Professional Paper
UDC: 658.14/65.012
Paper Received:02/07/2021
Paper Accepted: 03/08/2021

DEFINING APPELLATE ALLEGATIONS IN PUBLIC PROCUREMENT CASES –THEORY AND PRACTICE

Lucija Petrovčić, spec. publ. admin.
Nikola Tesla Polytechnics of Gospić, Gospić, Croatia
lpetrovcic@velegs-nikolatesla.hr
Martina Matošević
Public procurement/Regulatory administration work, Medial Ltd, Zagreb, Croatia
martina.matosevic@velegs-nikolatesla.hr

ABSTRACT:

This paper introduces the appeal process into the legal framework and gives a brief overview of appeal proceedings in public procurement cases in theory and practice. Consequently, in practice, the appeal process usually ends with rejection of the appeal because of the unfoundedness of the appellate allegations and as a result of which months are lost in which the client stops the procedure and cannot contract until the State Commission for Control of the Procedure makes a decision, this paper focuses on the factual basis of the appeal process. Based on the above, at the heart of the subject analysis and reflection are the important issues of good definition of grievance allegations as a product of good practice and imperatives in the skills of filing grievances and proving that grievance allegations are discussed, giving critique and concrete suggestions of key methodology for setting elements of factual support. In this regard, examples of flat-rate appeal proceedings are presented, which stand out as the most common reasons for the loss of time in which the contracting authority could have completed the public procurement procedure in question. Also, from the client's perspective, the importance of willingness to prove and justify annulment or selection is emphasized. The task of this paper is a thorough review of the most common problems during the appeal process in terms of the effective legal protection

encountered by authorized representatives of contracting authorities and tenderers in the procedure, whose phases will try to justify the hypothesis that the demanding administrative complexity of the appeal process in terms of proving and refuting appellate allegations is one of the key reasons for the procedural issues of public procurement.

Keywords: *public procurement, appeal process*

1. INTRODUCTION

According to the latest data published in the Statistical Report on Public Procurement in the Republic of Croatia for 2019, the total value of public procurement amounts to HRK 54,105,927.15 without VAT. A large number of economic entities on the market, as well as public and sectoral ordering parties, establish contractual relations based on conducted public procurement procedures. A market competition in which such a large number of participants compete for a contract can undoubtedly end up in a way that individual participants feel that they were not selected due to violation of subjective rights and are therefore damaged. In order to guarantee legal security to the participants in the public procurement procedure and ensure the lawful use of budget funds, the legislator provided an appeal procedure as a legal remedy. The possibility of consuming a legal remedy in public procurement procedures provides the possibility of legal protection to many economic entities that are participants in the procedure if they consider that they have suffered damage due to violation of subjective rights provided that they had a legal interest in obtaining a particular public procurement contract. Also, the appeal process's legal security undoubtedly strengthens the participants' confidence in the procedures in the very legality of the implementation of the procedures. Public procurement is a living system of normative frameworks with a tendency to complement through good practice and improvement following the challenges of the new time, which, due to the adjustments, represent a platform for new procedural practice in terms of public procurement of innovative solutions.

2. IMPERATIVE OF THE APPEAL ALLEGATION IN THE APPEAL PROCEDURE

When an aggrieved party considers that it has suffered damage and decides to initiate an appeal procedure, it is first necessary to define well and provide good argumentation on the irregularity due to which it considers that there has been a violation of subjective rights and ultimately damage. Although the burden of proof is on both sides, the prerogative of the appellate

procedures is at the initiative of the appellant. Article 420, paragraph 1, of the Public Procurement Act (hereinafter: PPA)[1] defines the appeal as a description of irregularities and an explanation. The appeal statement is the mandatory content and the core of any appeal. An appeal that would not contain appellate allegations would be devoid of purpose. However, the complexity of the institute itself is, on a case-by-case basis, summarized in the question of which rights should be stated for the allegations to be substantiated. When defining appellate allegations, it is crucial to follow the provisions of the Procurement Documentation and how the ordering party has defined the requirements and the ways of proving that these requirements have been met. If the appellant files an appeal against the provisions of the Procurement Documentation, it is necessary that the appellate allegations have a basis in the legal provisions and that they are unquestionably proven. In principle, very clear, but in practice, the same requires applying both parties' learning outcomes and experiences to the appeal procedure.

