

Questionnaire on Public Procurement in V4 countries

Give a brief insight into the legal and economic background of establishing the PP (public procurement) systems, to see the challenges your country faced on this field in the last 20 years.

Public procurement legislation in Slovakia very much followed the evolution of EU directives on procurement. Altogether 4 laws have been adopted (in 1993, 1999, 2003 and 2006), with another one being in the making. Dozens of amendments have been passed, with no year without one since 2006. Over time the legislation covered more sectors, strengthened the rules, hence giving procurers less power to select offers by their own judgement. This was partly a results of EU pressure, partly of corruption scandals engulfing procurement in Slovakia.

I. Legal framework

Analyzing the legal framework will be the fundamental part of this study. This part has to reveal the PP system of each country as a whole and identify similarities and differences between them, which may serve as the basis for further comparison. The legal framework defines the scope of each country's PP system.

1.

1. 1. Is there a separate body of law that regulates public procurement? (Y/N)	
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1. 2. Identify the relevant national-level regulations [primary/secondary law]. If possible, insert a reference to the official English translation of each act and decree in effect. Indicate if there were any major changes in the regulatory framework recently.	
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The Law on Public Procurement 25/2006 (Slovak only, <http://www.vyvlastnenie.sk/predpisy/zakon-o-verejnom-obstaravani/>)

English version only from 2010 at

http://www.uvo.gov.sk/download/2010/english/act_fullversion_2010.pdf

but 5 amendments took place in 2010-1, mainly 58/2011 (see the list and amendments in Slovakia

<http://www.uvo.gov.sk/legislativa/index.html>)

2.

2. Describe the scope of public procurement. Does it cover sub-national levels of government? Does it include coverage of all government procurement, including security and military procurement? Are there separate procurement rules established for parastatals?	
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The Law cover all types of procurement, subnational, defense etc within a single framework.

3.

3. 1. Was / is there any EU infringement case in progress against the government concerning PP? (Y/N)	
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	N no courts decisions, only requests for info
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3. 2. Describe the cases briefly and indicate the violated EU regulations.

2010 Case [IP/10/1244](#) Discrimination against some applicants (In 2007 „the National Motorway Company launched a public tender for the selection of an electronic toll collection system operator. The value of the contract was worth approximately € 664 million. Out of the four tenders submitted, three were excluded by the National Motorway Company for not submitting a tender that was in compliance with the technical specifications. Following the signature of the contract on 13 January 2009, several contracting conditions were substantially modified. If these modifications had been made and communicated at the beginning of the procedure, participating bidders might have submitted a different tender and more candidates might have participated in the bidding procedure.”)

2009 Case [IP/09/1759](#) Lack of transparency in advertising tender for advertising and translation services at Ministry of Infrastructure (advertised only on a internal notice board, tender worth 90 million euros). Slovakia cancelled the tender.

Case [IP/09/1470](#) Lack of transparency in advertising tender („In 2007, the Slovak Ministry of Transport had prematurely terminated the previous public service contract on consultancy and legal services on the grounds of non-satisfactory performance of the contractor. Within a few weeks after the termination, it awarded a legal services contract with a contract value of 19.6 million Euros for an indefinite period to another contractor.”)

4.

4. 1. Please indicate if the following OECD principles are expressed by the national regulations. (Y/N)

4. 1. 1. Transparency	Y
4. 1. 2. Good management	Y
4. 1. 3. Prevention of misconduct	Y
4. 1. 4. Accountability and control	Y
4. 2. Are the following key recommendations of the OECD ensured by the relevant regulations? (Y/N)	
4. 2. 1. Providing an adequate degree of transparency throughout the whole procurement cycle in order to promote fair and equitable treatment for potential suppliers	Y
4. 2. 2. Maximising transparency in competitive tendering and taking precautionary measures to enhance integrity, in particular for exceptions to competitive tendering	Y
4. 2. 3. Ensuring that public funds are used in public procurement according to purposes intended	partly
4. 2. 4. Developing a set of professional standards to enhance the knowledge, skills and integrity of public procurement officials	Y
4. 2. 5. Putting mechanisms in place to prevent risks to integrity in public procurement	partly
4. 2. 6. Encouraging close co-operation between government and the private sector to maintain high standards of integrity, in particular in contract management	N
4. 2. 7. Providing specific mechanisms for the monitoring of public procurement and the detection and sanctioning of misconduct in public procurement	Y
4. 2. 8. Establishing a clear chain of responsibility together with effective control mechanisms	partly
4. 2. 9. Handling complaints from potential suppliers in a fair and timely manner	Y
4. 2. 10. Empowering civil society organisations, media and the wider public to scrutinise public procurement	Y

4. 3. If you have any remarks on the above listed principles and recommendations please describe.

