How Open Contracting Adds Value to EU's COVID-19 response and recovery

Context

The COVID-19 pandemic has Europe in crisis mode, with governments at all levels mobilized to purchase the urgently needed medical supplies to fight the virus. An outburst of scandals (for example, in Slovenia, Romania) showed just how fragile public procurement can be, but also how vital it is to the delivery of goods and services, especially in emergency situations. The mismanagement came as no surprise. This situation is deepening many of the pre-existing challenges public contracting systems have faced for many years. EU Governments are struggling with low levels of transparency, and coordination.

Public procurement is already government's number one corruption risk; as the OECD, European Commission and UNODC all agree.[1] The sheer scale of the market - governments spend over $9.5trillion on public contracting and procurement every year[2] - and its general opacity and opportunities for discretion by officials make it a major corruption risk. Emergency procurement is even more vulnerable to malfeasance, as it may involve sole sourcing, accelerated timeframes, prepayment, and a general scramble to secure supplies that may minimise due diligence and supplier scrutiny. And the health sector itself is particularly risky given its complex procurement and sourcing requirements: indeed, it is the second most prosecuted sector under the OECD Anti-Bribery Convention.

We've also seen how transparency and open data have met those challenges, enabling countries with good open data to provide a single window for all their COVID-19 related contracts to identify, aggregate and analyze the most complete information about their supply chains and performance. Open contracting data has also helped governments to plan better, publish their stocks and anticipated needs to properly inform the market about future opportunities, helping with emergency management. It has also supported direct monitoring of corruption risks in multiple countries.

---

[1] http://www.oecd.org/gov/ethics/public-procurement.htm, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf, p.21, UN Office of Drugs and Crime. 2013. Guidebook on anti-corruption in public procurement and the management of public finances. p.1.

[2] Center for Global Development. November 2014. Publishing Government Contracts. Addressing Concerns and Easing Implementation. p. ix.

Better, more open and accountable public procurement systems will be central to rebuilding the devastated economies as the pandemic subsides. In shrunk economies, it is crucial to ensure that every Euro spent translates into maximum added value for the EU companies and citizens. The good news is that there is a lot of room for improvements and potential savings within public procurement. Even a small shift of **1% in efficiency can save the EU around EUR 20 billion per year[3].** Business as usual will not be enough to achieve any of that.

To that end, we the coalition of leading open procurement advocates in the EU, recommend that the leaders at the European Commission, the European Parliament, and the Council recognize the importance of open contracting to the recovery efforts, and establish fully transparent and accountable procurement driven by open data and open information as the new normal in the EU and beyond. See annex I for more details on how open contracting supports the EU recovery agenda.

Recommendations:

1. The European Commission (DG CONNECT) should mandate Member States to publish all procurement related data (from planning to implementation, including all bids and information below TED and national thresholds) in consistent, standardized and comparable open formats by including it under the Annex I of the Public Sector Information Directive, currently under development. More detailed information can be found in this public letter.

2. The European Commission (DG GROW) should continue doing everything within its power to ensure that the newly introduced Tenders Electronic Daily (TED) e-forms are implemented in the fullest scope possible, allowing the Member States to collect full, high-quality and structured procurement information. This should include encouraging countries to use e-Forms for below threshold procurement as well as collecting and publishing as many optional data fields as possible.

3. The European Commission (DG ENV) should urge all Member States to use open data to promote and implement the **Green Public Procurement** (GPP). The GPP is fully aligned with the **European Green Deal** and the **2014 Procurement Directives** which enable public authorities to take environmental considerations into account. Transparent and open data will allow Public Authorities to procure goods, services and works with a reduced environmental impact, and provide financial savings and reduce contracts' costs. Furthermore, GPP can be applied to contracts both above and below the threshold for application of the Procurement Directives.

---

[3] https://ec.europa.eu/growth/single-market/public-procurement_en

4. The European Commission should support the efforts to analyze the currently existing COVID-19-related information to be able to draw all the lessons about procurement from the current crisis. One example of best practices are the four **EU joint procurements** for medical equipment.

5. The Council should include open contracting data as an additional anticorruption mechanism,   included in the **Digital Europe programme for the period 2021-2027**, under paragraph 2.3. Measures to prevent fraud and irregularities. Accessible and published data can also assist in identifying red flags from the early procurement stages.

6. The European Council should set the tone for the rest of the EU, by including open contracting under the **Digital single market for Europe** policy, and into the recovery policy agenda as part of the debate **on the digital priorities in the post COVID-19 recovery**.

7. The European Parliament should contribute to a pan-European discussion and help put open contracting on the agenda, encouraging the European Commission and the Council to act promptly.

Signed by:
1. Karolis Granickas, Open Contracting Partnership, kgranickas@open-contracting.org
2. Francesco Saija, Parliament Watch Italy, francescosaija@gmail.com>
3. Krzysztof Izdebski, ePanstwo Foundation, Poland, krzysztof.izdebski@epf.org.pl
4. Elena Calistru, Funky Citizens, Romania, elena@funky.ong
5. Rachel Hanna, Access Info Europe, rachel@access-info.org
6. Sandor Lederer, K-Monitor, Hungary, lederer@k-monitor.hu
7. Pierre Mesure, Open Knowledge Sweden, pierre@mesu.re
8. David Cabo, Eva Belmonte, Fundación Ciudadana Civio, Spain, david@civio.es, eva@civio.es
9. Adriana Homolova, Tenders Exposed, adriana@tenders.exposed
10. Karina Carvalho, Transparency International Portugal, karina.carvalho@transparencia.pt
11. Leo Hoffmann-Axthelm, Transparency International EU leo.hoffmannaxthelm@transparency.org

ANNEX I: How open contracting fits with the Recovery agenda?

