

## CRITICAL PHASES IN THE PROCESS OF AWARDING PUBLIC PROCUREMENT CONTRACTS. ROMANIA CASE STUDY

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**Abstract:** *Public procurement represents an important part of the current economy reality. The economical growth of the bidding Romanian companies is closely connected with the public system and cannot be possible without an efficient and correct procurement process. The number of the procurement appeals identifies informations about the satisfaction of the economic operators, while the admitted appeals show the irregularities from the system. This paper presents which are the critical phases of the public procurement procedure, in order to emphasize the weakness, to highlight possible activities that can generate irregularities in the process. According to the admitted complains, the paper shows the irregularities from public procurement system, which can be identified in time by the economic operators. This study is focused on the research of irregularities from public procurement system and the objective of the research is to compose an applicable strategy of identification and avoidance of irregularities from tender procurement procedures. It puts forward suggestions and opinions on the bidding process, content and methods.*

**Keywords:** *public procurement, critical phases, complains, irregularities, development*

### INTRODUCTION

Public procurement concentrates large public sector's purchasing power, and has a significant impact on each country's economic development. The purpose of public procurement procedure is transparency, non-discrimination and accordance to the principles of fair competition in acquisition of goods, services and works necessary for the smooth functioning of the public administration. Besides, public procurement can be one of the most important instruments for sustainable development and other purposes useful to the whole society and the economy of the country (Virginijus Kanapinskas, Zydrunas Plytnikas, Agne Tvaronavičienė, 2014).

The public procurement system represents a significant part of the Romanian economic reality, having the same characteristics, both strong points and weaknesses. Here are the components of the public procurement system: the regulatory authority; contracting authorities; business operators; system supervisors. (Ioana Livia Manea, Ioana Anda Popa, 2010). The quality of the public procurement processes is influenced by the management and intentions of each entity.

Consequently, a *good procurement* system is not about finding the least cost path from inputs to outputs, but rather is a management function that adds value while protecting integrity in the use of public funds (Procurement & Fiduciary Services Department, 2014). The project with the smallest price or cheapest solutions is not always the best and efficient project.

Because public procurement is one of the key areas where the public sector and the private sector interact financially and this interaction is based on public money, it is a prime candidate for corrupt activity, cronyism and favoritism as well as outright bribery (Reida Kashta, 2014). More expensive solutions can be selected despite cheaper solutions, the cheapest project can have huge additional costs, free competition can be distorted by dedicating specific project requirements and more; all these are the results of corrupt public procurement system. This erroneous system influences the public funds and the development of the business operators, as well.

Public procurement represents an important part of the current economy reality. The economical growth of the bidding Romanian companies is closely connected with the public system and cannot be possible without an efficient and correct procurement process. The public procurement process aims at creating the framework required for conducting the procurement or investment process in the field of public services (Bășanu and Pârjol, 1998). The public procurement process is a sequence of stages and, after going through them, the product, service or work is obtained as a result of the awarding of the public procurement contract. Therefore, detailed description of steps that compose the procurement process is useful and can be an interesting guide for experts (Armeanu, 2011). From the stages of one process, can be identified risks and indicators for each phase, mitigation and disposal solutions.

Public procurement is highly affected by corrupt behavior due to its administrative complexity, financial volumes and close interaction between the public and the private sphere. Administrative and judicial review processes are primarily meant to control the compliance of procurement procedures with legal frameworks and involve bidders in prevention and detection of corruption (Annika Engelbert, Nina-Annette Reit, 2013).

Generally, the most effective and widespread method of detecting the fraud and the misconduct is the complain or information received about it. Opening a channel of communication especially for the risk of fraud is an excellent way to fight fraud (Ionuț Șerban, 2009).

OCED (2007) consider that the public procurement complaint or appeal mechanisms, where competitors can file protests in case of violations of all sorts are very helpful in detecting bribery and corruption. Also, PWC and Ecoris (2013) said that complaints from users or other parties involved are often a good indicator of misconduct. While these procedures are generally very useful, they can also be misused. On the other hand, Mialțu, Bănac, Popescu and Patraș (2015) said that the contestant behavior is closely related to the distrust in the public procurement system and in the general perception of corruption.

Natalia Monica Balogh, Martin Balogh, Valentin Ciprian Filip (2015) identified the contract award stage as one of the risky stages of financed with European funds projects implementation because of the extremely dense and interpretable legislative framework and the involvement of the large number of stakeholders, lack of expertise manifested in the field and because of complaints that seriously affects the duration of project implementation. However, the opinion of the experts is that corruption is more common where there is no mechanism for reporting them (OECD, 2007).

I believe that a decrease of bidders involvement in the processes of prevention and reporting of fraud and irregularities will lead to a reduction of the information received about them. Less involvement will lead to shortcomings in detection of fraud and irregularities in public procurement system.

Public procurement errors are defined by Ceparu and Irimia (2013) as infringements of the rules (principles) procurement, regardless of the status or consequences for public budget Errors can be committed in public procurement: before initiating a formal procurement procedure (for example during the process of estimating the value of purchase or decision making on the application of a specific procedure), during a procurement procedure (for example, during incorrect assessment of the economic operator's capacities, misapplication of the rules on supplier selection, or mispricing offers), or after the procedure has been completed and the contract awarded (for example a failure to publish a notice of award of contract, unlawful modification of a contract already signed, or the award of additional works or services without being achieved the specific conditions) (Ceparu si Irimia, 2013).

Public procurement legal provisions and procedures do not represent an effective obstacle to bribery; inadequate public procurement legal provision and procedures can even create opportunities for bribery and abuse of power. The nature and technicality of purchased goods, works or services can be another opportunities of irregularities. Finally, bribery and corruption are rarely isolated crimes – they are often associated with other offences or misdeeds. This explains the ongoing effort to identify solutions for reducing the small and big crime in public procurement.