2.1. APPELLATE ALLEGATIONS IN PRACTICE

In the continuation of the paper, two examples of defining the appellate allegation and factual determination and proving the circumstances of the appellate allegation are presented. Procedural complexity of appellate allegations, the importance of each segment of argumentation of appellate allegations with a broader picture of achieving the objectives of the ordering party and appellant's appellate rights, within the legal framework, make each appellate procurement procedure a subject that requires a separate systematic analysis of the case. We first point out the appellate procedure case in which the appellate allegation is not adequately defined concerning the procedure stage to which the appeal is lodged. It is clear from the above example that if the appellate allegations are not following the legal provisions regarding the moment of declaring an individual appellate allegation, such allegations are assessed as unfounded, and the appeal is rejected. In the second example, we emphasize the importance of factually establishing and proving the appellate allegations' circumstances. It is necessary that every appellate allegation has a basis in legal provisions and is unquestionably proven. If the appellate allegations remain only allegations, without reference to evidence and a link to laws/bylaws, such allegations are assessed as unfounded, and the appeal is rejected.

1 Public Procurement Act, the Official Gazette of the Republic of Croatia, No 120/16

2.1.1. An example of appeal definition issues

From the Decision of the State Commission for Supervision of Public Procurement Procedures (hereinafter: DKOM)[2] of June 24, 2021, in which the appellant Srijem Ltd from Osijek files an appeal against the Decision on Annulment in the open procurement procedure for the subject of the procurement: gloves, ordered by Dr Josip Benčević General Hospital of Slavonski Brod, we see an example of the appeal's rejection due to its unfoundedness. In the appeal, the appellant disputes the validity of the review and evaluation of bids and proposes the annulment of the Decision on Annulment. He considers that the ordering party unfoundedly rejected his offer. The appellant's offer was rejected due to non-compliance with the required description of the technical specification for item 6 of the cost estimate - cotton gloves, packed in pairs, size 6-16. The appellant offered size of 6-12 for the said item. Following the above, the ordering party determines that the appellant does not have sizes 13-16 and rejects the bid. The appellant explains the appeal so that sizes 13-16 do not exist at all and refers to the novelty in the labelling and nomenclature of cotton gloves, according to which the largest size is 12-XXXL. It is clear that the appellant bases the backbone of the appeal on the appeal allegation, which is not appropriate to the stage of the procedure in which the appeal was filed (on the Decision on Annulment). It is primarily emphasized here that the provision of Article 280, paragraph 4, of the PPA, prescribes that tenderers prepare their tender exclusively according to the requirements and conditions defined in the Procurement Documentation. Therefore, in this case, the appellant was obliged to prepare a bid following the Documentation conditions and the ordering party was obliged to evaluate such a bid. According to the provision of Article 202 of the PPA, in the previous stages of the procedures, the appellant had the opportunity to request the ordering party to amend the description of the disputed item. Also, following the provision of Article 406 (paragraph 1, item 1) of the PPA, the appellant could have filed an appeal alleging an unsatisfactory description of the item through an appeal to the Procurement Documentation. It is undisputed that the appellant was dissatisfied with the requested description of paragraph 6 concerning the prescribed sizes requested. However, when the ordering party reviewed and evaluated the tenders and decided to annul the procedure, the appellant's remark on the prescribed sizes was no longer relevant, and the appellate allegations failed.

