



– TOWARDS MORE INTEGRITY IN PUBLIC PROCUREMENTS IN EUROPE



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Transparency International Hungary, as an independent professional organization, contributes to mitigating corruption, promotes transparency and accountability in public decision-making processes as well as in the allocation of public funds, and improves access to information in the public interest.

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INTRODUCTION

Procurement is an area most prone to corruption in Hungary where substantial amount of public funds are used for private benefit. Due to a centralized model of corruption the risk of misusing public funds is higher and the chance that decision-makers step up against it is getting lower. According to estimations of Transparency International Hungary published in November 2015, more than 90% of the projects financed from EU Funds may be affected by overpricing, which makes the procurements 20-25% more expensive compared to the market prices.

Since the significance of public procurement markets in the European economy cannot be underestimated, it is of utmost importance to fight against corruption in public procurements with every possible means and tools.

Transparency International Hungary (TI Hungary) in cooperation with its project partners, K-Monitor Watchdog Organisation for Public funds, and PetaByte IT Research Company, started working on the “Red Flags” tool in 2013, when the European Commission (DG HOME) granted support for the project under the Programme “Prevention of and Fight against Crime”. Our main aim was to develop a new risk assessment methodology in the field of public procurement, to create an interactive online monitoring tool and a structured database that allows controls, investigations and analyses. We hoped that all kind of groups of the society would find our tool useful: not only public procurement experts or authorities in charge of controlling public procurement procedures, but also active citizens, journalists or competitor market players.

We officially launched the tool, that is www.redflags.eu website, on 9 November 2015, but our intention to further develop the tool did not cease to exist. One of the ways we wanted to explore was to examine the possibility of the adaptation of the tool to the public procurement system of another European Union Member State. At present, the tool monitors the Hungarian public procurement procedures published in Tenders Electronic Daily (TED). However, we believe that the tool is suitable for the adaptation after a careful assessment of the public procurement practice of the given Member State, since it works within the framework of the EU’s Public Procurement Directives.

To explore this possibility from a rather theoretical point of view, we launched a project with the support of the European Anti-Fraud Office, OLAF. In order to facilitate international dissemination of the Red Flags tool as well as to identify national specificities of procurement related risks in Slovakia, the Czech Republic, Lithuania and Latvia, TI Hungary organized a one-day international conference in Budapest on 27 October 2016 with the participation of representatives from authorities in charge of controlling

public procurements and NGOs from the four countries. This conference allowed to foster cooperation and sharing of experiences to detect, assess and analyse risks of fraud against EU funds in the participating countries.

This booklet is the outcome of this conference. Following a brief introduction of the Red Flags tool, and a practical guide for adaptation of the tool, it presents the national specificities of the four participant countries, and shows our experiences and the lessons we learned over the course of the conference.

We hope that this compilation will be a useful material for anyone interesting in countering the public procurement corruption risks and wishing to adapt the Red Flags tool.

“Red Flags” – a New Automatic Warning System

by Anita Németh, attorney-at-law, expert of Transparency International Hungary

Within the framework of the Red Flags project – building on the results from previous analyses and tools – **a new automatic warning system** has been developed in the field of public procurement. The operation of the Red Flags system is based on publicly available data in TED. This system is fundamentally intended to identify and highlight corruption threats and risk factors on the basis of data in public procurement notices possible to detect with IT tools, which can also have a preventive function.

The Red Flags warning system has been developed with the Hungarian legislative framework in mind: we defined indicators, tested the system and set the signal thresholds of the individual indicators based on the data and information in the standard forms of public procurement procedures announced in accordance with Hungarian public procurement regulations. By using this approach, the warning system may be adapted to the different regulations of individual Member States of the EU for wider use while still based on the same standard forms, which also enables comparisons at European level.

Contract notices are the purest sources of public procurement processes, as they include the actual and public data provided by the contracting authorities. This resource is definitely an advantage in that the basis for the operation of the system is a reliable, relevant and relatively well-structured body of data that shows up true correlations. However, the weakness of the tool can also be traced back to this same aspect: on the one hand, the data is not complete as far as showing the most characteristic symptoms and conditions of public procurement corruption is concerned (as the primary goal of publishing this data is different); on the other, in contrast to the whole of public procurement a process, the public announcements launching the procedure and informing about its outcome limit the scope and the publication of data to these two steps in the process. The evaluation of the history of projects before and after tendering and contracting, and warnings based on these would require involving further internal and external data resources. For this reason, we wish to stress that further data that can be linked to the database and the involvement of human resources and analyses can generate **further added value for the operation of the tool**.

With an automatic warning tool like this, **the system, scope and quality of data is essential**. From this point of view, **the unified system of standard forms** under the EU regulations is a favourable starting point, just as the fact that the other pillar of development, **Hungary's legislative environment** requires contracting authorities to provide a more than averagely large scope of data, with greater precision. (At the same time, the data content and systematic structure of EU public procurement notices could be further improved, which would also help the useful operation of risk warning systems.)

While creating the tool, we took **a wide interpretation of corruption** as our basis and included elements in our warning system that do not obviously manifest in all corruption cases, or do not inevitably lead to corruption. Thus, not all flagged public procurement procedures can be automatically considered corrupt. This new warning system capable of predicting risks and negative effects is not a tool for measuring corruption. The signals raise awareness, and multiple signals may point to a more severe risk or even corruption. This warning may be ominous signs for contracting authorities in public procurement procedures as to what is worth avoiding in the interest of fair competition.

The red flag warning system **may be used for different purposes**. First of all, it helps predict corruption risks and other risks in relation to individual public procurement procedures, so its preventive function must be emphasised. At the same time, based on the assessment of the contents of the contract award notice and certain data connections between the two notices, the system may give signals that may highlight important characteristics and risks related to the public procurement procedures, albeit only in retrospect. In addition to the above, based on the involvement of large amounts of available structured data and other databases further analysis may become possible, which allow conclusions beyond the direct public procurement procedures, and make the assessment of contracting authorities, tenderers, or a specific public procurement practice in the market possible for certain characteristics. Following the tested adaptation of the so called basic version of the warning system in the **Member States of the EU**, there is also an opportunity for comparisons **at European level**.

Within the framework of this project, the definition and development of indicators could be realised in a somewhat **restricted scope**. This means that we relied on the EU standard forms and only public procurements of higher values that reach or exceed EU thresholds, and within those concentrated on ones that are related to the general procedural rules on the public procurements of so called classic contracting authorities.

Based on earlier and current research, materials and experience, all potential **indicators** were **collected** that may help to point out critical issues with an influence on the integrity of any given public procurement procedure, and show corruption risks or a correlation with these. After that, the list of potential indicators was **"cleaned", fine-tuned, tested and categorised** in several steps using several methods. (The testing and evaluation of indicators took place in a separate stage.)

It was reasonable to **distinguish** between the remaining indicators whether the signalled risk can be identified based on concrete information characteristics to the specific public procurement procedure, included in the contract notice or omitted, or a potential risk is signalled based on general information or threats experienced earlier in the given (in our case Hungarian) public procurement market in relation to the data included in the given notice. In the former case, signals are **red flag signals (red flag indicators, "red flags")** based on the specific data of the given public procurement procedure. We have to distinguish these from indicators that give so called **other risk signals (other risk indicators, "pink flags")**, and highlight that based on earlier market or other database information the link of the given characteristic to the public procurement procedure definitely merits attention, adds detail to the picture, but in itself does not determine the assessment of the given procedure. This latter group includes indicators, such as information on whether the contracting authority had been previously convicted by final judgement for public procurement offences, or what reputation he has in the market. The issue of potential cartel activities in relation to public procurements is another such indicator. Information and company data linked to the winning economic actor(s) are also suitable for signalling risks.

