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**Public Procurement**

# Monitoring of Public Procurement

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Public procurement contracts represent a major share of any country's gross domestic product (GDP) and public expenditure budget. According to the *Annual Procurement Implementation Review 2013* of the European Commission, public procurement in the European Union (EU) in 2011 amounted to 19% of GDP. This figure alone provides sound reasons for monitoring the performance of public procurement systems.

## Definition of monitoring

The Oxford Dictionary of English (ODE) defines the verb “monitor” as “to observe and check the progress or quality of (something) over a period of time; keep under systematic review”. According to the ODE, “monitor” originates from a Latin word, “*monit*”, which means “warned”. According to another definition, “monitoring” is “an intermittent (regular or irregular) series of observations in time, carried out to show the extent of compliance with a formulated standard or degree of deviation from an expected norm”<sup>1</sup>. Monitoring is a meaningful exercise only if the state that is desired in terms of objectives or targets is defined in advance. The role of monitoring is to assess whether these objectives (targets) are being met.

According to the ODE, monitoring should be distinguished from “surveillance, which is a repeated survey using a standard methodology undertaken to provide a series of observations over time”. Surveillance can yield valuable information but does not in itself establish whether objectives or standards have been met. Information derived from surveillance may be used, on the other hand, to inform judgements concerning the existing situation.

For the purposes of this Brief, the “monitoring of public procurement” is any systematic observation of the public procurement system that is conducted in a coherent way in order to assess how the system functions and develops over time and to establish whether the desired (targeted) state defined by policy makers has been achieved<sup>2</sup>.

A distinction should be made between the concept of **monitoring**, as defined above, and the methods and proceedings applied in order to detect and remedy infringements of public procurement rules (auditing, inspection, checking of compliance). Although detecting and combating infringements of public procurement rules (by means of a **compliance assessment**) is instrumental in achieving goals set for public procurement, monitoring is a much wider concept that is not limited to the assessment of legal compliance.

Monitoring of public procurement usually involves such activities as:

- collection
- analysis
- dissemination of data (concerning various aspects of public procurement, e.g. its transparency, openness, competitiveness and efficiency).

## How can the results of monitoring be used in practice?

Information collected through monitoring is useful for the purposes of developing policy, determining value for money, and drawing conclusions with regard to compliance with the fundamental principles of public procurement and to the fulfilment of pre-defined objectives and targets. The results of monitoring provide a basis for the preparation of regular reports on the functioning of the procurement system and in particular for the elaboration of recommendations and proposals for the future development of the procurement system. For example, the Polish annual reports on the functioning of the procurement system (discussed in

<sup>1</sup> Hellawell, J.M. (1991), “*Development of a Rationale for Monitoring*” in Goldsmith, F.B. (ed.), *Monitoring for Conservation and Ecology*, Chapman and Hall, New York, pp. 1-14.

<sup>2</sup> Information and examples in this Brief reflect practices in Member States as at July 2013.

more detail below) are not limited to the presentation of statistical data but also attempt to analyse collected information, comparing it with data collected during previous reporting periods. The last part of the report, dedicated to conclusions and recommendations, includes detailed proposals concerning forthcoming actions as well as a presentation of activities.

In order to take informed decisions with regard to the further development of the public procurement system, the government needs to monitor the system. Requests for the establishment of monitoring tools and mechanisms may also originate from other bodies, institutions or persons (for instance, the national parliament, civil society organisations, and the business sector).

The initiative to create monitoring tools and mechanisms may also be taken by academics interested in public procurement issues, as shown by the case below.

### Case study

In Spain, the Public Procurement Observatory (*El Observatorio de Contratación Pública*<sup>3</sup>) has been established. The Observatory is not a part of the state administration but a non-profit, independent organisation that promotes co-operation between academics interested in public procurement issues. It is intended to serve as a laboratory of ideas on public procurement, with the purpose of elaborating proposals for the improved functioning of the public procurement system.