[2] Decision of the State Commission for Supervision of Public Procurement Procedures, Class: UP/II-034-02/21-01/491; Registration Number: 354-01/21-6

2.1.2. An example of factual determination and proof of circumstances issues

From the DKOM Decision[3] of June 17, 2021, in which the appellant Hrvoje Pozar Energy Institute of Zagreb, lodges an appeal against the Decision on Selection in the open procurement procedure for the subject of the procurement: development of the investment concept of sustainable energy of the City of Rijeka, client City of Rijeka, we also see an example of the rejection of an appeal on the ground that the appeal allegation is unfounded. The appellant disputes the legality of the selection decision and the validity of the bid of the selected bidder and the second-ranked bidder. The challenge to the validity of the selected bidder's bid is based on the complaint stating that the selected bid was extremely low-priced, which distorted competition. In doing so, the appellant explains that the bid of the selected bidder is:

- more than 50% lower than the average selling price in the market,
- 50% lower than the estimated value of the purchase,
- 27% lower than the second-ranked offer.

Furthermore, following Article 22, paragraph 1 of the Regulations on procurement documentation and bidding in public procurement procedures (hereinafter: the Regulations)[4], some prerequisites must be met if the ordering party finds it necessary to require an explanation of an extremely low bid and these are:

- at least three valid bids have been received,
- the bid price is more than 20% lower than the price of the second-ranked valid bid,
- the price is more than 50% lower than the average price of the remaining valid bids.

The appellant's explanation of the reasons why he considers that the bid of the selected bidder, for which the ordering party was obliged to request an explanation of the extremely low bid, has no basis in the provisions of the Regulations that define an extremely low bid. If the appellant considered that there were circumstances for applying Article 22, paragraph 2, of the Regulations, which prescribes that the ordering party may require an explanation of

3 Decision of the State Commission for Supervision of Public Procurement Procedures, Class: UP/II-034-02/21-01/447; Registration Number: 354-01/21-9

4 Regulations on procurement documentation and bidding in public procurement procedures, Official Gazette No 65/2017, 75/2020

the very low price for other reasons, he should have proved and explained this, which he did not do. Also, the appellant's allegation in which the appellant alleges distortion of competition, which puts him in an unequal position, is not related to the established facts or is not substantiated or proved by the appellant. According to the provision of Article 403, paragraph 1, of the PPA, each party to the procedures shall state the facts on which its claims are based, and those facts must be substantiated. Thus, it is not sufficient to merely state the fact as an appellate allegation. If the appellate allegation is not proven, it remains assessed as a flat claim and an unfounded appellate allegation.

3. ISSUES OF PROVING / REFUTING APPELLATE ALLEGATIONS

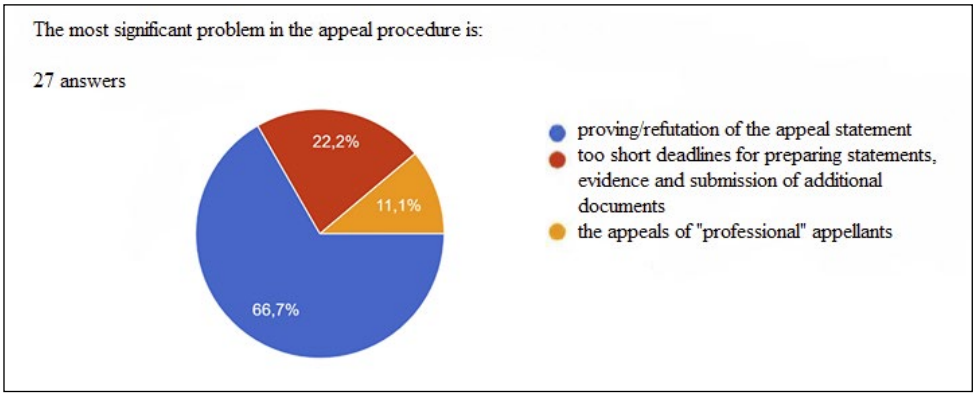
According to a survey conducted for a research seminar paper[5], in June 2021, we surveyed a sample of 27 respondents who were parties to appeal procedures, bidders and authorized representatives of public ordering parties, including a wide range of professionals engaged in the public procurement system. It is interesting to point out their answers to the question of what is their most significant problem in the appeal procedure. These are the ones who apply the normative frameworks, guidelines and recommendations in practice, thus creating an appeal procedure within this complex institute. As a critical issue in the course of the appeal procedure, 66.7% of the respondents consider proving/ refuting the allegations of the appeal. In addition, 22.2% of the respondents see too short deadlines for preparing statements, evidence and submission of additional documents as a problem, and 11.1% of them stated the problem of "professional" appellants. By analyzing the attached survey question, we would like to emphasize the justification of the central topic of this paper in terms of presenting the selection of specific issues of correct argumentation and refutation of appellate allegations, which represents food for thought and a problem "on both sides" of public procurement.