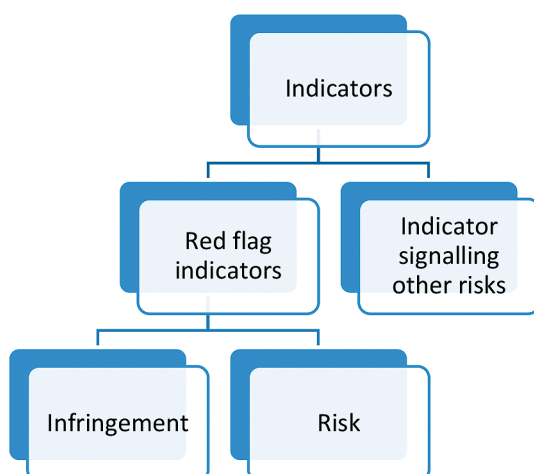
Signals of red flags indicating risks based on notice data related to the given public procurement procedure **can be divided into two further groups**, though the tool does not indicate this. The basis of the signals of red flag indicators in one group is the **infringement of a legal requirement** relevant for fair competition and corruption risks. This means that the basis for the development of the indicator is the compliance with legal requirements, but this does not inevitably mean that all signals stand for an actual infringement, even though the system is characteristically capable of signalling exactly that. A signal triggered for example by any occasion where in procedures of two- or more stages the contracting authority restricts the number of participants more than is stipulated in legislation (determines a lower maximum number of participants), is information that allows a conclusion to a definite infringement of legal regulations.

The basis of the signals of red flag indicators in the other group is a so called emergency relevant for fair competition and corruption risks that we identify as a **risk factor**. Publishing or setting certain conditions is namely not an infringement in itself, but has the potential to carry a true risk (e.g. use of an accelerated procedure in itself; conclusion of a public procurement contract for an indefinite or long term; or a so called one-tenderer procedure based on the data in the contract award notice; or a situation where a procedure was declared unsuccessful due to the fact that only invalid tenders were submitted).

It must be noted that there are indicators which are based on the assumption of an infringement, but due to the complexity of the topic or at the current level of development, they were rather classed as risks (e.g. the red flag indicator for the requirement of EU, co-financed references). Red flag indicators signalling issues on the border of an infringement and a risk can also be interpreted.

The distinction between indicators based on infringements and those signalling risks is not marked by the system when a notice is flagged, but it becomes clear from the summary and explanation of the indicators.

Figure: Grouping of indicators



As to the **methodology**, in this project **a simplified approach and method to the aggregated interpretation of indicator signals** in the automatic system was accepted. The gist of this approach is that based on the notices, the warning system shows how many indicators were triggered (in what fields, and on what grounds), i.e. how many “red flags” and “pink flags” marking other risks did the given notice receive. These automatic signals show for example how many of the currently working 32 indicators were triggered and in what form (“red or pink flags”) by a contract notice launching a public procurement procedure. For now, this approach is **quantitative**, i.e. we do not rate the importance of red flags, their relations to each other, or other possible differentiating factors. As we have already indicated, the development of a corruption index was also not our goal in this phase, however the architecture of the program allows the further development also in this direction. **In this project, risks (potential infringements) are identified and summarised.**

I. SUMMARY LIST OF INDICATORS – CONTRACT NOTICE

1. Contracting authority has been convicted by final judgement, or has bad reputation
2. Framework agreement with one tenderer
3. Framework agreement with more, but with less than 3 tenderers
4. Term of the framework agreement (long)
5. Estimated total value of framework agreement (high)
6. Object of public procurement (cartel risk)
7. High estimated value of the contract
8. Amounts excessively uncertain (great difference allowed)
9. Contract can be renewed (several times or for a longer time)
10. Term of the contract (long or indefinite)
11. Omission of the definition of compulsory grounds of exclusion
12. Economic and financial ability – no minimum requirements
13. Economic and financial ability – criteria for capital (levels)
14. Economic and financial ability – required sales revenues > estimated value
15. Economic and financial ability – statement of sales revenues (period)
16. Technical capacity – no minimum requirements
17. Technical capacity – reference value > 75% of estimated value
18. Technical capacity – period of reference requirement
19. Technical capacity – requirement of a reference performance under one contract
20. Technical capacity – requirement of references co-financed by the EU
21. Technical capacity – setting geographical requirements
22. Technical capacity – experience of experts involved (number of years)
23. The use of accelerated procedure
24. Legal grounds of negotiated procedure
25. The predefined number of candidates is low
26. No criteria specified for the reduction of candidate number
27. Definition of award criteria – incomplete (no constituent factor or at least 2 constituent factors)
28. Definition of award criteria – incomplete (no method defined basically)
29. Award criterion – payment deadline
30. Time limit for tendering or participation (short)
31. Opening date of tenders (if it differs from the time limit for tendering)
32. Tender guarantee (high amount)

II. SUMMARY LIST OF INDICATORS – CONTRACT AWARD NOTICE

1. Procedures without prior publication
2. Number of tenders received (low)
3. Winning economic operator(s) – related information
4. Ratio of the total final value and the estimated value
5. Unsuccessful procedure for risky reasons
6. Unsuccessful procedure without statement of reason
7. Successful procedure without contracting
8. *Duration of evaluation (long) (different data in the new standard form → Ø no indicator)*¹
9. Final value of the contract is high

¹ All the indicators were revised on the basis of the new standard forms of notices and the new Hungarian Act of 2015 on Public Procurements.

Practical Recommendations for the Adaption of the “Red Flags” Tool and Possible Ways for Further Developments

by Sándor Léderer, director of K-Monitor

The next few pages are a short summary of recommendations on how to adopt redflags.eu in other countries based on our experiences of implementing it in Hungary. In addition, an overview of possible extensions and future developments is provided.

Need assessment

Although we are sure that Red Flags is an innovative, useful tool, before implementation it has to be assessed **whether there is a real need** for it in your country, city or agency. Also it is important to see who would use it, whom you want to assist with the tool. This can be journalists, NGOs, academics or representatives of public administration. In Hungary, we defined journalists and NGOs as our primary target group. We see active citizens as important partners, academics and public administration as groups that can also benefit from the tool and receive more tailor shaped features from future extensions of the tool.

Also, **the purpose of the Red Flags system** has to be assessed: Do you want the tool to be used as a signalling tool for prevention? Do you want to engage citizens or concerned experts to evaluate investments? Or, rather analyze how prone to corruption the procurement market is? Maybe you want to assess whether your procurement contains any risks before it is published? These are all very different scenarios. It is very important to have a clear vision of these use cases to be able to develop a system that reflects on real needs. When building redflags.eu we conducted interviews with relevant stakeholders to collect needs and later to get feedback on our first concept. In our case it was clear that the biggest need for such a tool comes from watchdogs, since there is a lack of commitment from the political side to let public administration do meaningful anti-corruption work. To enable the use for Academia, we developed an API to allow the further analysis of our data. By opening up our code, we also allowed others to test and replicate the tool. That is how ePanstwo Foundation has built a Polish prototype and is considering to deploy certain indicators based on their own procurement data tailor shaped on their own needs.

Is there data?

The most important input for the tool is data. **The more you have the better the tool will be.** Is procurement data available? Is it regularly updated? Is it published in open databases? Does its structure follow the same standards for the whole market you want to analyze? Are contracts and the amendments of notices available? Are there relevant external databases accessible, such as company registry or court decisions? Is it from a reliable source? If you are planning to use proprietary databases, how do you secure access to the wider public or updates once your access expires?

Laws and data structures change, so does procurement praxis. Due to the new EU Directives on Public Procurement, the Procurement Act and also the format of notices have changed. It gave us an enormous amount of work to comply with all changes and keep the tool functional. When planning the project be aware that the tool will need regular updating and maintenance. The Hungarian version of redflags.eu is based on data from the EU procurement database, Tenders Electronic Daily (TED), since there is no open company registry or court database most of our indicators focus on information from the TED. As

an extra, K-Monitor's press database is used to include the track record of companies and public institutions in connection with the spending of public funds. Unfortunately, TED does not provide information on contract amendments or fulfilment, therefore information on the whole procurement procedure is not available. This information could be the basis for further indicators such as increase in the final costs, extension of deadline, modification of quality or quantity of purchased goods & services.

Are you an expert of public procurements?

