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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 GDP and public expenditure budget. According to the recent *Evaluation Report* (2011) published by the European Commission, public procurement in the European Union in 2009 amounted to EUR 2,100bn, representing 19% of GDP. Those figures alone provide sound reasons for monitoring the performance of public procurement systems.

### How is monitoring defined?

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 one defines in advance the state that is desired in terms of objectives or targets. The role of monitoring is to assess whether these objectives (targets) are being met. According to the source quoted above, 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, “monitoring of public procurement” comprises each and any systematic observation of the public procurement system conducted in a coherent way in order to assess how this system functions and develops over time and to establish whether the desired (targeted) state defined by policy makers has been achieved.**

A distinction should be made between the concept of **monitoring** as it is defined above and the methods and proceedings applied in order to detect and remedy infringements of public procurement rules (auditing, inspections, 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; and
- Dissemination of data concerning various aspects of public procurement (e.g. its transparency, openness, competitiveness and efficiency).

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<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.

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

Information collected through monitoring is useful for the purposes developing policy, determining value-for-money, and drawing conclusions with regard to compliance with fundamental principles of public procurement and 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 more detail below) are not limited to the presentation of statistical data but 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 more or less detailed proposals concerning forthcoming actions and 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, which is shown by the Spanish case below.

### Case study

In Spain the **Public Procurement Observatory** (*El Observatorio de Contratación Pública*, [www.obcp.es](http://www.obcp.es)) has recently been established. The Observatory is not a part of the state administration but a non-profit, independent organisation that promotes cooperation between academicians 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 cooperation 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 ([www.uzp.gov.pl](http://www.uzp.gov.pl)) 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 presenting 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.

### Are there any EU requirements concerning monitoring?

EU law on public procurement does not define the meaning of the term “monitoring”. The current EU public contract directives do not provide specific requirements concerning the monitoring of public procurement. The only reference to monitoring in the text of the Public Sector Directive (2004/18) is provided in the title of Article 81 – “*Monitoring mechanisms*”. This article states: “*In conformity with Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures for the award of public supply and public works contracts, Member States shall ensure implementation of this Directive by effective, available and transparent mechanisms. For this purpose they may, among other things, appoint or establish an independent body*”.

The directive also refers in its preamble (recitals 18-19) to monitoring of the awarding of contracts related to the services defined in the directive's Annex IIB (“Non-priority services”).

In addition, the directive provides for reporting obligations of:

- Contracting authorities – obligations concerning the preparation of individual reports related to specific procurement procedures (Article 43);
- EU Member States – concerning submission to the European Commission of annual statistical information on contracts awarded in a given year (Articles 75-76).

According to Article 75, the obligation concerning the submission of statistical information was imposed in order to “permit assessment of the application of this Directive”.

More obligations concerning reporting and monitoring have been proposed in the new EU directives on public procurement, which were presented in December 2011 and are currently in the process of adoption.

### What is the role of monitoring in public procurement?

Monitoring in public procurement has the following functions:

- Assessing the way in which the public procurement system develops as a whole and the direction in which it is moving – some trends can be identified only after years of observation – and thereby providing meaningful information that is essential for policy making;

- Identifying the need for any changes in the system;
- Setting short and long-term priorities and evaluating whether they have been achieved;
- Analysing the potential effects of alternative solutions;
- Providing guidance for procurement policy and implementation decision making;
- Providing 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**.

### What are the types of monitoring?

The following forms 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 the 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 (such as the qualification of economic operators or the selection of the best tender) or their omissions (for example, the failure to publish a contract notice where its publication was required). Those 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 are also not concerned with the monitoring of the implementation of the government's public procurement policy (policies). Checks that have been thorough 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 aimed at detecting (and penalising) cases involving the improper application of non-competitive, non-transparent procedures, such checks/inspections 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 rules (minimum

requirements, capacity levels, documents requested, etc.) should result in the removal of barriers faced by SMEs that are competing for public contracts.

The Bulgarian Public Procurement Agency, the Polish Public Procurement Office (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 *Performance Measurement*, SIGMA Public Procurement Brief 21, 2011).