Well Van Weele (2004) defines procurement as all activities that are required in order to get the product/service from the supplier to its final destination. According to Gershon (1999) the process spans the whole life cycle from the initial concept and definition of business needs through to the end of the useful life of a unit or end of a service contract.

Public procurement can be characterised as a process flow starting with procurement planning and proceeding in sequence to product design, advertising, invitation to bid, prequalification, bid evaluation (broken down further into technical and financial evaluation), post-qualification, contract award and contract implementation. Each link in the chain is potentially vulnerable to corruption in some form or another (OECD, 2007).

Below I am going to briefly present which are the main stages of the public procurement procedure in force in order to emphasize the strengths and the weakness of the process, to highlight possible activities that can generate delays and neregularities in the process.

## **METODOLOGY**

To tackle the issues and challenges of public organisations and economic operators are facing in every phases of public procurement process, I conducted a literature review to identify important concepts, patterns and models that previous

research have found important when it comes to the risk and mistakes in every stage of the public procurement process.

In order to achieve this article, in the first part, I conducted a brief review of literature and a description about literature reviews.

In the second part of the article I proposed a completely public procurement model and I presented a description of each stage of the process underlining the risks and possible mistakes.

The review process started with searching by keywords relevant articles for my thesis. The search terms were a combination of “public”, “procurement”, “phases”, “risks”. The articles were then chosen based on their relevance. After a quick scan of the article I decided if the article was going to be a part of the review or not. Initially, 54 articles were found at the beginning of the search process. However, 12 of them were found to be relevant after a review of all 54 articles. The period in which the 54 articles that was used in the analysis dates from 1991 to 2015.

In the third part of the article, I presented the irregularities from public procurement system, which can be identified in time by the economic operators.

### **3. RESULTS**

#### **3.1 LITERATURE REVIEW**

Procurement includes all the activities required in order to get the product from the supplier to the final destination. All the identified procurement process models can be defined as four phase-models. To easily compare the identified models I was able to group the activities of each models in the main common phases like: Needs assessment and definition, Process design, Evaluation and Contract implementation. The activities of each model are similar in some places. The first five models describe the private procurement process and the last six models describe the public procurement process. As we can see in Table 1, in the private procurement process model the phase of Process design does not exist. From the comparison I can define the peculiarities of the public procurement model, which consists in choosing and operating a bidder selection procedure. These procedures should be well chosen, based on the regulations of the general principles of public procurement. Over time, the authors felt the need to detail the process design and Evaluation. It may be due to problems encountered in this phase in and continuously enlarge amount. Is very interesting to observe that not all the authors included the performance evaluation as an mandatory activity in the stage of contract implementation. Moreover, in the view of Freedom House, the contract implementation is not seen as a step of public procurement process. In their opinion, the process of public procurement ends after the signing of the contract.

**Table 1. Procurement process models**

Phases	Novak and Simco (1991)	Gershon (1999)	Archer and Yuan (2000)	Lysons, K. and Gillingham	Van Weele (2005, 2010)	Caldwell et al (2007)	OECD (2007)	Davis (2010)	Armeanu (2011)	Fazekas Mihály (2013)	Freedom House (2015)	
	Private procurement						Public Procurement					
Needs assessment and definition	Identify or re-evaluate	What is it that is wanted?	Information gathering ( search for suppliers that can satisfy requirements )	Identification Phase	Determine the specification of goods and services that need to be bought			Needs identification	Elaborating the procurement plan	Needs assessment and definition	Planification	
	Define and evaluate user requirements							Defining User requirements / Refine Requirements based on market				
	Decide to make or buy - Identify type of purchase	How should the procurement of what is wanted be processed?						How should the procurement of what is wanted be processed? What Can the market				
	Conduct market analysis	What can the market provide?						Ascertain Budget Available				

Phases	Novak and Simco (1991)	Gershon (1999)	Archer and Yuan (2000)	Lysons, K. and Gillingham	Van Weele (2005, 2010)	Caldwell et al (2007)	OECD (2007)	Davis (2010)	Armeanu (2011)	Fazekas Mihály (2013)	Freedom House (2015)	
	Private procurement						Public Procurement					
Process design						Specification Phase	Identification of needs and design of tenders	Tender design	Awarding method	Tinkering with the threshold and exceptional	Development of tender documentation	
									The elaboration of the awarding documentation	Establishing of contract clauses		
										Tailoring eligibility criteria		
										Tailoring assessment criteria		
									Notice of intent	Tinkering with the submission period		Notice of intent
							Call for competition	Participation Advertising		Clarifications on the tender documentation		
										Bid Evaluation Committee investiture		
										Opening of bids		

Evaluation	Identify all possible suppliers	-	Supplier contact	Ordering Phase	Identify most suitable suppliers	Selection Phase	Selecting a business	Tenders returned - analysis of bids - cost comparison - VFM exercise conducted	Presentation of the application and tender, The awarding procedure itself	Tender evaluation and award decision	Offer evaluation	
	Pre-screen all suppliers		Background review (e.g. references are checked)		Preparing and conducting negotiations		Contracting Phase				Contract award	Contract Awarded
	Evaluate remaining		Negotiation			-		-	-			
	Choose supplier				Signing the agreement		Completion of the awarding procedure				Waiting period and settlement of appeals	Signing the contract and Transmission for the awarding Advertisement
<b>Phases</b>	<b>Novak and Simco (1991)</b>	<b>Gershon (1993)</b>	<b>Archer and Yuan (2000)</b>	<b>Lysons, K. and Gillingham</b>	<b>Van Weele (2005, 2010)</b>	<b>Caldwell et al (2007)</b>	<b>OECD (2007)</b>	<b>Davis (2010)</b>	<b>Armeanu (2011)</b>	<b>Fazekas Mihály (2013)</b>	<b>Freedom House (2015)</b>	
	<b>Private procurement</b>						<b>Public Procurement</b>					
Contract implementation	Deliver product / perform service	Making the purchase	Fulfillment	Post-ordering Phase	Placing an order with selected supplier	Ordering	Contract execution	Contract Management	Execution of the agreement	Contract implementation	-	
	Post-purchase / make performance evaluation	Making the purchase	Consumption - maintenance and disposal (evaluation of performance)		Monitor and control the order	Expediting and Supplier Evaluation			Completion of the agreement			
					After-care and evaluation	Follow up and procurement evaluation						Expediting and Supplier Evaluation
					Ending the relationship	Renewal						Ending the relationship

Source: own representations

Novack and Simco (1991) are the first authors which sustained that the chains of functions through which materials flow from suppliers to the users represent an object of management. Procurement spans the supply chain as defined and the Management of procurement in a modern organization encompasses Logistics Management, antifraud management, environmental issues and post-execution controlling as well.

