

**EKONOMSKA SUŠTINA I FORMALNO
POSTUPANJE U JAVNIM
NABAVKAMA-IMPLIKACIJE NA
NASTANAK ŠTETE**

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SAŽETAK

Rad analizira odnos ekonomske suštine i formalnog postupanja u postupcima javnih nabavki, sa posebnim osvrtom na implikacije koje takav odnos ima na nastanak štete, naročito u vidu izgubljene dobiti. Fokus je na situacijama u kojima je ponuđač izabran kao najpovoljniji, ali ugovor nije realizovan usljed žalbenih postupaka ili nepostupanja ugovornog organa. Polazeći od pravnog okvira i sudske prakse, rad ukazuje da formalno nepostojanje ugovora ne isključuje postojanje štete, ukoliko postoji realna i dokaziva mogućnost njegove realizacije. Poseban značaj daje se ulozi ekonomskog vještačenja u kvantifikaciji izgubljene dobiti, kroz definisanje ključnih metodoloških koraka i primjenu principa ekonomske suštine iznad pravne forme. Rad potvrđuje da pravilno razumijevanje ekonomskog sadržaja transakcija ima ključnu ulogu u utvrđivanju i naknadi štete u postupcima javnih nabavki.

Ključne riječi: izgubljena dobit, javne nabavke, ekonomsko vještačenje, naknada štete, najpovoljniji ponuđač, praksa

primjene propisa, ekonomska analiza, procjena štete, suština iznad forme.

**SUBSTANCE OVER FORM IN PUBLIC
PROCUREMENT- IMPLICATIONS
FOR THE OCCURRENCE OF
DAMAGES****ABSTRACT**

This paper analyzes the relationship between economic substance and formal conduct in public procurement procedures, with particular emphasis on the implications such a relationship has on the occurrence of damages, especially in the form of lost profit. The focus is on situations where a bidder was selected as the most advantageous, but the contract was not executed due to appeal procedures or the inaction of the contracting authority. Based on the legal framework and case law, the paper demonstrates that the absence of a formally concluded contract does not preclude the existence of damage, provided that there is a real and demonstrable possibility of its execution. Special attention is given to the role of forensic economic analysis in quantifying lost profit, through the application of a structured methodological approach and the principle of substance over form. The paper concludes that a proper understanding of the economic substance of transactions plays a crucial role in determining and compensating damages in public procurement procedures.

Keywords: lost profit, public procurement, financial expert witness analysis, damages compensation, most economically advantageous bidder, regulatory practice, economic analysis, damage assessment, substance over form.