This kind of monitoring focuses on the 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 proceed with 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 (required for the 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 (indicator of the size of the procurement market);
- Number of tenders submitted in a given procedure (measurement of the competitiveness of procurement procedures);
- Number of tenders rejected in procurement processes (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 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; the lower percentage of procedures initiated without the publication of contract notices indicates a more 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 too high the requirements concerning minimum capacity levels expected from candidates (bidders) and similar activities of contracting authorities;

- Efficiency and effectiveness of procurement processes, measured by the average duration of procurement processes, counted as from the moment of publication of the contract notice up until the decision to award a contract or 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 (judgment) 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 evolves (for instance, 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 to the Council of Ministers annual reports on the functioning of the system of public contracts. The report presented in a given year summarizes 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: 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; the share of contracts awarded to foreign companies and the number of contracts awarded abroad to Polish enterprises; the average duration of a specific type of procurement procedure; the average number of bids submitted in tendering processes; the average number of award criteria used by contracting authorities; the number of appeals submitted and reviewed and their results; the 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, along with activities such as defining procurement policy and drafting primary legislation, developing secondary legislation (designing implementing tools and preparing manuals, instructions, guidelines, etc.), and international cooperation in the field of public procurement. Sometimes two or even three different institutions perform these functions (for example 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 – “the Board”), which is a part of the Ministry of Finances and 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 (L'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 cooperation with the DAJ and is supported in its daily work by the DAJ Secretariat. The OEAP collects data on 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 (PPP) 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. It is also a key element of strategic and operational planning and management of the contracting authority.

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

- Helps to enforce contractual obligations;



- Helps to ensure that the object of procurement will give 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** 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 the use of 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, aimed either towards the environment or towards the welfare of persons who are not necessarily parties to the public contract. The broad objective of GPP is to design procurement strategies in such a way as to minimize the number of negative consequences on the environment. How “green” public procurement has been 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 enterprises in the EU), 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 ([www.avcp.it](http://www.avcp.it)) 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 the 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 awarding procedures and with the effective performance of contracts as well as 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 its distorted application; it also **proposes** legislative modifications to the government and **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: a) indexes of the assessment of excessive tendering rebates, in comparison with average rebates; b) the number of bids presented in each award procedure; c) 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 functions. The information compiled in the Observatory's database is generally provided in the form of required reports by contracting authorities.

## What are the sources of information used in monitoring?

- 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, notifications of contracting authorities (information on the application of exceptional procurement procedures, records of the procedures);
- Summary reports prepared on a regular basis (e.g. annually) by contracting authorities and delivered to the public procurement office or agency/authority (PPO/PPA).

## Which institutions (actors) are involved in monitoring?

- Public procurement offices (agencies/authorities);
- Statistical offices;
- Contracting authorities;
- Review bodies;
- Economic operators;
- State audit offices and other inspections;
- Non-governmental organisations (NGOs);
- Academia (universities, academics).

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

At the central level, **public procurement offices (agencies/authorities)** usually perform the monitoring. One of their common functions is to monitor the compliance of contracting authorities (entities) with public procurement law. They check in particular 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 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 this case the review body's role is to settle the dispute between those 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 involved in the monitoring of procurement mainly 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 target 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, cancellation of procurement) may be an indication of problems in the implementation of procurement rules at the level of contracting authorities or problems in the law itself.

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

## What are the methodologies of monitoring?

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

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

- Peer reviews and assessments;
- Regulatory impact assessments;
- Stakeholder surveys;
- External audits.

Monitoring is a meaningful exercise only if it is conducted over a defined time period and by using the same or similar methodology or combination of methodologies. Data may vary from year to year, but in a longer perspective trends should be visible. Conclusions are also valid only 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 such elements as financial thresholds for the application of procurement law, time periods, conditions for the application of various types of procurement procedures, entry fees collected from bidders requesting review, etc.).

### *Further reading:*

- [Performance Measurement](#) (SIGMA Public Procurement Brief 21, 2011).