259,832.47	27,122,898.99
2008	6,128,195.78	25,255,733.06	10,013,107.50	432,945.29	41,829,981.63
2009	7,958,236.19	40,219,386.16	15,872,228.66	3,043,781.78	67,093,632.79
2010	6,929,923.38	81,689,025.13	52,309,998.75	3,251,237.73	144,180,184.99
Total	22,768,874.11	166,073,080.32	88,312,163.29	10,880,124.87	288,034,242.59

Source: Public Procurement Agency of B&H, Annual report about concluded contracts in the public procurement procedures, 2006 – 2010.

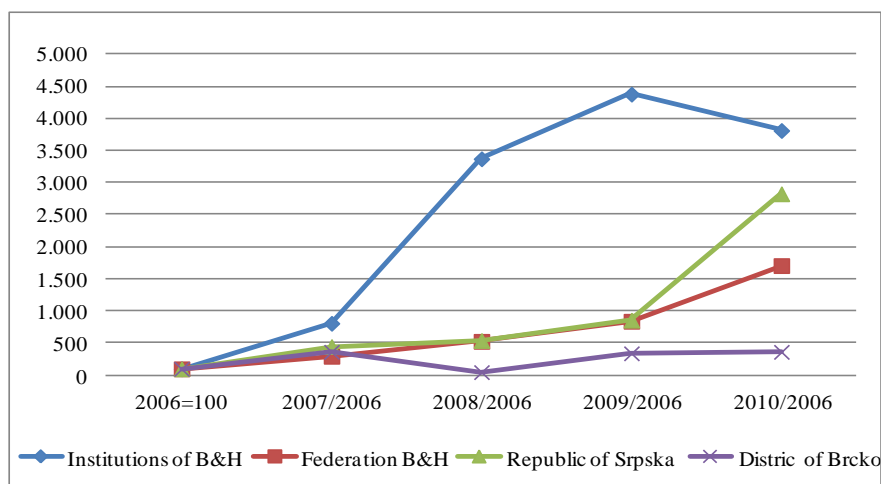
Figure 30: Review of concluded contracts values by direct agreement



Based on data from table and figure, we can conclude that in Federation of B&H, in the period from 2006 to 2010, there was the largest numbers of concluded contracts in case of direct agreement. It has increased from year to year, and in 2010 has reached its maximum in the amount of 81,689,925.13 BAM. In Republic of Srpska there is a large increase as well in 2010 and it amounted to 53,309,998.75 BAM. In other entities and at state level this type of procedure is less used.

From total amount of concluded contracts in case of direct agreement (288,034,242.59BAM), the largest share goes to the Federation of B&H in the amount of 166,073,080.32 or 57.66%. In RS, concluded contracts in case of direct agreement amounted 88,312,163.29 BAM or 30.66 %, while concluded contracts in this case was the least in Institutions of B&H in the amount of 22,768,874.11 BAM or 7.90% and in District of Brcko also and it amounted 10,880,124.87 BAM or 3.78%. Dynamics of concluded contracts in case of direct agreement was analyzed using the base index.

Figure 31: Base index of concluded contracts values by direct agreement



The graph illustrates concluded contracts in case of direct agreement with the base 100 in 2006. For the analyzed period the highest growth of concluded contracts in case of direct agreement was recorded in Institutions of B&H. In 2009, base index was 4,378.17 which imply that the growth rate of concluded contracts was 4,278.17 % or in absolute amount of 7,676,465.15 BAM compared to 2006. Concluded contracts in case of direct agreement in FB&H grow in all observed years compared to the base year. In 2010, the increase of concluded contracts in Federation of BIH was 1,608.05 %, which represents an increase in the absolute amount of 76,906,422.93 BAM. Compared with other entities in District of Brcko, there was no significant increase. In 2010, it increased by 264.35 % or 2,358,910.13 BAM compared to base year.

The biggest average growth was in concluded contracts in case of direct agreement in Republic of Srpska, at a rate of 130.57 %. This is followed by the concluded contracts in Institutions of B&H at a rate of 122.69 %, thus by the rate of 103.29 % in Federation of B&H, and in District of Brcko at the rate of 38.16 %.

