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**The Public Procurement of Construction Works:
The Case of Croatia**

ABSTRACT

This paper seeks to assess the extent of favouritism – i.e., preferential treatment for some bidders over others - in the allocation of public procurement contracts in the construction sector in Croatia. The methodology is based on identifying opportunities for favouritism and evaluating the effectiveness of constraints. The research finds that Croatia’s public procurement law sets a high standard and there are numerous transparency and control mechanisms in place. Nevertheless, the integrity of procurement is undermined because a large share of it is contracted by entities which are owned by government units and thus subject to political influence and constrained by a much weaker control framework. Data on the procurement of high-value construction works is analysed for indicators of favouritism in the process or outcomes. Whilst there is only limited use of restrictive procedures, competition for public contracts is surprisingly weak in a sector under considerable economic pressure. Moreover, around one-half of the total contract value is won by tenderers which are not private companies but rather entities that are partially or fully owned by the state. This raises further questions about the potential for political leaders to influence the process in order to achieve favouritism in the allocation of public contracts, to benefit themselves or third parties. Evidence from the verdict of a trial involving high-ranking politicians suggests further that such favouritism may be widespread.

KEYWORDS

Public procurement, Croatia, construction sector, corruption risks

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ABBREVIATIONS

CBS	Central Bureau of Statistics
CCI	Commission for Conflict of interest
CFCA	Central Finance and Contracting Agency for the European Union Programmes and Projects
CNB	Croatian National Bank
CPV	Common Procurement Vocabulary
CSO	Civil Society Organization
DPPS	Directorate for the Public Procurement System
FA	Framework agreement
FINA	Financial Agency
GDP	Gross Domestic Product
OG	Official Gazette
PP	Public procurement
PPA	Public Procurement Act
PRAG	Practical Guide
SCSPPP	State Commission for Supervision of Public Procurement Procedure
VAT	Value Added Tax

GLOSSARY ¹

Common Procurement Vocabulary (CPV) designates the reference nomenclature applicable to public procurement procedure, while ensuring equivalence with existing nomenclatures.

Contracting authority/entity refers to contracting authorities and contracting entities.

A *contract notice* is published by contracting authorities intending to award a public procurement contract or conclude a framework agreement in an open, restricted and negotiated procedure with prior publication and competitive dialogue. It is drawn up so as to contain all the necessary data allowing the economic operator to prepare the request to participate and/or tender.

Framework agreement is an agreement between one or more contracting authorities/entities and one or more economic operators, the purpose of which is to establish the terms governing contracts in a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Group of tenderers or candidates is an association of several economic operators submitting a joint tender, or request to participate.

Public procurement contract is a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities/entities and having as its object the execution of works, the supply of products or the provision of services.

Public works contract is a public procurement contract having as its object:

¹ Definitions are taken from the Public Procurement Act (Official Gazette 90/11, 83/13, 143/13, 13/14).

1. Either the execution, or both the design and execution, of works related to one or more activities within the meaning of Annex I, List of activities in Construction of the Public Procurement Act, or

2. Work, or the realisation, by whatever means, of work corresponding to the requirements specified by the contracting authority/entity. The 'work' refers to the outcome of building or civil engineering work taken as a whole, which is sufficient of itself to fulfil an economic or technical function.

Subcontractor is an economic operator delivering supplies, providing services or performing works directly related to the subject matter of procurement for the selected tenderer with whom the contracting authority/entity has concluded a public procurement contract.

A *tender* is a written statement of the tenderer's willingness to deliver supplies, provide services or perform works in accordance with the terms and requirements listed in the tender documents (contract notice).

Tenderer is an economic operator who has submitted a tender on time.

Public expenditure (cost of general government) is the sum of the expenditure of all levels of government: central government (state), local and regional government and extra-budgetary users.

Value of executed construction works refers to all construction works (public or private, new constructions and reconstructions, maintenance and repair works on existing constructions) performed in the territory of the Republic of Croatia.

Value of public procurement is the sum of works, goods and services.

Value of the procurement of works represents the sum of all concluded public works contracts.

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I. INTRODUCTION

The integrity of the public procurement process is best assured when the allocation of resources occurs in conditions of open competition and where mechanisms exist to monitor the government agents in charge of the process and check that their decisions reflect nothing but the relative merits of competing bidders. However, if insufficiently constrained, the government agents in charge of procurement may seek to allocate resources in a particularistic manner, in order to benefit themselves or other parties. This paper seeks to assess the extent of favouritism – i.e., preferential treatment for some bidders over others - in the allocation of public procurement contracts in the construction sector in Croatia. The research is conducted within a theoretical framework which posits that corruption is most likely to occur where the opportunities are high and the constraints low (Mungiu-Pippidi et al 2011). The methodology is therefore based on identifying opportunities for favouritism and evaluating the effectiveness of constraints.

The paper proceeds as follows. First, the legal framework concerning public procurement in Croatia is explained and evaluated. Second, data on the public procurement of high-value construction works is analysed for indicators of favouritism in the process and outcomes. Third, further analysis is undertaken of a key risk area that emerges from the research, relating to political influence over the procurement process. Fourth, the control framework is elaborated and evaluated. Finally, conclusions are presented about the balance of opportunities and constraints with respect to favouritism in the public procurement of construction works in Croatia.

II. THE LEGAL FRAMEWORK FOR PUBLIC PROCUREMENT

The first national act regulating public procurement was the *Act on the Procurement of Goods, Services and Works*² adopted in 1997. Since that time, the Act has been amended substantially on several occasions, with each version making the process more stringent, better controlled, and more transparent.³ These amendments finally led to the passage of an entirely new law in 2011, the Public Procurement Act, effective since 1 January 2012.⁴ The new act simplified procedures and reduced administrative costs for both contracting authorities and tenderers. It created conditions for tender documents to be submitted electronically, although progress towards e-public procurement⁵ had already been made in 2008 with the introduction of the mandatory electronic publication of all public procurement notices on the Electronic Public Procurement Classifieds platform of the Official Gazette.⁶ The platform also includes an e-auction module, although barriers remain to rolling out e-procurement in Croatia, particularly for goods and services which require tenders to be evaluated on conditions other than price. The Public Procurement was amended once again

² The Act on the Procurement of Goods, Services and Works was adopted on 19 December 1997 and published in the Official Gazette (OG) 142/97, 31 December 1997. Amendments to the Act were published in the Official Gazette 32/01, 10 April 2001)

³ OG 117/01, 92/05, 110/07, 90/11.

⁴ OG 90/11.

⁵ The Decision on the adoption of the Strategy for the development of electronic public procurement in Croatia 2013-2016 (Official Gazette No. 54/13).

⁶ OG 110/07.

in 2013⁷, resulting in further improvements in control and the introduction of some provisions that were only later, through the EU Directives of 2014⁸, accepted as the European standard.

Interviews with public sector procurement professionals⁹ suggest that the 2011 law was primarily driven by a need to align Croatian legislation with that of the European Union as part of the accession process, as well as by a need to address deficiencies of the previous legal framework which had allowed corrupt practices. Several experts commented that the current legislation is advanced and more stringent than European standards in some areas. As the Head of the Department for Infrastructure and Construction Works in the Central Finance and Contracting Agency for the European Union Programmes and Projects (CFCA) explained,

“The legislation is very strict and I do not see any opportunities for favouritism. It is so strict in some areas that it limits the logic and the structure of the process.”

For the construction sector, the Act and its first amendment¹⁰ resulted in significant changes concerning subcontractors. According to Article 86 (2), economic operators who intend to subcontract part of a public procurement contract to one or more subcontractors should include information about the subcontractor in the tender, including the company name and the proportion of the public procurement contract to be subcontracted.¹¹ This amendment is intended to prevent economic operators from acting merely as intermediaries, winning contracts but then passing on the majority of the work to other contractors whose credentials were not subject to the scrutiny of a public tender. Contracting authorities now also make payments to subcontractors directly, providing an additional security mechanism to prevent payment blocking or fraud.

The legal framework also stipulates an obligation to control the execution of public procurement contracts after the award, i.e., the obligation to check whether the execution complies with the conditions laid down in the tender. This clause is unusual, because most PP laws in the EU regulate only until the point of signing the contract. The clause has important potential to detect and deter corruption, with a considerable body of research suggesting that irregularities in the procurement of construction are common in the post-award phase (Guasch 2009). However, although the clause came into effect on 1 January 2012, the institution responsible for overseeing this part of the PP process has not yet been specified.

Overall, the legal framework sets high standards and includes a number of provisions which constrain the opportunities for private companies to seek to distort the competitive process.

⁷ OG 90/11, 83/13 and 143/13.

⁸ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance; Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance; Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance.

⁹ Five semi-structured interviews conducted with the representatives of the Central Finance and Contracting Agency (SAFU), Office of Contracting & Head of Infrastructure and Construction Department; Ministry of Economy, Directorate for the Public Procurement System, Ministry of Regional Development and EU funds: Head of Procurement.