A crucial part of the work is the set up of the right indicators. To achieve this, you have to know about potential corruption risks and breaches of law in your field of action. Be sure to involve experts who can elaborate what you have to look at. There are several attempts around the globe to build tools that analyze corruption risks based on indicators (Arachne, World Bank, OpenContracting, ProZorro, DigiWhist, E-Prokurimi, Partnership for Social Development, etc), before building your own one, check what has already been done.

Indicators are not only a collection of ideas but they have to work properly on ten thousands of documents. Don't forget to test and validate indicators before using them. Same for using external databases or designing indicators based on market performance, company history, etc. We worked with a pool of procurement experts from academia, public administration and business to define indicators and set benchmarks for flagging (eg. what price for a contract is "too high", what criteria for expertise is excessive, etc). After defining more than 60 possible indicators based on notices, and months of intensive testing, we only installed the 40 that were fully operational.

Are you a coder?

Implementing the tool needs a lot of coding which has to go hand in hand with the design of the indicators. You will need exact specifications to find the right information at the right place and to make all algorithms work the way you have imagined. Redflags.eu is developed in Java. Our documentation² can be shared with your coder, it will guide her/him through the process. Be aware that the indicators never work without mistakes. We needed months of excessive testing and refinement of indicators before they could be activated on the website. Certain indicators remained prototypes, since the results they provided did not fulfil our expectations. In a next stage we collected feedback from users who provided us with valuable information on bugs, problems or simply ways to improve user experience. When planning the project, allocate time and capacities for this work, as well. It is crucial for having a fully functional system.

How much time / money / people do you need?

This depends of course on dozens of factors. You can create a basic adaption of the tool in 4-5 months, but the development of a complex system will take much more time. You will definitely need someone to shape the concept, manage the process, procurement experts to assist you in the indicator development, coders who will implement the indicators and testers who check and validate the indicators / outcomes. You can imagine that the price will depend on the experts you have to pay. As said, don't forget to think about sustainability! Such tools need updating whenever data formats, regulations, etc. change.

² <http://docs.redflags.eu/developer/cookbook/>

Main steps of implementation

- Formulate your needs / assess the availability and accessibility of data / assess risks / draw a concept
- Get all relevant experts on board
- Let them and other stakeholders assess the concept
- Finalize the concept
- Translate the code (if you use it in other language than English)
- Build your database (follow standards, use OCDS)
- Get the data
- Design and implement the indicators
- Test the indicators
- Refine the algorithms and test again (and again and again)
- Set up / adjust the user interface
- Invite stakeholders to try it, make modifications if needed.
- Let your audience and potential users know about the tool.

Options for further development

The current redflags.eu tool specified for Hungarian data from the TED could be extended with a various set of indicators or used in a variety of forms since it is open source and documented in detail.

Further indicators based on procurement data

Although we work with notices from TED with predefined indicators, the sources for procurement data can be widened in different ways. National databases often contain more information, eg. on other bidders, evaluation process, contract amendments, contract fulfilments, projects audits, etc. Also, the detailed documentation of a procurement can provide excessive information on content and the procurement process. Besides pre-set indicators, machine learning can provide patterns of fraud that cannot be detected by experts or classical data analysis.

Indicators based on external databases

Information on contracting authorities and bidders is extremely important when evaluating a tender. Contracting authorities with a bad track record can be pointed out even before bidding, while information on risky bidders can be obtained after the contract award is published. K-Monitor's database serves this purpose. Unfortunately, Hungary's company registry is only accessible via captchas, there is no free and open API available, therefore important information on bidders remain hidden from our users (but can be controlled manually). High market share of a bidder, high ratio of public funds among incomes, very low number of employees, no business history, problematic beneficial owner or signs for conflict of interest are just a few of indicators that can be developed on company data. Court decisions (eg, employment of illegal labour, previous violation of procurement law, cartel cases) or fines by authorities (eg. consumer rights, fair competition, or environmental issues) can also indicate risks.

Adaption to different legal environment / procurement praxis

Although data from the TED is available for all EU countries, the publication of notices and procurement practice can differ in a lot of ways. Working on national regime procurements need also various amendments to the redflags.eu code. Still it is worth the effort, since the modular open source concept allows modifications and extension without having to build a tool from scratch. This means that even a city or a development bank can benefit from adopting it to its own needs and data.

Modification to use data input APIs

Big contracting authorities can also make use of the tool as an internal integrity test before the publication of tenders. In this case data would not automatically be imported from public procurement databases but provided in a specific format by the procuring entity. Such a use can assist to the publication of calls that comply with the law and foster competition on the market.

Make indicators flexible, set own benchmarks

The Red Flags tool has pre-set benchmarks for its indicators such as the threshold for low amount of bidders, high estimated price, and uncertain quantity or excessive references. Of course the tool could enable flexible settings for users to use their own benchmarks or test results on a high scale of variables.

Use indicators for creating an index

The flags used in our system are all signals for risks. However, they do not evaluate the seriousness of a risk. Neither give the number of flags a real ranking of problematic procurements. Some flags show different aspects of a minor problem while others signalize a serious breach of law. To use redflags.eu as an index, weights must be attached to all of the indicators. This needs intensive analytical work and the consideration of issues such as the period of examination (if you look at the whole contract period, it becomes difficult to give an evaluation of a notice in the bidding phase), the seriousness of a risk, the relation of flags to each other, or the ratio of errors in the operation of a flag. Since redflags.eu is not intended to be an academic research system we did not develop such an index, but inserted an option for using weights into the code.

Profiles

The combination of indicators that often appear for certain contracting entities or bidders allows you to draw their risk profile. Such an analysis can highlight problematic practice at institutions or even a specific market. Results can be used to improve internal know-how, best practices or develop soft law to avoid problematic practice. Such profiles can also serve as a basis for in-depth research and advocacy to shape legislation.

Trends in Public Procurement Integrity and Legislation: Case of the Czech Republic

by David Ondračka, director of Transparency International Czech Republic

Public procurement integrity and efficiency is never-ending source of often furious and wild debates and will always be unavoidably issue of controversies between its stakeholders – government officials, businesses, oversight institutions, policy-makers, media, NGOs and general public. The true nature of public funds is in conflict. These are re-distributed and used by political nominees and administration with their limited incentives and accountability and on the other side highly motivated private sector which aims to get contracts and secure business opportunities. Therefore it always needs to be understood with this intrinsic conflict that is caused by opposing interests and motivations of those actors. It may be summed up that public tenders remain very complex dynamic interaction between government and business, many actors involved, conflicting interests.

Legislative changes and amendments of procurement system should always serve as kind of sensitive fine-tuning of the system and will always remain never-ending cycle of amendments and adjustments. And we should be aware that public procurement is the political thing – and always will be.

General public is usually caught in between this struggle. It has legitimate expectations to see public money (their taxes) being spent smartly, carefully and efficiently. Public legitimate expectations of efficiency and fairness in public interests is accompanied by deep distrust of and participants, very often rooted in lack of information on how the system actually works. But at the same time it is told that procurement is highly legal, technical and administrative process that cannot be understood without specific expertise. What needs to be underlined is that the very logic of public tendering is economic – it is about how to spend public money on useful projects and do it efficiently and rationally. And these basic common sense questions can be raised even without specific knowledge and expertise – they can (and should be) raised by everyone.

This policy brief deals primarily with the issue of trends in public procurement integrity in the Czech Republic and focuses mainly on recent developments or new trends coming over last couple of years. It's more than clear that the Czech situation is not particularly unique in regional perspective, meaning perception integrity changes in time and went through couple of waves. There is general distrust in ability of public sector to procure and deliver services, goods and works at best quality possible and there are also substantive perceptions of corruption-vulnerability nurtured by numerous cases of wrong-doing. The procurement market is slightly over 500 billion CZK in 2015 (in best years it went up to 600 billion CZK, fuelled by use of EU funds and subsequent tenders), it represents roughly 15% of country's GDP. The size is pretty comparable to other central European countries, but it's significant amount of funds.