CONCLUSION

Public procurement in the European Union represents a significant market. Harmonization of national public procurement systems in member states is one of the most important instruments for the existence of an internal market which removes barriers to free trade within the EU. Specific EU rules on public procurement have been processed through a series of detailed directives, specifying detailed requirements for the regulation of public procurement procedures.

The first directive which coordinates the procedures for the award of public works has been adopted in 1971. It has been change through the years and many other directives were

adopted. In 2004, two EU procurement directives came into force, the Public Sector Directive (2004/18) which applies to service, supply or works contracts and the Utilities Directive (2004/17) which regulates procurement in four sectors, especially water, energy, transport and postal services.

Detailed rules required by the Directives apply only to the award of a contract whose value equals or exceeds a certain threshold. Threshold values are reviewed and verified by the EU every two years.

Basic principles of public procurement directives are that the contracting authorities treat economic operators equally and non-discriminatory and operate in a transparent manner. In public procurement this principle requires equal treatment for all participants in the process at all stages of procurement. All forms of bias and discriminatory behavior are strictly prohibited. The principle of transparency in public procurement procedures requires the availability of relevant information to all interested parties.

Public procurement contracts which regulate directives include three categories: public works contract, public goods contract and public services contract. The procurement process is the steps that need to be undertaken to identify and select a contractor for a particular work. The procurement plan lays out the details of the procurement process, and the steps that will be required. Preparing tender documents is one of the main steps in the procurement process and contains all specification which is necessary to prepare in order to participate in a tender for the supplies, services and works.

All notice of public procurement published in the Official Gazette are also available on the internet in an electronic version of the Tenders Electronic Daily. In order to ensure that bidders have enough time to prepare tender, the directive requires minimum time limits that must be respected in certain stages of the proceedings. The contract must be awarded on the basis of criteria for assessing tenders (price and other criteria related to the subject of procurement such as quality, deadline for completion of work, running costs) after having reviewed the contractor's ability in the accordance with criteria of economic and financial situation, as well as professional and technical knowledge and skills.

Directive defines the criteria that the contracting authority may use to evaluate tenders and ensure to choose the best offer. The criteria are published at the beginning of the procedure - in the notice of tender and in tender documentation. There are two criteria for the award of contract: the lowest price and the most economically advantageous tender.

The contracting authority should inform the bidders that the tender is accepted as well as informing other bidders on the results of the procurement process. If the offer is abnormally low, and is related to goods, works or services, EU rules require that before rejecting the

tender it should make a written request to the bidder to clarify details of the constituent elements of the tender to justify or verify the price. Not later than 48 days after the successful conclusion of the contract, the contracting authority must send publication of a contract award notice, which informs the public about the results of the procedure.

Both directives specified the same procurement procedure when it comes to awarding the contract: the open procedure, restricted procedure, negotiated procedure (with or without prior publication of procurement notices). The Directive 2004/18 includes the new competitive dialogue procedure. Both directives also include a design contest procedure, which exists for certain types of services. While contracts whose value is lower than the threshold are awarded through quotation procedure or direct agreement

Corruption means offering, giving, receiving or asking for anything valuable in order to force a work of public servants in the competitive selection process or contract execution. Law on Public Procurement in Bosnia and Herzegovina has entered into force on 10 November 2004. This Law aims to bring public procurement legislation in line with the standards of EU Member States.

Thus, in the harmonization of legislation, Bosnia and Herzegovina has not made any progress in public procurement system, which is one of the main requirements on its road to the EU accession. It should be emphasized that in 2005 Bosnia and Herzegovina had the law which has mostly been harmonized with the directives, compared to the Western Balkans. However, in recent years all countries have changed their legislation, so Bosnia and Herzegovina now has at least compliant Law with EU Directives. Therefore, the PPA has prepared its new draft, but it has not been adopted yet. It is important to emphasize that the public procurement system does not include concessions, which are regulated by special laws in Bosnia and Herzegovina.