The Observatory's objectives are to:

- increase the transparency, competitiveness and integrity of the Spanish public procurement system;
- increase the efficiency of public procurement, on both the supply and demand sides;
- facilitate the access of small and medium-sized enterprises (SMEs) to the public procurement market;
- boost innovations in the public procurement sector;
- promote the participation of Spanish enterprises in the international public procurement market;
- facilitate and promote inter-administrative co-operation in the field of public contracts

One of the crucial aspects of monitoring is the **dissemination of information** collected during the process of monitoring. In **Poland**, for example, the Public Procurement Office (PPO) prepares the annual report on the functioning of the procurement system, which is posted on the PPO website<sup>4</sup> following approval by the Council of Ministers. All other analyses conducted by the PPO are also available on the website. In addition to the annual reports, the PPO prepares and publishes weekly and monthly newsletters, which present concise information on the latest developments in the procurement system as well as aggregated data concerning the number of contracts published and awarded in a given period. The **Spanish Observatory** mentioned above disseminates information that is relevant for public procurement from both national and international perspectives, publishes opinions and views of experts involved in the Observatory's work, and elaborates and disseminates newsletters that present proposals resulting from analyses and debates conducted by experts.

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<sup>3</sup> [www.obcp.es](http://www.obcp.es)

<sup>4</sup> [www.uzp.gov.pl](http://www.uzp.gov.pl)

## EU requirements concerning monitoring

The Public Sector Directive (the Directive)<sup>5</sup> introduced additional requirements concerning the monitoring of the operation of public procurement systems.

**Monitoring authorities:** Article 83 of the Directive requires Member States to ensure that monitoring of the application of public procurement rules is performed by “one or more authorities, bodies or structures” (monitoring authorities). The monitoring authorities must be empowered to report on “specific violations or systemic problems” that have been identified. These reports may be made to “national auditing authorities, courts or tribunals or other appropriate authorities or structures such as the ombudsman, national parliaments or committees thereof”. Member States therefore have some discretion to decide on the most appropriate reporting structure where specific violations or systemic problems have been identified, but they must permit the monitoring authorities to make reports on these issues.

**Results of monitoring:** The results of monitoring activities conducted by monitoring authorities must be made available to the public. The results must also be made available to the European Commission. Article 83 sets out requirements concerning regular data collection and reporting to the European Commission every three years. The report provided to the European Commission must include information, where applicable, on:

- “the most frequent sources of wrong application or legal uncertainty including possible structural or recurring problems in the application of the rules”;
- the level of SME participation;
- “prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interest and other serious irregularities.”

The European Commission is required to use data received from monitoring authorities to issue a regular report on the implementation and best practices of national procurement policies.

**National monitoring, reporting and statistical information:** Additional measures relate to monitoring at EU level.

Member States are required to make available to the European Commission information on “their institutional organisation related to the implementation, monitoring and enforcement” of the Directive.

Article 85 of the Directive requires the European Commission to review the quality and completeness of data published in prior information notices, contract notices, and contract award notices published in the *Official Journal of the European Union*. Where data in the notices is not compliant with the requirements of the Directive, the European Commission can request complementary information from the Member State concerned, and that Member State is required to provide the missing information.

Member States are also required to prepare and submit a statistical report to the European Commission every three years on procurement below the EU thresholds.

**Individual reports on procedures or on the award of contracts:** Article 84 of the Directive requires contracting authorities to draw up a written report every time a contract or framework agreement is awarded or a dynamic purchasing system is applied (where the contract, framework agreement or dynamic purchasing system is covered by the Directive). The minimum content of the individual report is listed in Article 84.

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<sup>5</sup> Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, 26 February 2014.

Contracting authorities are also required to document the progress of all procurement procedures and ensure that they keep sufficient documentation to justify decisions taken at all stages of the procurement procedure. This documentation may include communications with economic operators, internal deliberations, information on dialogue and negotiation, procurement documents and information on selection and contract award. The documentation must be kept for a period of at least three years from the date of award of the contract.

## Role of monitoring

The role of monitoring in public procurement is to:

- assess the way in which the public procurement system is developing as a whole and the direction in which it is moving – some trends can be identified only after years of observation – and thereby provide meaningful information that is essential for policy making;
- identify the need for any changes in the system;
- set short-term and long-term priorities and evaluate whether they have been achieved;
- analyse the potential effects of alternative solutions;
- provide guidance for procurement policy and implementation of decision making;
- provide information of relevance to decisions made by other policy makers.