Current new trends and legislative regulations

1. **Sophisticated schemes.** Bid-rigging, procurement fraud and corruption schemes seem to get more sophisticated and they are much harder to uncover and find direct evidences of wrong-doing or illegal activities. It often happens at different stages of procurement than just selection of bidders itself (either ex ante determination of scope of delivery and technical parameters or ex post with changes in contract, extra-costs, poor or non-existent on-site control of outputs).

2. **Inherited bad projects.** New political leadership often inherits ill-prepared projects, or contracts that need to be prolonged. Typically in IT/ICT sector projects, where new mayors or ministers lack legal base to change or quit contracts, or face dramatic damage losses law suits. Usually it brings tough dilemmas over two bad choices.
3. **„Criminalization“.** There is growing atmosphere (or rather myth) of improper criminalization of public sector and political decisions in tenders by police and prosecutors. There are number of contracts under investigations and there are instances of convictions as well, however statistics do not confirm specifically higher number of cases.
4. **Professionalism of public administration** and capacity to run complicated tender is questioned. In business environment there is a widespread perception of often rigged and overpriced contracts, unaccountable decisions and weird and overcomplicated procedures by public administration, and this only fuels. Individual accountability of civil servants is most important and lack of adequate administrative capacity in contracting authorities is key impediment to real following of principles of transparency, non-discrimination, equal treatment and mutual recognition.
5. **Irregularities/fraud risks.** There are still number of instances of the use of discriminatory criteria, unjustified bid assessments, failure to reject unqualified bidders and unauthorised cancellation of award procedures. Some controls and audits suggest that there are still situations where contracts were awarded outside of the Law on Public Contract's regime.
6. **Outsourcing** of tender organizers to advisors, law firms or other enablers who provide services to government institutions. It was widely spread phenomenon mainly due to low capacity to administer projects, after couple of scandals and criticism, this type of outsourcing is slightly fading out.
7. **Price as only selection criteria commonly used.** Research suggests that it is currently used in 82% of cases(!), which is extremely high number and shows that majority of government institutions avoid searching more complex and often more suitable criteria for particular purchase. Unfortunate result is low accent on quality and often projects done below real costs that cause more problem during implementation, use or maintenance. The dominant use of price criteria is probably often caused by low skills of workers at the contracting entities, as well as the lack of resources in public budgets.
8. **Too much control.** Aim is to avoid double (triple) controls by different subsidy providers with opposing results. There is consensus over the need to reorganize control system, as many controls seem unnecessary burden and too formal.
9. **UOHS (Anti-monopoly Office), very problematic oversight.** Powers are strong – If the Office detects a breach of the law, it may opt for what is called remedial measures, such as reinstating the unjustly excluded bidder to the process, or cancelling the entire tender. However applying administrative fines seems useless and leads to no change in attitude of institutions (no learning lesson). Objectively things have changed there recently, deadlines are met now, more predictable decisions
10. **Centralized purchases** – number of institutions are trying to do so, but long way to perfection and widespread use. While there is no central purchasing body at national level, there is a tendency to increase aggregation of procurement demand through joint purchasing at ministries level. There were number of arguments on which purchases are ideal for centralized approach and second, how to organize, collect needs and specifications and which form of procedures to use. The centralised government e-procurement platform for e-submission is called – NEN.
11. **Share of negotiated procedures without publication is very high,** shows the way contracts are being avoided. Disproportionately high number of tenders without competition. As Goodgovernance.cz states in their study: „According to the results of the study of the European Commission the EU Single Market Scoreboard of July 2016 shows that the Czech Republic

belongs for a long time to the countries having a high rate of public procurement contracts awarded without any competition. In 2013 the European average of contracts awarded without a competition was 7.4% while according to the study the Czech Republic's share of contracts awarded without a competition was 22% out of all contracts awarded. In the years 2014-2015 the EU average was 6.6% while in the Czech Republic, the ratios were 18%, respectively 19%."

12. **Compliance and prevention.** Corruption risks detection and fraud prevention is important element of public procurement system, generally as well as specifically in every organization, government institution and compliance systems of companies. There is growing realization that preventive internal mechanisms need to be in place and enforced efficiently in order to overcome future risks and problems.
13. **IT/ICT.** Recently IT/ICT projects were identified as biggest corruption risk – namely due to technical know-how often being lacked at public sector, capacity to transfer intellectual property
14. **E-procurement, e-government,** IT/ICT tools enabling all procurement actors to lower administrative burden, communicate smoothly and exchange information in real time. However it is a process that will take more time and number of difficulties and obstacles still prevent effective use. There are government as well as private eMarkets for Public Tenders and Procurement, which provide web applications that allows electronic procurement within current procedures.

What recent procurement legislation brings

New public procurement legislation harmonizes EC Directives and offers basic standards, each Member State can go beyond them and adjust it to local context and market. The new Public Procurement Act came into effect as of 1 October 2016, after it was discussed at length over the last two years among experts and legislators. This new legislation brings some positive changes, however it also contains new legal concepts and open up a number of questions. Here are a few selected ones:

1. **Sole-source contracts** – change in rules, now it is possible to award contract in case there is only one bid. It made up to 20% of all contracts before, but this rule was perceived too strict and hardly usable in practice.
2. **Extra-works** and limits, percentage was adjusted, but the principle remains, still needs to be agreed and approved with government entity.
3. **Thresholds:** contracting authorities award public contracts that fall into any of three bands: **minor** (below an expected amount of CZK 2 million excluding VAT, or CZK 6 million excluding VAT for construction works); **below threshold** (contracts from CZK 2 or 6 million, respectively, up to a defined limit); **above threshold contracts; and contracts awarded under a framework agreement with several bidders.**
4. **Chance to disqualify company/bidder** with bad previous experience. Under condition, this bad experience can be supplied with evidence (late delivery, breach of contract, low quality)
5. **Beneficial ownership** – self-declaration as mandatory part of bidding documents (connected to AML legislation and register of beneficial owners – in future). It is a step toward more openness in corporate ownership, but not strong enough.
6. **Complaint to Anti-monopoly Office** will be linked to obligatory fee from now on – 10.000 CZK per complaint. This new arrangement reacts to the supposed overburden of the Office, but will cause dramatic lowering of number of complaints, and will diminish public oversight done by opposition politicians, watchdog NGOs or journalists – it seems as very questionable step in wrong direction.
7. **Change (simplification)** of certain procedures (below-threshold) – reacts to practical complaints, it should smooth out those award procedures.
8. **No black list.** Law no longer contains any regulation of administrative offences of the supplier or sanctions, including a black list (a list of entities banned from performing public contracts).

- 9. Register of contracts introduced** – This disclosure mechanism represents new and powerful push for openness, accountability and public oversight. It also opens up certain issues over conflict between transparency and oversight versus freedom to act responsibly. We may expect lot of apps to pop up to compare costs and seek extreme cases of overpriced contracts. Register have started in July 2016, full sanction mechanism will come into force a year later.

There are number of useful websites that provide insight into analytical information about public procurement market (these are either government-run, or civil society projects):

- www.vsechnyzakazky.cz – NGO Oživení through machine tracks down disclosed tenders and select them into categories, you may find individual government entities or bidders and see their procurement strategy and history.
- www.zindex.cz – NGO that ranks government bidders (including municipalities) according level of transparency, disclosure and quality they perform.
- www.goodgovernance.cz – think tank that deals with accountability, control and oversight of public sector.
- www.transparency.cz – leading anticorruption watch-dog providing legal advice in public tenders to citizens and companies, trainings to procurement officials.
- www.isvz.cz – Ministry of Regional Development's system of official information on public procurement. It carries out legal duties specifically in the area of notices publication – this subsystem provides for the publishing duty of the procurer. The Ministry ensures the compliance with legislative amendments to the EU legal regulations and collects expert opinions.
- www.compet.cz – Office for Protection of Competition, oversight body.