Novack and Simco (1991) identified the main stages of the supply chain, which were the basis of the phasing procurement process (Identify or re-evaluate needs, Define and evaluate user requirements, Decide to make or buy – Identify type of purchase, Conduct market analysis, Identify all possible suppliers, Pre-screen all suppliers, Evaluate remaining supplier base, Choose supplier, Deliver product / perform service, Post-purchase / make performance evaluation).

Public procurement aims supplying materials, providing services or execution of works, as well, against costs incurred by public funds. Public funds appearance determines the special nature of the public procurement. Unlike private acquisitions, the public procurement must include a correct and efficient step of selecting the bidder / supplier. In public procurement, where the public funds are at stake, it needs a greater focus on conflicts of interest and on the antifraud controls in each phase of project.

Public procurement can be characterized as a process flow starting with procurement planning and proceeding in sequence to product design, advertising, invitation to bid, prequalification, bid evaluation (broken down further into technical and

financial evaluation), post-qualification, contract award and contract implementation. Each link in the chain is potentially vulnerable to corruption in some form or another (OECD, 2007).

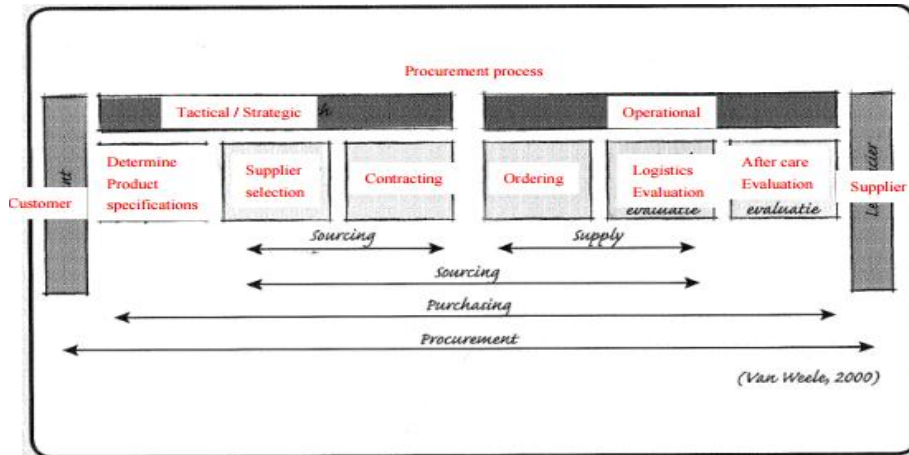
Gershon (1999) applied a simple model to the public sector in UK and underlined the importance of defining distinct phases in the public project life-cycle, implementation of the gates between these phases, characterized by sets of deliverables (e.g. requirements specification, procurement plan, project management plan, risk management plan), which should be assessed by expert people and passed as a result of reviews chaired by senior people with no interest in the outcome of the review.

One year later, Archer and Yuan (2000) detail a seven-phase procurement process. The phases include (1) information gathering, (2) supplier contact, (3) background review, (4) negotiation (5) fulfillment, (6) consumption, maintenance and disposal, and (7) renewal. Their procurement process model includes the stages detailed by Novack and Simco (1991) and Van Weele (2005), but he adds the Renewal phase, which allowed talking about the recurrent life cycle of the process. According to Archer and Yuan (2000) renewing the contract with the existing supplier is more convenient, because going to another supplier would involve re-tracing the first three steps in the relationship life cycle, at the cost that is worthwhile only if experience with the first supplier has been unsatisfactory. In public procurement system in Romania, we can talk about the renewal of the contract with the same supplier just in the case of the direct acquisitions, with fulfilling the principles of the efficiency using of the public funds. According to EO no. 34/2006, in Romania, the contracting authority direct purchase products, services or works, to the extent that the value of the acquisition, (..) does not exceed the equivalent in RON of 30,000 Euros, excluding VAT for every purchase of goods or services or 100,000 Euros excluding VAT for every purchase of works. The acquisition is performed based document.

Lysons and Gillingham (2003) have discussed a lot about purchasing procedures, assembled the activities of the acquisition process in three main phases (Identification Phase, Ordering Phase and Post-Ordering Phase), but, but they did not create a clear model of purchasing.

Most of these traditional models do not discuss the whole process. These models deals with a single part of the procurement process, that of the transaction of buying.

Van Weele (2005) identified three levels of responsibility in the purchasing organization (strategical - the highest level and are concerned with more overall issues, tactical - the detail level, and operational - concerned almost entirely with every day details). Van Weele (2005) introduced the Monitor and order control phase. His model encompasses the traditional purchasing steps but also very clearly encompasses the roles of supply management.



**Figure 1. Van Weele's Procurement Process**

Source: Johan Versendaal, [http://www.cs.uu.nl/docs/vakken/ee/Week37b%20v1\\_1.pdf](http://www.cs.uu.nl/docs/vakken/ee/Week37b%20v1_1.pdf), accessed in 28/11/2015

According to Van Weele (2005), Caldwell, Bakker, and Read (2007) the first step of purchasing is to define the specification of the product, including functional as well as technical specifications. In my opinion, in the public sector, as in the private sector, it is absolutely necessary to identify the need and conduct a market analysis before the specification determination of goods and services that need to be bought. Skipping the phase of the need identification, there it runs the risk of division the contract into several cheaper contracts to avoid the appliance of the legislative provisions in public procurement and to directly award cheaper contracts. The market analysis if useful, as well, both in formulating objective requirements and the subsequent analysis of the received offers.