When the Law on Public Procurement of Bosnia and Herzegovina has entered into force, Public Procurement Agency has been established, with headquarter in Sarajevo and with branches in Banja Luka and Mostar. At the same time PRB, whose function is resolving complaints regarding the applicant's system for awarding public procurement contracts, has been established. Number of complaints addressed to PRB increases from year to year.

In the period 2006 - 2010, the total value of awarded contracts under Chapter II of PPL amounted to 8,828,009,044.61 BAM. Half of the total of concluded contracts, in the analyzed period, goes to the goods 4,717,248,758.22 BAM. In the case of type of the procedures used, the one that is most presented is the open procedure in the amount of 6,359,651,267.14 BAM. However in 2010, there was a decline of the open procedure use, and large increase of the negotiated procedure, which shows that the situation in public procurement in B&H from year

to year has become worse in terms of reducing transparency and inefficiency in the implementation procedures.

Total value of awarded contracts under Chapter III of PPL amounts 1,280,349,471.48 BAM. In 2010 there is also a large increase of concluded contracts by direct agreement and quotation procedure, thus quotation procedure increases from 240,465,498.04 BAM in 2009 to 423,359,603.83 BAM or for 76.06% in 2010. Direct agreement increases as well from 67,093,632.79 BAM in 2009 to 144,180,184.99 BAM or 114.89% in 2010. These data are alarming, because the use of these procedures without public notice leave much larger space for the possible manipulation on the corrupt foundations in public procurement.

Key reasons for this unsustainable and largely corruptive situation, is primarily because of inappropriate work and practice of the three basic institutions: the Public Procurement Agency, PRB and the Court. Because of this negative situation in public procurement, a new Law on Public Procurement should be adopted as soon as possible, in order to reduce corruption and to make public funds in procurement protected and efficiently used.

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Appendix 1: Table of base and chain index of concluded contracts (2006-2010)

Table A 1: Chain index of total concluded contracts in goods, services, works and combined procurement (2006 - 2010)

Chain index	Goods	Services	Works	Combined procurement
2007/2006	84.04	233.49	134.51	/
2008/2007	115.29	112.78	162.51	/
2009/2008	159.58	88.02	72.52	25.03
2010/2009	145.23	180.68	200.02	/

Table A 2: Chain index of total concluded contracts by all type of procedures (2006 - 2010)

Chain index	Open procedure	Restricted procedure	Negotiated procedure	Design contest
2007/2006	104.89	223.52	59.95	968.04
2008/2007	163.89	56.87	70.15	6.51
2009/2008	94.32	56.00	349.21	/
2010/2009	89.15	137.22	549.12	/

Table A 3: Base index of concluded contracts values in the case of open procedures (2006 - 2010)

Base index	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko
2006	100.00	100.00	100.00	100.00
2007/2006	212.56	81.91	136.96	1,186.79
2008/2006	370.62	145.35	200.92	1,314.25
2009/2006	212.25	146.85	182.18	1,114.89
2010/2006	204.68	133.11	154.71	1,180.02

Table A 4: Base index of concluded contracts values in the case of restricted procedure (2006 - 2010)

Base index	Institutions of B&H	Federation B&H	Republic of Srpska
2006	100.00	100.00	100.00
2007/2006	13.07	288.54	11.49
2008/2006	51.95	112.40	206.84
2009/2006	28.13	83.20	33.12
2010/2006	161.44	62.77	224.06

Table A 5: Base index of concluded contracts values in the case of negotiated procedure (2006 – 2010)

Base index	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko
2006	100.00	100.00	100.00	100.00
2007/2006	618.58	34.06	419.90	4,667.27
2008/2006	988.02	27.53	200.82	10,873.51
2009/2006	6,500.28	121.88	304.97	18,313.47
2010/2006	5,319.18	531.53	4,799.07	9,393.34

Table A 6: Base index of concluded contracts values in the case of design contest (2006 – 2008)

Base index	Federation B&H	District of Brcko
2006	100.00	100.00
2007/2006	40.26	5,300.34
2008/2006	50.65	20.00