Conclusion

Over the course of last year, there were made dramatic reforms in public procurement system, which would otherwise need certain stability. However public procurement reforms are never-ending policy exercises, they aim to fix holes in the very dynamic system. Still make no mistake, it is worth doing it, as without those changes and public oversight, situation would likely deteriorate much more. And after all, it's all about taxes, policies, quality and costs of public infrastructure and public services – and that simply matters. Critical is to keep high standards of transparency in every stage of procurement cycle; avoiding of conflict of interests – enforce rules in practice, procurement plan – in defined format, methodical guidance to contracting authorities, help to avoid errors. The key aspect is positive incentive on both sides of the game – how to incentivise public sector servants to be open, efficient and accountable and on contrary private sector bidder to play according rules, avoid bid-rigging, collusive actions and overpricing of contracts. As there are several existing attempts in the Czech Republic to monitor procurements, public entities and contracts both on by governmental players and NGOs it does not seem necessary to adopt the redflags.eu system as it is. Certain elements, methods or code could be used though by Czech organizations, since the documentation and a source code are easily available.

Evaluation of the “Red Flags” Tool from Latvian Point of View

by Diana Kurpniece, public procurement expert

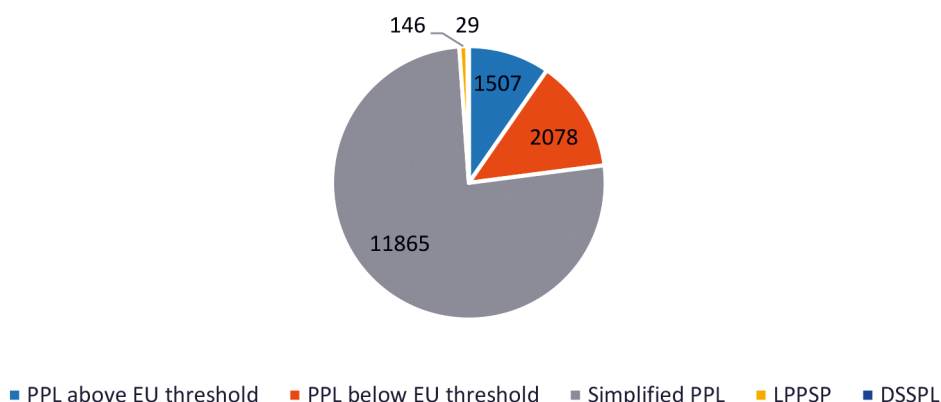
Description of the public procurement system in Latvia

The public procurement system in Latvia has comparatively high transparency and accountability as well as administrative burden for procuring agencies due to the fact that a strict regulation is applied for supplies and services much below the EU thresholds. Currently, the regulation of Public Procurement Law of Latvia (hereinafter – PPL) is not applicable to purchases below 4000 euro for supply or service contracts and 14 000 euro or less for building works contracts. Unfortunately, the parliament of Latvia is about to amend³ the abovementioned threshold to 10 000 euro to permit wider discretion for the procuring authorities in Latvia. The only safeguard for public oversight is the obligation for institutions to publish on their particular website information on contracts entered to.

Simplified, but still transparent procedure based on open invitation to tender and published evaluation criteria and procedure of bids should be applied to contracts with value between 4000 euro and 42 000 euro (for supplies and services) and 14 000 euro and 170 000 euro (for construction works).

Since Procurement Monitoring Bureau had started its activities, each public body has professional staff managing public procurement. Moreover, since the administrative fine had been introduced on 2013, management of procurement became even more cautious in institutions and rule of law now is followed with high scrutiny. 76% of procurement procedures in 2015 were carried out by simplified procedure and although it accounts just for 11% of total value of contracts, major part of corruption prone areas in small public agencies and municipalities is tackled by higher level of scrutiny by thousands of entrepreneurs taking part in these procedures.

Share of public procurement procedures 2015 per type



³ New Public Procurement Law has passed two readings on Parliament, information valid on 1st of December 2016.

Typical corruption risks in the Latvian public procurement system

Corruption is regarded as a serious threat in implementation of public procurement in Latvia, therefore majority of legal requirements are introduced to limit discretion of procurement agency, establish liability of officials taking part in decision making and provide transparency of the procedure.

Types of corruption risks are closely related to legal framework of public purchases in Latvia. Abovementioned regulation ensures that almost all spending should be made according to legal requirements. If the procuring agency evades regulation or does not comply with rules, Procurement Monitoring Bureau is imposing administrative fines to the head of public institution or particular procurement commission, the State Audit Office is issuing negative decisions with regard to institution. Therefore, the purpose of corrupt individual or groups of corrupt persons to ensure advantage of one earlier defined bidder over other applicants **should be ensured in more sophisticated manner**. If corrupt activities are performed by the representative of procuring agency then most often there are three forms of illicit behaviour at the selection phase of the tenderer:

- (a) evasion from more severe procedure by splitting the contract in smaller fractions to be able to apply less monitored procedure or exemptions from the application of law (usually, simplified procurement procedure as described above);
- (b) elaboration of very complicated qualification requirements for bidders most probably adjusted to the capabilities of the one pre-defined winner, where typical red flag signal is exclusion of all or majority of other bidders or very small amount of bids submitted;
- (c) discretionary, unclear evaluation criteria of applications submitted by bidders, including minimal proportion of importance of financial proposal, high importance of requirements what are not clearly stipulates by the tender documents.

To limit competition sometimes such methods are used as late publication of information about procurement or announcing the tender close to seasonal holidays. Country related limitation of competition in Latvia is dependent on requirement to submit bid in national language. At the execution phase of contract, there are vast opportunities for corruption as external monitoring is limited just to the end of procurement procedure. The most typical violation is related to amendment of contract requirements, namely deadline of delivery of services or supplies, amount of services etc. Value of the contract is amended more rarely. Investigations initially carried out by Corruption Prevention Bureau and later more often initiated by the Competition Council of Latvia shows that prohibited collusions or cartels are not rare distortion of free market at public procurement procedures in Latvia. Usually this trend is appearing in cases where procuring agency is not inclined to corrupt behaviour and tries to push down the contract value.

Typical red flags signals for collusions are as following:

- ✓ unbalanced price offers – the same bidder proposes very different prices in different procedures for the same type of services;
- ✓ the same person has prepared bidding documents for different tenderers,
- ✓ business offices are at the address, connected enterprises;
- ✓ the same employees are employed by different bidders in parallel;
- ✓ family members or friends have established different businesses – shell companies, what are taking part in the same procurement procedure what is managed by one person;
- ✓ similarity in form and content (sometimes even admitted mistakes) of bidding documents;
- ✓ bids by different bidders are brought to the opening meeting of bids by the same person;
- ✓ small number of bids in case when competition could be much wider.

Existing monitoring / control tools

In order to eliminate corruption and fraud in area of public procurement three basic principles are followed in Latvia: (1) elaboration of precise and detailed regulation of procedures limiting any discretion; (2) establishing of transparency from the announcement to contract and (3) monitoring of lawful implementation of rules and imposing fines in case of breaches.

Transparency is ensured by publication of an informative notice with regard to different stages of procurement on the website of the Procurement Monitoring Bureau and free and electronic access to tender documents on the website of procurement commissioning authority. This stipulation is valid to all public procurement procedures, both below and above EU thresholds and simplified procedures. In addition, cabinet of ministers regulation requires to publish list of all procurement contracts entered to in written form on website of particular public body, including those what are below threshold of simplified procedure; that is 4000 euro

At least three public bodies are monitoring implementation of procurement procedures: the Procurement Monitoring Bureau, the State Audit Office and the Central Financing and Contracting Agency.

From time to time non-governmental sector represented by the Latvian chapter of Transparency International “Sabiedrība par atklātību – Delna” is able to carry out citizen monitoring activity entering into integrity pacts with certain institutions. Due to limited resources, it is possible just once in a decade or slightly more often. At the same time, investigative journalists are regularly digging deep into particular cases of suspicious procurements and discussions around them are regularly topical on public agenda.