What are the conditions to ensure effective monitoring?

To ensure that monitoring yields meaningful results, a number of conditions must be fulfilled. First, the policy goals and objectives of the public procurement system should be **consistent** over time, as otherwise it would be difficult to compare the results obtained through the monitoring process. Second, the availability of good, **reliable data** is essential. Third, effective monitoring requires the staff involved in monitoring activities to possess good **analytical and reporting skills**. They need to know what kind of information is useful, how to collect this information, how to proceed with data gathered, how to draw conclusions, and how to present the results obtained by the monitoring. Fourth, the effectiveness of monitoring depends on **official support, guidance and actions**.

## Types of monitoring

The following types of monitoring can be identified:

- audit of compliance (procedural compliance)
- performance evaluation/performance measurement
- policy-compliance monitoring.

**Audit of compliance:** The **audit of compliance** consists of verifying that the legal provisions on public procurement have been properly applied. This type of monitoring means verification of the actions of contracting authorities in terms of their formal (legal) compliance. The monitoring is conducted through checks (inspections) of the legality of the actions undertaken by the contracting authorities. Actions of contracting authorities that are subject to checks may include the qualification of economic operators, the selection of the best tender, or the failure to publish a contract notice where its publication was required.

These checks do not concern the evaluation of public expenditures from the point of view of sound management, effectiveness, efficacy and integrity (as this is the role of independent audit institutions).

Checks or inspections do not concern the monitoring of implementation of the government's public procurement policy (policies). Checks that have been thoroughly and properly performed may nevertheless be instrumental in the achievement of goals set by this policy. For instance, if the policy goal is to increase the openness and transparency of public procurement, inspections that are then aimed at detecting (and penalising) cases involving the improper application of non-competitive, non-transparent procedures should discourage contracting authorities from abusing provisions that enable the direct award of public contracts. The result would then be an increase in the share of competitive procedures, especially if such checks are coupled with legislative actions streamlining transparent and competitive procurement processes. In the same vein, if the particular procurement policy is to increase the participation of SMEs in public procurement, the monitoring of compliance with the rules concerning selection and qualification (minimum requirements, capacity levels, documents requested, etc.) should result in the reduction or removal of barriers faced by SMEs that are competing for public contracts.

The Bulgarian Public Procurement Agency, the Polish PPO, the Office for Public Procurement in Slovakia, and the Romanian National Authority for Regulating and Monitoring Public Procurement are examples of institutions that conduct audits of compliance.

**Performance evaluation/performance measurement:** "Performance measurement is about seeking to answer the fundamental question of whether the procurement system and operations ultimately deliver in accordance with the main objectives set" (see SIGMA Public Procurement Brief 21, *Performance Measurement*).

This kind of monitoring focuses on assessment of the functioning of the procurement system in terms of its **efficiency and effectiveness**. To perform this assessment, the bodies involved in the monitoring need to collect and analyse a wide array of data concerning procurement processes. This data may be collectively referred to as procurement **indicators**. Indicators should normally include:

- information about the number of procurement procedures published and/or launched during a given reporting period, which is required for assessment of the competitiveness and openness of the market;
- average time span between the publication of the procurement opportunity and the conclusion of a contract; this information enables conclusions to be drawn on the efficiency of the system;
- estimated value of the contract and the prices of selected tenders, which provide an indicator of the size of the procurement market;
- number of tenders submitted in a given procedure, which assists in measurement of the competitiveness of procurement procedures;
- number of tenders rejected in procurement processes, which is a good indicator of the competitiveness of the procurement market; tenders rejected are not taken into account during the award, and therefore the pool from which the contracting authority may choose is smaller;
- number of complaints (appeals) submitted in comparison with the total number of procurement procedures conducted;
- average duration of the review procedure and of similar performance evaluations (in order to assess the efficiency of the review system).