¹⁰ OG 83/13.

¹¹ The information about the subcontractor must include the name, company name, seat, national identification number (or national identification number of the country seat of the economic subject, if applicable), account number of the subcontractor and the subject, quantity, and value of the subcontract.

However, the experts we interviewed also argued that several challenges remain regarding the implementation of the law.¹² For example, many contracting authorities lack an adequate number of professionally trained procurement staff. Although the Directorate for the Public Procurement System (DPPS) conducts training in this area in accordance with the Regulations on training in the field of public procurement¹³, one DPPS representative the interviewed for this research pointed out that,

“Negative personnel selection is often evident in the internal organisation of contracting authorities, with insufficiently qualified, non-specialist and unmotivated staff in charge of public procurement.”

This casts doubt on the professionalism with which the procurement process is executed and puts the onus on control mechanisms to monitor and detect inadequacies.

III. THE PUBLIC PROCUREMENT OF CONSTRUCTION: MARKET OUTCOMES

1. Overview of public procurement in Croatia

Public procurement in Croatia accounted for around 9.7% of GDP on average in the years 2011-13, comparable to Cyprus (10.5% in 2010) and Greece (10.8%). Procurement can be undertaken by four types of contracting authority:

1. **Type A.** State authorities or central government bodies such as ministries, departments, state agencies and other public bodies, which are under the direct rule of the Government, or ministries.
2. **Type B.** Bodies of local and regional government/local and regional agencies and offices consisting of counties, cities and municipalities, and agencies and offices within the internal organisation of local and regional government.
3. **Type C.** Legal persons other than public authorities, including public companies other than sectoral contracting authorities in the ownership of central, regional and local government, institutions under their ownership and other legal entities that are not directly subordinate to public authorities, but come under the indirect influence of public authorities pursuant to their founding rights. This category includes several organisations that play a major role in construction, including Croatian Roads Ltd., the Croatian water management company, and county road administrations.
4. **Type D.** Sectoral contracting authorities, which are state-owned companies¹⁴ (owned at least partly by the central, regional or local government) characterised by a special position in the market (usually strategic sectors, such as water, energy and transport).¹⁵

An analysis of the structure of public procurement finds around one-half of total public procurement contracting value in Croatia during the period 2008-13 was executed by

¹² This is evident from responses obtained from representatives of relevant institutions in the field of public procurement, who were interviewed for the purpose of this study.

¹³ See relevant provisions in the law in OG 06/12 and 125/14.

¹⁴ A sectoral contracting authority is not necessarily a public company, according to EU legislation. However, in the Croatian context, there is no example in which a sectoral contractor is not at least partially owned by a state entity.

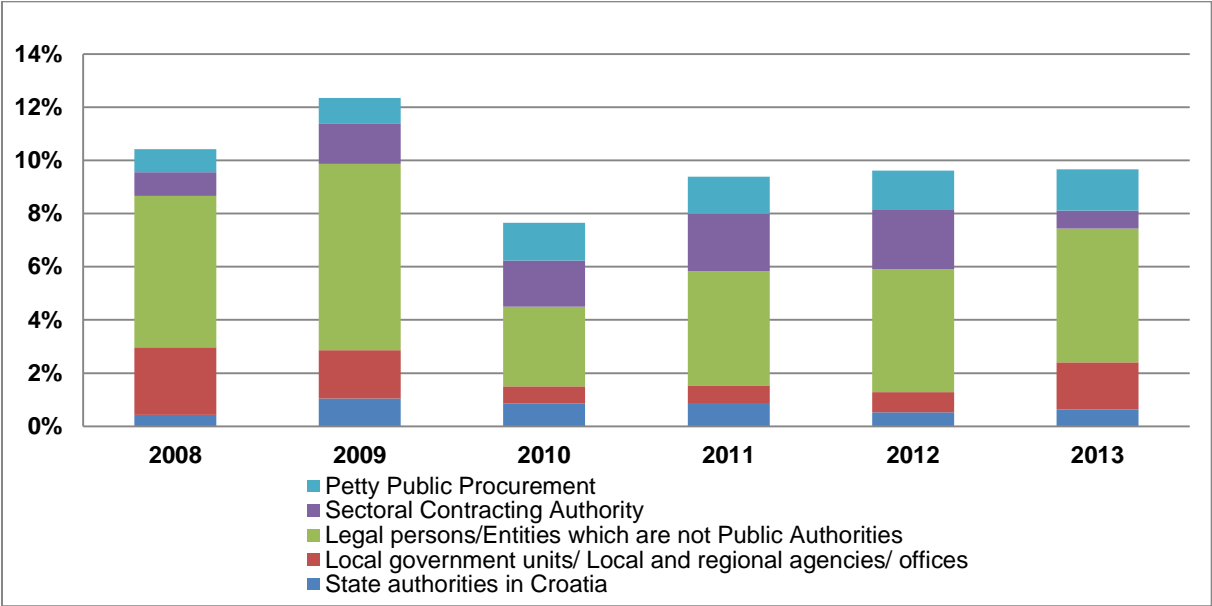
¹⁵ For example gas distribution companies (HEP Plin d.o.o., Energo d.o.o., Plinara d.o.o., Plinacro d.o.o., HEP Toplinarstvo d.o.o.), transmission and distribution operators (HEP –OPS d.o.o., HEP – ODS d.o.o.), water management companies (Vodovod i kanalizacija d.o.o. Karlovac, Vodovod d.o.o. Slavonski Brod) etc.

contracting authorities in categories C and D (see Figure 1). This is significant because different types of contracting authorities are subject to different control mechanisms, and thus are vulnerable to corruption risk to varying degrees.

Type C and D authorities are subject to weaker controls than other contracting authorities. The law itself provides for preferential treatment in public procurement conducted by such authorities, in that a weaker justification is needed for the use of restricted procedures. Thus, many actions that would represent breaches of the law if procedure was conducted by a Type A or B authority are permitted for Type C and D contracting authorities.

The academic literature on the state entities which constitute Types C and D contracting authorities finds that they typically have poor management, reflected in weak profit and loss accounts and making them highly dependent on budget subsidies (Crnković et al., 2011). These findings raise questions about the technical capacity of the organisations to conduct complex public procurement procedures, as well as highlighting the organisations' likely sensitivity to maintaining favourable relations with their political 'owners'. These risks are assessed in greater depth in part three.

Figure 11 Structure of total public procurement (works, goods and services) by type of contracting authorities and as % of GDP (in current prices), 2008-13¹⁶



Source: Author's calculations based on data from Croatian Bureau of Statistics and Directorate for Public Procurement System

2. The construction sector and public procurement

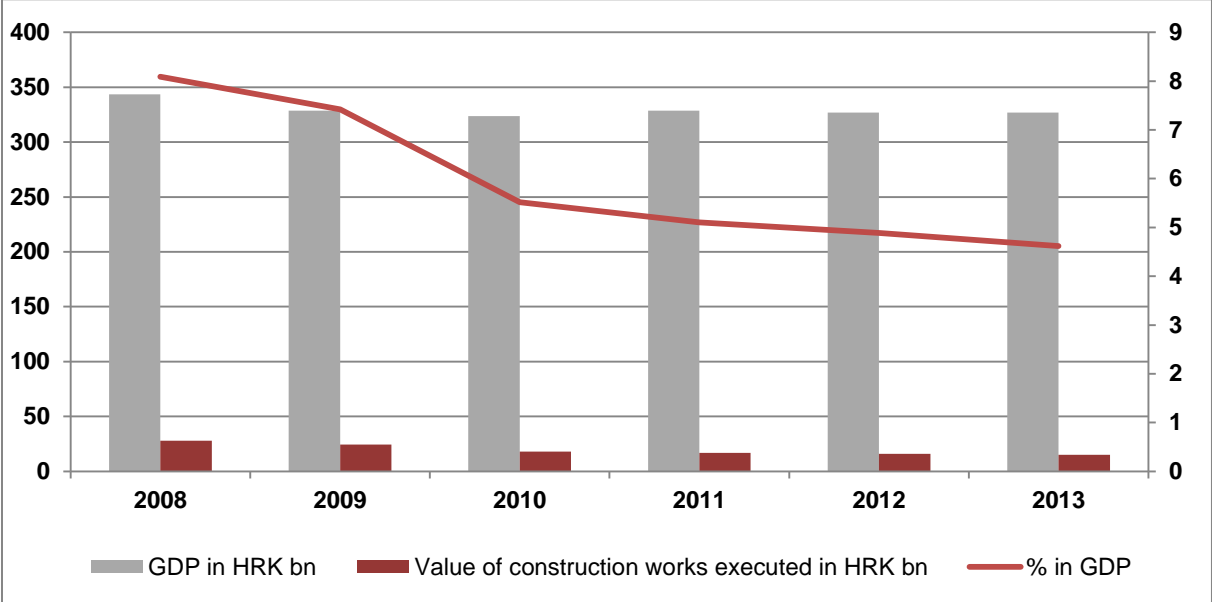
The construction sector has been in decline since 2008, losing 45.7% of its value over 2008-13 and with the sector's share in GDP collapsing from 8.1% in 2008 to 4.6% in 2013 (see Figure 2)¹⁷. The sector was, however, buoyed somewhat by an increase in public investment in infrastructure in 2009 as part of a government plan to stimulate an economic recovery, while a change in public procurement laws in the same year prompted many contracting

¹⁶ Underlying data are provided in Appendix Two.