If all the reminded authors talked about the procurement in private sector, Caldwell, Bakker, and Read (2007) are among those who talked about the purchasing process and the public sector in the same context.

In the same year, The Organization for Economic Co-Operation and Development (2007) identified the risks of the main stages of the public procurement process. They didn't analyze the market research and project evaluation like as milestones of the process. But they underlined the weakness of the Contract execution phase. According to OECD (2007) this phase is less susceptible to regulation and techniques to hide bribes during the execution of a contract are manifold.

The first contribution of Davis work is the recognition that the appropriate use of technology within a process had a greater impact than applying technology across the whole process. Davis (2010) considered that the process is more complex than those described by other authors and improved the public procurement process model, starting from Gershon's model by adding the Ascertain Budget Available and Tender Design phases. As in the private sector the budget is not unlimited, so the improved model is justified. According to Davis (2010) the iterative nature of the process should be considered.



According to Armeanu (2011) in the public procurement procedure modeling it is important to take into account the legislation. So, in contrast with the previous authors, Armeanu (2011) underlines the importance of the notice of intent and the elaboration of the awarding documentation. In my opinion the elaboration of the awarding documentation it is a very sensitive stage in the public procurement process. With or without intent, the public authorities can make errors that can cost time and money from public funds.

Studying the problems encountered by the contracting authorities and economic operators from Poland, Zielina (2011) identified some mistakes made in some phases of the public procurement process, unidentified as critical phases yet. The study also confirms its critical and risky nature of the estimation and preparation of tender documentation stages. According to Zielina (2011) the budget estimation, tender documentation and clarifications period are weak phases of the public procurement process.

Fazekas, also had a special contribution to the literature in the field of corruption in public procurement. According to Fazekas (2013) the three actors internal to the public procurement process are 1) issuers of tender, 2) public procurement advisors or brokers, and 3) bidder companies. Fazekas is one of the first authors who recognized the importance of the public procurement advisors or brokers in evolution of the process. Through their professional training and their intentions, the public procurement advisors can influence the outcome of a project. There are external actors within the state such as 4) politicians who can also take on senior civil service positions; and 5) review bodies such as courts, state audit institutions, and competition agencies. The external factors outside the state are the 6) media and 7) the civil society. Fazekas Mihály (2013) defined a simple abstract model of procurement activities allowing for grouping of corruption techniques.

Although the developed model is very simple and similar to those developed by previous authors, he identified a summary of corruption techniques, based on examples from Hungary, which can be the basis of a more detailed model.

One of the most completed and detailed public procurement process model is the one developed by the Freedom House Romania (2015). The authors added in the previous model of public procurement process the following stages: the investment of the bid evaluation commission and the drafting and the approval of the procedure report. The model developed by the Freedom House Romania (2015) does not refer, at all, at the Monitoring and Controlling Phases.

Deepening the studies on planning activities for the award of the public procurement contracts is important because the more the stages and the activities within a public procurement process are better identified and rigorously planned, the efficiency and the ongoing manner and monitoring of the entire process are significantly improved (Herea Violeta, 2013).

Many academic researchers provided similar procurement process models as shown in Table 1. Among them, the most representative, complete and detailed models for the public sector are Davis and Freedom House models. These models can be well

suited for the private or public sector, but in my opinion, the details level does not cover the entire life cycle of the public contracts.

Starting from this literature we have developed a more detailed life cycle of the project financed from public funds. The national system of public procurement is governed by the same set of rules as the European public procurement system, so the developed model can be used at national and European level.

### **3.2 THE LIFE CYCLE OF A PROJECT FINANCED FROM PUBLIC FUNDS. THE PROPOSED MODEL**

In order to protect the country's economic development is necessarily the success in the fight to prevent and eliminate corruption. In the fight against corruption and insufficient the political will is required. Besides determination and good will, knowledge and specific skills are required to take appropriate measures and implement them successfully to achieve the changes needed in the interest of the national community (Mialțu, Patraș, 2014). According to Mialțu and Patraș, the poor training of stakeholders particularly at government level in the Romanian society is a cause of deficiencies functioning public procurement system.

By developing a model of the public funds projects, the intuitive approach when it comes to the management of projects or programs in Romanian public institutions will be reduced. The emphasis on public sphere is justified by the need to provide a toolbox. This toolbox should help the central and local public authorities to make scientifically sound decisions regarding policies, programs and projects initiated and be able to anticipate the results of certain actions. To improve the awarding contracts management of the public authorities, I propose a more detailed and complete model of the project. The model (see figure 2) is the result of the literature review, based on models proposed by Davis and Freedom House, which I have deemed most relevant.

Next, I will describe each step of the process and I will emphasize the risks of each step.

