

Increasing the prices of building materials in the procurement of construction works

Patrik Šťastný^{1,*}, Simona Feninová²

¹ Slovak University of Technology in Bratislava, Faculty of Civil Engineering, Department of Building Technology, Radlinského 11, 810 05 Bratislava, Slovakia; patrik.stastny@stuba.sk

² Office for Public Procurement, Ružová dolina 10, 821 09 Bratislava, Slovakia

* Correspondence: patrik.stastny@stuba.sk; Tel.: +421 915 382 476

Abstract: Currently, price increases and inflation are a very topical issue affecting all industries. This price increase also has an impact on public orders, which are part of public procurement. This problem, which indirectly affects all of us, deserves increased attention. The problem of price increases has been reflected in a situation where successful bidders approach price increases through amendments, or in the worst case, the successful bidder withdraws from the contract due to the impossibility of fulfilling the obligation. Subsequently, a situation arises where it is problematic to complete the work. The paper deals with problems related to the increase in prices, which affect the mentioned public procurement of construction works.

Keywords: Public procurement, Buildings materials, Prices

Abstrakt: V súčasnosti je nárast cien a inflácia veľmi aktuálnou témou postihujúcou všetky odvetvia. Tento nárast cien má taktiež dopad na verejné zákazky, ktoré sú súčasťou verejného obstarávania. Tento problém, ktorý sa nepriamo dotýka nás všetkých si zaslúži zvýšenú pozornosť. Problém nárastu cien sa premietol do stavu, kedy úspešní uchádzači pristupujú k navyšovaniu cien prostredníctvom dodatkov, alebo v horšom prípade nastáva odstúpenie od zmluvy zo strany úspešného uchádzača z dôvodu nemožnosti plnenia záväzku. Následne tak nastáva situácia, kedy je problematiké dokončiť dielo. Príspevok sa zaoberá problémami súvisiacimi s nárastom cien, ktoré vplývajú na vyššie uvedené verejné obstarávanie stavebných prác.

1. Introduction

Many publications testify to the fact that public procurement is not only typical for Europe [1,2], but is used all over the world [3,4,5]. The goal of public procurement is to ensure economic efficiency in the acquisition of goods, works and services, but also to prevent corruption and potential conflicts of interest. Equality of chances and equal treatment in relation to interested parties can be considered as another goal of public procurement, or applicants. One of the newer goals of public procurement is certainly the effective application of "horizontal policies" in public procurement. Under the term "horizontal policies in public procurement" we can imagine social goals, industry, but also the currently very actual topic, which is the environment and related green public procurement. The goals of public procurement can also be considered the opening of public procurement markets within the individual member countries of the European Union and the increase in the efficiency of the entire public procurement process, as well as the quality of the work offered. We can consider all these goals as the main goals of public procurement. These goals also ensure an effective price-quality ratio.

From a global point of view, the concept of public procurement can be defined as a legally established procedure for awarding contracts. This legally established procedure is mandatory for a certain group of persons who are obliged to apply the Public Procurement Act to the entire process of awarding the contract and to the conclusion of the contract with the successful bidder. Public procurement is also perceived as a specifically regulated awarding of public contracts. As for the obliged persons whose task is to fulfill the procedure for awarding contracts established by law, they include, for example, ministries, higher territorial units, municipalities and cities, schools, hospitals, courts and others. In this context, it should be emphasized that these obliged persons cannot avoid the application of the Public Procurement Act, i.e. they cannot arbitrarily award contracts to selected suppliers. If a situation arises where obliged persons violate the procedure established by law, they must suffer the consequences associated with it. Most often, under these consequences, one can imagine the imposition of a fine by the Office for Public Procurement.

In application practice there are also cases where it is possible to enter orders directly, by so-called direct negotiation. In such a case, the contracting authority invites one or more selected interested parties to negotiations on the terms of the contract, especially the technical, administrative and financial terms [6].

As mentioned above, public procurement is defined by different authors in several publications. On the contrary, according to Ellmers, public procurement is a public policy tool that reflects the financing of development as well as its economic and social results [7]. Globally public procurement can be identified as one of the biggest sources of possible corruption in the public sector. According to Schapper, Malt and Gilbert, the social and economic consequences of corruption in public procurement are considerable, especially in developing countries [8]. Corruption in the field of public procurement causes significant problems in the provision of public services, such as insufficient quality of health care and education. These problems are particularly noticeable among socially weaker and also marginalized groups of the population, and thus disrupt efforts to eliminate or poverty alleviation as such. The transparency of public procurement processes eliminates the possibility of corruption.

In Slovakia, the term public procurement is defined by § 2 par. 1 of Act no. 343/2015 Coll. on public procurement and on the amendment of certain laws as rules and procedures according to this law, by which contracts, concessions and design competitions are awarded [6].