Table A 7: Base index of concluded contracts values by quotation procedure (2006-2010)

Base index	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko
2006=100	100.00	100.00	100.00	100.00
2007/2006	455.03	296.57	339.38	220.74
2008/2006	1,318.70	595.88	607.72	64.03
2009/2006	2,030.10	748.77	702.71	168.48
2010/2006	1,577.33	1,217.35	1,544.47	364.20

Table A 8: Base index of concluded contracts values by direct agreement

Base index	Institutions of B&H	Federation B&H	Republic of Srpska	District of Brcko
2006=100	100.00	100.00	100.00	100.00
2007/2006	809.12	295.37	446.61	365.32
2008/2006	3,371.38	528.08	541.00	48.52
2009/2006	4,378.17	840.95	857.57	341.11
2010/2006	3,812.45	1,708.05	2,826.28	364.35

Appendix 2: Review of 20 awarded contract with highest values in 2010

Table A 9: Review of 20 awarded contract with highest values in 2010

No.	Entity	Contracting authority	Subject of contract	Type of procedure	Supplier	Value
1.	Republic of Srpska	Public Enterprise "Roads of Republic of Srpska"	Works	Negotiated Procedure without Prior Publication of a Contract Notice	Niskogradnja	402,480,556.00
2.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Subsidiaries of Elektroprivreda's Concern - the mines Kreka	106,925,346.00
3.	Federation B&H	Public enterprise Elektroprivreda Hrvatske zajednice Herceg Bosne, Mostar	Goods	Open procedure	Energy Financing Team	99,040,611.20
4.	Federation B&H	Federal Directorate of civil aviation - Bosnia and Herzegovina	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	COMSOFT GmbH	90,484,000.00
5.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Brown Coal mines Banovici	64,775,845.00
6.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Brown Coal mines Kakanj	60,937,890.00
7.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Brown Coal Mine Breza	30,800,000.00
8.	Republic of Srpska	Public Enterprise "Roads of Republic of Srpska"	Works	Open procedure	Niskogradnja	30,103,640.71
9.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Brown Coal Mine Đurdevik	29,326,550.00

No.	Entity	Contracting authority	Subject of contract	Type of procedure	Supplier	Value
10.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Alstom Power Systems GmbH	27,088,245.50
11.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Services	Negotiated Procedure without Prior Publication of a Contract Notice	Public Company Railways of the Federation of Bosnia and Herzegovina, Sarajevo	20,721,203.00
12.	Federation B&H	BH Telecom Joint Stock Company	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Mobis Electronic, Sarajevo	20,000,000.00
13.	Federation B&H	Public enterprise Elektroprivreda Hrvatske zajednice Herceg Bosne, Mostar	Services	Negotiated Procedure without Prior Publication of a Contract Notice	Electrical Project Company	18,800,000.00
14.	Republic of Srpska	Directorate of Commodity Reserves of Republic of Srpska	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Nestro Petrol	17,925,000.00
15.	Federation B&H	Public enterprise Elektroprivreda Bosnia and Herzegovina, Sarajevo	Goods	Open procedure	Treasure, Zenica	16,461,586.00
16.	Federation B&H	BH Telecom Joint Stock Company	Goods	Negotiated Procedure without Prior Publication of a Contract Notice	Erikson Nikola Tesla, Zagreb	15,784,139.80
17.	Republic of Srpska	The Ministry of Internal Affairs of Republic of Srpska	Goods	Open procedure	GRAFO-KOMERC	15,051,922.00
18.	Federation B&H	BH Telecom Joint Stock Company	Services	Negotiated Procedure without Prior Publication of a Contract Notice	Erikson Nikola Tesla, Zagreb	14,524,606.63
19.	Federation B&H	Public enterprises Croatian Telecommunications, Mostar	Services	Negotiated Procedure without Prior Publication of a Contract Notice	Nokia Siemens Networks Zagreb	11,846,463.67
20.	Cantonal level	Health Insurance Institute of Sarajevo Canton	Goods	Open procedure	SARAJEVO-FARM, Sarajevo	11,780,918.94