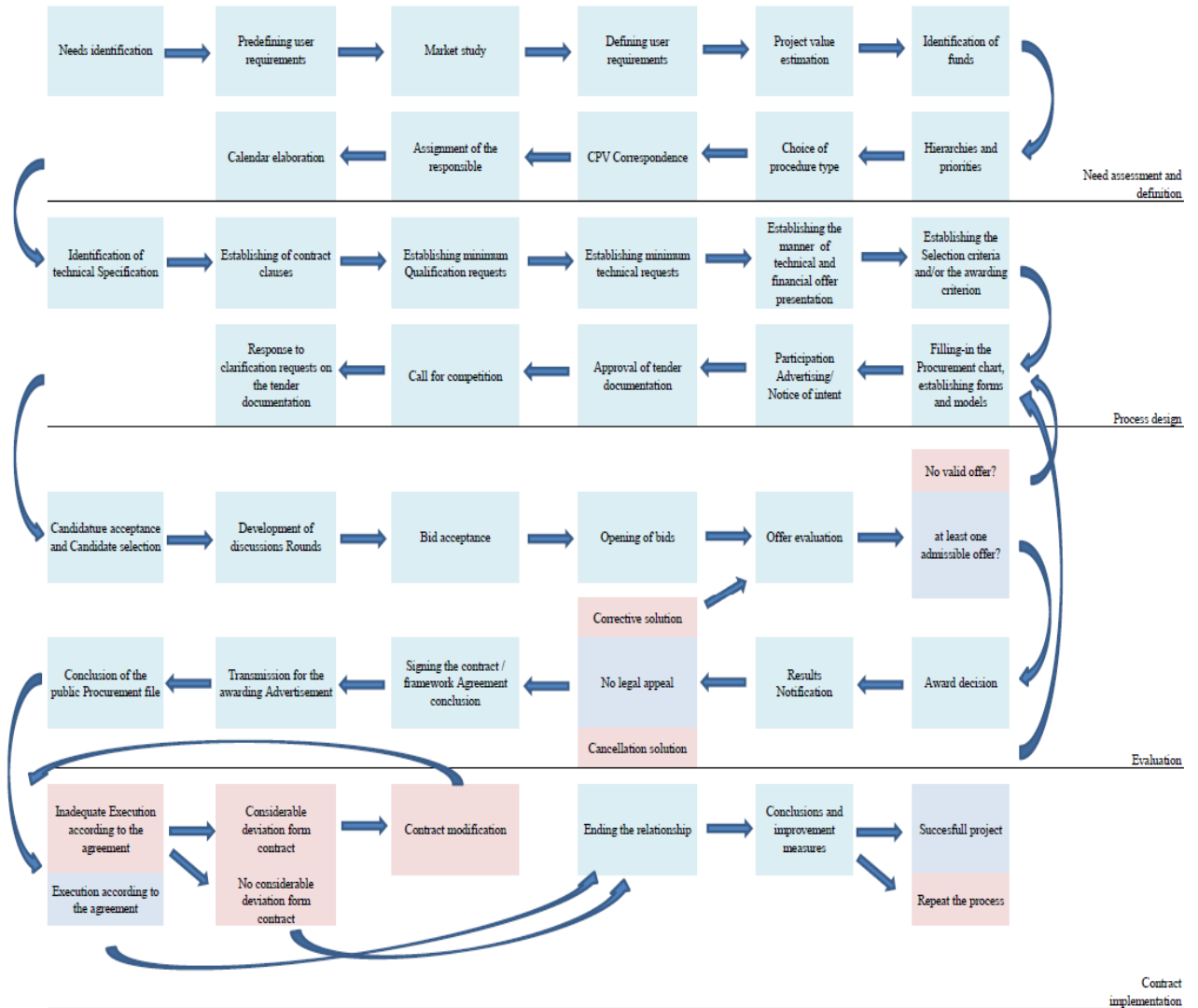


Figure 2. Public procurement process  
Source: Own representation

**Needs identification.** The correct identification of the real need is the key element that influence both the efficiency and effectiveness of public spending. The public authorities can choose to procure goods and services which are in fact not necessary for them, to procure goods and services in a size and quantity excessive compared to their actual needs, economically not justified, or environmentally harmful.

Skipping the identification of need phase, the public authorities can choose to direct sign more cheaper agreements to procure goods and services to fulfill the whole need and to violate the provisions and the principles of public procurement. The needs identification must be done before the budget approval. The quality of identifying need influence the establishing minimum qualification requests and establishing the selection criteria and/or the awarding criterion phases.

**Predefining user requirements.** To find out what the market offers, the public authorities first have to find out the general parameters of their needs.

**Market study.** Technical and economic solutions of the market are useful in correct formulating of the requirements and correct estimation of the contract value. The market analysis can play the role of publicity and information relating to the award of a new public procurement contract. It can also create advantages of prior information to a particular supplier, service provider or contractor.

**Defining user requirements.** The public authorities can incorrectly formulate requirements to restrict the competition, in benefit of a particular supplier. Such requirements are most easily defined on markets where products and services have a high number of very specific characteristics such as large infrastructure construction or IT infrastructure and services (Fazekas et al., 2015). In Romania, it is impossible to prevent the risk of these irregularities because the specifications are not the subject of the examination made by the competent institutions. Moreover, the competent institutions don't verify all the tender documentation; they verify tender documentations, according to a specific algorithm and don't have specific training for all types of contracts. Those who are most able to notify irregularities concerning restrictive documentation requirements are even the bidders.

**Project value estimation.** According to Fazekas et al. (2015), the project value estimation can be made without considering all the cost that may be incurred, or it can be over-assessment in order to encourage a certain contracting party. The incorrect need identification can lead to a estimation value that may not correspond to the application of a competitive procedure, like direct award of the contract. The contracts with underestimated values generate additional acts to supplement the value of the contract. It is necessary to prevent all the irregularities from the project value estimation, but the biggest challenge is to identify the contracts, whose value was estimated correctly, but its increased by additional acts, following acts of fraud.

This stage is one of the most sensitive at fraud and irregularities risk. The results of this stage influence the next phases, like the choice of procedure type, establishing the minimum qualification requests and offer evaluation.

**Identification of funds.** To identify the necessary budget to fulfill a need must take into account both the price of purchase, the cost of maintenance and the cost of using. Also it is very important to identify the need before the funds approval.

**Hierarchies and priorities.** The projects are prioritized in terms of budgetary allocations and need finances, financial affordability and sustainability, economic and social justification, opportunity. External factors, like consultants and politicians can influence the priority of the projects.