1. Improving functioning and vitality of the Single Market
Some 250,000 public agencies in the EU spend around 14% of our GDP or approximately EUR 2 trillion per year through public procurement[4]. The key to the success of recovery efforts will not be limited to the amount of public spending, but also how these financial flows are managed.

A data-driven public procurement can better support the European tech ecosystem, small businesses and encourage smarter purchasing decisions, leading to better prices and improved quality of goods and services for European citizens.

There is compelling evidence that publishing open data on procurement and contracts has improved competition, market entry and decreased prices elsewhere too.
- A 2019 analysis by academics at Yale, Chicago Booth and MIT Sloan found the publication of procurement data on the EU's Open Data Portal in csv format had major social benefits including:
    - the number of bids received increased per call for tender published as open data (the initial analysis in the paper suggests this was by approximately 12%);
    - public officials were more likely to award government contracts to new vendors after the increase in open data accessibility and;
    - prices for contracts with open data publication decreased (by approximately 8% in the initial analysis).
  It is also fair to point out that increased competition comes at the expense of lower contract performance, particularly if suppliers are new, procurement projects are complex, and contracts are awarded solely based on price.
- Analysis by the European Bank for Reconstruction and Development (EBRD) shows that open procurement data lowers barriers to entry and the cost of doing business for SMEs. After Ukraine enacted public procurement reforms based on OCDS, they saw big gains. US$1 billion in savings and some 80% of businesses using the procurement portal were SMEs. 75% of these won at least one public contract in 2016.
- A European Commission-funded study found that publishing more information about procurement reduces single bidding. This remains a major challenge across the EU as around 35% of procurements attract only one bid.

2. Improving targeting and delivery of economic stimulus

---

[4] https://ec.europa.eu/growth/single-market/public-procurement_en

The EU has called for an unprecedented investment effort, a substantial part of which will be spent through public procurement. Not only is it important to give the EU companies, especially smaller ones, a fair chance to participate and benefit, but it is also crucial to ensure the effective screening of foreign direct investment, leading to more trust and better environment for further investments.

Investment in digital, health and other infrastructure is particularly risky. There is a huge efficiency gap (approximately 30%, according to the IMF) between the money that is spent and the coverage and quality of the resulting infrastructure. This means that vital, life-changing infrastructure is not being delivered to citizens and that might sharpen during the recovery.

Underpinning these issues is the very nature of the infrastructure and construction industry – large sums, long timelines, complex supply chains – all of which increase the risk of losses from inefficiency, mismanagement or corruption. The recent Odebrecht and Carillion scandals made evident that we need more, better, and more timely data across the process to make sure public works deliver. This is where open contracting can help by putting standardized and structured data at the core of infrastructure project management. Now is the moment to change the business as usual approach and to attach meaningful transparency and accountability criteria to investments.

3. Global leadership and promoting a rules-based international approach
Cross-border procurement is paramount to cross-border trade. The mentioned EBRD study shows just how important access to information about opportunities is to promoting cross-border procurement.

Our guidance on using open data for the purposes of the World Trade Organisation General Procurement Agreement shows how collecting and pu§blishing standardized open public procurement data, and tracking useful metrics, can improve procurement performance, including cross-border participation. This approach can also help boost market access. Multiple studies show that transparency and competition are very closely correlated (see some of the latest research on this here).

Around half of the EU and the EEA Member States and the five (5) Eastern Partnership countries are at different stages of open data publication and the open data architecture is slowly emerging, signaling the need for further standardization.

Multiple international norm setters recommended the use of open contracting to promote transparency and accountability within procurement, including the European Bank for

Reconstruction and Development (that has a separate [open contracting work stream](#)), [World Trade Organization](#), [the World Bank](#), [Organization for Economic Cooperation and Development](#). Importantly, [G7 Biarritz declaration](#) in August 2019 recognized the role of open contracting and open data standards in the fight for a fairer, efficient and transparent public procurement market. It reinforced the [previous recognition](#) of the role of open data in public procurement during G20 in Toronto in 2015.

The EU now has a unique opportunity to go beyond big statements and initiate the change of the global norm by embracing open contracting within its border, that will inevitably translate into change in norms beyond the EU.

4. Promoting EU public integrity and trust
Standardized open data that links all different stages of procurement from planning to implementation will enable smarter contract management, red flagging, efficiency monitoring, auditing capabilities, and even quicker transactions. More external monitoring of procurement will reduce levels of corruption and inefficiencies, and increase the value for money. A recent [OLAF study](#) shows that direct public loss in public contracts amounted to **18% of the overall project budgets concerned, of which 13% can be attributed to corruption.** [Another study](#) suggests the EU loses around EUR 5 billion to corruption in procurement every year.

Importantly, a substantial volume of lessons learned and best practices during the COVID-19 crisis have been lost due to a lack of structured and standardized data leading to the inability to analyze prices, suppliers, and delivery across Member States. Besides a few good examples from Lithuania, Slovenia, Portugal, TED database, and a few others, Member States faced difficulty in publishing COVID-19 specific information for further analysis. This challenge should be tackled for the governments to react to crises in a timely manner and deliver more efficiently.

High-quality, structured data about procurement can fuel the change in attitude. Member States should make their procurement performance-driven (as opposed to compliance and process-driven). The only way to measure the effectiveness and efficiency of procurement is by having reliable data. Our [guidance](#) on using open data for measuring the quality and performance of a procurement system shows how to use data to calculate specific performance indicators.