TENDERS.GURU

NATIONAL PROCUREMENT RECOMMENDATIONS

ABOUT TENDERS GURU

Tenders Guru is a pan-European project that aims to reduce the risk of corruption in public procurement by collecting and analysing contracting data. With this analysis, the project produces evidenced-based legal and policy recommendations, directed at the national and EU level, on how to increase transparency of procurement in order to avoid corruption and tackle inefficient spending of public funds.

The Tenders Guru Consortium is made up of leading transparency and anti-corruption organisations across Europe: Access Info Europe (Spain), Civio (Spain), ePaństwo Foundation (Poland), Funky Citizens (Romania), and K-Monitor (Hungary).

The Tenders Guru Consortium carries out the following activities:

» Analysis of corruption risks in national and local level procurement in Hungary, Poland, Romania, and Spain;

» Training of journalists and civil society on how to monitor public procurement, how to use data to identify problems, and how to engage in advocacy to address those problems;

» Managing an open-source IT Tool, the Tenders Guru Platform, that can be used to detect structural weaknesses and behaviour patterns likely to facilitate corruption, allowing local governments, civil society, and journalists to monitor procurement processes;

» In-depth research into international standards on public procurement transparency in order to formulate specific recommendations for the EU and national legislators on how to increase transparency and reduce corruption risks;

» Production of micro-learning materials, designed to help public officials, policy makers, journalists and civil society organisations gain a more in-depth understanding of how to identify and combat corruption in public procurement.

Information on the project, its recommendations and analysis of local level procurement data can be found on the website: https://tenders.guru/

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INTRODUCTION

Each member of the Tenders Guru Consortium carried out an analysis of national level procurement in the four project countries, Hungary, Poland, Romania, and Spain. When examining the findings of this project, common problems within the procurement systems were identified across all four countries.

» **Fragmentation of data across various e-procurement portals:** Rather than having all procurement information in one central procurement portal, Hungary and Spain have various procurement-related databases, causing procurement data to be heavily fragmented. In fact, procurement information in Spain is heavily fragmented across tens of portals at different levels (national, regional, local). In Romania, however, despite having a central procurement portal, there isn't a uniform approach as to where procurement data is published, with contracting authorities publishing procurement data on their websites rather than the central procurement portal.

» **Unstructured data:** A problem identified by our research is the way the data is being published, with procurement data being uploaded onto procurement portals in formats that are not machine-readable. In Spain, for example, scanned meeting minutes have been uploaded, which prevents any automated analysis. In Hungary, procurement data is not accessible as bulk databases, and searching and filtering options are also underdeveloped on the user interfaces, preventing data scraping. In Poland, the Public Procurement Bulletin, as well as other data sources (for example on the below-the-threshold spending) does not have an API feature, which makes data analysis difficult.

» **Data across the life cycle of the contract either not linked or missing:** Incomplete data or data that is dispersed in multiple locations was a problem that we found in all four countries. Hungary has numerous procurement portals with no interoperability between procurement announcements, processes, contracts, information on fulfilment, complaints, and legal procedures. Publication of procurement data in Romania is uneven, often making it impossible to follow the life cycle of a contract. We also found that contract modifications are often not published, as is the case in Spain, or that they are published separately from the original procurement procedure and not linked, as in Poland. In addition, the planning phase is not published in Poland.

» **Lack of open Company and Beneficial Ownership data:** The lack of beneficial ownership information was flagged as a problem in Hungary, Romania, and Spain, as none of these countries has fully implemented the Anti-Money Laundering Directive (2018/843), which mandates the implementation of a public beneficial ownership register. The company registers are not open in

Hungary, Romania, and Spain. In Hungary the company registry database and the database for annual reports are only accessible through captchas and are not interlinked. In Romania, the company register is only available via a paid subscription and there is no beneficial ownership register; Romania has not yet transposed the Anti Money Laundering Directive and the Commission has initiated infringement proceedings against it.

» **Lack of data verification:** Without a basic data verification system, the introduction of erroneous data into the system (such as wrong ID number or post code) causes problems concerning not only the validity of the data but also the interoperability of the data. The Tender Guru found this to be a problem in particular in Spain, Poland, and Romania.

» **Lack of transparency below the threshold:** Artificially splitting of contracts so that they fall just below the threshold, therefore avoiding EU publication requirements, was noted as a significant problem in Poland and Spain, meaning that a significant part of public spending remains non-transparent.

In the remainder of this report, we set out the specific recommendations for government action needed to strengthen transparency of procurement in Hungary, Poland, Romania, and Spain.