Evaluation of the “Red Flags” tool from Latvian point of view

Red flag indicators identified by TI-Hungary are widely recognised corruption prone areas in public procurement procedures. The idea of automated risk identification system of public procurements could be promising tool for future development of procurement monitoring systems as currently all supervisory efforts are based on random selection of objects. The biggest obstacle of implementation of such tool in Latvia is the different number and scope of information units published on searchable database of The Procurement Monitoring Bureau. Another issue is related to the indicator itself – as contracting authorities would like to escape “blacklisting” of their procurement procedures they very soon will avoid applying procedures in way that they match the indicator. Then both content of procurement notice and indicators should permanently be amended what makes it very costly.

Examination of the methodology paper of the “Red Flags” tool, “New Warning System for the Identification of Red Flags in Public Procurements” and the red flags tool it is apparent that majority of indicators in Latvia is not electronically systematized therefore the automated tool may not be directly applicable at the moment. Out of the 40 indicators the Red Flags tool use 27 would not be accessible electronically. Nevertheless, list of indicators is extremely useful for use of everybody, including economic actors taking part in procurements and representatives of the public and media who would like to understand whether certain procurement could be under shadow of corruption.

Applicability of Red Flags in Lithuania

by Paulius Murauskas, project coordinator of Transparency International Lithuania

Public Procurement System in Lithuania

The main legal document that regulates public procurement processes in Lithuania is the Law on Public Procurement.⁴ Throughout the years it has often been the object of amendments and since Lithuania's accession to the EU⁵ its alterations have taken place 25 times. The Law on Public Procurements within the Defense and Security Sector⁶ serves as special legislation and therefore overrules the framework set by the general legislation for public procurements under its scope.

One of the key aspects the law regulates is the differentiation of public procurements based on their value. The law currently⁷ discerns small value public procurements: the value of a public procurement for goods and services cannot exceed 58 000 EUR and 145 000 EUR for works for it to suffice as a small value public procurement.

Small value procurements are regulated by a simplified legal regime that is largely based on the inner guidelines of a given purchasing authority.⁸ The most important instances of such legal latitude include the duty to abide only by the general principles when comprising the technical specifications and whether to announce the foreseen technical specifications as such. It also allows the purchasing authority to decide whether to provide the Public Procurement Office with a report about the small scale tender. During recent years, the number of small value tenders adds up to around 98% of all annual procurements.⁹

The system itself is currently largely based on electronic public procurements – the number of e-procurements amongst all the procurements has been steadily growing – from around 75% in 2011¹⁰ to around 97% in 2015.¹¹

⁴ Can be found at <https://www.e-tar.lt/portal/lt/legalAct/TAR.C54AFFAA7622/CAvSmSJhKr> [in Lithuanian, visited 2016.10.24].

⁵ Lithuania acceded to the EU on 1st May 2004.

⁶ Can be found at <https://www.e-tar.lt/portal/lt/legalAct/TAR.E838D0C06065/YDEtChiaDI> [in Lithuanian, visited 2016.10.24].

⁷ As of 18th November 2016.

⁸ The purchasing authorities are suggested, however, to make use of the exemplary guidelines produced by the Public Procurement Office. Can be found at <https://www.e-tar.lt/portal/lt/legalAct/TAR.CFA5B378E6AC/hVUDUDTuCr> [in Lithuanian, visited 2016.10.24].

⁹ 97,6% on 2015, 98,5% on 2014, 97,9% on 2013. Data can be found at <http://vpt.lrv.lt/lt/statistika-ir-analize/ketvirtines-ir-metines-ataskaitos-1> [in Lithuanian, visited 2016.10.24].

¹⁰ http://vpt.lrv.lt/uploads/vpt/documents/files/LT_versija/Administracine_informacija/Ketvirtines_ir_metines_ataskaitos/Metines_veiklos_ataskaitos/2011m/Informacija%20apie%202011%20m_%20viesuosius%20pirkimus.pdf.

¹¹ <http://vpt.lrv.lt/uploads/vpt/documents/files/Informacija%20apie%202015%20m%20%20vie%C5%A1uosius%20pirkimus.pdf>.

Typical corruption risks

Qualification requirements and technical specifications

Although the Law on Public Procurement establishes the means and content by which qualification requirements and technical specification have to be set and announced in practice this stage is the one where protectionism and preferential treatment of particular bidders can take place. Purchasing organizations have a rather wide discretion when drafting the documents and due to the fact that preferential treatment may sometimes manifest by introducing highly technical adjustments to the tender documents, it is relatively simple to hide undue influence at this stage. The Public Procurement Office has taken the first steps to reveal the severity of this issue in numbers.

A survey conducted by the Public Procurement Office of businesses that have been involved in tenders revealed that the representatives of the private sector view the stage of drafting the technical requirements as the most corruption-prone. 89% of the respondents claimed that corruption deals are likely (37,3%) or very likely (51,7%) to take place when setting the qualification requirements. When it comes to corruption deals being made during the stage of drafting technical specifications the numbers were very close to the ones on qualification requirements – 85,9% representatives of the private sector claimed. 40,3% of respondents said they decided not to participate in the tenders because the winner was unofficially known in advance. The respondents were also asked to name the most often problems they notice when taking part in public tenders:

- 66,7% said the purchasing authority has set up the requirements so that only its favoured bidder would meet them; this was further highlighted in a more recent survey conducted by European Commission, where the respondents identified this as the biggest problem;
- 56,2% claimed that the favoured bidder received some leaked information about the procurement which enabled it to be better prepared for the tender itself;
- 42,3% said the preferred company has been selected based either on no clear and objective criteria (or, conversely, there were too many of these criteria to make sense);
- 31% claimed that the purchasing authority did not announce the procurement or pursue a simplified procurement without announcing its conditions.

Unannounced tenders

Unannounced tenders (procedures without prior publication – negotiations without prior publication and some types of simplified procurement) by definition pose additional corruption-related risks. The Law on Public Procurement provides a list of conditions when this procedure may be applied, and provides that the Public Procurement Office needs to give a permission to apply this procedure. However, the fact that tender information on these procurements is not available publicly implies that there is less accountability. Furthermore, in cases where simplified procurements are conducted without prior publications, this also poses a risk of corruption.

TI Lithuania has conducted a research with the aim to analyse the practice of unannounced public procurements implemented by Lithuanian ministries and municipalities. The research revealed that throughout the years 2006 – 2012 nearly a quarter (23,5%) of all the funds spent through public procurements by ministries were spent through unannounced procurements. The same number for municipalities is 12,7%. In monetary terms, these proportions translate to over 84m EUR for ministries and nearly 0,5b (492m EUR) for municipalities.

Single-bidder tenders

A public procurement process that ends up receiving just a single bid can be a symptom of corruption-related activities before the bid (*i.e.* arranged technical specifications or inadequate qualification requirements) and poses further risks when implementing the tender itself since there is no competition.

TI Lithuania has tangible data collected on this issue in some sectors. On average, one out of two procurements within the defence sector is a one-bidder procurement.¹² The Public Procurement Office has also highlighted the risk of one-bidder procurements. For example, its latest overview¹³ of public procurements for laboratory reagents and diagnostics devices has revealed that nearly half of the tenders (47%) within this sector during 2013 – 2015 were one-bidder procurements.¹⁴

Competences of purchasing authorities & exemplary case studies

According to the Law on Public Procurement, purchasing organizations must form procurement commissions to prepare and evaluate tenders. While it is allowed to hire external experts, this is hardly ever the case due to financial constraints. Afterwards, the purchasing organizations assign a person(s) to oversee the quality of the implementation of a tender contract. Naturally, in cases of highly technical fields, these people are usually not experts of the specific and technical issues. In practice, this means that purchasing organizations tend to base the technical requirements of their own tenders on similar tenders that have been implemented by other public sector organizations. Moreover, a general tendency is that the purchasing authorities often tend to rely on the technical procedures and do not have internal mechanisms that would help detect risks. They tend to not have a practice on taking extra voluntary steps to reassure themselves that the services or products offered meet the general price scale currently on the market.