**Choice of procedure type.** The choice award procedure have to take into account the effective ways of meeting the need of the contracting authority. Beside, project value estimation, this stage is one of the most sensitive at fraud and irregularities risk. In this stage, the responsible persons can abusive use uncompetitive procedures, like direct award of the contracts, invoking the existence of legal exceptions, can divide the contracts with into small value contracts, or can abusive use extreme emergency situations. According to Fazekas et al. (2015) slicing up contracts, invoking special rules

of exception and underestimating expected contract value are the main ways of moving procedures across public procurement regimes or completely outside the remit of the Public Procurement Law.

**CPV Correspondence.** CPV (Common Procurement Vocabulary) is a standardized nomenclature describing the categories and types of goods and services may be procured. Superficial identification of the appropriate procurement code. Incorrect determination of CPV code represents a serious misconduct of legislative provisions in public procurement field and can influence the establishing minimum qualification requests and the procedure transparency on the other hand. According to Fazekas et al. (2015) erroneously categorizing a call for tender in the CPV nomenclature can effectively exclude potential bidders from a tender as most companies search by CPV codes rather than going through all the announcements made each day.

**Assignment of the responsible.** The structure of the project team and the evaluation committee is very important. Project team members must follow the interests of the project and not personal interests. Moreover, the evaluation committee members should be competent in the public procurement field and impartial, they should not be in a conflict of interest in the project. The principle of avoiding unfair competition implies that the bidder is not involved in any way in the preparation of documentation and not exclusively access to information about the case through the evaluation committee members or staff of the contracting authority. According to the Government Emergency Ordinance no.34/2006, in Romania, the person who participated in preparing the tender documentation, has the right to be a bidder, but only if his involvement in the preparation of the request is not likely to distort competition. Assignment of the responsible is the more another critical phase of the public procurement process, the more there is no legal provision to nominate cases make it impossible to distort competition.

**Calendar elaboration.** Calendar elaboration can be affected by the faulty planning of the procurement process and insufficient time allotment for the appropriate development of each stage.

**Identification of technical specification.** This stage is closely related with Needs identification, Predefining user requirements, Market study and Defining user requirements. It is indicated for the public authorities to make a market study, but there it is an opportunity for them to meet with the preferred bidder for consultations on technical requirements and to adjust the specification in order to correspond to a single business operator. There it is the risk that contracting authorities formulate unclear, restrictive, contradictory specifications or inconsistent with the laws. According to Mialțu et al. (2015), in Romania the object of the most common appeals are the restrictive or unclear technical specification of the documentation. Thereat, it is very important for public authorities to correctly identify the need and its minimum technical specifications, after examining the market and to be, professionally well prepared in terms of technical.

**Establishing of contract clauses.** The public authorities don't have to impose excessive penalties or clauses that are not specifically related to the contracting authority's need and to the object of the contract. It is prohibited any change to the terms of the contract as binding provided within the tender documentation, otherwise it creates prerequisites for abuse of both the principle of transparency and the principle of equal

treatment. It's very important, especially for operators to ask clarification regarding the contractual clauses and any change, in the tendering stage. It is important and useful for contracting authorities to recommend that to the bidders, in the tendering stage.

**Establishing minimum qualification requests.** Minimum qualification request define which potential bidders can bid and which bids can be considered for competition. Qualification and award criteria must be clearly defined and fully to reflect the objectives of the advantages of the successful tenderer for the contract execution. Elaboration of all documents of the tender documentation components must be correlated to not double, or becoming restrictive. Tailoring the qualification request is a common corruption technique identified by the romanian and international litterature. Another temptation of the public authorities is to customize the minimum qualification request for certain business operators. This customization results in the development of developed and unjustified requirements, but easily identifiable by the rest of the bidders.

**Establishing the manner of technical and financial offer presentation.** There is a temptation to unjustifiably and restrictively require calculations or graphs produced with certain softwares. Another temptation is to be require many documents and presentations, for the technical offer, regardless of the complexity of the project. In Romania, according to Mialțu et al. (2015) a common object of the accepted appeal is the subjective evaluation of the technical bid, which can be possible because of the complexity of the received technical bids.

**Establishing the selection criteria and/or the awarding criterion.** In awarding a public procurement contract, the award criteria may be the lowest price or the most advantageous offer. The contracting authority must clearly describe the calculation of scores, in the case of of the contract award situation after applying the most advantageous offer. In determining the most advantageous tender, it is usually considered among the price, the execution time, the warranty period, the cost of using, time of intervention in the case of malfunction etc. These factors account must be justified to not leave room for speculations.

**Filling-in the procurement chart, establishing forms and models.** The public authorities must fill with consideration the forms, to not leave room for speculations. Errors in the procurement chart or form will have the result of rejecting the documentation. Usually, the most common cause of these irregularities is degrama lack of professionalism and not the misconduct. However, these irregularities cause delays in the contract award.

**Participation advertising/Notice of intent.** Participation advertising/Notice of intent is the phase in the public procurement process, which should provide a bigger competitiveness, generate a fair price and efficient use of public funds, besides a correct development of the economy. A correct advertise gives the so much needed transparency to the process.

**Approval of tender documentation.** Approval of the tender documentation should be done after internal controls by the responsible persons for the project and then, following random external controls, by the authorized institutions. The rejection of the award documentation will cause delays in the contract award. If the erronated

documentation pass these controls has a lot of opportunities to be contested by the bidders. In this case, there will be another delay in the process, or even a cancellation solution.

**Call for competition.** This is the stage when the bidders have access to the documentation and starting from this moment they have to prepare their offers. In some countries, there was a problem with the access to the documentation, which was restricted until the implementation of the e-procurement. Even with the implementation of the e-procurement, the malicious contracting authorities can deteriorate the access to the documentation by loading on the platform erroneous or inaccessible files of the documentation. The operators may seek clarification and completion of the documentation, but without a deferral of the deadline for submission of bids, they will not benefit from the same time for offer preparation.