Regarding the selection of the respondents, it is clear that they had a common answer to one of the questions; unsurprisingly, most of them pointed out the so-called struggle with arguments as a stumbling block in the realization of the stated rights and legal interests. Therefore, the graphic presentation of the answers to this question shows that the

5 Matošević, M., 2021,"Pravni lijekovi u postupcima javne nabave", Nikola Tesla" Polytechnics of Gospić, research seminar paper

complexity and administrative demand of the appellate procedure lie mainly in proving/refuting the appellate allegations. From the above, it may be concluded that defining and proving the facts from the appellate allegations is crucial for the successful outcome of the appellate procedures, so it is important to ensure that all elements of the appellate allegation are well defined and proven.

3.1. GRAPHIC PRESENTATION OF THE ANSWER TO THE QUESTION OF THE MOST SIGNIFICANT PROBLEM DURING THE APPEAL PROCEDURE:



Source: Research seminar paper, Matošević, M.,"Pravni lijekovi u postupcima javne nabave"

4. PUBLIC PROCUREMENT AND NEW CHALLENGES REGARDING APPEAL PRACTICE

In a time of new challenges, crises caused by COVID-10 disease, parallelly with the development of new technologies, the fourth industrial revolution, energy transition and a whole new digital paradigm, subject reflections on modern public procurement have been placed in the context of time and new challenges. Guidance on Innovation Procurement C(2021) 4320[6], published on June 21, 2021, at the time of writing, makes an interesting novelty, i.e. legally non-binding practical guidelines in the field of PPA, both for the practical part and professional discussions. The document aims to encourage public investment through guidelines and examples of good practice with a tendency to

[6] Guidance on Innovation Procurement C(2021) 4320, available at: *https://ec.europa.eu/docsroom/documents/45975*), published on June 21, 2021.

transform the current economy into an economy of sustainable development[7]. The imperative is placed on the green and digital economy in line with the aforementioned new social paradigm. Besides the educational purpose of the inherent nature of the topic aimed at popularization of the practice, the document contains useful examples of how to conduct public procurement of innovative solutions, i.e. how to use opportunities to raise quality in the process and create new opportunities for companies, suppliers and society as a whole. It also prescribes intellectual property rights in the field of public procurement. The Guidance on Innovation Procurement lists the cooperation of public bodies with innovative companies as "first beneficiaries" in terms of public procurement of new or significantly improved products, services or processes that have not yet been placed on the market and are purchased by the first 20% of customers. Here it is important to point out the novelty introduced by the provisions of the PPA, which introduced a public procurement procedure called "Innovation Partnership", used when no solution is available on the market for the needs of the ordering party[8], according to which, based on the previous market research and analysis[9], Article 86., line 2, states that: "An ordering party may use an innovation partnership if it requires innovative goods, services or works which it cannot satisfy by procuring goods, services or works already available on the market". Sectoral ordering parties can also use innovation partnerships[10]. Furthermore, the only criterion for selecting a bid in an innovation partnership is exclusively the best price-quality ratio, qualitative criteria relating to the ability of competitors in the field of research and development[11]. In this regard, recommendations for the proper determination of the conditions of the ability of economic subjects, since the public procurement of innovative solutions involves risks, and in terms of procedural prerequisites for appealing, lodging an appeal and giving responses to the appeal according to the novelty mentioned above and its implementation in the complex institute of public procurement, will certainly have its place in expert discussions and the practice of appeal procedure, since the practice of appeal procedure in the field of innovation has not existed so far in the Republic of Croatia. However, the implementation of the public procurement procedure is