NATIONAL PROCUREMENT RECOMMENDATIONS

HUNGARY

1. Procurement data is not accessible as a bulk database for users interested in analysis

Finding: Although official Hungarian procurement portals (kozbeszerzes.hu, ekr.gov.hu) publish detailed information on Hungarian public procurement, this data is not accessible as bulk databases. Searching and filtering options are also underdeveloped on the user interfaces. This hinders the work of journalists and experts who would be interested in the analysis of bigger datasets but have no capacity to scrape entire databases.

Recommendation: Allow data exports based on complex filters and the bulk download of the procurement databases.

2. Fragmented data publication across multiple databases

Finding: The Hungarian state has various procurement-related databases, and information is rarely interlinked, with no connection between, for example, procurement announcements, processes, contracts, information on fulfilment, complaints, and legal procedures. This makes finding and sharing procurement information and procurement documents cumbersome.

Recommendation: Existing databases should be interoperable to allow easy access to documents connected to a given public procurement or participating entity. It is recommended that all data be accessible from a single central procurement portal, even if behind the portal it is stored in separate databases at this stage.

3. Central publication of procurement data should be compulsory above HUF 1M [€3,000]

Finding: Procurement conducted below the national public procurement threshold only has to be made public on the webpage of the procuring entity or based on data requests, depending on the amount spent. This makes it impossible to have a broad overview of procurement spending below the public procurement threshold. At the same time most institutions provide such information to the treasury via a closed internal system.

Recommendation: Procurement conducted by public bodies above HUF 1 million (€3,000) should be published in a central database including contracts and related documents.

4. Independence of Public Procurement Arbitration Board

Finding: The independence of the Public Procurement Arbitration Board (PPAB), the first instance of legal remedy in public procurement cases, is currently not secured. There are two main issues:

» The Public Procurement Authority's (PPA) Council appoints the President and Vice-President of the PPAB with a two-third majority decision. Most members of the Council are, however, employees nominated by other government bodies, thus representing the government.

» The President of the PPA exercises employer's rights over the President, the Vice-President, and the acting commissioners of the PPAB, resulting in even higher levels of dependency.

Recommendation: Ensure that all members of the Public Procurement Arbitration Board are appointed as experts who are expected to act with independence. Ensure that they are drawn from a wide range of stakeholders, such as public procurement professionals, academia, and civil society. Ensure that all members complete conflict of interest declarations.

5. Company registry not open and no beneficial ownership register

Finding: Hungary's company registry database and the database for annual reports is only accessible through captchas and are not interlinked. Furthermore, linking of related entities is also not possible within these databases. Another shortcoming is the lack of public beneficial ownership information as Hungary has still not transposed the Anti-Money Laundering Directive.

Recommendation: The company registry database, the database for annual reports and the beneficial ownership database should be made accessible without captchas, via an API and bulk filtered downloads. Information among and within these databases should be interlinked.

6. Information on subcontractors shall be published

Finding: Public procurement databases do not publish detailed information on the subcontractors involved in the work carried out under a particular contract, nor their workshare and the payments received.

Recommendation: The names, tasks, and contracts of subcontractors, along with payments to them should be included in procurement databases and made available to the public.

POLAND

1. Lack of spender ID data verification

Finding: The system accepts identification data entered by public spenders without any verification. As a result, problems with interoperability can arise if, as does happen, a public institution incorrectly enters data into the system (e.g. ID number 0000, or an incorrect postal code). This prevents correct automatic identification, which is necessary to draw up a profile of the spender, and hinders proper data analysis and monitoring of purchasing policies and trends.

Recommendation: The Public Procurement Office should upgrade the portal with a basic data verification system such as ID numbers and geographical area.

2. Short tender deadlines (in Poland 1% of total procurement number)

Finding: The Tenders Guru data shows that in 2020, 700 tenders in Poland lasted six (6) days or fewer (with some of the tendering processes that were awarded lasting 0 days). This is only 1% of the total but in financial terms it is significant and gives cause for concern. Such a short deadline to submit an offer limits the competition of bidders, and increases the possibility of corruption in these very short notice contracts.

Recommendation: With the exception of emergency procurement, the Public Procurement Office should require seven (7) days tendering duration as a minimum and should automatically check procedures which failed to meet this requirement.

3. Lack of transparency in procedures below the national thresholds

Finding: Although the publication of procedures below the national thresholds was foreseen in the new Polish Law on Public Procurement, this provision was removed just before the Law was adopted. As a result, a significant part of public spending remains non-transparent, creating an environment for corruption or other unlawful behaviour such as unusual splitting of contracts or procedures just below the threshold (i.e. contracts with a value of up to 5% below the threshold).