¹⁷ The value of construction works executed is presented in terms of current prices and includes works performed in the reporting year, regardless of whether or not they were paid for in the reporting period.

authorities to invite tenders for large framework agreements.¹⁸ Overall, the total value of public procurement contracts and framework agreements in the sector reached HRK 21.8bn in 2009, more than double the previous year's total of HRK 8.4bn in 2008 (DPPS, 2010). The ten highest value contracts and framework agreements in the construction sector accounted for one-quarter of the total value of public procurement in that year (DPPS, 2010).

Figure 2 Total value of executed construction works, Croatia 2008-13 (left axis, HRK bn; right axis, % of GDP)



Note: GDP data for 2013 are provisional (the sum of quarterly data)
Source: author's calculations based on data from the Croatian Bureau of Statistics

Indeed, the sector became increasingly dependent on public procurement in this period. In 2008, public procurement had accounted for 30.2% of the total value of construction works executed, indicating that most of the value created by the sector was achieved under the rules of market competition. In subsequent years, public procurement came to account for the majority of construction business (see Table 1).¹⁹

Table 1 Value of executed construction works, Croatia 2008-13 (in HRK bn and % of GDP)

Year	GDP in HRK bn	Total construction sector, value in HRK bn	% of GDP	Construction procurement value in HRK bn	% of procurement in construction sector value
2008	340	104	30.29	31	29.81
2009	325	104	32.03	21.8	21.06
2010	320	65	20.31	15	23.08
2011	325	65	20.00	15	23.08
2012	325	55	16.92	15	27.27
2013	325	55	16.92	15	27.27

¹⁸ The amended Public Procurement Act in 2008 created the possibility for contracting authorities to establish framework agreements (FA), i.e., multi-year contracts with one or more tenderers, for a period of up to four years. See OG 110/07 and 125/2008.

¹⁹ The figure for 2009 is particularly high, but is not comparable owing to the legislative change and the widely used opportunity for contracting authorities to sign FAs.

2008	343.4	27.8	8.1	8.4	30.2
2009	328.7	24.4	7.4	21.8	89.3
2010	323.8	17.9	5.5	9.8	54.7
2011	328.7	16.8	5.1	9.4	56.0
2012	327.0	16.0	4.9	9.1	56.9
2013	326.8	15.1	4.6	10.0	66.2

Source: author's calculations based on data from the Croatian Bureau of Statistics and the Directorate for Public Procurement System

The rest of our analysis focuses on a specific sample of public procurement contracts: those for construction works worth 1mn euros or more awarded in the period 2011-2013.²⁰ The total value of contracts in our sample is HRK 17.9bn, and they were awarded by 192 contracting authorities.²¹ We analyse several aspects of the process and outcomes to assess whether there is evidence of favouritism. In terms of process, we consider the structure of spending by contracting authority, the use of restricted procedures, and the number of tenderers. In terms of outcome, we assess the characteristics of winning bidders according to their type.

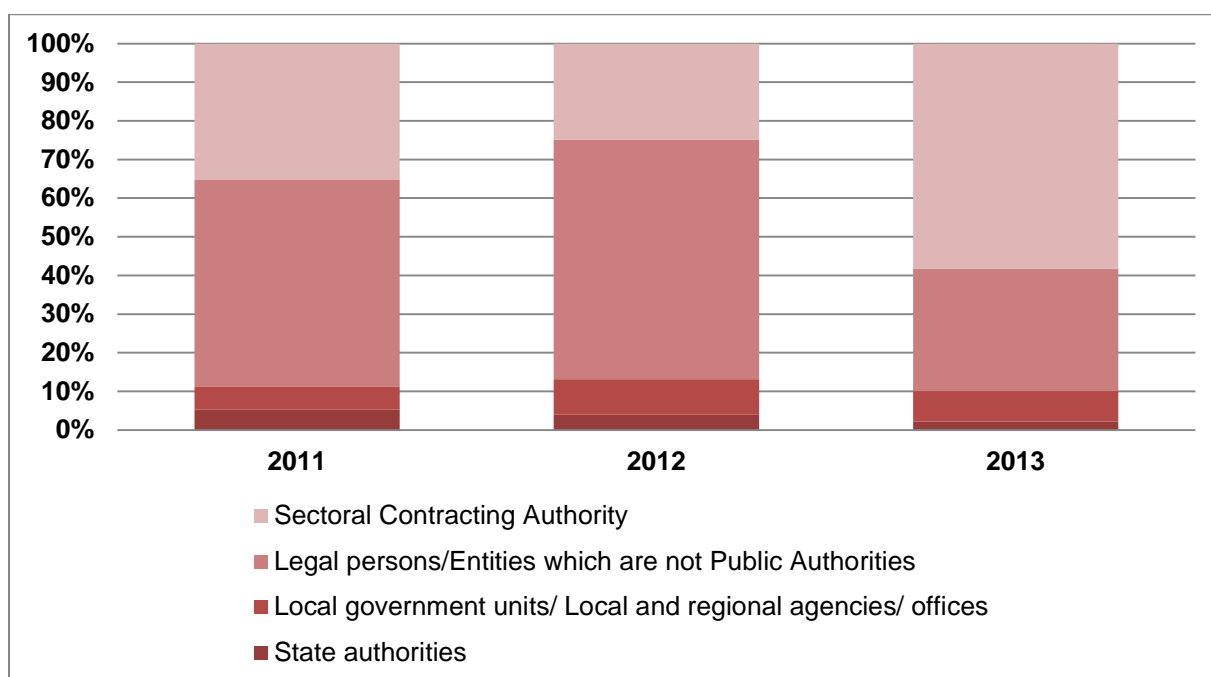
3. Structure of construction procurement, by type of contracting authority

When focusing on the construction sector alone, the predominance of procurement by Type C and D contracting authorities is yet more striking (see Figure 3). Around 90% of contracts in our sample were awarded by these types of authorities, which are subject to weak controls.

²⁰ Construction works are defined as Group 45 within the EU Common Procurement Vocabulary (CPV). The data has been collected and consolidated from several sources, including the Ministry of Economy's Directorate for Public Procurement System (DPPS), the Financial Agency (FINA), the Central Bureau of Statistics (CBS), the Commercial Court Register, the Central Finance and Contracting Agency for European Union Programmes and Projects (CFCA), and the Integrity Observers Database on public procurement (available at: www.integrityobservers.eu). The period of analysis was limited by a paucity of comparable data for earlier years. Moreover, while it was possible to collect a great deal of data from the state, considerable work had to be undertaken to standardise the data from different sources and to take account of changes in the law and rules relating to procurement and reporting of procurement. Given changes in practice on the inclusion of VAT, for example, as well as in the rate of VAT, contract values were standardised to exclude VAT to allow comparison.

²¹ The total value of all contracts signed by contracting authorities is not comparable to the value of contracts signed by individual tenderers quoted later in the paper. This is because the value of contracts signed by contracting authorities includes the value of contracts signed with a group of tenderers, as well as framework agreements. When analysing the tenderers, the value of framework agreements and group tenders were excluded because (due to the specifics of such arrangements) it cannot be precisely determined how much of the total value of particular framework agreement or contract within the group of tenderers belongs to each tenderer.

Figure 3 Structure of public procurement of works (construction) contracts exceeding HRK 7,452,830 (1mn euros), by type of contracting authority, 2011-13



Source: author's calculations based on data from the Directorate for Public Procurement System

4. The use of restricted procedures

The use of restricted procedures is examined because this is one way in which government agents may seek to restrict competition in the public procurement process, thereby benefiting cronies or allies. The use of such procedures is strictly regulated by law, and there are certain conditions in which it is permitted to limit competition by negotiating contracts with companies rather than conducting open tenders. Such procedures are legitimate, for example, in emergency conditions or when negotiating in specialist areas. However, governments seeking to allocate resources in a particularistic manner may seek to over-use or abuse such mechanisms. The pattern of usage of such procedures can therefore serve as a probabilistic indicator of particularism.

In our sample, a significant proportion of contracts, representing 27% of the total value, was contracted through negotiated procedures without being announced publicly, as shown in Table 2. In the case of FAs, however, the use of restricted or negotiated procedures was negligible (Table 3).