4. 4. Indicate any other guiding principles expressed in the legal regulations.

5.

5. 1. Which procurement methods are allowed by the national regulation? (e. g. open, restricted, negotiated, accelerated). List them. Open contest, restricted contest, negotiated with publication, negotiated without publication, competitive dialogue.								
5. 2. Are conditions for use of various procurement methods clearly established? (Y/N)							Y	
5. 3. Is there an explicit requirement that open competitive bidding is the preferred or default method? (Y/N)							Partly, open and restricted are default	
5. 4. Describe these. Open and restricted contests are default, all others have special conditions attached to them Negotiated with publication - if, alternatively all bids failed to pass criteria in previous open or restricted contest or competitive dialogue, if it is impossible to lay out price criteria given the subject (e.g. financial services), if public works is meant for RandD, not profit activities Negotiated without publication - if, alternatively all bids failed to pass criteria in previous open or restricted contest, or if only a single bidder can provide the item due to technical, artistic or copyright reasons, or due to time constraints, or extra amount of item already bought in open or restricted contest, up to 3 years since the last contract award, or if the item is sold on official trade exchange, or if the item is sold within sale or by seller who is in liquidation, or it is the winner from design contest, or if it concerns additional public works unforeseen or necessary to finish previous work, but up to 50 percent of original contract value, or if it concerns additional public works same or similar to original contract up to three year since the original contract award. Competitive dialog – extremely difficult projects (hard to define technical, financial or legal criteria) if open or restricted contest are no possible.								
5. 5. Specify the relevant thresholds by types (min/max) and relevance (goods, works, services). [Insert extra rows/columns if needed] all in thousands of euro								
type	goods		works		services		Defense goods, certain telecom services	
	min	max	min	max	min	max	min	max
„above the limit”	125	-	4845		125	-	193	-

„below the limit”	40	125	200	4845	40	125	40	193
„below the threshold”	10	40	20	200	10	40	10	40
„low value”	-	10	-	20	-	10	-	10

6.

6. Do legal provisions stipulate the use of new and innovative techniques in PP process (automatic or e-procurement)?

Yes, electronic auctions are now mandatory for all goods above 40 thousand euro.

7.

7. 1. Describe the system of administrative or judicial review/appeal. Is it fair and adequate?
Anyone can appeal to procurer within 10 days and is entitled to an answer. Dissatisfied, one can appeal to Office of Public Procurement which can stop or cancel the tender altogether. Dissatisfied, one can go to court. The framework is fair and well regulation, but some firms complain about implementation, eg quality of decisions by the Office.

7. 2. Specify the legal sanctions (penalties etc.) of violating legal regulations regarding public procurements.
In most serious cases up to 5 percent of contract value (or expected value). For administrative failures contracting authorities can be fined from 300 to 30 000 euros.

8.

8. 1. Are there minimum time limits for the receipt of tenders required for public procurements below EU-threshold? (Y/N)	Y
8. 2. If so, specify by types and conditions of procurement. [Insert extra rows if needed]	
type of procurement	days
„above the limit”	45/30 if pre-notice published/25 if electronic access to documentation/22 min
„below the limit”	30 open contest, 22 other methods
„below the threshold”	20 from the day of sending notice to procurement office
„low value”	none

9.

9. Is there a legal or regulatory requirement for public disclosure of procurements /related legal texts and statistical data? (Y/N)	Y
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10.

<p>10. Are there provisions regarding preferences for particular categories of suppliers (sp. preferential treatment of local bidders) and/or categories of goods, works and services (cf. private sector provision/operation of power, water or other infrastructure facilities)? If so, specify.</p> <p>Yes, for utilities (water, power, telecom etc) alongside the EU directive. Procurement rules for them apply, but they are less onerous.</p>

11.

<p>11. 1. Are there any explicit anti-corruption / transparency rules - as part of the framework regulation? If so, specify the essential features.</p> <p>Nothing specific, unless one counts publication of notices and of results</p>
<p>11. 2. Is there a conflict of interest policy in effect? If so, describe the essential features.</p> <p>No</p>

Sources: regulations, laws, other studies, reports

II. Institutional framework

The institutional framework introduces the public entities taking part in PP procedures, and the managerial framework.

1.