2. Current problems of public procurement of construction works

The initial problem that occurred in 2020 and significantly affected the flow of construction and extended the duration of public procurement processes was the pandemic. These problems were joined by the rising prices of building materials and their insufficient quantity on the market. However, these problems gradually stabilized, resulting in an improvement in the market situation. Subsequently, as a result of the war conflict in Ukraine, there was a shortage of supplies of some selected types of materials, such as steel, but also many others. This again caused problems with the implementation of the procured works.

While in the past, when preparing tender documents, it was not complicated to prepare a budget that determined the expected value of the contract, nowadays the situation is much more complicated. The prices of some materials are constantly changing, mainly due to their lack. This results in the budget prepared at the stage of submission of the offer not having to coincide with the final price of the work after the end of the competition. This fact is also due to the fact that the whole process takes a long time, during which individual prices develop and change. This process is shown in Figure 1. This scheme describes not only the individual stages of the public procurement process, but also indicates the potential complications that enter the given process during its course. These have the effect of extending the duration of the procurement many times over. There are several variants of how individual processes can develop. These possible development scenarios will be described below.

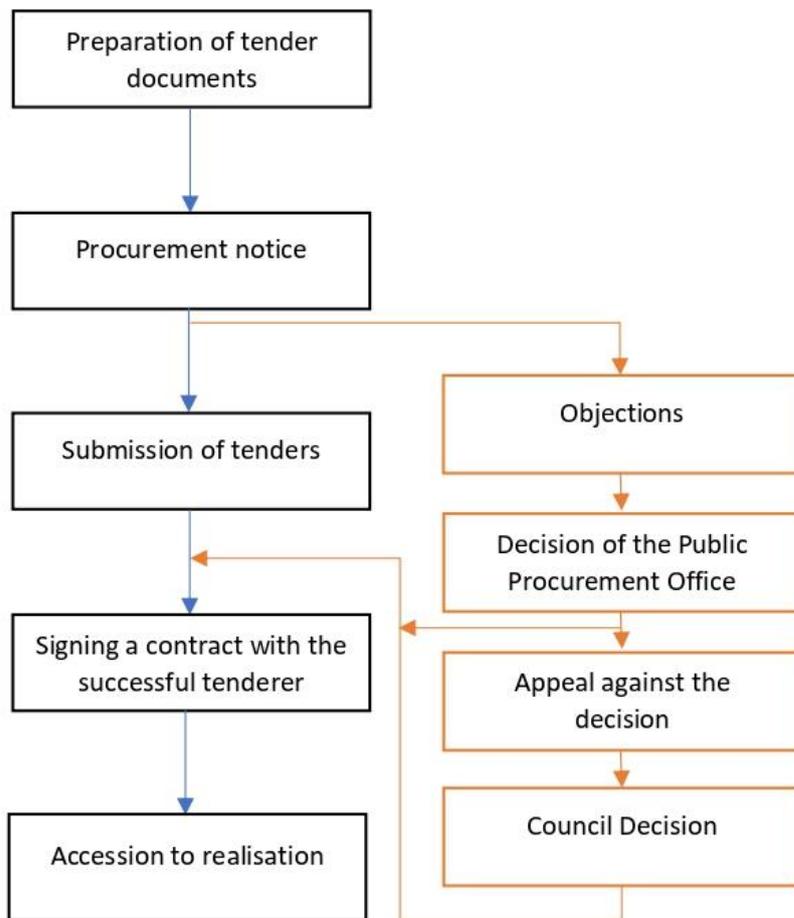


Figure 1. Scheme of the process of procurement of construction works in public procurements announced until 31.12.2022 (source: Authors).

1. **Continuous development** – In this variant, the public procurement process goes through 5 main phases shown in Figure 1 (Preparation of tender documents, announcement of public procurement, submission of bids, signing of the contract with the successful bidder, access to implementation). With such a development scenario, there are no complications that would disrupt the smoothness of the public procurement process and delay or complicated the signing of the contract with the successful bidder. The duration of such public procurement is not affected by negative phases. However, there are factors that play an important role in the overall duration of individual procurements. These include for example the difficulty of preparing tender documents, which largely depends on the difficulty of the order itself. At this point, it is also necessary to distinguish whether the procurement of construction works will also include the development of project documentation and engineering activities related to the issuance of a building permit. In cases where the subject of public procurement is simpler construction work of a common nature, such as building insulation, replacement of windows, etc., it is possible and mostly desirable to finish the public procurement process in 3 to 4 months;
2. **Development with objections** – In this scenario, objections are filed by one or more interested parties within the scope of the public procurement in question, or applicants. In such a development, there is a complication and extension of the duration after the announcement of the public procurement. At this point, it is possible to submit objections according to § 170 par. 3 of Act no. 343/2015 [6], such as objections to the tender documents, objections to exclusion, objections to the evaluation of bids, and so on. Subsequently, the office must issue a decision on the matter within 30 days from the date of delivery of the complete documentation. In rare cases, the deadline for issuing this decision is extended (e.g. the public contracting authority does not