Table 2 Public procurement of works (construction) by type of procedure, contracts valued over HRK 7,452,830, 2012-13

	Number of contracts	Value of contracts (HRK)	% of total value of all contracts

Open procedure	214	4,222,463,130	72.63
Negotiated w/o prior publication	15	1,578,072,839	27.14
Not defined by law - exempted	1	13,040,449	0.22
Total	230	5,813,576,417	100.00

Source: author's calculations based on data from the Integrity Observers database.

Table 3 Public procurement of works by type of procedure, framework agreements valued over HRK 7,452,830, 2012-13

	No. of FAs	Value of FAs (HRK)	% total value of all FAs
Open procedure	46	2,575,430,547	96.46
Restricted procedure	2	28,502,987	1.07
Negotiated procedure with prior publication	2	66,066,385	2.47
Total	50	2,669,999,919	100.00

Source: author's calculations based on data from the Integrity Observers database.

5. Competition for contracts and the prevalence of sole bidders

Another potential indicator of favouritism is the number of bidders, which signals the extent of competition in the market. In a highly competitive market with many bidders for every contract, it may be more difficult for corrupt government agents to manipulate the allocation of a contract, while the process will be under greater scrutiny from interested parties, i.e., the competing tenderers.

In conditions where favouritism is rife, by contrast, competition may be low for two reasons. First, systematic favouritism over a long period would have driven out of the market companies which were unable to win contracts because they lacked relevant political connections. Second, if competitors expect a contract to be allocated in a particularistic way, they will not incur the costs of tendering and hence will opt out of the market. Equally, though, a low number of tenderers may simply reflect a lack of relevant expertise or interest in a particular contract. This indicator must therefore be interpreted with care. However, given the extensive pressures on the construction sector in Croatia during this period, it is reasonable to expect that competition would be intense.

However, the majority of contracts in our sample (63.8%) were acquired in an environment of relatively low competition, with three or fewer tenderers (see Table 4). Almost 40% of these large tenders had one sole bidder, despite 43 of the 58 being tendered on open procedures. Competition for FAs was also surprisingly low, with 60.4% of the contract value the result of processes with three or fewer tenderers, while 40% of the value of FAs in 2012 and 2013 attracted only one bidder (Table 5).

Table 4 Public procurement of works (construction) by number of tenders received, contracts valued over HRK 7,452,830 (EUR1mn), 2012-13

	Number of contracts	Value of contracts signed (in HRK)	% of total sum of contracts ≥ EUR 1m
1 tender received	58	2,317,775,476	39.87
2 tenders received	40	732,320,272	12.60
3 tenders received	38	654,920,160	11.27
≥ 4 tenders received	94	2,108,560,508	36.27
Total	230	5,813,576,417	100.00

Source: author's calculations based on data from the Integrity Observers database.

Table 5 Public procurement of works by number of tenders received, framework agreements valued over HRK 7,452,830, Croatia 20-2013

	No. of FAs	Value of FAs (HRK)	% total value of FAs
1 tender received	21	1,099,506,958	41.18
2 tenders received	5	349,170,956	13.08
3 tenders received	9	163,888,783	6.14
≥ 4 tenders received	15	1,057,433,223	39.60
Total	50	2,669,999,919	100.00

Source: author's calculations based on data from the Integrity Observers database.

6. The characteristics of winning bidders

Further indicators of favouritism in public procurement derive from studying the characteristics of winning bidders. If there are very few winners, or the winners appear to have links with political leaders, this is indicative of favouritism in the procurement process. In addition, if winning bidders exhibit unusually good economic performance relative to other market actors, this is suggestive of public contracts having been designed or awarded in ways that did not achieve the best value for money for the public, which may indicate corruption.

Overall, the contracts and FAs in our sample were won by a reasonable number of tenderers (175 different entities) and accounted for 17.3% of the tenderers' total revenue. However, for contracts amounting to almost one-half (46.5%) of the total value, the winning bidders were state-owned companies in the same legal category as Type C and D contracting authorities. This means that, for a large share of public procurement in construction, both the contracting authority and the winning tenderer were state entities under the control of political principals. Thus, politically elected executive branch officials at the national, regional and local levels have the *potential* to control both ends of the process, including the design of the contract notice and the tender submitted by winning bidder.

The winning tenderers were then separated into profitable and loss-making companies (results presented in Table 6). State-owned companies recorded higher cumulative profits (from a lower total value of contracts) than tenderers from the private sector. Privately owned companies recorded higher cumulative losses, despite the higher total value of signed contracts.

These findings might suggest that public sector tenderers are simply more efficient and therefore extract more profits from less revenue. However, the research analysed whether the proportion of public contracts in total revenue is relevant to performance. The publicly owned contractors which recorded cumulative profits were reliant on public procurement contracts for an average 24.2% of their revenues, while public contractors which recorded losses had only an average of 8.4% of procurement contracts in revenues. This relationship, i.e., the higher the proportion of procurement contracts, the greater the profits, applies to private contractors as well. Profitable private contractors have an average of 19.5% of public procurement in their revenues, while the average proportion for loss-making private contractors is only 16%. This at the very least raises concerns as to whether the companies which win public procurement contracts are providing the best value for public money.

Table 6 Analysis of tenderers with contract(s) above HRK 7,452,830 in public procurement of works, 2011-
13

Tenderers with net profit					
	Value of public procurement, works contract/s (in bn HRK)	Cumulative revenue of tenderers (in bn HRK)	% of value of work contracts in cumulative revenue of tenderers	Cumulative number of tenderers with profit	Profit (in bn HRK)
State owned enterprises	5,4	22,4	24,2	29	1,8

Private enterprises	6,2	32,1	19,5	95	1,4
TOTAL	11,7	54,5	21,4	124	3,2

Tenderers with net loss					
	Value of public procurement, works contract/s (in bn HRK)	Cumulative revenue of tenderers (in bn HRK)	% of value of work contracts in cumulative revenue of tenderers	Cumulative number of tenderers with loss	Loss (in bn HRK)
State owned enterprises	1,9	23,1	8,4	20	-2,1
Private enterprises	2,3	14,3	16,1	31	-2,4
TOTAL	4,2	37,4	11,3	51	-4,5

7. The Top Ten State-Owned Winning Tenderers

The next phase of analysis focused on the top ten most successful state-owned tenderers, by contract value (Table 7). This revealed that the top three companies, which won almost 20% of the total sum of contracts in our sample, were members of the same group, Croatian Railways. Moreover, the contracting authority for these contracts was the same entity, Croatian Railways. This represents an unusual deviation from international standards for public procurement.

Table 7 Top 10 Tenderers by value of public procurement, works contract/s (HRK) – state owned enterprises, 2011-13

	Value of contracts in HRK
PRUŽNE GRAĐEVINE d.o.o.	2,784,220,531
POSIT d.o.o.	403,123,217
REMONT I ODRŽAVANJE PRUGA d.o.o.	325,823,109
STSI-Integrirani tehnički servisi d.o.o.	277,926,594
Vodoprivreda Zagreb d.d.	248,045,308
KONČAR - Inženjering za energetiku i transport d.d.	209,846,523
VODOPRIVREDA VINKOVCI d.d.	186,954,399
Istarske ceste d.o.o. Pula	171,780,657
Županijske ceste Split d.o.o.	162,395,384
CESTE-RIJEKA d.o.o.	152,520,741

Source: author's calculations based on data received from the Directorate for the Public Procurement System

8. The Top Ten Private-Sector Winning Tenderers

A further stage of analysis focused on the private companies that were the most successful tenderers in terms of the highest aggregate value of contracts. Of the top ten, nine were former state-owned companies that had been privatized – all except Lapor d.o.o (Table 8).²²

Table 8 Top 10 winning tenderers by value of contract/s (HRK) – Privately owned enterprises, 2011-13

	Value of contracts in HRK
GRADNJA d.o.o. OSIJEK*	424,295,084
GP KRK d.d.*	369,369,287
HIDROELEKTRA NISKOGRADNJA d.d., Zagreb	287,537,784
ZAGORJE TEHNOBETON d.d.*	280,993,865
OSIJEK-KOTEKS d.d.*	263,186,500
VIADUKT d.d.*	238,730,927

²² Only one company among the top ten private tenderers has been private since its establishment, Lapor d.o.o. This company co-owns one of the public companies that is a major contractor in the water management sector, Vodoprivreda Zagreb d.d. (Bohutinski, 2011).

LAVČEVIĆ d.d.*	205,125,845
VODOPRIVREDA d.o.o., Buzet*	195,297,215
VODOGRADNJA RIJEKA d.o.o.*	179,937,878
LAPOR d.o.o.	175,151,809

Source: author's calculations based on data received from the Directorate for the Public Procurement System

* Private ownership after privatisation

The history of these enterprises is relevant to our analysis because the privatisation process in Croatia was associated with serious weaknesses in terms of fairness, transparency and procedure (Bajo, 2011, Grubišić et al., 2009, Bendeković, 2000). Several scholars have characterized the process as one in which resources were allocated according to favouritism and cronyism, with political principals distributing resources so as to extend their political control over the emerging private sector (Čučković 2002, Franičević 1999). The new owners were often successful in securing assets not because of their business competence or financial resources, but because they had fruitful connections to the political elite (Franičević 1999; Petričić).