<p>1. 1. Name the institutions/authorities in charge of PP in your country. Describe their duties and responsibilities. Quote the legal sources of the infrastructural framework.</p> <p>Office of Public Procurement – conducts oversight over PP, sanctions procurers for breaking PP law, publishes guidance on PP methods, keeps all the documentation on tenders, publishes notices on tender in its Journal, issues procurement permits certifying individuals to carry out PP, once a year published analysis of PP results in Slovakia</p>	
<p>1. 2. Is the procurement system in your Country centralized or decentralized? (C/D)</p>	D
<p>1. 3. Is there a central tender board or authority? (Y/N)</p>	N

2.

2. 1. Is there an entity with oversight responsibilities for procurement functions throughout public administration (e.g., with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure.	
Office of Public Procurement, see above	
2. 2. Are procurement decisions overridden by higher governmental agencies? (Y/N)	N
2. 3. If so, by whom?	
2. 4. Are the authorities relating to procurement clearly delegated to the entities carrying out the process?	Y
2. 5. Are the applicable procedures clearly defined?	Y

3.

3. 1. Are there any integrity and transparency guidelines or code of ethics for employees working with PP? (Y/N)	Y
3. 2. What guidelines ensure integrity and transparency in PP?	
Clean criminal record required	

4.

4. What institutions have the power of supervision and control in the PP system? Name the key authorities, describe their rights and duties. Distinguish between internal management control and external audit.
Office of Public Procurement see above.

5.

5. Describe how review and remedy is regulated in Public Procurement. Name the key authorities.
Only by Office of Public Procurement, see point 7.1, first part

6.

6. Is there a national Public Procurement strategy? If so, describe its main objectives, targets and indicators. If it is publicly available, please add online reference.
No

7.

7. 1. Can public procurement be outsourced?	Y
7. 2. Do procurement agents or consultant / law firms take part in tendering?	Y

7. 3. If so, under what circumstances? How are they selected?
In procurement for consulting services

7. 4. Describe the normal basis for compensation and contract duration.

Fixed fee or share of tender volume, or combination

8.

8. 1. How are employees in PP institutions recruited? (Are vacancies publicly announced? What are the HR requirements – e. g. professional certificate, experience)

Vacancies are publicly announced. Professional certificate from Office of Public Procurement is required.

8. 2. How are PP employees trained? Are there regular training programs for entry- and higher level staff?

Need to get PP ability certificate from Office for Public Procurement. The Office can order retraining when Law changes substantially.

III. Practice and performance

The third part focusing on practical issues shows how Public Procurement systems operate in reality, how transparency and integrity are guaranteed, what deficiencies there are among them. This part plays a key role in analyzing whether and how Freedom of Information prevails in the PP system.

1.

1.1. What are the main performance indicators of the PP sector - for the year 2010? (Or latest available statistics Indicate the year:)

% of GDP (without „low value” contracts, estimated to be another 2-3% of GDP nominal value in PPP	7.6
	7bn euros

1. 2. Please indicate the share of methods (% in volumes and cases) [Insert extra rows if needed]

methods (cf. open, restricted etc.)	in volume		case	
	In %	Nominal value in PPP	%	TOTAL
Above the limit	71	5	16	840
Below the limit	19	1.3	26	1325
Below the treshold	10	0.7	58	3003
TOTAL	100	7	100	5168

1. 3. Please indicate the share of PP types (works, goods, and services - % in volumes and cases)

type (cf. goods, services, etc.)	in volume		case	
	In %	Nominal value in PPP	In %	TOTAL
goods	21	1,5	29	1488
services	35	2,4	34	1743
works	44	3.1	37	1937
TOTAL	100	7	100	5168

2.

2. 1. Are summaries of information about public procurement published? (Y/N)	Y
2. 2. Is there any comprehensive database on PP? (Y/N)	Y
2. 3. What kind of data is available? Specify the format.	Y/N format
2. 3. 1. number of received bids	Y web
2. 3. 2. number of contracts awarded	Y web
2. 3. 3. names of successful bidders / losing bidders	Y web
2. 3. 4. public advertisements	Y web
2. 3. 5. prequalification documents (if used)	Y web
2. 3. 6. the prequalification evaluation report documenting any decisions not to prequalify certain potential bidders	Y web
2. 3. 7. the bidding documents	Y web
2. 3. 8. record of any pre-bid meetings	N
2. 3. 9. the bid opening minutes	Y web
2. 3. 10. final bid evaluation report	Y web
2. 3. 11. detailed record of the reasons used to accept or reject each bid	Y web
2. 3. 12. copies of bids	Y web
2. 3. 13. appeals against procedures or award recommendations	N
2. 3. 14. signed copy of the final contract	Y web
2. 3. 15. any performance and advance payment securities issued	N
2. 3. 16. any changes in the final contract	Y web
2. 3. 17. documents on contract performance/completion	N
2. 4. Is a timeline follow up of a tender possible? (Does a tender have a specific ID from the beginning to the end?) (Y/N)	N
2. 5. Describe the access rules. Indicate if there are legal restrictions on the public availability of these data. Are data easily available to the general public? Data on notices and results are published in online Journal of Public Procurement at http://www.e-vestnik.sk/EVestnik/Aktualne Data on bids and selection procedure documents with final contracts are at Central Registry of PP documents at http://crdvo.uvo.gov.sk/ However, from November 2011 these documents are not being published due to lack of funding for anonymization of personal data and trade secrets All data are available free of charge in structured formats to anybody, updated daily.	
2. 6. Describe forms of publication (printed, electronic), scope and frequency. Does the country have a national gazette (or other similar publication) published in a timely fashion? All publication is electronic only, updated every working day.	