**Response to clarification requests on the tender documentation.** After the call for competition, the bidders have time to request clarifications or completions on the tender documentation. The public authorities have to respond to all the bidders' requests, which are made in time. The malicious contracting authorities may give delayed responses, may refuse to answer, respond ambiguously without clarifying unclear situations, or give answers that change the specifications included in the documentation without giving business operators enough time to adapt to the submitted clarifications.

**Candidature acceptance and candidate selection.** This is the phase of the public procurement process, when the contracting authority evaluates the compliance of bidders with minimum qualification criteria. According to Mialțu et al. (2015), in Romania, the bidders often contest the way of eligibility evaluation. With good or bad intent, the public authorities misinterpret the fulfillment of minimum qualification requirements, such as similar experience, financial, technical and professional capacity. Preferred business operators are considered qualified by accepting authorizations or certifications that do not correspond to real facts. On the other hand, the bidders can submit forged and hard verifiable documents to prove compliance with the requirements.

**Development of discussions rounds.** Development of discussion rounds is the phase of the procurement process in the case of a negotiation. The negotiation procedure is used in the case of a complex project, where it is necessary to find out the best solution after the meeting with the candidates. In this stage it is forbidden to reveal confidential information to the candidates.

**Bid acceptance.** The decision of acceptance or rejection of the bid must be taken after a correct evaluation. In the cases of misconduct the bid acceptance is established long before the opening meeting. The bidders have to avoid submitting forged and hard verifiable documents. The contracting authorities must ensure that they did everything to obtain the sufficient information to take a decision of bid acceptance/rejection.

**Opening of bids.** The opening bids stage can be treated in several ways.

- 1) The opening bids stage, in the event that the bids are submitted in hard copy to the contracting authority's headquarters. The bids are opened at a certain time in the presence of the bidders. The bidders have the opportunity to control the accuracy of filling the minutes of opening tenders.
- 2) The opening bids stage, in the event that the bids are submitted in hard copy to the contracting authority's headquarters. The bids are opened at a certain time in the absence

of bidders. The bidders do not have the opportunity to control the accuracy of filling the minutes of opening tenders.

3) The opening bids stage, in the event that the bids are submitted online. As in the case above, bidders are unable to control the accuracy of filling the minutes of opening tenders. In case of online submission of tenders, tender evaluation in financial terms is made after the technical acceptance of the offer. The technical verification of the offer is made only if the bidder is declared eligible. According to Mialtu (2014) the contract award procedures, with online submission of bids and electronics final phase are exposed to a high risk of delay and abuse of the contracting authority. The contracting authority may incorrect remove the economic operator bid and the bidder may be excluded from the electronic offer improvement final stage. An eventual identification of an error in the elimination of a tenderer before the electronic final stage will cancel the entire procedure and will reveal the best offers of the economic operators.

**Offer evaluation.** The offer evaluation is the phase when the contracting authority evaluate in objective way the financial offers. The beneficiary must ensure that the prices are supportable, the offer value fit into the available budget and the financial offer is according technical offer and contract provisions.

**No valid offer?/At least one admissible offer?.** If no offer is valid, the hole process must repeat, until it will be a valid offer.

**Award decision.** The award decision is made after the evaluation of the offers and the appliance of the awarding criterion.

**Result notification.** The result notification is made under the law provisions. The bidder/candidates who have been rejected are, or whose offer was unsuccessful are informed about the reasons who stood for the decision as follow specific reasons which led to the rejection decision, characteristics and relative advantages of the successful tender in relation to tender and the name of the winning bidder.

**Corrective solution/ No legal appeal/ Cancellation solution.** The dissatisfied bidders may contest the result notification. In this case they have to explain why they disagree the beneficiary result. The contest is a very important instrument in preventing the fraudand irregularities from public procurement process, but, in the same time, it can be unjustifiably, excessively and inappropriately used. The result of an appeal is the approval or the rejection of it. The approval of the appeal will generate the annul the contested document or the hole proedure.

**Signing the contract / framework Agreement conclusion.** The contract will be signed after the result notification, if no bidder contested the procedure, or after the settlement of the appeals.

**Transmission for the awarding advertisement.** The transmission for the awarding advertisement is made under the law provisions.

**Conclusion of the public procurement file.** The public procurement file is the public document made by the contracting authority during the public procurement process until the contract signing. It represents the description of the process of the awaring procedure and must incude all the inscriptions of the process.

**Execution of the contract.** The phase of execution of the contract is the phase when the contractor provide the beneficiary good. The contractor may provide goods,



whose quality is different from the contract. In this stage, it is very important the control of the contractor results. Also, the authority may accept bribe to overlook the fake documents, the bad quality of the inappropriate provided goods from the contractor. When the authority accepts bad quality of the provided good, they waste the public funds through theft (bribe) or ineffective spending of funds (the good must be changed, modified soon). The control must be made on the contractor, and on the authority activity, as well.

**Contract modification.** The phase of contract modification is not mandatory. This is the step at risk of irregularity because the contract can be changed greatly over other bidders. The irregularities amending the object of the contract are made by increasing the value of the contract, or by modification of technical solutions. The modifications of the contract should not favor the winning bidder. The baseline competition must be constant on the project life and contract implementation.

**Ending the relationship.** The relationship ends after the work was performed / services were performed / materials were provided and the payments were made, the authority received the provided good. The completion of the relationship is not the end of the project.

**Conclusion and improvement measures.** This is the stage, when project objectives are reviewed and evaluated. The objectives must be measurable and clearly defined. Their evaluation must be done in the right way by highly trained responsible. The evaluator will propose measures to improve the public procurement process for the future.

**Successful project.** If the project objectives are achieved, it means that the project was successful.

**Repeat the process.** If the project objectives were not achieved, it will resume the process to repeat or correct the project. Repeating the process is a sign of irregularities made during the project or of the incompetence of the responsible.

### **3.3 THE BIDDERS IMPACT IN THE PUBLIC PROCUREMENT PROCESS CONTROL AND PREVENTING IRREGULARITIES. ROMANIA CASE STUDY.**

Bidders can defend against beneficiaries abuse, can report irregularities and can participate in controlling and reducing fraud in the public procurement process by submitting appeals.