IV. RISKS OF POLITICAL INFLUENCE OVER PUBLIC PROCUREMENT

1. The appointment of managers of contracting authorities

One way in which favouritism might be practiced in the allocation of contracts is through political influence over the managers of contracting authorities. This is a potential risk area in Croatia owing to the governance structures pertaining to the procurement process, particularly for Type C and Type D authorities which, as discussed, are responsible for around one-half of public procurement in Croatia and 90% of the contract value in our sample.

According to law, in the case of *legal persons that are not contracting authorities and sectoral contracting authorities (if they are public companies)* - i.e., most Type C and Type D authorities - the head of the contracting authority is appointed by the relevant public authority (national, local, or regional executive branch government), pursuant to its founding rights.²³ Thus, the managers of these authorities are appointed by the politically elected leadership of the owner organisations be they central, regional or local government.

Political principals might choose to use this power of appointment more or less proactively, and for different reasons. Incoming political leaders are not compelled to change the management of contracting authorities under their control and might decide only to make

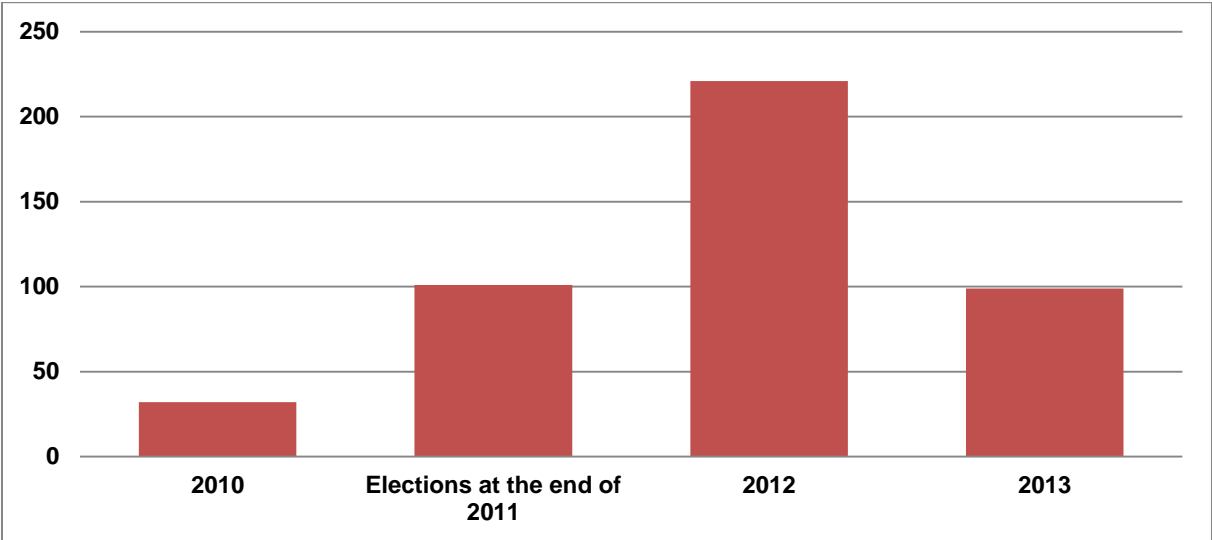
²³ The Act on the Management and Disposal of Assets owned by the Republic of Croatia, Official Gazette 94/13, 130/14 (Article 28.6 of the Act); Act on Local and Regional Self-government, Official Gazette 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 36/09, 150/11, 144/12, 19/13 (Article 45.1 of the Act). Founding rights, as described in the Act, are those pertaining to the owner or establisher of the entity. In the case of public companies, these are the rights of the owner (a public authority that has established such a company), but in the case of schools, hospitals, social care institutions and similar, that are by nature non-profit and non-state, though established by the state, the public sector (national, regional, or local government) has founding rights. These rights are similar to those of owners in the case of companies, but cannot be equated.

appointments when positions become available owing to retirements or resignations. If they do replace incumbent managers, they might do so for a variety of reasons. For example, they might evaluate an incumbent as being unfit for the job, and wish to replace him or her with a better-qualified candidate. Another possibility is that they might wish to use their power of appointment to reward an informal ally or crony, or to ensure informal influence over an appointee so as to facilitate corrupt transactions. It is near impossible to gain evidence as to the *reasons* for changes in management boards. This analysis seeks rather to measure the extent to which incoming political leaders use their powers of appointment. This will yield insights into the scale of managerial changes associated with political change, and therefore provide an indicator of *potential* political influence over the management of contracting authorities.

The analysis of the relationship between election cycles and changes in management structure uses the following methodology. Data on changes in the management structures of type C and type D contracting authorities were obtained from the Commercial Court Register. The authorities in our sample (i.e., those that had signed contracts for the procurement of works equal to or greater than 1mn euros) were then divided into those owned by the central government and those owned by local and regional governments. This allowed us to identify the relevant electoral cycles in which political change might occur, and subsequently to analyse whether the number of changes in the management of these authorities changed in the periods after elections.

For contracting authorities owned by the central government (a sample of 28), the number of managerial changes increased significantly in the year following the elections held in December 2011 (see figure 4). The number of changes in management personnel in 2012 accounted for 49% of all changes observed in the 2010-2013 period. Of the 28 companies covered in the analysis, 24 had at least one change in management that coincided with the change of government.

Figure 4 Number of managerial changes in legal persons and sectoral (Type C and D) contracting authorities owned by central government, Croatia 2010-2013 (N=28)

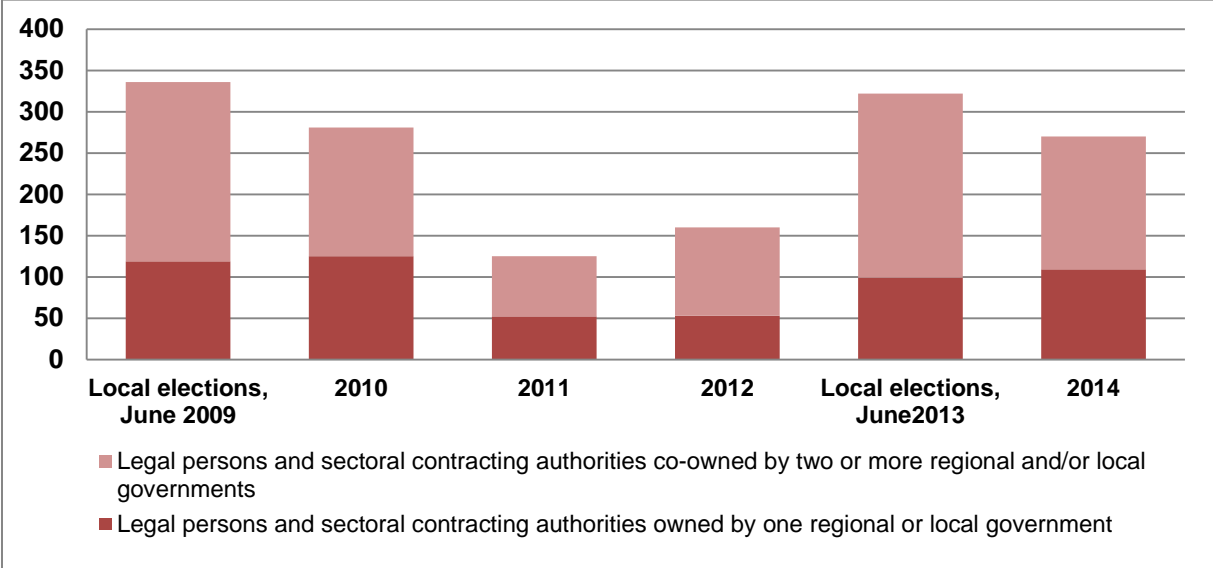


Source: author's calculations based on data from the Commercial Court of Zagreb

For our sample of 95 contracting authorities owned by local government, changes in management were analysed in relation to two elections, in 2009 and 2013. Since local and regional elections are usually held mid-year (before the summer holidays), political

appointments of management board members are expected to occur in the election year and the first post-election year. The number of changes in management does indeed increase at the expected times (see figure 5).

Figure 5 Number of managerial changes in Type C and Type D contracting authorities owned by regional and local government, 2009-14 (N=95)



Source: author's calculations based on data from the Commercial Court of Zagreb

Some entities have more than one governmental owner. A higher number of owners increases the chance that there will be owning government units where elections bring about political change. Since all owners have rights to make appointments to management boards, this also increases the probability that there will be management changes following elections. The evidence confirms this prediction: the number of changes in management in those authorities that were jointly owned by several local and/or regional government units was 68.2% higher than in those owned by a single local/regional government. This finding appears to confirm that changes in management reflect changes in the political leadership of the owning government units, i.e., that political leaders use their powers of appointment over contracting authorities extensively.