Recommendation: The law should be amended to ensure the obligatory publication of below-the-threshold procedures or set an automatic control of proceedings with a value of up to 5% less than the threshold, as a basic tool to prevent avoidance of the transparency rules.

4. Planning phase regarding below the national thresholds is not published

Finding: Although, according to the Polish Law on Public Procurement, the planning phase is an essential part of the procurement process and public entities are obliged to publish procurement plans, this does not apply to procurement planning below the national thresholds.

Recommendation: The Public Procurement Office should set up an obligation to publish budgets and plans for all procurements, including those below the national thresholds.

5. Contract modifications are published separately from original procurement procedure

Finding: Although modifications of the public procurement contracts are published in Poland, they are not attached to the corresponding procedure, but rather as a separate announcement. Therefore, it is almost impossible to track changes.

Recommendation: The Public Procurement Office should align and automatically connect all data under the same procurement procedure - from planning phase up to the contract modification.

6. Lack of information on contractual penalties

Finding: There is no publicly available data on contractual penalties. This information is crucial to rank contractors but also to measure the quality of the tender procedure.

Recommendation: The Public Procurement Office should make it mandatory to publish information on contractual penalties.

7. Lack of API

Finding: The Public Procurement Bulletin, as well as other data sources (for example on the below the thresholds spending) does not have an API feature which makes bulk download difficult, therefore impeding analysis.

Recommendation: Public Procurement Office should ensure there is an API feature for procurement data.

ROMANIA

1. Delays and often incomplete published data

Finding: In 2020 the importance of timely publication of data became apparent, but as a result of legislative changes generated by the state of emergency, more contracts were awarded directly and were published with delays on the official e-procurement portal (http://e-licitatie.ro/pub). According to data.gov.ro, in 2020, 2.224.048 direct awards were conducted. The e-procurement portal often has functionality issues and some data cannot be retrieved. Also, accessing aggregate data in real-time is problematic. At time of writing (June 2021), complete public procurement data is published by the Romanian Authority for Digitalization as a data dump on a quarterly basis on the open data portal (www.data.gov.ro).

Recommendation: Data needs to be centralised and available on the national portal with complete publication of procurement data and specific deadlines for uploading the information by the contracting authorities.

2. Inaccurate data

Finding: Analysis of the public procurement data is sometimes hindered by the data inaccuracies. For example, the Tenders Guru research identified contracts with the wrong amount of money specified. It was possible to identify these errors because the amount stated exceeded the existing threshold for that type of purchase. These mistakes were observed as a result of manual monitoring of the published data.

Recommendation: A high standard of accurate publication is needed from the contracting authorities. More automatic checks and manual checks by an oversight body on the accuracy of the data should be carried out as well as regular updating of the data on the open data portal.

3. Incomplete data over the cycle of a contract

Finding: As of June 2021, data available during the procurement process is uneven at best. In many cases, it is impossible to follow the spending of funds across the entire chain of public contracts. In theory,

at the very least data on planning, tendering, and award should be available. In the case of framework agreements, information should also be available on delivery and implementation through subsequent contracts. This information being published is, however, a rare exception and usually it is almost impossible to follow the multi-year framework agreements.

To ensure full publication of procurement information, the Open Contracting Data Standard should be used, as this would create a release of standardised data for every event or change that occurs in the life of a contracting process. Such data is important to enable the tracking of changes over time.

Recommendation: Procurement data should be published in well-documented, user-friendly, structured schema using the Open Contracting Data Standard.

4. Lack of conflict of interests control over the direct awards

Finding: During the pandemic many authorities directly awarded contracts that were over the EU threshold under emergency provisions. As a result, the National Agency for Integrity (NAI) was unable to check for conflicts of interest because the direct awards were not published on the online platform (SICAP) where the NAI has an integrated module (PREVENT) that acts as an early-warning system.

Recommendation: Contracting authorities should use public procurement procedures that ensure a higher degree of transparency, such as negotiation without prior publication. This procedure is also recommended for emergency interventions. Additionally, specific processes should be put in place in order to ensure that the policy on conflict of interest prevention can still be enforced.

5. Lack of transparency on beneficial ownership and lack of public access to the company registers

Finding: The data from the Trade Register, where company data is held, is available, but access is available via a paid subscription and is only for individual companies. Romania is currently in infringement proceedings with the Commission for not acting to create a beneficial ownership register under the Anti-Money Laundering Directive (2018/843).

Recommendation: Romania should fully transpose the Anti-Money Laundering Directive and create public beneficial ownership registers. Company registers should also be made public and fully open free of charge as open data.