We sought to identify the main and most common reasons for incorrect rejection of bids. After identifying the main reasons for rejecting the bids, it can be identified measures that can be taken by bidders to prevent this situation, including the development of an algorithm for identifying the legality of a procurement procedure.

I conducted a qualitative analysis of 54 decisions on the admission of complaints filed by bidders in 2015 against the outcome of the procedure or documentation. These decisions were randomly selected from the CNSC portal. In order to study the contents of the complaints they were downloaded and studied SEAP. By qualitative analysis on the 54 appeals allowed, we identified the main reasons for contesting the procurement procedures in Romania:

**Table 2. Irregularities detected by the bidder**

Irregularities detected by the bidders	The public procurement process phase
Refusing to divide the acquisition where products / similar works	Need assessment and definition
Restrictive requirements regarding similar experience, qualification criteria, qualification requirements imposed by the contracting authorities - considered to be disproportionate to the nature and object of the contract	Process Design
Limiting the legal right to subcontract part of the work	Process Design
Unclear or unjustified award criteria	Process Design
Restrictive requirements on technical specifications, requirements that refer to a particular manufacturer, limiting competition	Process Design
Lack of a clear answer fully and unambiguously answer from the contracting authority about the requests for clarifications regarding the tender documentation provisions	Process Design
Ambiguities or irregularities in the form of collateralization participation	Process Design
The imposition of excessive contractual requirements	Process Design
Incorrect minutes of the meeting for opening tenders (failure to take account of the participation guarantee, the conduct of the public opening of tenders)	Evaluation
Misinterpretation of its requirements in the Data Sheet, during the evaluation of tenders	Evaluation
Dismiss the appellant offer following the erroneous evaluation of its similar experience	Evaluation
Dismiss the appellant offer following the erroneous evaluation of supporting third party similar experience	Evaluation
Dismiss the appellant offer following the erroneous evaluation of the power of attorney to sign documents offer	Evaluation
Dismiss the appellant bid following the erroneous evaluation of the qualification documents on its technical and professional capacity	Evaluation
Dismiss the appellant bid following the erroneous evaluation of the qualification documents about its financial capacity (cash flow, turnover, etc.)	Evaluation
Incorrect, subjective and unfounded assessment of the applicant's technical proposal	Evaluation
Incorrect assessment of the applicant's financial proposal (in the final stage of electronic procedures)	Evaluation
Unusually low price for other participants in the tender procedure	Evaluation
Preferential treatment of certain bidder, qualification documents, the technical and / or financial proposal submitted by other bidders or wrong way of scoring / evaluation thereof by the contracting authority	Evaluation
Failure outcome of the procedure, reasons for rejecting the contesting offer	Evaluation

Rejecting the offer without to seek clarification on qualification documents, technical proposal, the offer price unusually low price or an incorrect assessment of responses to clarifications	Evaluation
Lack of legal grounds to reject the offers (eg non-compliant package)	Evaluation
Cancellation without legal basis of the tender procedure by the contracting authority	Evaluation
Amend the tender documentation or evaluation factors during the course of the procedure	Evaluation
Lack of transparency and refusal to send information to all potential bidders on errors specifications, tender documentation	Evaluation
Require the submission of clarification in too short time	Evaluation
Receipt of tenders to another address than the one specified in the tender documentation, or later (not in time)	Evaluation

Source: *Own results and representations*

#### 4. FURTHER RESEARCH

Based on the findings in this thesis, I suggest that future research within the public procurement targeting risk management dive into finding the early indicators of fraud and irregularities.

#### 5. LIMITATIONS

This work has barely scratched the surface of the possibilities for strategies in public procurement process. The article is limited by the fact that the results are based on articles found by specific keywords. Therefore it is impossible to find out all relevant literature within the area of public sector.

#### 6. CONCLUSIONS

To improve the awarding contracts management of the public authorities, I propose a more detailed and complete model of the public procurement process, the intuitive approach when it comes to the management of projects or programs in Romanian public institutions will be reduced. This model is a toolbox, which should help the central and local public authorities to make scientifically sound decisions regarding policies, programs and projects initiated and be able to anticipate the results of certain actions. A model with a high degree of detail is useful for understanding the process, the development of methodologies to identify indicators of fraud / corruption / irregularities, fraud control methodologies in order to improve the public procurement system.

I described each step of the process for a better understanding, I emphasized the risks of each step and I presented the phases of the public procurement process, which can be easily controlled by bidders against fraud and irregularities. As we can see in Table 2, the bidders have a strong impact in detecting the irregularities from the public

procurement process, especially from the Process Design and Evaluation phases. The bidders have a small influence in detecting irregularities in first phase of the public procurement process and an insignificant influence in detecting irregularities in the last phase of the public procurement process. It is obvious that in most cases, the bidders are active in reclaiming the irregularities when they are directly influenced (when the offer is rejected), in most cases.

These results are of great importance to emphasize the importance of the contribution bidders in identifying and reducing the irregularities from public procurement system and underlying algorithm development to identify the legality of a public procurement procedure. It is very important to encourage bidders to actively contribute to control, identification and reduction of process irregularities. Stakeholder involvement in the control of public procurement is supported by Wang Hongguang, Zhao Dan, Zeng Fusheng (2015) and Tina Soreide (2002), too, which support the transfer of service quality supervision public services to the community and to extend the scope of supervision, so that everyone in society can participate in supervision.

In my opinion, to improve the public procurement system, the legislature would have to seek the real causes of the increased number of the complaints against public procurement procedures. A desperate decision to increase the absorption of European funds, by limiting the rights of access to justice can have undesirable long-term adverse effects, the downside of transparency, reduce competition, increase the risk of fraud, corruption and irregularities but do not guarantee an increase in the absorption of foreign funds and the economic development.

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