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Annex I Guidance Note

Prevention of corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

1. The Secretariat has produced this Guidance Note to assist States parties in providing information on initiatives and practices they have implemented regarding the topics under consideration at the fifteenth session of the Working Group on the Prevention of Corruption taking place from 28 August to 6 September 2024.
2. The Secretariat wishes to recall paragraph 12 of the report of the Working Group on Prevention on its second intersessional meeting, which noted that in advance of each meeting, States parties and signatories should be invited to share their experiences of implementing the provisions of the Convention under consideration, preferably by using the self-assessment checklist.
3. In furtherance of this, the Secretariat outlines a set of questions, based on those in the self-assessment checklist, which States parties and signatories may wish to use as a guide when providing information regarding the two topics under consideration. States parties and signatories are encouraged to view the questions below only as guidance and are free to provide any information believed to be relevant to the topics under consideration.

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;
- Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;
- Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;
- Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;
- Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;

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- Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;
- Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

States parties and signatories may wish to provide information on measures that:

- Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.

Information sought may, in particular, include the following:

- Description of any electronic system of public procurement, including, for example:
 - The means by which tender invitations are published;
 - The inclusion of all pertinent information on the award of contracts;
 - Ways in which applications may be submitted (including the use of electronic procurement platforms); and
 - Ways in which the criteria to be used for selection and award are publicized.
 - Any other ways, in which technology is used in the procurement process
 - Any other ways, in which technology is used to detect corruption or identify irregularities.

When providing information on the use of technology to prevent, detect, deter and counter corruption in procurement, States parties and signatories may wish to refer to their submissions for the sixth meeting of the Working Group, held in 2015.

3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may have faced include:

- Challenges in developing the proper legislative framework;
- Coordination challenges between government agencies responsible for integrity in procurement and other bodies;
- Communication challenges between government bodies, agencies responsible for integrity in procurement, and business community representatives;
- Other implementation challenges; and

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- Financial challenges with respect to maintaining sufficient and consistent funding for government bodies and other government agencies responsible for integrity in procurement and management of public finances.

4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

ANSWER:

Description of the Slovenian public procurement system

1. Legislation

Slovenian public procurement system is based on European Union's legislation, determined through the following Directives:

- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.
- Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.
- Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC.
- 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 to the award of public supply and public works contracts.

On this basis Slovenian procurement system is regulated by the following acts:

- Public Procurement Act (hereinafter: PPA);
- Public Procurement in Defence and Security Act;
- The Legal Protection in Public Procurement Procedures Act (hereinafter: ZPVPJN).

Slovenian procurement legislation and some unofficial English translations are available on the link: <https://ejn.gov.si/sistem/zakonodaja/veljavni-predpisi.html>.

Some Slovenian legislation in English is also available on the link: <https://pisrs.si/aktualno/zakonodaja-v-anglescini>.

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2. Basic principles of the Slovenian public procurement system

Slovenian procurement system follows the strict rules that ensure the principle of the free movement of goods, the principle of freedom of establishment and the principle of freedom to provide services, which derive from the Treaty of the Functioning of the EU, and with the principles of economy, efficiency and effectiveness, competition among tenderers, transparency of public procurement, equal treatment of tenderers, and proportionality.

The rules of the PPA apply to all procurement procedures with the estimated value above EUR 40.000 for the procurement of good and services, and above EUR 80.000 for the procurement of works (article 21 of PPA). The procurement procedures are pre-defined, as set by the EU directives, see chapter 2.1 of the PPA, Articles 39 and onwards. Besides the EU procedures, for the procurement of goods, services and works below the EU threshold, there is a national procedure called law-value procedure in place (Article 47 of PPA). The low-value procurement procedure closely resembles the open procedure and calls for the same standards as other procedures, publication of all e-notices and contracts, e-submission of tenders, etc.

The PPA for each of the procedures determines the obligation of e-notices, time-limits for reception of tenders, rules on supplementation, obligatory exclusion grounds, etc., to ensure the principles of equal treatment and transparency.

