

OPEN DATA TOOL FOR PUBLIC PROCUREMENT GUIDELINES

1. WHY IT IS CRITICAL TO PUBLISH PUBLIC PROCUREMENT DATA IN ACCORDANCE WITH A COMMON STANDARD

This section identifies the key elements that need to be considered when publishing contracting data, best practices and the publication levels across European Union member states.

Public procurement is one of the government activities that is most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders. (OECD 2016, Preventing Corruption in Public Procurement).

A clear red flag indicator for corruption within the public procurement process is single bid tenders. A study has shown, that publishing more data on public procurement decreases the risk of single bid tenders.¹ Furthermore, a World Bank survey including a thousand companies across nearly 90 countries found that competition was higher and kickbacks were fewer in places where transparent procurement processes, independent complaint procedures and external auditing were in place,² This was confirmed also by the Center for Global Development³.

It is now mandatory for European Union countries to make procurement electronic. Member States are now publishing procurement information on national e-procurement portals, and some countries publish further information either through so-called contract registers or open data initiatives⁴ (both supported by the Commission).

EU countries have not defined yet a shared agreement about the scope of required publication, data formats, accessibility, usability, etc. Governments often publish the minimum amount of information required, in order to comply with publication requirements based on national laws. The quality of information is often poor and entered across parallel systems that are not interoperable with one another.

¹ <http://digiwhist.eu/publications/lights-on-the-shadows-of-public-procurement-transparency-in-government-contracting-as-an-antidote-to-corruption/>

² <http://documents.worldbank.org/curated/en/817871496169519447/pdf/WPS8078.pdf>

³ <https://www.cgdev.org/publication/ft/publishing-government-contracts-addressing-concerns-and-easing-implementation>

⁴ https://ec.europa.eu/regional_policy/sources/good_practices/GP_fiche_23.pdf

2. WHAT ARE OPEN DATA FOR PUBLIC PROCUREMENT AND WHO ARE THE BENEFICIARIES OF THIS TOOL?

This section briefly defines Open Data on Public Procurement, refers to international conventions and the EU Public Procurement Directives, and identifies the beneficiaries of the ACT! Open Data Public Procurement-tool.

«Open data is data that can be freely used, shared and built-on by anyone, anywhere, for any purpose».⁵ It refers to making data free, publicly accessible and machine-readable for anyone to access and use, without restrictions.

Open data on Public Procurement concerns the public distribution of information relating to procurement procedures and contracts.

“Transparency in procurement takes form in a variety of practices, such as: publishing procurement policies; advance publication of procurement plans; advertisement of tender notices; disclosure of evaluation criteria in solicitation documents; publication of contract awards and prices paid; establishing appropriate and timely complaint/protest/dispute mechanisms; implementing financial and conflict of interest disclosure requirements for public procurement officials; and publishing supplier sanction lists”. (Ballard 2011, Transparency and public procurement⁶).

The European Commission released two directives referring to Open Data on Public Procurement:

- The first one is the Open Data Directive⁷ in order to provide a common legal framework for a European market for government-held data, also referring to “Public sector information”. The two pillars of this directive are: **transparency** and fair **competition**. It addresses material held by public sector bodies in the Member States, at national, regional and local levels, such as ministries, state agencies and municipalities. It also focuses on the economic aspects of the re-use of information rather than on access to information by citizens.
- Second, are the Public Procurement Directives (2014/23/EU⁸ 2014/24/EU⁹ and 2014/25/EU¹⁰).

These directives focus on legal and technical definition and requirement of public contracts and in general the processes by which public authorities purchase works, goods or services from companies¹¹. These directives follow the EU’s principles of **transparency** and **competition** in order to ensure the best value for money for public purchases.