An analysis of indicators provides information enabling the monitoring body to draw conclusions with regard to:

- transparency of procurement processes, as expressed in the share of open and transparent procedures in the total number of procedures; a low percentage of procedures initiated without the publication of contract notices indicates an open and transparent public purchasing system;
- competitiveness of procurement procedures, measured by the number of tenders submitted on average in response to published calls for competition; a low number of tenders would not only lead to higher prices paid by the contracting authority for goods, services or works acquired (lower competitive pressure), but should also make the monitoring body consider whether this situation results from the preparation of biased technical specifications that artificially limit competition by setting technical requirements effectively excluding bidders from participation in the tender process;
- efficiency and effectiveness of procurement processes, measured by the average duration of procurement processes, counted from the moment of publication of the contract notice to the decision to award a contract or to the conclusion of a contract;
- efficiency of review processes conducted by review bodies, measured by the number of days that elapse between the receipt of an appeal and the decision (judgement) adopted by the review body;
- suitability of specific procurement procedures to ensure value for money, measured by the savings obtained by the contracting authorities.

Comparing current indicators with indicators from previous reporting periods enables conclusions to be made about the way in which the system is evolving. For instance, it may be possible to establish whether there is more or less competition or transparency and whether the system is becoming more efficient.

### Case study

The Polish PPO is obliged to present annual reports to the Council of Ministers on the functioning of the system of public contracts. The report presented in a given year summarises the major developments in the system of public procurement that have taken place in the previous year. The contents of the report may vary from year to year, but annual reports nevertheless have common characteristics.

The annual reports always provide:

- statistical data concerning the public procurement system based on available data, such as the value and number of contracts published and awarded (both below and above the EU thresholds);
- other statistical data concerning public procurement (number of procedures for the award of public contracts, divided according to the types of procurement envisaged in the procurement law; share of contracts awarded to foreign companies and number of contracts awarded abroad to Polish enterprises; average duration of a specific type of procurement procedure; average number of bids submitted in tendering processes; average number of award criteria used by contracting authorities; number of appeals submitted and reviewed and their results; and number of checks conducted by the PPO and their results; etc.);
- description of the major activities of the PPO conducted during the reporting period (related to legislation, monitoring, advisory services, dissemination of information, and

training);

- description of the relevant legal framework and presentation of amendments adopted in the course of the year under review, and activities and tasks planned by the PPO for the following year.

Performance measurement is conducted at various levels:

- **National level** – assessing the performance of the national public procurement system as a whole;
- **Contracting authority level** – assessing the performance of the contracting authority's operations;
- **Contract management level** – addressing the issue of delivery of an individual contract.

Monitoring at **national level** is usually one of the core functions performed by central procurement administrations. Monitoring is undertaken along with other activities, such as defining procurement policy and drafting primary legislation; elaborating secondary legislation; designing implementing tools and preparing manuals, instructions, and guidelines; and assuring international co-operation in the field of public procurement. Sometimes two or even three different institutions perform these functions (such as in the Czech Republic, France and Hungary).

### Case studies

In Spain, a central administration responsible for public procurement issues is the Consultative Board on Administrative Procurement (Junta Consultativa de Contratación Administrativa – “Board”), which is a part of the Ministry of Finance and Public Administration. The Board provides the public with the following documents, among others:

- legal opinions and reports issued by the Board;
- list of entrepreneurs forbidden to enter into contractual agreements or classified as suspended;
- official list of classified companies;
- Public Registry of Contracts.

**France** has at least two key institutions at the central level to carry out monitoring functions. The Directorate for Legal Affairs (*Direction des Affaires juridiques* – DAJ) is a part of the Ministry of Economy and Finance. The Public Procurement Department of the DAJ is responsible for drafting primary and secondary legislation, standard tender documents and standard contract documents. It is also in charge of developing procurement policy and preparing guidelines and instructions. The task of the Economic Observatory of Public Procurement (*Observatoire économique de l'Achat public* – OEAP), created in November 2005, is to collect and analyse data related to economic aspects of public procurement, in particular information provided by contracting authorities on contracts that have been awarded. It operates in close co-operation with the DAJ and is supported in its daily work by the DAJ Secretariat. The OEAP collects data on: all contracts covered by Directives 2004/18 and 2004/17; contracts of a value lower than the EU thresholds but higher than EUR 90 000, provided by all contracting authorities concerned; contracts of a value between EUR 20 000 and EUR 90 000, collected from contracting authorities that are randomly selected by the OEAP; contracts in the areas of defence and security; and public/private partnership contracts.