deliver complete documentation; preparation of an expert opinion or expert opinion for the purpose of issuing a decision). The Public procurement office can issue a decision according to § 174 of the Act on Public Procurement, by which it stops the proceedings for the review of the actions of the inspected, rejects objections in accordance with § 175 par. 3 of the Act on Public Procurement or orders to eliminate the illegal situation, or the office can also order to cancel the procedure used for awarding the order according to § 175 par. 1 of the Act on Public Procurement. After the relevant decision becomes final, the process returns to the course of continuous development according to point a). This process is also represented in Figure 1;

3. **Developments with objections and appeals against the decision** - In the proceedings for the review of the audited actions started by December 31, 2022, an appeal can be filed against the decision according to Section 175 of the Public Procurement Act. We can consider this public procurement process to be the longest. The procedure is the same as in the previous scheme 'Development with objections', up to the point when the decision of the office does not become valid, as there is an appeal against the decision in question. The opportunity to file objections is available in the case of a decision pursuant to § 175 par. 1 of the Public Procurement Act [6] every bidder or interested party. The Council of the office subsequently decides on the merits of this appeal. The Council can stop the proceedings, confirm the decision of the office or change the decision of the office. The Council has 45 days from the date of filing the appeal to issue a decision. An appeal cannot be filed against the Council's decision on appeal. The Council's decision on appeal is reviewable by a court. The lawsuit must be filed within 30 days from the date of delivery of the board's decision on the appeal. After the administrative decision in the public procurement in question, the process returns to a smooth flow, where the contract is subsequently signed and the work is completed.

In this context, it is necessary to say that objections can be submitted repeatedly by several bidders or interested parties in the public procurement in question. Repeated objections can create a cyclical process that can last several months and, in worse cases, up to several years. This subsequently prolongs the entire public procurement process. The prolongation of the public procurement process has the effect that the expected value of the contract does not reflect the real prices after the end of the aforementioned cyclical process caused by repeated objections. The constant increase in the prices of construction materials and the out-of-dateness of the tendered price of the successful bidder can also cause a situation where the successful bidder withdraws from the contract, as it cannot implement the subject of the contract at the contracted price.

On March 31, 2022, Act No. 395/2021 Coll., amending Act no. 343/2015 Coll. on public procurement and on the amendment of certain laws as amended and by which certain laws are amended and supplemented. The purpose of this amendment was also to speed up and make the public procurement process more efficient with regard to its length. Figure 2 represents this change.

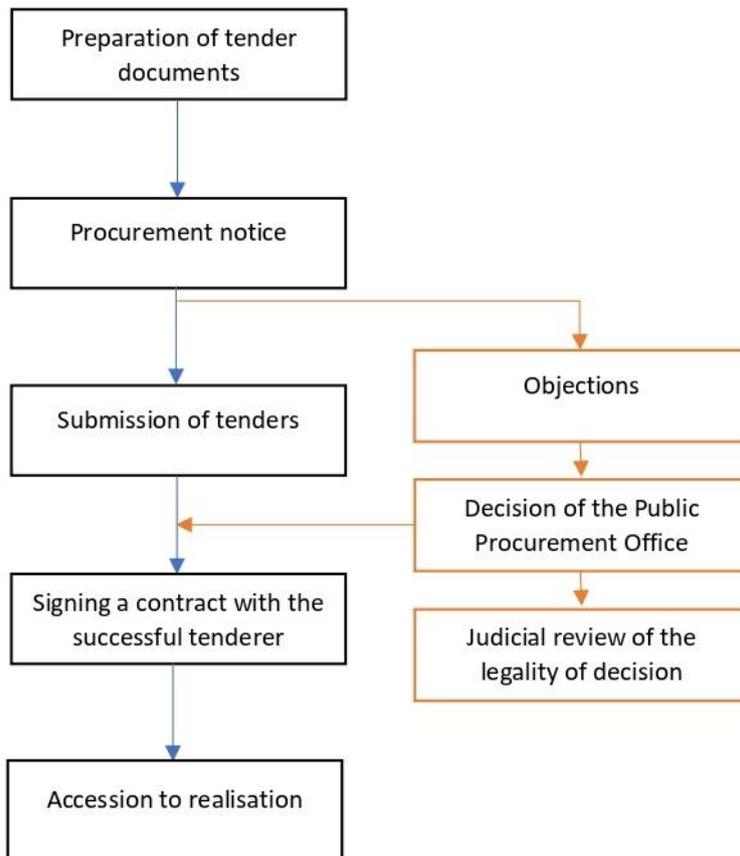


Figure 2. Scheme of the process of procurement of construction works in public procurements announced from 1.1.2023 (source: Authors).