The Article 9 of the United Nations Convention Against Corruption - UNCAC (2004) also highlights the importance for “Each state party, in accordance with the fundamental

⁵ <https://blog.okfn.org/2013/10/03/defining-open-data/>

⁶ UNOPS 2011 “Transparency and Public Procurement”

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1561563110433&uri=CELEX:32019L1024>

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0023-20180101>

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0025>

¹¹ https://ec.europa.eu/growth/single-market/public-procurement_en

principles of its legal system, to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption". In addition, the UNCAC specifies what data should be published "a) *The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts; b) award criteria and tendering rules; c) objective and predetermined criteria for public procurement decisions.* The OECD Recommendation on Public Procurement (OECD, 2015b) recommends that adhering countries ensure an adequate degree of transparency of the public procurement system in all stages of the procurement cycle. As a minimum, adequate and timely information may be provided on upcoming contracts as well as contract notices and information about the status of ongoing procurement processes.

Additional information such as the average procurement duration, justification of exceptions and specific overview records by type of bidding procedure may further enable external parties to scrutinize public procurement practice. To provide an appropriate degree of information, governments need to strike a balance between ensuring accountability and competition on the one hand, and on the other hand protecting trade secrets and respecting the confidentiality of information that can be used by interested suppliers to distort competition, in current or future procurement processes.

As the first target group of beneficiaries of the ACT-toolkit, municipalities are invited and supported to manage the process of public procurement to be compliant with these directives and related concerns and recommendations¹².

3. HOW THE EUROPEAN COMMISSION IS DEALING WITH THESE PUBLICATION PROCESSES AND WHY THE OPEN CONTRACTING DATA STANDARD CAN BE A SOLUTION

Nowadays the European Commission is promoting contract registers and open data projects. The Commission also requires member states to publish tenders that are above a certain monetary threshold in a standardized format on its Tenders Electronic Daily service (TED). The TED forms¹³ are evolving to include new reporting ideas in order to improve transparency (please see for example this platform to discover and analyse Covid-related public contracts in Italy <https://bandicovid.openpolis.it/>). These forms largely comply with the Open Contracting Data Standard (OCDS), as it has been mapped by the creators of the OCDS - the Open Contracting Partnership.¹⁴ Since 2018 the OCDS has been highlighted by EU Commission¹⁵ as the new standard to be implemented in order to harmonise public contracting data among EU countries. The OCDS is also a pillar of the Integrity Pacts Programme of Transparency International and funded by the European Commission.¹⁶

¹² https://ec.europa.eu/growth/content/new-eu-public-procurement-rules-less-bureaucracy-higher-efficiency-Q_en

¹³ <https://ec.europa.eu/docsroom/documents/38172>

¹⁴ <https://standard.open-contracting.org/profiles/eu/master/en/>

¹⁵ https://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157319.pdf

¹⁶ <https://www.transparency.org/en/projects/integritypacts>

4. WHAT FAILURES DOES THE TOOL ADDRESS?

The tool addresses failures related to **transparency and competition**, as they are the two principles that European Commission aims to guarantee with its directives. EU law sets minimum harmonised rules both for higher value and lower value tenders with the aim at guaranteeing:

- Basic standards for public contracts
- Adequate advertising
- Impartiality on the award process
- Impartiality on the review procedures

As the European Commission states, public contracts «present significant opportunities for businesses in the Internal Market, particularly for SMEs and start-up companies. At the same time, open and competitive award methods help the public administrations to attract a broader range of potential bidders for such contracts and to gain from better-value offers. Ensuring the most efficient use of public money is of particular importance in view of the budgetary problems encountered in many Member States. One should also not forget that transparent contract awarding practices are a proven to help safeguard against corruption and favouritism».¹⁷

The tool is compliant with Open Data standards and in particular with the Open Contracting Data Standard (OCDS). OCDS is a framework by Open Contracting Partnership to enable disclosure of data and documents at all stages of the contracting process by defining a common data model. It was created to support organizations to increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users¹⁸. The Open Contracting Partnership is a collaboration across governments, businesses, civil society, and technologists to open up and transform government contracting worldwide, spun out of the World Bank in 2015, and now working in 30 countries as independent not-for-profit.¹⁹

5. WHO ARE THE SUBJECTS INVOLVED (IN GENERAL)?

5.1. The municipality

The municipality must deal with public procurement contracts and data related in a way compliant with the European Directives on Open Data and Public Procurement, in order to guarantee a sound transparency and competition alongside the entire tender process.²⁰

5.2. The bidder company

The company aiming at bidding on a public contract has to guarantee

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006XC0801%2801%29>

¹⁸ <https://standard.open-contracting.org/latest/en/>

¹⁹ <https://www.open-contracting.org/>

²⁰ https://ec.europa.eu/growth/content/new-eu-public-procurement-rules-less-bureaucracy-higher-efficiency-Q_en

transparency and competition across all procedures.