7 See: Komunikacija Komisije. Nova industrijska strategija za Europu, COM(2020)102, 10.3.2020. Available at: https://eurlex.europa.eu/legalcontent/HR/TXT/PDF/?uri=CELEX:52020DC0102&from=HR. Komunikacija Komisije, Strategija za MSP-ove i održivu i digitalnu Europu, COM(2020)103 final,10.3.2020. Available at: https://eurlex.europa.eu/legalcontent/HR/TXT/PDF/?uri=CELEX:52020DC0103&from=HR. te Mehanizam za oporavak i otpornost dostupno na web stranici: https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_hr)

8 See: Directive 2014/24/EU

9 See the Articles 198 and 199 of the PPA, OG No 120/16.

10 ibid. Art. 356

11 ibid. Art.130

underway. Namely, in December 2020, the City of Zagreb published the Imposition Notice for the subject of the procurement: Development of technological innovation to improve the sludge treatment line at the Central Wastewater Treatment Plant of the City of Zagreb by building an experimental plant and managing the experimental plant for one year, depending on success in experimental plant management and preparation of project documentation for sludge treatment plants and obtaining permits[12]. Given that this is a two-stage procedure in which negotiations are still underway, there are still no results on the termination of the procedure. Following all the above, there is no practice in appellate procedures. Unfortunately, the ordering parties do not apply this type of procedure, and therefore there is no practice regarding the remedy and the filing of appeals. Since this is a more recent institute whose practice is developing together with the transition of the innovation society, it may be concluded that the institute of public procurement of innovative solutions will be complemented by the practice of appeals whose interpretations of the most common "on-site" mistakes will be the flagship of good appellate practice. The challenges of the new industrial revolution bring new solutions that make business, public and private segments easier for all sectors within the public administration. With the tendency to introduce managerial principles in the ways of working of public bodies, the procurement of innovative solutions, new technologies, services and products should come to life in step with the digital transition of our society and thus appellate practices in public procurement innovation solutions. For example, let us imagine the first ideas of connecting cameras and mobile phones that classic mobile devices did not have twenty years ago[13] and a hypothetical case where the Ministry of Labor and Social Welfare considers purchasing mobile phones with integrated cameras necessary for employees. It prescribes their minimal technical characteristics, in this case, mobile devices for these employees, i.e. for the needs of their inspectors, whose scope includes fieldwork such as making the records with photo documentation. Then, for such a publication, it is possible that the appellant could state that the described technical specifications can be met only by one specific product, then the only manufacturer of mobile phones with an integrated camera, make a point on the product and thus the customer is referred to a specific item. Furthermore, the customer can explain and prove that the product represents the technical specifications necessary for its functionality, i.e. the realization of the purpose of the procurement in question. Without the mentioned specification, these devices will not have the required

12 In the Electronic Public Procurement Notice of the Republic of Croatia (EJON) under the code 2020 / S 0F2-0043800, a tender notice was published for the subject of procurement. (accessed: June 30, 2021)

13 The first such device was the Japanese mobile phone Sharp J-SH04, data available at https://global.sharp/corporate/info/his/only_one/item/t34.html (accessed: June 15, 2021)

function. It would be meaningless if we want to improve the way we work, and there is a product on the market whose need we can justify, that we should not look for such a product as long as there are no more manufacturers on the market that meet such a technical specification. It can also happen that when the deadline for submission of bids expires, other manufacturers will develop the technology in question. Although there is an obstacle to competition, in that case, the said condition, although restricting competition, would be justified. Also, the client can never be sure enough that he has researched the market well. However, if there were a dozen products on the market with an integrated camera, and the customer asks as a minimum technical characteristic that the camera should have a certain number of megapixels and thus refers to only one specific manufacturer, it would be difficult to argue.