An additional check was conducted by focusing on 13 contracting authorities in which no managerial changes were recorded in the observed period. If managerial changes are largely a result of changes in the political control of the owning government unit, we would expect that a lack of change in management would be associated with the absence of political change in the relevant local and regional governments in the period covered. Of 26 possible cases (13 authorities in two election cycles), a change of political leadership in the founding entity (local/regional government), was observed in only four. These findings further support our argument.

2. The Discretionary Power of Managers of Contracting Authorities

Control over the appointment of the manager of a contracting authority can only facilitate favouritism if the manager has significant discretionary power over the entire procurement

process. This is, however, provided for in law. These powers are set out in the 2011 Public Procurement Act. Specifically, the head of the contracting authority is responsible for:

- establishing the entire procurement plan (Article 20.1);
- appointing the Certified Procurement Officers, the authorized representative of the authority responsible for executing the process (Article 24.3);
- appointing the members of the selection committees – whether ad hoc or permanent - who make contract award decisions (Article 24.5);
- signing all documents in the public procurement process, including the final contract (Article 96); and
- supervising the execution of the contract (Article 105.3).

The heads of contracting authorities thus have considerable resources and opportunities to influence the process to serve private interests, if they wish. Given that they in turn rely on political leaders for their initial appointment, their continuance in office, and often for state financial support for their institution, they may also be susceptible to political influence. This suggests that political leaders at central, regional and local government level could have significant informal power over public procurement through their patronage powers.

3. The Role of Central Procurement Officers

Political influence might easily extend - through the head of the contracting authority's power to appoint the Central Procurement Officer - to fine details of the procurement process. The 2011 Act stipulates that public procurement procedures, stretching from the preparation of the tender and conduct of the procedure through to the signing of the contract, are to be carried out only by authorised representatives of the contracting authority, i.e., the CPO. The CPO is appointed by the head of the contracting authority.

The CPO must hold a valid certificate from a special training programme and this must be renewed on the basis of ongoing education or training. Although this stipulation is intended to ensure professional capacity in contracting authorities, in practice it may indirectly create another risk area. This research found that there is a paucity of qualified individuals and typically only one accredited CPO in many contracting authorities. This means that there is nobody else in the organisation qualified to check or oversee the CPO's work.

Since CPOs report to the head of the authority, who is in turn responsible only to the political leader to whom he or she owes his appointment, the overall governance structure potentially allows for one political leader to exert considerable control over the details of individual procurements, while there is scant provision or incentive to carry out internal checks and balances. The existence of such a governance structure is not evidence that corruption occurs. Yet it does indicate that there is significant potential for political leaders to collude with or exercise power over the managers and officers of contracting authorities, with the objective of ensuring favouritism in the allocation of contracts, to benefit themselves or others. The following case study demonstrates that such political influence over the procurement process has been used in the past to channel public money to private interests.

4. Case Study: Political influence over Public Procurement in the FIMI Media case²⁴

The highest-level corruption case ever prosecuted in Croatia concerns the allocation of public procurement contracts to FIMI Media. Several members of the political elite were prosecuted, including former Prime Minister Ivo Sanader, three other high-ranking members of the HDZ, and one of the owners of the private company as well as the ruling political party (HDZ). Although the Sanader case was prosecuted in 2010-11, the appeal is still pending before the Supreme Court. Moreover, legislation has changed since these events occurred, and control mechanisms may have improved. However, for the purposes of this paper, the verdict of the trial has been analysed in order to extract insights into how public procurement might be used to channel resources out of the state for the private benefit of political leaders and parties.

The verdict notes that Sanader and others took advantage of the fact that the HDZ, as the leading parliamentary party, represented a concentration of decision-making power and authority able to play a role in furthering the interests of its financial supporters. The party used its concentrated power in government to collect financial donations from both individuals and legal entities, on the grounds that it needed to finance the party's political activities. In exchange for funds, however, promises were made about using state resources to channel contracts to the companies controlled by the donors.

In his further comments on Sanader's role, the judge emphasised the role played by public companies (entities of Types C and D) in a complex procedure which used public procurement to extract money from the state during the period from the end of 2004 until 2 July 2009. The verdict found that the first accused (Sanader), as the Prime Minister of the Government of Croatia, had engaged the second accused (Mladen Barišić, Head of the Customs Service) to act on his orders. Together they had attended a meeting held on 4 April 2007 in the premises of the Croatian Government, with representatives of companies solely or majority-owned by the state and public institutions. The meeting was also attended by the third accused, Ratko Maček. Sanader had then personally proposed to the leaders of some government bodies, CEOs and others responsible for commercial companies which were exclusively or partly state-owned, using his authority as Prime Minister, and exploiting their relation of dependency (since the Croatian Government appointed their management structures), that they engage the services of Fimi Media (the seventh accused) for the procurement of certain goods and services.

The involvement of so many high-ranking politicians and officials in the government and the evidence that they systematically abused their formal and informal powers over public companies and relevant public entities to influence the public procurement process, suggests that favouritism may be widespread in Croatian public procurement. The scheme involved an

²⁴ This case study is based on the first-instance verdict in the case against former Prime Minister Ivo Sanader, the HDZ and four other persons. The case is currently under the appeal procedure before the Supreme Court, and this research makes no judgement on the guilt or innocence of those indicted. The verdict does however offer important insights into the ways in which politicians interact with the management of public companies. The verdict is based on thousands of pages of evidence and numerous testimonials gathered during a two-year investigation and trial. Source: County Court of Zagreb, First-instance verdict, Reference number: 13 K-US-8/12, March 11th 2014

extensive range of state-owned entities, including two government ministries,²⁵ with political influence over such bodies used to further private interests.

Moreover, existing mechanisms for internal and external monitoring of public procurement proved inadequate to detect these operations, although they were conducted during a period from the end of 2003 until July 2009. Indeed, Sanader and the HDZ were prosecuted only after he had resigned, apparently voluntarily, rather than in response to public pressure. It is unclear whether he would have been prosecuted if he had remained in power.

The verdict also provides evidence about the gains made by the HDZ, the politicians, and the individuals associated with these state-owned entities. It lists nine prominent individuals who made cash donations to the HDZ and the prime minister, many of whom subsequently won contracts from companies owned by the state²⁶, for example:

- **Marijan Primorac** donated EUR 322,368 and paid for Sanader's BMW. His company 'Primorka' benefited from a lucrative contract to rent office space to the Croatian Lottery (public company).
- **Marinko Mikulić** donated EUR 171,052. As the owner of the privatized 'PAN' company, there was no evidence proving that he did illicit business with the state, although questions were raised about how he amassed his personal wealth.
- **Miha Zrnić Marinović** donated EUR 263,157. He owned 'Odlagalište sirovina' (Raw Material Landfill) which, with the Fund for Environmental Protection (state entity), drained the state budget of millions.
- **Božidar Longin** donated EUR 36,000. From 2003 to 2012, he was a board member in charge of legal affairs, including public procurement, in Hrvatske šume (Croatian Forests).

In terms of those who benefited from this scheme, in addition to the five individuals and one political party charged, 30 other members of the HDZ were given cash by the organisers of the scheme (the five accused). They included individuals at all staff levels, from doormen and bodyguards to secretaries and ministers.

V. CONTROL MECHANISMS

The procurement process is subject to control by a number of internal institutions, assessed below. In addition, the potential for civil society, the media, and members of the public to exercise 'external' control is evaluated.

1. The State Commission for Supervision of Public Procurement Procedure

The SCSPPP is charged with investigating potential breaches of the law in connection with the rights and interests of interested parties or competing tenderers (Kolar, Loboja, Vuić, 2011) and is the key legal protection mechanism for the interests of tenderers (Pejaković,

²⁵ The list of public companies involved reads: Hrvatske šume d.o.o., Hrvatska elektroprivreda d.d., Hrvatska poštanska banka d.d., Hrvatske autoceste d.o.o., Autocesta Rijeka-Zagreb d.d., Environment Protection and Energetic Efficiency Fund, Ministry of Interior Affairs, Hrvatska HŽ group – Hrvatske željeznice d.o.o., Croatian National Tourist Board, Proplin d.o.o., Viadukt d.d., Hidroelektra niskogradnja d.d., Konstruktor inženjering d.d., Hrvatske ceste d.d., Croatia airlines d.d., Croatia osiguranje d.d., Narodne novine d.d., Ecos trgovina d.o.o., Financial Agency, Ministry of Sea, Transport and Infrastructure, Ministry of Foreign Affairs and European Integration, ACI d.d.

²⁶ Specifically, companies defined in law as legal entities that are not public authorities or sectoral contracting authorities.