Monitoring at the **level of contracting authorities** helps to ensure efficiency and effectiveness of operations, identifies strengths and weaknesses in the performance of procurement, and



sets priorities for improvement. Monitoring at this level is also a key element in the strategic and operational planning and management of the contracting authority.

Finally, monitoring at the **level of contract management**:

- helps to enforce contractual obligations;
- helps to ensure that the object of procurement will provide value for money;
- allows comparison, if benchmarked, with other contracts and other contracting authorities;
- identifies strengths and weaknesses in the procurement process;
- provides inputs for improvements at higher levels.

**Policy-compliance monitoring:** Policy-compliance monitoring consists of the assessment of the instrumentality of public procurement processes in the achievement of specific procurement policy goals, such as sustainable public procurement, greater participation of SMEs, and use of electronic procurement (e-procurement). *Sustainable public procurement* covers the inclusion of environment-related considerations (**green public procurement – GPP**) and social considerations (**socially responsible procurement – SRP**) in public procurement processes. Sustainable public procurement broadens the scope of public procurement by including a potentially wide array of external consequences, concerning either the environment or the welfare of people who are not necessarily party to the public contract. The broad objective of GPP is to design procurement strategies in such a way as to minimise the number of negative consequences on the environment. The “greenness” of public procurement may be measured, for example, in terms of the percentage (expressed in both the number and value) of procurement contracts in which environment-related elements were considered in either the selection or the award criteria. In the same way, SRP may be measured by the percentage (the number and value) of procurement procedures in which social dimensions were considered in either the selection or the award criteria.

Given the significance of SMEs for the EU economy and labour market (they represent 98% of EU enterprises), policy makers are increasingly concerned about potential barriers to SMEs in public procurement markets. If the policy of the government is to measure and increase the share of SMEs (measured in terms of the percentage of procurement contracts awarded to SMEs) in the award of public contracts so that it reflects the importance of SMEs for the economy, the monitoring body should focus on collecting information on the number of contracts awarded to SMEs.

## Case studies

### Italy

The Authority for the Supervision of Public Contracts<sup>6</sup> in Italy was established in 1994 with the aim of supervising public contracts in order to ensure compliance with the principles of transparency, legitimacy and competition of operators in the public procurement market.

The Authority supervises the entire public procurement system, at both state and regional levels, in order to ensure compliance with the principles of legitimacy and transparency in award procedures, the effective performance of contracts, and compliance with competition rules. In particular, it supervises, through sample surveys, the correct application of laws and regulations, while verifying the regularity of award procedures and the efficiency of contract execution. The Authority reports to both the Parliament and the Government on particularly serious cases concerning the failure to comply with public procurement legislation or distorted application of the legislation; it also proposes legislative modifications to the Government and

<sup>6</sup> [www.avcp.it](http://www.avcp.it)

suggests revisions of implementing regulations to the Minister of Infrastructure. Every year, the Authority reports to the Parliament on its activities.

The Authority, through the Observatory, ensures the collection and processing of data on public procurement.

In particular, the Observatory:

- processes the data collected and assesses the structural characteristics of the public procurement market and its evolution;
- assesses whether the criteria of efficiency and value for money are respected during the procurement process;
- detects dysfunctions and anomalies of the market through fixed measures: (1) indexes of the assessment of excessive tendering rebates, in comparison with average rebates; (2) the number of bids presented in each award procedure; (3) the localisation of the awarded company with respect to the localisation of the contracting authority.

## Portugal

The objectives of the Portuguese **Public Works Observatory** (*Observatório das Obras Públicas*) are to promote transparency and to enable more informed, and consequently more efficient, decisions in the guidance of policies for the public procurement sector. The Observatory's mission is to monitor the most important aspects in the conclusion and execution of public works contracts and concessions.