<p>2. 6. Is there a public website available with comprehensive real time data? If so, please insert reference link.</p> <p>See above 2.5</p>
<p>2. 7. Who handles public procurement data? Name the authority.</p> <p>The Office for the Public Procurement</p>

3.

3. 1. Do procuring entities have internal quality and control mechanisms? (Y/N)	Y
<p>3. 2. Are they regularly audited? If so, describe scope, frequency, who carries them out, etc.</p> <p>No</p>	
3. 3. Is procurement monitoring and administration computerized? (Y/N)	Y
<p>3. 4. How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?</p> <p>Frequently and adequately due to wide range of data mandatorily reported to Office for PP</p>	
3. 5. Do procurement units regularly update their informations on prices for goods and works? (Y/N)	Y
3. 6. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items? (Y/N)	N
3. 7. Are completion of contracts adequately monitored? (Y/N)	N
<p>3. 8. How frequently are contracts not completed on schedule? What is the major cause for slippage? Which sectors and which particular kinds of contracts are effected? Specify.</p> <p>See below</p>	

3. 9. How frequently are contracts not completed within the originally approved contract price? How frequently are clauses of the contract (quality/quantity of goods, services, work) modified? What is the major cause for modification? Which sectors and which particular kinds of contracts are affected? Specify.

TI Slovakia study from last year indicates, that every fourth tender contract gets amended. 15% of contracts will get an amendment with price rise of on average of 20 percent of original price. Law stipulates the maximum price amendment of 50% (works and services only). Public works are the most likely sector for price amendments. Amendments are more typical after open contest tenders.

4.

4. 1. Describe briefly the selection and contract awarding procedures. (per tender type). Take the checklist questions as a guideline	
4. 2. Are qualification criteria appropriate and clearly described? (Y/N)	Y
4. 3. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application? (Y/N)	Y
4. 4. Are time limits for the receipt of tenders fairly prescribed and sufficient for the preparation of bids? (Y/N)	Y
4. 5. Are bidders afforded sufficient time to revise their bids following a modification of the documents? (Y/N)	Y
4. 6. Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract? (Y/N)	Y
4. 7. Is prequalification carried out when appropriate? (Y/N)	Y
4. 8. Specify the types of contract prequalification is used for. Restricted contest, usually in public works	
4. 9. Who carries out the evaluations? Contracting authorities Are evaluations conducted by qualified evaluating committees? Yes Are evaluating committees appointed ad hoc for each evaluation? Yes Describe the composition of evaluation committees. Usually individuals administering PP in procuring authority, occasionally outside experts, including ngos.	
4. 10. What kind of information do bid evaluation reports contain? (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified) Describe. Yes, all of the above.	
4. 11. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily? (Y/N)	Y
4. 12. Are additional Government approvals required before contracts can be made effective? (Y/N)	N

5. Evaluate briefly the national public procurement system in your country. Identify the major problems and challenges. Is the system clear, comprehensive and consistent compared to EU framework?

The PP regulation in Slovakia is EU-compatible. Its Law on PP is to large extent a copy of EU directives. It is rather transparent, given a large amount of data that are being reported to public. Yet, on average less than 3 companies compete for a tender, against the average of 5 in the EU. The public and entrepreneurs believe there is a lot of corruption in the process.

One of the problems lies in the weak capacity of Office of PP to monitor the results, given the decentralized model of procurement Slovakia adopted. Another is a weak legal liability of PP administrators for wrongly administered tenders. Finally, a central registry of unit prices of most commonly procured products would be helpful in raising control of procurements results.