4.1. REQUIRED FEATURES VS A MORE INNOVATIVE METHOD OF PRODUCTION

Although, as mentioned above, only one procedure of the Institute of Public Procurement Innovation is underway, to achieve the required product specification, the question arises whether the production method is essential, can it be more innovative and achieve the required characteristic? In terms of the issue in question and the reasoning within which we can draw a parallel comparison, the judgment of the High Administrative Court[14], which annulled the Decision of the DKOM[15] of 28 May 2021, is very interesting. Namely, the appellant stated that the technical characteristics are discriminatory because they refer to a particular method of production, which excludes products with the required characteristic (min. separation force required). The same technical characteristic can be achieved by glueing. Therefore, the appellant considers that the ordering party must have provided an equivalent method of production. The ordering party did not eliminate the appellant's objections with the evidence submitted in the appeal procedure and, among other things, did not prove in any way that only the injection method for joining the soles and shoe uppers was acceptable. Prescribing the required technical characteristic of the force of separation of the upper and soles, and prescribing only one method of joining (injection) that must be used to achieve the required characteristic, without allowing the provi-

14 The judgment of the High Administrative Court, VUS RH-Usll-153/21-11.

15 Decision of the State Commission for Supervision of Public Procurement Procedures, Class: UP/II-034-02/21-01/194.

sion of other equivalent methods that could also achieve the required characteristic, the ordering party acted contrary to the provisions of Article 210 of the PPA. Although the High Administrative Court annulled that decision, this is undoubtedly an excellent example of reflection in appellate practice regarding new methods and legal interpretation.

5. CONCLUSIVE REMARKS

Evidence and refutation of appellate allegations are key elements of the appellate procedure, and the success of the appeal depends on them, i.e. the success of refuting the appellate allegations and assessing the appeal as unfounded. Therefore, it is clear that the tremendous burden for the parties in the appellate procedures is precisely the quality of proving/refuting the appellate allegations. The justification of the central topic of this paper in terms of presenting the selection of specific issues of proper argumentation of appellate allegations and the issue of refuting them, in the fight against arguments, is a reflection and issues "on both sides" of public procurement. In the appellate procedure, bidders must define, explain and prove the appellate allegations in a good way. The prerogative of the appellate procedure is on the appellant. However, the burden of proof is on both sides, so the ordering parties must be prepared to refute the appellate allegations to prove the legality of the requirements and conditions of the Procurement Documentation, review procedure, evaluation and selection tenders. The outcome of the appeal procedure depends on the skill of proving. In order for the parties to the procedures to approach the appeal procedure as successful as possible, it is advisable to check the practice of the DKOM or the practice of the High Administrative Court in similar cases in case of dilemmas.

The challenges of the new industrial revolution bring new solutions that make business, public and private segments easier for all sectors within the public administration. Since this is a more recent institute whose practice is developing together with the transition of the innovation society, it may be concluded that the institute of public procurement of innovative solutions will be complemented by the practice of appeals whose interpretations of the most common "on-site" mistakes will be the flagship of good appellate practice. In this regard, we face the challenges of a new appellate practice regarding the public procurement of innovative solutions.