5.3. **Other subjects and offices involved: IT personnel**

IT personnel working within the municipality must deal with public contracts data in a sound way in order to release it according to Open Data standards, to allow stakeholders in reusing data freely and for any purposes.

6. HOW TO PUBLISH PUBLIC CONTRACTS DATA IN COMPLIANCE WITH OPEN CONTRACTING DATA STANDARDS

6.1. **Data Assessment and Normalization process**

Municipalities have to assess and transform their data in order to make it compliant with the Open Contracting Data Standard (OCDS). In fact, while the traditional manner to publish Open Data on public procurement refers to simply releasing raw data, OCDS provides a common data model to map the overall public procurement process (planning, tender, award, contract and implementation). Raw data can be managed to become compliant with OCDS data models and linked to each other along the different phases of public contract. This management process refers to the following steps:

- Assessing data with OCDS - Normalizing and transforming data to be compliant with OCDS

6.2. **How to release data under OCDS**

Open Contracting provides a strategy and a set of instruments in order to map the whole public procurement process in five steps: planning, tender, award, contract and implementation. This strategy allows public institutions to bridge the different phases in public contracting ., In particular by:

- 6.2.1. Collecting and classifying data
- 6.2.2. Assessing the quality of available data
- 6.2.3. Organizing data in accordance with the OCDS data model for European Union²¹
- 6.2.4. Validating the data transformation and organization processes
- 6.2.5. Releasing data

6.3. **What data has to be published**

The Open Contracting Data Standard defines which data has to be published for each phase. Below is a list of data organized by contracting phases:

- 6.3.1. Phase 1 - Planning
 - a) Budgets
 - b) Project plans
 - c) Procurement plans

²¹ <https://standard.open-contracting.org/profiles/eu/master/en/>

- d) Market studies
- e) Public hearing info
- 6.3.2. Phase 2 - Initiation (Tender)
 - a) Tender notices
 - b) Specifications
 - c) Line items
 - d) Values
 - e) Enquiries
- 6.3.3. Phase 3 - Award
 - a) Details of award
 - b) Bidder information
 - c) Bid evaluation
 - d) Values
- 6.3.4. Phase 4 - Contract
 - a) Final details
 - b) Signed contract
 - c) Amendments
 - d) Values
- 6.3.5. Phase 5 - Implementation
 - a) Payments
 - b) Progress updates
 - c) Location
 - d) Extensions
 - e) Amendments
 - f) Completion or Termination info

You can find more details in the Contracting Process page on the OCDS website²².

7. FURTHER RECOMMENDATIONS AND TIPS FOR MUNICIPALITIES

In accordance with the Open Contracting Data Standard, we urge public institutions to follow these further recommendations in order to release public procurement data in a more efficient and reliable way.

We recommend that municipalities:

- 7.1. Publish early, and ensure full transparency of procurement data at each step of the process
- 7.2. Use common formats and standards to release data according to CSV and JSON structure and avoiding proprietary formats such as XLS, in order to guarantee a wider and more accessible reuse of data
- 7.3. Ensure the quality check of data to be published for each step of the contracting process
- 7.4. Get inspired by common open data publication patterns
- 7.5. Guidance on improving data collection and data quality

²² https://standard.open-contracting.org/latest/en/getting_started/contracting_process/



7.6. Engage citizens and collaborate with stakeholders, asking them for feedback and reviews.

Find further information, resources and instruments. on the Open Contracting Data Standards²³ website

²³ <https://standard.open-contracting.org/>