6. Transparency on public procurement data is not uniform

Finding: Even though progress has been made with the publication of public procurement data in recent years, there are still many instances where contracting authorities do not follow uniform procedures when it comes to publishing contracts or data about procurement. Specifically, some contracting authorities publish contracts both on their websites and on the SICAP platform, whereas others publish only on SICAP, yet others do not publish procurement data at all. This non-uniform approach also applies to annual procurement plans and audit reports.

Recommendation: Contracting authorities should apply a uniform approach regarding where they publish public procurement data. At a minimum all data should be published on the central SICAP portal, with it being optional to also publish on the website of the contracting authority.

SPAIN

1. Unjustified delays

Finding: Although legal timeframes for publication are established by Law, unjustified delays in publication are very common, and this impedes and causes challenges to consistent monitoring and analysis. Delays can be of several weeks or even months. For instance, information about tenders awarded in mid-2019 was only published in late 2020.

Recommendation: Strict time limits for publishing procurement data should be established and monitored.

2. Fragmented data across multiple procurement portals

Finding: Procurement information in Spain is heavily fragmented across tens of portals at different levels (national, regional, local). Despite the push to centralise this data in one single portal, the national *Contratación del Estado* (State Contracting) portal, many public bodies are still not present, many years after the national portal started importing data from smaller ones. Furthermore, the data gathered from other portals is still missing some details, creating a two-tier system, which makes data comparison and analysis complicated.

Recommendation: Data should be centralised in one single national portal with complete publication of procurement data.

3. Unstructured data

Finding: Information required by law, such as the number and names of all bidders, is published in an unstructured format, with problems such as scanned meeting minutes, which prevents any automated analysis. The publication systems are not capable of collecting and distributing this data in a structured fashion.

Recommendation: Procurement data should be published in a machine-readable, structured format. To solve this problem, procurement data should be published using the Open Contracting Data Standard.

4. Lack of beneficial ownership and company registers

Finding: Although not directly under the responsibility of the procurement portal, it is important to note that the Spanish Company Register (*Registro Mercantil*, in Spanish) is not open and nor is there yet a register of beneficial ownership of companies, despite Spain having transposed the Anti Money Laundering Directive. The lack of available company ownership data blocks investigations into cartels and/or fake bids by coordinated actors in order to simulate a competitive process.

Recommendation: Increased transparency of Spain's company register is a commitment under Spain's IV Open Government Action Plan and the government should ensure that the register is fully open, free of charge and in an open data format. Spain should also make urgent progress with the creation of a

register of beneficial owners of companies, which should be integrated into the company register or, at least, be fully interoperable with it, and should be available free of charge in an open data format.

5. Inaccurate data

Finding: The Tenders Guru project found very low quality control by the publication portals over the inputs provided by contracting bodies. Many instances were identified of tenders being misclassified in terms of type (services vs. works). Errors were detected on a scale that should be easy to detect automatically, such bids for several million euros from a small city hall. The lack of reliable CPV codes is particularly worrying, as it limits the type of sector-based analysis that could help identify best/worst practices in certain industries.

Recommendation: Contracting authorities should ensure higher quality and accuracy in the publication of their procurement data. Better monitoring of the accuracy of that data is needed, especially when it comes to CPV codes.

6. Lack of quality control on below the threshold contracts

Finding: The lack of quality control is obvious when dealing with below-the-threshold contracts, and the publication portals allow contracting bodies to, for example, publish as one single item a list of hundreds of small contracts awarded to different companies, avoiding the legal transparency requirements.

Recommendation: Stronger transparency and publication requirements are needed for contracts that fall below the threshold.

7. Details of contract modifications are not published

Finding: While publication portals across Spain are generally designed taking into consideration the various stages of bidding for and awarding tenders, the Tenders Guru research found that in many cases they were often badly prepared for later modifications of the contract, something which often impacts significantly on the final amount paid out. Recent legal changes in Spain now require this information to

be public, potentially exposing a traditional source of corruption and collusion, but the portals are lagging behind, resulting in this data not yet being available.

Recommendation: Procurement data should be published throughout the procurement cycle, not just at the award stage. Details of any modification made to a contract after award must, by law, be published online, and all publication portals should be upgraded to ensure that this happens.

8. Temporary company partnerships are not published

Finding: There is a phenomenon in Spain whereby temporary company partnerships (*Unión Temporal de Empresas*, in Spanish) win a significant percentage of tenders, especially in the public works sector where large amounts are awarded. The information about which companies form the partnerships is not always available, despite recent legal changes. The fact that the Company Register is not open, and that there is not yet a beneficial ownership register, compounds the problem and means that transparency requirements can be easily circumvented.

Recommendation: The names of companies that form temporary company partnerships must be published online and must be linked to the specific tender process and the contract awarded.