REFERENCES

1. Matošević, M., 2021."Pravni lijekovi u postupcima javne nabave",Veleučilište „Nikola Tesla" u Gospiću, a research seminar paper
2. Zakon o javnoj nabavi, Narodne Novine, broj 120/2016
3. Pravilnik o dokumentaciji o nabavi te ponudi u postupcima javne nabave, Narodne novine broj, N65/2017, 75/2020
4. Directive 2014/24/EU
5. Presuda Visokog upravnog suda (VUS RH-Usll-153/21-11)
6. Rješenja Državne komisije za kontrolu postupka javne nabave, Klasa: UP/II-034-02/21-01/447
7. Rješenja Državne komisije za kontrolu postupaka javne nabave, Klasa: UP/II-034-02/21-01/491
8. Rješenje Državne komisije za kontrolu postupka javne nabave, Klasa: UP/II-034-02/21-01/194
9. Statističko izvješće o javnoj nabavi u Republici Hrvatskoj za 2019. godinu *http://www.javnanabava.hr/userdocsimages/Statisticko_izvjesce_JN-2019%20-%20NOVO-converted.pdf*
10. Smjernice za javnu nabavu inovativnih rješenja, Guidance on Innovation Procurement C(2021) 4320. Available at: *https://ec.europa.eu/docsroom/documents/45975*). Published on June 21, 2021.
11. Komunikacija Komisije, Nova industrijska strategija za Europu, COM(2020)102 final, March 10,2020.*https://eurlex.europa.eu/legalcontent/HR/TXT/PDF/?uri=CELEX:52020DC0102&from=HR*.
12. Komunikacija Komisije, Strategija za MSP-ove i održivu i digitalnu Europu, COM(2020)103 final, March 10, 2020. *https://eurlex.europa.eu/legalcontent/HR/TXT/PDF/?uri=CELEX:52020DC0103&from=HR*.
13. Mehanizam za oporavak i otpornost *https://ec.europa.eu/info/business-economy-euro/recovery-coronavirus/recovery-and-resilience-facility_hr*)
14. Postupak Partnerstva za inovacije na EJON RH 2020/S 0F2-0043800 (accessed on June 30, 2021).
15. Web adresa zanimljivosti o mobilnom uređaju s prvom integriranom kamerom Sharp J-SH04 *https://global.sharp/corporate/info/his/only_one/item/t34.html* (accessed on June 15, 2021)

DEFINIRANJE ŽALBENIH NAVODA U POSTUPCIMA JAVNE NABAVE – TEORIJA I PRAKSA

SAŽETAK RADA

U radu se uvodno žalbeni postupak stavlja u zakonske okvire te sažeto daje pregled žalbenih postupaka u predmetima javne nabave u teoriji i praksi. Budući da u praksi žalbeni postupci završavaju odbijanjem žalbe zbog neosnovanosti žalbenih navoda uslijed kojih se gube mjeseci u kojima naručitelj staje s postupkom i ne može ugovarati sve dok Državna komisija za kontrolu postupka ne donese rješenje, ovaj rad u fokus stavlja činjenična uporišta žalbenih navoda. Temeljem navedenog, u središtu predmetne analize i promišljanja raspravlja se o važnim pitanjima dobrog definiranja žalbenih navoda kao produkta dobre prak-se i imperativa u vještinama postavljanja žalbe i dokazivanja žalbenih navoda dajući kritike i konkretne prijedloge ključne metodologije postavljanja elemenata činjeničnog uporišta. S tim u svezi, prikazuju se primjeri paušalnih žalbenih navoda koji se ističu kao najčešći razlozi gubitka vremena u kojem je naručitelj mogao okončati postupak predmetne javne nabave. Također, iz perspektive naručitelja, ističe se važnost spremnosti na dokazivanje i obrazloženje poništenja ili odabira. Zadatak ovog rada temeljit je pregled najčešćih problema tijekom žalbenog postupka u pogledu efikasne pravne zaštite s kojima se susreću ovlašteni predstavnici naručitelja i ponuditelja u postupku, čije će faze pokušati opravdati hipotezu da je zahtjevna administrativna složenost žalbenog postupka u pogledu dokazivanja i pobijanja žalbenih navoda jedan od ključnih razloga proceduralne problematike javne nabave.

Ključne riječi: *javna nabava, žalbeni postupak*