4. **Development with objections and judicial review of the legality of decision** - In the proceedings for the review of controlled actions starting from January 1, 2023, an appeal cannot be filed against the decision according to Section 175 of the Act on Public Procurement. The procedure is the same as in the previous scheme 'Development with objections'. The change, however, is the introduction of a single-instance administrative procedure at the office. The legality of the office's decision can be reviewed by a court. The purpose of this change should be to reduce the length of public procurement.

3. Proposal of measures preventing the extension of the procurement of construction works

As mentioned above, different procurement process schemes have different durations. It is necessary to focus mainly on streamlining and speeding up the entire process, as the extension in many cases has an impact on the final amount of the completed work and its successful implementation.

There are several options for speeding up the whole process, which would significantly help bring the final amount closer to the expected value of the order.

The first thing that comes into consideration is the possibility of stopping apparently unreasonable objections. The institution of apparently unjustified objections was part of the above-mentioned amendment to the Public Procurement Act. The Public procurement office has the option to stop the proceedings if it is clear beyond a reasonable doubt that the objections are clearly unfounded. The person who submits an obviously unfounded objection is liable in accordance with § 174 par. 3 of the Act on Public Procurement for the damage caused to others. The above-mentioned provision of the Act on Public Procurement could to a large extent discourage the filing of tendentious objections, which are submitted mainly for the purpose of prolonging or complicating the public

procurement process. However, it is important to note, that it is very important how this institute will be approached in application practice.

The second option is the professionalization of employees who are responsible for the public procurement process, as in many cases there is negligence on the part of these employees. This is caused in many cases by an insufficient level of qualification, or experience, especially with more complicated orders that require more demanding preparation and a greater degree of experience, but also certain knowledge about the subject of public procurement. Professional training, discussions and workshops could increase the level of professionalization.

Currently, the professionalization of public procurement is coming to the fore and along with it the institute of professional guarantor for public procurement. A professional guarantor is a natural person or a legal entity that has fulfilled the prerequisites established by law, consisting in proving professional practice and performing examinations. Subsequently, the office will enter such a person in the List of professional guarantors. As today the provision of services in the field of public procurement is a free trade and can be performed by almost anyone, the professionalization of public procurement as such can be considered a step in the right direction. The Institute of Professional Guarantor and the professionalization of public procurement as such should increase the level of transparency and improve the quality of the entire public procurement process.

5. Conclusions

The goal of public procurement is the economical use of public resources. In many cases, certain problems arise in the process, which were mentioned in this publication. These problems often result in the extension of the duration of the public procurement and the related increase in the final price for the work. It is clear that it will not be possible to make all public procurement processes more efficient, as each competition is specific and differs in terms of difficulty level but also in the circumstances that accompany its announcement. It will be necessary to propose several measures that will contribute to the highest possible economy. This article offers several options that should help to achieve the desired effect.

References

1. F. Ochrana and P. Stehlik, "Overpricing of Public Procurement for Construction Works in the Czech Republic," *Ekonomický Casopis*, vol. 63(3), pp. 227-238, 2015.
2. R. Caranta, P. C. Gomes, "Public procurement and innovation," *ERA Forum*, 2021. <https://doi.org/10.1007/s12027-021-00674-6>
3. D. R. Rai, "Progress Payments in Public Procurement of Construction Works in Nepal," *IJRAR*, vol. 7(1), pp. 122-126, 2020.
4. A. O. F. Dita et al., "Risks of Public Procurement for Construction Works," 2020 IOP Conf. Ser.: Mater. Sci. Eng., vol. 930, pp. 012002, 2020. <https://doi.org/10.1088/1757-899X/930/1/012002>
5. D.S. JONES, "Public Procurement in Southeast Asia: Challenge and Reform," *Journal of Public Procurement*, vol. 7(1), pp. 3-33, 2007.
6. Zákon č. 343/2015 Z. z. o verejnom obstarávaní a o zmene a doplnení niektorých zákonov. Available on: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/343/> (accessed on 20 October 2022)
7. B. ELLMERS, "Helping or hindering? Procurement, tied aid and the use of country systems in Bangladesh," Brussels, European Network on debt & development, pp. 39, 2011.
8. P. R. Schapper, J. N. Veiga Malta and D. L. Gilbert, "An analytical framework for the management and reform of public procurement," *Journal of Public Procurement*, vol. 6, pp. 1-26, 2006. <https://doi.org/10.1108/JOPP-06-01-02-2006-B001>