2008).²⁷ However, it may act only at the request of tenderers or interested tenderers (those considering submitting tenders, if a complaint refers to conditions set in the tender), and its enquiries are limited to the irregularities stipulated by the complainant. If no complaint is lodged by any of the tenderers, the SCSPPP will not act and even if a complaint is lodged, it will rule only on the matter stipulated in the complaint and will not investigate further. Thus, in restricted procedures (i.e., negotiated procedures without prior publication) where there is no open competition, there are no grounds for complaint by other interested parties. The fewer the competitors, the less potential there is for the SCSPPP to act.

If it finds irregularities, the SCSPPP may cancel the procedure or render a decision resulting in the annulment of the contract. In some cases, it may levy an administrative fine on the contracting authority. Since February 2010, the SCSPPP has also been authorized to file motions for indictment in relation to misdemeanours set out in the Act and other regulations pertaining to the field of public procurement.²⁸

The SCSPPP has used these powers to a limited extent (see table 9). However, given that 1,924 active contracting authorities sign approximately 10,000 public procurement contracts and framework agreements each year, it is not clear that this control mechanism acts as a major constraint on favouritism.

Table 91 SCSPPP Motions filed for indictment in relation to misdemeanours prescribed by the Act, 2010-13

Year	No. of motions filed	Misdemeanours prescribed by the PPA
2010	5	Goods, works or services were procured without a PP procedure
2011	7	Goods, works or services were procured without a public procurement procedure and provisions of the PP Act were not applied
2012	2	Contracting authorities failed to submit requested documentation
2013	7	Contracting authorities failed to submit requested documentation (5 cases) or acted contrary to or failed to comply with a decision (2)

2. The Directorate for the Public Procurement System

The DPPS is in charge of capacity building in the procurement system, including the obligatory, ongoing certified education of CPOs, supervising all aspects of the PP system, and initiating procedures before the Misdemeanour Court for violations of legal provisions prescribed in the PP Act (*ex ante* and *ex post* supervision).²⁹ The DPPS focuses on misdemeanours related to breaches in public procurement systems. Through administrative investigations, the DPPS may act upon an extensive list of breaches of the PP act, relating to

²⁷ Public Procurement Act, Official Gazette 90/2011, 83/2013, 143/2013; Act on the State Commission for Supervision over Public Procurement Procedure, Official Gazette 18/2013, 127/2013, 74/2014.

²⁸ Article 2 paragraph 4 Act on the State Commission for Supervision over Public Procurement Procedure, Official Gazette 21/2010.

²⁹ Note that official title of the body in the Act is the Central Government Authority Responsible for the Public Procurement System, and the official name of the authority in the court register is the Ministry of the Economy; Directorate for the Public Procurement System

failures by the contracting authority to comply with the necessary procedures.³⁰ The DPPS has filed 78 motions since 1 January 2012.

However, our research revealed a number of causes for concern. First, the organisation lacks the capacity to monitor and supervise the large number of contracting authorities and contracts. Second, there is a conflict of interest between its investigative and monitoring powers on one side, and its capacity-building role on the other (training and certifying CPOs, which represents a significant proportion of its operational income). Third, the DPPS as prescribed by law, treats potentially serious criminal activity (conflicts of interest, disregard for competitive procedures and direct contracting) within the (non-criminal) misdemeanour framework, which means that serious infringements may remain beyond the reach of the punitive justice system. Fourth, decisions about the targets of pro-active investigations are left to the discretionary powers of DPPS employees and managers. Fifth, the DPPS is a department of the Ministry of Economy, and may therefore be deterred from undertaking investigations that might criticise the government or ruling party.

3. The State Audit Office

The State Audit Office (SAO) audits the financial management of state entities and establishing whether it is in accordance with public accounting standards. In reference to public procurement, the SAO verifies whether the PP procedure has been applied in areas where it is obligatory, but does not typically examine the details of a particular procurement procedure. However, in accordance with state audit standards and principles, the SAO verifies whether the financial statements issued by an audited entity, including statements on public procurement, are true and accurate.

The SAO acts pursuant to its adopted annual action plans³¹, but it has considerable discretion in terms of the subjects and timing of audits. It is quite possible that Type C and D contracting authorities will never (or only very rarely, perhaps once a decade) be subject to audits by the SAO. Moreover, the SAO cannot impose remedies or sanctions on an audited entity. It simply publishes reports and, if criminal activity is indicated, may forward a report to the relevant prosecutor's office. However, this practice has so far not led to any significant investigations or verdicts in the field of public procurement.

4. The Commission for Conflict of Interest

The CCI regulates provisions relating to conflicts of interest for most elected officials in Croatia, but has no specific responsibility for overseeing public procurement and our research revealed some uncertainty as to whether it is responsible for enforcing the provisions on conflicts of interest under the PP Act.

Article 13 of the PP Act defines situations in which a conflict of interest may exist: (1) if the representative of the contracting authority simultaneously performs managerial duties for the economic operator, or (2) if the representative of the contracting authority holds a business share, stocks or other rights entitling it to participate in the management or in the capital of the economic operator with the share of more than 0.5%. Moreover, representatives of contracting authorities must sign a statement declaring the existence or absence of conflicts

³⁰ See Articles 177 and 182 of the Act.

³¹ According to the provisions of the Act on the State Audit Office (Official Gazette 80/11), audits are planned and performed in accordance with the annual work plan and program, which is adopted by the Auditor General. 2014 work plan is available at: <http://www.revizija.hr/datastore/filestore/34/godisnji-plan-za-2014.pdf>

of interest, which extends to personal relationships with representatives of the economic operators. Such rules apply whether the economic operator with a potential conflict of interest is a single tenderer, member of a group of tenderers, or a subcontractor to the any of the above.

In theory, any action in breach of the law would lead to the contract being void and criminal charges being filed with the State Attorney's Office. However, the Act does not specify who is responsible for monitoring compliance with this provision. The representatives of the institutions interviewed for this research (the SCSPPP, the DPPS, and the Faculties of Law in Zagreb and Osijek), were unsure about who would be responsible for cancelling a contract and reporting the case for further action.

One representative of the CCI took the view that the CCI is competent to perform this role, to the extent that the provisions in the procurement act coincide with Articles 17 and 18 of the Act on Preventing the Conflict of Interest.³² However, this omits many personnel involved in the public procurement process, particularly at the local level. CPOs, for example, are beyond its remit³³, as are the senior managers of economic operators owned and established by local and regional governments remain out of their jurisdiction. The Act on Conflicts of Interest does not cover most Type C and Type D contracting authorities. The Act on the Prevention of Conflicts of Interest does cover the senior management of state-owned companies³⁴, but not public companies that are owned by regional and local governments. In addition, the Act does not cover the heads of contracting authorities that are appointed by individual ministers, mayors or city councils. Overall, the majority of public sector entities (such as schools, hospitals, and social service providers) are beyond the scope of the Act³⁵.

The CCI ruled in 30 cases relevant to public procurement in the period observed³⁶, with consequences for the offenders in 2 cases (HRK 30.000 and HRK10.000 fines).

5. The Criminal Justice System

The criminal justice system has the power to act on reports or indications of criminal acts in the public procurement domain. The police may initiate an investigation following a report from an interested party (a citizen, legal person or prosecutor's office), while prosecutors may initiate investigations based on any information or suspicion of a criminal act, whether originating in the media, public statements or reports by other state authorities or citizens.

However, while Croatia's USKOK institutional framework³⁷ is advanced in terms of the fight against corruption, the lack of public procurement expertise in prosecutors' offices and police departments means they depend on other state bodies for expertise in understanding specific violations of the PP Act. Although the crime of abuse of the public procurement procedure (Criminal Code, Article 254) has existed since 2012, there is no evidence of a

³² Officials covered by the Act on Preventing the Conflict of Interest are officers appointed by or approved by the Croatian Parliament, Government of the Republic of Croatia or the President of the Republic of Croatia; see OG 26/11, 12/12, 124/12, 48/13.

³³ The notion of an official is prescribed in Act On Preventing Of The Conflict Of Interest in Article 3 paragraph 1 (Official Gazette 26/11, 12/12, 124/12, 48/13)

³⁴ Article 3, paragraph 1 (41) of the Act.

³⁵ Act on Conflicts of Interest, Official Gazette 26/11, 12/12, 124/12, 48/13.

³⁶ In 2010, 2011 and 2013. Data for 2012 not available.

³⁷ Croatia has set up a combination of law enforcement and judicial structures specialised in dealing with corruption and organised crime; the so called USKOK Vertical, including the following institutions: National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK); Office for the Suppression of Corruption and Organised Crime (USKOK) and Special USKOK courts.

single case being prosecuted. The Criminal Justice system has acted on one case of a suspected violation of Article 254 of Criminal Code (*Public procurement procedure abuse*), since this article was introduced in the new Criminal Code and entered into force on 1 January 2013.³⁸ In this case, the criminal allegation was rejected by the Slavonski Brod public prosecutor's office (CBS, 2014).