By processing the data collected, the Observatory is able to obtain indicators, reports and statistics, thus improving its knowledge of the way in which the procurement sector functions. The information compiled in the Observatory's database is generally provided in the form of required reports by contracting authorities.

## Sources of information used in monitoring

**The following sources of information are used in monitoring public procurement:**

- notices related to public procurement – contract notices, contract award notices, voluntary *ex ante* transparency notices (i.e. notices of the contracting authority indicating its intention to award a contract without applying competitive and transparent procedures);
- individual reports and notifications of contracting authorities (information on the application of exceptional procurement procedures, records of the procedures);
- summary reports prepared by contracting authorities on a regular basis (e.g. annually) and submitted to the public procurement office or agency/authority (PPO/PPA).

## Institutions involved in monitoring

- PPOs/PPAs;
- statistical offices;
- contracting authorities;
- review bodies;
- economic operators;
- state audit offices and other inspections;
- non-governmental organisations;

- academia (universities, academics).

Monitoring may be conducted at both **central and local levels**.

At the central level, **PPOs/PPAs** usually perform the monitoring. One of their common functions is to monitor the compliance of contracting authorities/entities with public procurement law. In particular, they check whether specific procurement procedures satisfy legal requirements. They thus perform the **monitoring of compliance**, as defined above. The PPOs/PPAs also usually collect information on the procurement procedures conducted in a given period and analyse the developments taking place in the field of public procurement. This information enables them to draw conclusions concerning **policy compliance** and to carry out a **performance evaluation**.

**Review bodies** are not normally involved in the systematic monitoring of public procurement, as their basic function is to conduct an impartial and independent review of appeals (complaints) submitted in the course of a public procurement procedure against the decisions of contracting authorities. Appeals (complaints) are usually reviewed by means of interlocutory procedures, in which the two parties – the aggrieved bidder (appellant) and the contracting authority that has performed the challenged action – present their arguments in a court or another independent review body. In these circumstances, the review body's role is to settle the dispute between the two parties. Even if review bodies are not involved in the monitoring of public procurement, their decisions may be instrumental in the monitoring of developments in the field of public procurement, as they concern similar actions or omissions of contracting authorities.

**Statistical offices** are mainly involved in the monitoring of procurement by providing useful information on trends in the field of public procurement.

**Contracting authorities** also perform monitoring (locally). For practical reasons, they may monitor only their own procurement processes (procedures).

**Economic operators** are normally not involved in the (systematic) monitoring of procurement processes, as they are usually concerned with ensuring that the contracting authority observes the law during the process of evaluating applications or tenders. They focus on concrete procedures in which they are participating or could participate, and they complain to review bodies if they consider that their interests have been infringed. Their appeals may be useful, however, in drawing conclusions concerning the current state of public procurement. For example, a relatively large number of appeals concerning specific provisions of public procurement law (for example, rejection of tenders, technical specifications, abnormally low tenders, and cancellation of procurement) may be an indication of problems in the implementation of procurement rules at the level of contracting authorities or of problems in the law itself.

**State audit offices** audit the activities of public authorities in terms of sound management, effectiveness, efficiency and integrity.

## Methodologies of monitoring

Various methodologies of monitoring are used, depending on the level at which they are performed.

When conducted at national level, monitoring normally uses a combination of the following methods, for example:

- peer reviews and assessments
- regulatory impact assessments
- stakeholder surveys
- external audits.

Monitoring is a meaningful exercise, but only if it is conducted over a defined period and if the same methodology or a similar methodology or combination of methodologies is used. Data may vary from year to year, but over a longer perspective trends should be visible. Conclusions are only valid if the data collected is comparable and if it is compared under similar conditions. For example, during a specific period, procurement provisions remain more or less stable with regard to elements such as financial thresholds for the application of procurement law, time frames, conditions for the application of various types of procurement procedures, and entry fees from bidders requesting review.

## Further information

### Public Procurement Briefs

<http://www.sigmaweb.org/publications/key-public-procurement-publications.htm>

SIGMA (2016), *Performance Measurement*, Brief 21, OECD Publishing, Paris