A few recent examples are the public procurements implemented by the Lithuanian Military where purchased military kitchen equipment items (cutlery, cooking pots, ladles and such) exceeded their market value several (for some items – eight) times¹⁵ and by the Market Regulation Agency (MRA) which bought nutrition products (oat porridge, buckwheat, sugar and other similar products) around twice the market value.¹⁶ This may potentially also indicate that in cases of framework agreements, where the prices are provided per unit, the purchasing organizations do not have mechanisms to detect and react to unreasonable pricing of some items.

¹² 50% in 2015, 57% in 2014, 43,2% in 2013 and 58,3% in 2012. Can be found at <http://vpt.lrv.lt/lt/statistika-ir-analize/viesieji-pirkimai-gynybos-ir-saugumo-srityje-1> [in Lithuanian, visited 2016.11.09].

¹³ Dated 2016.11.08. Can be found at https://vpt.lrv.lt/uploads/vpt/documents/files/VPT_reagentai_29_11_16%2B.pdf [in Lithuanian, visited 2016.11.09].

¹⁴ This amounts to roughly 27m EUR.

¹⁵ <https://www.corruptioneurope.com/article/kariuomen%C4%97s-pirkiniai-kiaurasamtis-%E2%80%93-70-eur-pjaustymo-lentel%C4%97-%E2%80%93-180-eur> [visited 2016.11.09]. The Lithuanian Military is currently taking legal steps in order to reverse the procurement since its inception.

¹⁶ The MRA had to repay over 200 000 Eur to the European Social Fund Agency. The former director and advisor of MRA are under investigation for bribery and favoring a particular business; <http://www.bns.lt/topic/1911/news/49356773/print/true/> [in Lithuanian, visited 2016.11.09].

Monitoring of Public Procurement Processes

Public Procurement Office

The Law on Public Procurement establishes the central monitoring authority, namely, The Public Procurement Office (PPO) (under the auspices of the Government of Lithuania). PPO monitors whether a particular tender abides by all the regulations established by law. It is important to stress that PPO does not evaluate the effectiveness or utility of the tender. The purchasing organizations have the duty to oversee the implementation of the tender contracts. In principle, it can be said that PPO is guaranteed its independence that is granted to it by law. On the other hand, the PPO is in no position to monitor all or even the majority of the public procurements in Lithuania. Recently, the PPO has announced that with the human resources currently at hand it can monitor around 3% of all the implemented tenders. It has been also revealed that PPO finds breaches of the set legislation for public procurements in around 90% of procurements it monitors.

Civic oversight

The civic oversight of public procurements in Lithuania gained momentum only very recently, a couple years back. That was partly because the central public procurement information system was launched only in 2009 and to this day is not very user friendly. Also, there are not that many civic organizations / activists or investigative journalists who would engage in this.

This was in part remedied by a civic hacking initiative called Free Data. The Public Procurement Office provides the necessary open data and this collaboration results as a website¹⁷ that lists out the procurements in a more neat fashion. Free Data has also added filters so that it would be visible whether (1) a particular tender is at the preliminary stage, (2) it is a single-bidder tender, (3) it has received any procedural claims or (4) legal claims.

Applicability of Red Flags in Lithuania

Insights from public officials of Lithuania

During the international conference on “Knowledge and Experience Sharing on the Use of the Red Flag Signalling Tool for Cleaner and More Transparent EU Spending” in Budapest, TI Lithuania with the assistance of TI Hungary and OLAF has gathered the representatives from a number of public institutions of Lithuania, namely: the Public Procurement Office, the Competition Council, the Special Investigative Service, the Ministry of Finance, the Ministry of National Defense and the Municipality of Vilnius. During the workshop led by experts of TI Lithuania and K-Monitor the representatives of these institutions provided a spectrum of insights on Red Flags’ applicability in Lithuania.

The key insight was that by helping to make sense of the messy and complex public procurement data, Red Flags can help make public procurement more understandable for the general society and would, therefore, best suit as a tool for raising awareness. This could also mean a more up-to-date publicity and therefore can positively influence particular tenders as they are being implemented or at least provide a more informative and substantial base for investigative journalists and active citizens.

All representatives agreed that it is unlikely that they would use Red Flags in their daily tasks as each of the institutions have their own specific methodology that enables them to best fulfil their duties (i.e. the Public Procurement Office have their own methodology that enables them to measure the level of

¹⁷ <http://www.freedata.lt/vpt/>.

risk in a particular procurement and to draw sectoral tendencies therefrom; the Special Investigative Service focuses on pinpointing the possible criminal activities within a given procurement and largely depend on the information that cannot be discovered by analysing the documents of a tender). Nevertheless, given the platform would provide extensive filtering capabilities and raw open data, some Lithuanian institutions (namely, the Competition Council and to some extent the Special Investigative Service) might use Red Flags as an additional source at the initial stage of their investigations.

The biggest shortcomings mentioned were that small value procurements (that form around 98% of all the tenders in Lithuania) would not come under the ambit of Red Flags, as well as the fact that as the current code would only include the tenders listed on the Tenders Electronic Daily (TED) database. Moreover, as mentioned above, the legal setting of public procurements in Lithuania is ever changing. With regards to the applicability of Red Flags, this means that if the indicators would be adapted to Lithuania's context they would require constant revisiting or they would become outdated and jeopardize the very essence of the Red Flags platform as the accuracy of the displayed information would come under question.

Focusing on indicators: the case of publicity sector

In order to analyse the indicators in a more concrete and practical setting, they may be tested for a particular sector. Here, the context of public procurements in communications and the publicity sectors will be used. In doing so, several crucial additions to the Red Flags indicators will be suggested.

One of the key challenges for communication tenders is that they often involve third parties implementing the contract but the subcontractors are not always properly revealed. Therefore, (1) an indicator would be needed which would enable spotting whether the company employs a third party and if so, whether the information of such a party is provided in full. Currently, the fact that a subcontractor will be employed has to be revealed in the proposal of the tenderer and the title / name of the subcontractor should be revealed in the tender contract. Another indicator (2) could focus on whether the same subcontractors are not employed in all cases (potentially indicating collusions); for this, filtering functions would be needed to enable a swift overview of the number of procurements into which a particular company entered while employing a third party or how often the third party has been employed by particular purchasing organizations. Another risk is the misuse of the confidentiality clauses. Hence, (3) the fact that a particular tender is in part confidential should also serve as an indicator.

Moreover, procurements within the publicity sector by nature involve a lot of content-based subjective evaluations and there are always considerations about whether the winning bidder was chosen according to well-grounded and clear arguments. Such circumstances would also pose a challenge when coming up with a definitive list of indicators aimed at pinpointing particular risks of particular procurements of the whole publicity sector.

Public Procurement in Slovakia: how a red flag system can improve it

by Gabriel Sipos, director of Transparency International Slovakia

Overall, we find that Slovakia would be an ideal country for introduction of an online tool such as the proposed Red Flag System. It has some of the most extensive procurement documentation online within the EU, with much of the data in open formats. On the other hand, its both official and non-official controls systems seem to lag behind and the procurement is largely seen as corrupt and unfair. At the end of the chapter we propose a number of ways how the current red flag system could be improved.

Procurement in Slovakia – basic trends and corruption risks

The process of public procurement is seen as notoriously corrupt in Slovakia. In a 2012 opinion poll¹⁸ more than 80% of the population thinks there is always or often some corruption in public procurement. Another poll among company managers¹⁹ found that average bribe equals 13% of the tender volume.

Yet recent trends do show some improvement. The average number of bidders almost doubled between 2010 and 2015. Last year almost 4 companies competed²⁰ for an average contract (this is still below the EU average of 5.5 companies per tender). This was mainly due to reforms in 2011-12 which introduced mandatory electronic auctions, more extensive public documentation including publishing all contracts online as well as new electronic marketplace.

Yet many problems remain. According to the Office of Public Procurement²¹, over 400 tenders, or 4 percent of the total number in 2015 have been identified to have broken the law on public procurement. Half of the problems concerned the preparation of the procurement, another quarter publishing the information and yet another 16% consisted in the bids evaluation.