6. The Transparency Framework and Civil Society Scrutiny

The 2011 Act introduced several new instruments to increase transparency and enhance civil society scrutiny of public procurement procedures. For example, the Act obliges contracting authorities to adopt and publish procurement plans for the budget or business year, to establish and publish a register of public procurement contracts and FAs awarded³⁹, and to update the information in the register at least every six months. However, this research has found that a majority of public procurement procedures take place among state-owned entities that are beyond the scope of many of these rules. In addition, Bajo (2012) has questioned the ability of the public or civil society to scrutinise the financial operations and performance of Type C and D entities, because the official data on their revenues, expenditure, assets and liabilities is provided without adequate information on methodology.

Moreover, the ability for civil society to hold these institutions to account is fundamentally undermined by their governance structure. Civil society organisations might find evidence of anomalies or violations by contracting authorities and raise concerns in the public domain. However, for many Type C and Type D contracting authorities, it is only the owners of the contracting authorities that have the power to impose sanctions on managers. Thus control rests with internal accountability mechanisms that are ultimately controlled by the political party (or political patrons) which appointed those managers. Because national, regional and local governments, and thus elected politicians at these levels, have the right to appoint the senior management structures of these companies, the exertion of political influence over these companies is legal, indeed, institutionalised.

Our research sought to establish the importance of civil society scrutiny in monitoring public procurement by conducting an analysis of media and publicly available data to establish⁴⁰ the number of cases where companies were accused of wrongdoing by the public, civil society or media organisations in connection with the public procurement in our sample. This was then compared with the number of cases in which internal control institutions acted to investigate allegations, and the number of investigations which have thus far led to a verdict. The results are presented in table 10.

³⁸ OG 125/11, 144/12.

³⁹ Publication of actual contracts and framework agreements.

⁴⁰ NB: for the purpose of analysing publicly available data, the following code words are used (affair; procurement; abuse; corruption; investigation; verdict) that commonly appeared in reports on corruption in public procurement or public and private companies.

Table 10 Tenderers with contract(s) above HRK 7,452,830 in public procurement of works detected by accountability mechanisms

	Number of tenderers	Value of work contracts (2011-2013)
Total number of tenderers	175	15.9bn
Allegations	85	7.8bn
Investigations	34	3.2bn
Verdict	7	0.9bn

Source: author's calculations based on online media reports.

The discrepancies between the numbers of allegations, investigations and verdicts suggests that state prosecutors are not actively concerned about public procurement, despite the high standards set in the legal framework. This implies a lack of coordination which may jeopardise the system for ensuring integrity in public procurement procedures. It might also be indicative of particularism in the judicial system.

VI. CONCLUSIONS

Croatia's public procurement law sets a high standard and has established some important transparency and control mechanisms. However, the integrity of procurement is seriously undermined because of the common practice of contracting through entities which are outside the scope of the control framework and, by contrast, greatly subject to political influence. The scope of this problem is extensive. In 2012, the total value of public procurement carried out by Type C and D authorities under weak control mechanisms, along with petty procurement (for which there is no obligation to implement conduct procurement in line with specified procedures), represented around 85% of total procurement. Moreover, analysis of the timing of management appointments suggests that political leaders use their patronage powers over the heads of these contracting authorities extensively.

The research also analysed high-value construction contracts awarded in 2011-13 for indicators of favouritism in the process or outcomes. Whilst use of restrictive procedures is not excessive, competition for public contracts is surprisingly weak in a sector under considerable economic pressure. However, in combination with the weak control mechanisms around many contracting authorities, the indicator of greater concern is that around one-half of contract value is won by tenderers which are not private companies but rather entities that are partially or fully owned by the state. This suggests that political leaders and parties have the potential to influence the process so as to achieve favouritism in the allocation of public contracts, to benefit themselves or third parties. Evidence from the FIMI Media case, involving the most senior politicians in a scheme that used public procurement to trade political donations for contracts, suggests that such favouritism may be widespread. Finally, the existing control mechanisms have a reasonable array of powers in theory, but in practice lack expertise and will to monitor public procurement adequately.

APPENDICES

Appendix 1 Value of public procurement and the proportion of public procurement in GDP, Croatia 2008-2013

Year	GDP in HRK bn	Public procurement in HRK bn	% of GDP
2008	343.4	35.8	10.4
2009	328.7	40.6	12.4
2010	323.8	24.8	7.7
2011	328.7	30.8	9.4
2012	327.0	31.5	9.6
2013	326.8	31.6	9.7

Source: author's calculations based on data from the Directorate for Public Procurement System and Croatian Bureau of Statistics

Appendix 2 Structure of the value of public procurement by type of contracting authority, Croatia 2008-2013 (in HRK bn and % of total)

		Type A	Type B	Type C	Type D	Petty PP	Total
2008	HRK bn	1.5	8.7	19.6	3.1	3.0	35.8
	%	4.1	24.4	54.7	8.6	8.3	100.0
2009	HRK bn	3.4	6.0	23.0	4.9	3.2	40.6
	%	8.4	14.7	56.7	12.1	8.0	100.0
2010	HRK bn	2.8	2.1	9.7	5.6	4.6	24.8
	%	11.21	8.35	39.14	22.69	18.60	100.0
2011	HRK bn	2.9	2.2	14.1	7.1	4.6	30.8
	%	9.3	7.0	45.9	22.9	14.9	100.0
2012	HRK bn	1.7	2.5	15.1	7.3	4.9	31.5
	%	5.48	7.90	47.97	23.20	15.45	100.0
2013	HRK bn	2.1	5.8	16.4	2.2	5.1	31.6
	%	6.6	18.3	52.1	7.1	16.1	100.0

Source: author's calculations based on data from the DPSS

Appendix 3 Value of executed construction works, Croatia 2008-2013 (in HRK bn and % of GDP)

Year	GDP in HRK bn	Total construction sector, value in HRK bn	% of GDP	Construction procurement value in HRK bn	% of procurement in construction sector value
2008	343.4	27.8	8.1	8.4	30.2
2009	328.7	24.4	7.4	21.8	89.3
2010	323.8	17.9	5.5	9.8	54.7
2011	328.7	16.8	5.1	9.4	56.0
2012	327.0	16.0	4.9	9.1	56.9
2013	326.8	15.1	4.6	10.0	66.2

Source: author's calculations based on data from the Croatian Bureau of Statistics and the Directorate for Public Procurement System

Appendix 4 Contracting authorities with contracts for the procurement of works equal to or greater than HRK 7,452,830, Croatia 2011-13

<i>State-owned enterprises</i>	Small enterprises	Medium enterprises	Large enterprises	Total
2011-2013				
Number of enterprises showing profits	9	15	5	29
Cumulative profits (HRK)	8,797,156	219,358,113	1,536,235,858	1,764,391,127
Value of public procurement, works contract/s (HRK)	550,201,469	4,156,165,111	722,135,139	5,428,501,719
Number of employees 2011	718	3,013	10,745	14,476
Number of employees 2012	714	2,974	10,686	14,374
Number of employees 2013	688	4,377	9,472	14,537
Number of enterprises showing losses	5	8	7	20
Cumulative losses (HRK)	-27,906,384	-283,976,120	-1,776,307,228	-2,088,189,732
Value of public procurement, works contract/s (HRK)	352,236,618	475,137,378	1,109,985,501	1,937,359,497

Number of employees 2011	587	1,143	17,312	19,042
Number of employees 2012	599	1,277	16,349	18,225
Number of employees 2013	569	1,250	15,666	17,485
Total state-owned enterprises	14	23	12	49
<i>Private-owned enterprises 2011-2013</i>	Small enterprises	Medium enterprises	Large enterprises	Total
Number of enterprises showing profits	45	38	12	95
Cumulative profits (HRK)	102,736,738	660,582,809	636,070,612	1,399,390,159
Value of public procurement, works contract/s (HRK)	1,141,415,544	3,414,113,397	1,692,565,885	6,248,094,827
Number of employees 2011	1,772	4,779	6,089	12,640
Number of employees 2012	1,831	4,751	6,117	12,699
Number of employees 2013	1,926	4,899	6,003	12,828
Number of enterprises	11	14	6	31

showing losses				
Cumulative losses (HRK)	-154,537,039	-278,685,954	-1,938,344,411	-2,371,567,404
Value of public procurement, works contract/s(HRK)	484,331,279	688,838,137	1,121,360,903	2,294,530,320
Number of employees 2011	942	1,811	5,691	8,444
Number of employees 2012	509	1,651	4,362	6,522
Number of employees 2013	427	1,414	3,626	5,467
Total private-owned enterprises	56	52	18	126
TOTAL ENTERPRISES	70	75	30	175

Source: author's calculations based on data received from the Directorate for Public Procurement System and Financial Agency

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Project profile

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The fundamental purpose of ANTICORRP is to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue is how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP seeks to advance the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis is laid on the agency of different state and non-state actors to contribute to building good governance.

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