As for the tender preparation, the most common failure stemmed from inadequate deadlines for access to key procurement documents for bidders. Also often is over-specifying qualification criteria, which lead to less competition. Another typical problem is vague or on other hand too specific description of the product. Finally, it is also not uncommon that estimated price of the tender has not been determined before the start of the procurement, or that it is not clear how the price was determined at all.

As for the problems with information, the most common was the lack of reporting new contracts to the Office of Public Procurement. Secondly, tender documents are not always uploaded to the contracting authority's procurement profile as the law dictates.

Finally, one sixth of identified problems concern the misvaluation of the bids. Most common is not evaluating offers according to the pre-announced criteria or failing to ask bidders for explanation.

¹⁸ http://www.transparency.sk/wp-content/uploads/2010/01/FOCUS_Sprava-pre-TIS_jan20121.pdf

¹⁹ <http://alianciapas.sk/na-uplatok-ide-v-priemere-13-z-vysutazenej-ceny-2/>

²⁰ <http://www.transparency.sk/sk/v-tendroch-sa-sutazi-rekordne-vela-no-stale-trvaju-pridlho/>

²¹ <http://uvo.gov.sk/informacny-servis/analyticke-vystupy/analyza-najcastejsich-porusen-zakona-o-vo-4c8.html>

Existing procurement monitoring in Slovakia

Slovakia has three main state control institutions in charge of looking at public procurements: the Office of Public Procurement, the Anti-monopoly Office and the National Audit Office. The Office of Public Procurement is an official complaints body looking into the process of public procurement. The Anti-monopoly Office investigate cartels in public procurement. Finally, the National Audit Office is in charge of assessing effectiveness and efficiency of state contracting, including abidance with law.

All three bodies have suffered from politisation of its leadership and lack of funding in recent years. Their work have in general struggled with political influence and substandard quality. Yet, in the past two years all three offices have improved their work and uncovered serious fraud and cartels in public procurement (hospitals contracting, restaurant vouchers and highways construction are three prominent examples).

As for the public procurement monitoring tools, there are a number of private portals serving companies. However, there are only two NGO websites of note. First, run by Transparency International Slovakia and hosted by the largest mainstream news server in the country (Tender.sme.sk) visualizes results of the public procurement tenders since 2009. It enables search and sorting unavailable to official Public Procurement portal. Also, anybody can download all of data in table format. The portal in effect copies the official data every night and make them available in open format to any citizen.

The Znasichdani.sk website is an alternative site which combines procurement and business register data. Like the tender.sme.sk, is also draws on official data and helps a user identify patterns and trends. Both websites suffer from changes in official data. As the new directive changed the format of tender announcements, both NGOs had to adjust their own portals as well.

Red Flag system for Slovakia

The system of Red Flags would be certainly welcome in Slovakia. Neither private nor state institutions have introduced a system that would scan the tenders and automatically sort them out by risk. We believe such a system would be helpful in preventing risks from occurring in the first place, in pressuring the public control bodies into action when risks appear and finally, enhancing public control as well. Our initial interviews with people in charge of running or controlling public procurement in Slovakia suggest that there is an interest in introducing such an approach to the country as well. Moreover, with Slovakia being in the forefront of having open data on procurement, businesses or contracting available, it is technically indeed feasible to build such a system in a relatively short time.

Here are a few suggestions how to improve the current system:

- *Push the European Commission to have more extensive tender announcements*
The red flag system is as good as the information provided in the tender documents. The public calls and announcements are regulated by the EU Directives. It would be very helpful to make them more extensive. For instance, the names of competitors or planned subcontractors could be included as mandatory information. This would make detecting cartels or unusual success rate of some companies easier to detect.
- *Include cartel indicators*
One of the big risks in procurement is forming cartels. Sometimes the process can be completely fair and transparent yet the result is an overpriced purchase. This can follow when there is not much competition for the product and services and when all companies form a cartel agreement. We suggest to include some cartel indicators in the red flag system, such as those proposed by the OECD studies (bid rotation between companies, bid Suppression, etc.)

- *Include company financial data*
To make the red flag system even more comprehensive and explanatory, it would be important to include business register and company financial data as well. This would help find further risks such as that the tender winner is a month-old company, or a business that never had sales of more than 10% of the new contract.
- *Beneficial owners register*
As of end of 2017, most EU countries will have their beneficial register running (Denmark, UK and Slovakia are the first three countries with such a system). To increase the transparency, it would be great to tie up beneficial register information with procurement data, thus helping to weed out potential cartels or political influence.
- *Fake competitor indicator*
As mentioned above, we witnessed in Slovakia instances when to create appearance of competition friendly companies were submitting bids with no intention to win. Such a behaviour decreases the value of indicators such as number of competitors per tender. But this can be detected with some success if you look at the patterns of competitors in large number of tenders.
- *Out-of-country bidders lowers the risk*
It might be fruitful to look at the ratio of foreign competitors in a tender. These tend to lower the risk of cartels and improve the pressure on price. The EU itself likes to look at this number when judging whether procurement markets are really open across the borders.
- *Bids benchmarking*
Different product or service markets have different characteristics. In some there are naturally many competitors (such as paper delivery) while in others there are very few alternative suppliers (medical equipment, for instance). It would be helpful to allow for indicator benchmarking within product/industry lines. How does a specific tender result compare with others in that group category?
- *Percentage of contracts within certain market*
For analyzing dominance in certain sector, it would be helpful in company profiles to include how big a share of a certain market (tenders in computers) such a company has. If it has an unusually large share of tender yet it is relatively small on the private market, this poses a natural question whether something improper is taking place.
- *Database of public officials*
One big risk includes when public officials and their companies win state contracts. Connecting the database of public officials with company ownership and then scanning winning companies for such presence would helpfully uncover such conflicts of interests.
- *Automatic notifications to control authorities, to contracting authorities*
To make the red flag system more active, we suggest to include notification system directly to both contracting authorities affected as well as to the control institutions.
- *Enable contracting authorities to check their documentation*
The system should also have a strong prevention role. It is often too late to find out about the risks. One way to strengthen the prevention role would be to let interested parties check their documentation before officially publishing it. They would upload the proposed call and see how many red flags they would get. Or when preparing tender for a specific product, they could test how their older purchases went and analyze how to change the new specifications to lower the risks.

CONCLUSIONS

All participant countries, the Czech Republic, Latvia, Lithuania, and Slovakia, as well as Hungary struggle the same corruption-related problems in the area of public procurements. We have recognized similar schemes such as limitation of competition through the choice of a restrictive public procurement procedure, tailor-made requirements or forming cartels.

It can be also concluded that an automatic signalling or warning system, such as the Red Flags tool would be welcomed in all participating countries, mainly for its well-structured database and easy-to-use functions. The participants of the conference found the tool especially useful for journalists and active citizens.

Although we identified some country-specific differences, mainly due to the different legal solutions despite the common European legal frameworks, first of all, we were able to determine a common minimum standard, second, the technical structure of the Red Flags tool is flexible enough to tackle these differences.

The most important problem we need to face is that public procurement notices in different Member States do not contain the same amount and same type of information or data, despite the commonly applied EU Directives on Public Procurement. It seems that even TED is supporting the trend that more and more data do not appear in the notice, as the size of the notice is limited. The software can only gather data from the notices. This might make the adaptation of our Red Flags tool difficult, but any kind of automatic monitoring system might face the same problem. This was a general observation of the participants that there is a need to send signals to the European Commission in order to have more extensive notices.

As for the future of the Red Flags tool, we defined several possible ways for the further development of the concept and the tool based on the inputs we gathered over the course of the project supported by OLAF. Our partners indicated numerous new potential corruption risks that are worth to consider as new indicators, for example, fake competitor indicator, more advanced cartel indicator. Another extension could possibly involve the assessment of notices of public procurement procedures below the EU value threshold, with special regard to the fact that the threat of corruption risks is present in this sector as well, and is even more pronounced. Also, it would be a huge added value, if the Red Flags tool were to be linked to other external databases, like the company registry, or the beneficial owners' registry.

Finally, in spite of any possible deficiencies, adapting the Hungarian benchmark software, a Polish test version of the tool has already been developed, and we hope that more will follow in the near future.

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