In Slovenia we follow high standards of transparency in public procurement. Prior to any procurement (with the only exception in negotiated procedures without prior publication, see chapter on negotiated procedure without prior publication for more information) an e-notice must be published on the beginning of public procurement (invitation to tender). This notice includes all information on public procurement, required by the EU legislation and additional Slovenian requirements and contains a link to procurement documentation. Procurement documentation is publicly available online to all interested public (free of charge and without registration). All procurement obligations and conditions, including exclusion grounds, award criteria, technical specification criteria, sample contract, must be part of the procurement documentation published in the e-notice with the invitation to tender.

These e-notices must be published on Slovenian public procurement portal www.enarocanje.si where all information on all public procurement in Slovenia can be found. For procurements above the EU threshold, e-notices are also published on the EU portal (Tenders Electronic Daily, TED). After the execution of the procurement procedure the contracting authority must also additionally publish its decision and the e-notice on the award of the procedure. A request for a review may be submitted after that, time limits for submitting a request for a review are set in article 25 of ZPVPJN (see chapter on legal protection for more information).

Following Article 14 of Integrity and Prevention of Corruption Act (hereinafter: IPCA) an Anti-corruption clause is mandatory in all contracts that public sector bodies and organisations enter into and that exceed EUR 10,000 (excluding VAT) with bidders, suppliers of goods and services or contractors. Any contract in which a person promises, offers, or gives any undue advantage to the representative or agent of a public sector body or organisation on behalf or for the account of another contracting party for the purpose of:

- obtaining business;
- concluding business under more favourable terms and conditions;
- omitting due supervision over the implementation of contractual obligations; or
- any other act or omission which causes a public sector body or organisation damage or by which the representative or the agent of the public sector body or organisation or the other contracting party or its representative, agent or intermediary are put in a position to obtain an undue advantage;

is deemed null and void.

In order to ensure the transparency of the transaction and to mitigate corruption risks, any public sector body or organisation which is subject to the obligation to carry out public procurement procedures in compliance with the relevant public procurement regulations must, under Article 14, paragraph 6 of IPCA, prior to the conclusion of a contract exceeding the value of EUR 10,000 (excluding VAT), obtain a statement or information on the participation of natural and legal persons in the ownership of the bidder, including the participation of silent partners, as well as on economic operators which are considered to be affiliated companies to the bidder under the provisions of the Companies Act. The public sector body or organisation in question must submit this statement or information to the Commission for the prevention of corruption at the latter's request. In respect of natural persons, this statement includes their personal name, residential address, and interest in the assets. If the bidder submits a false statement or provides false information on the facts stated, the contract is null and void.

More on these two institutes is explained on the Commission for prevention of corruption's webpage <https://www.kpk-rs.si/en/institutes/anti-corruption-clause-and-structure-of-ownership-declaration>.

Under Article 35 of IPCA a public sector body or organisation which is committed to conducting a public procurement procedure in accordance with the regulations on public procurement or which carries out a procedure for granting concessions or other forms of public-private partnership may not order goods, services or construction works, enter into public-private partnerships, or grant special and exclusive rights to entities in which the holder of public office who holds office in the body or organisation concerned or their family member has the following role:

- participating as a manager, member of management or legal representative or
- having more than a five percent share in the founders' rights, management, or capital, either by direct participation or through the participation of other legal persons.

This prohibition also applies to the public sector body or organisation's business dealings with the holder of public office or their family member as a natural person. More can be read on the link: <https://www.kpk-rs.si/en/institutes/restrictions-of-business-activities>.

Under Articles 41 – 46 of IPCA there is a wide obligation to declare assets to the Commission for the prevention of corruption. The persons obliged to declare assets are among several others also professional holders of public office, non-professional mayors and deputy mayors, officials in a managerial position, managers, and members of supervisory bodies in state-owned enterprises and corporations in which a controlling interest or a dominant influence is held either by the state or by a local community and persons responsible for public procurement. Data on assets and the list of the persons with obligations are reported in an electronic form and assets must be declared yearly. More can be read on the link: <https://www.kpk-rs.si/en/institutes/assets>.

Civil Servants Act defines a procedure for the employment of officials in which all candidates for all positions are treated equally (Article 53 and further).

General regulation of conflict of interest is established in Articles 37 – 40 of IPCA. More on this can also be found on the link: <https://www.kpk-rs.si/en/institutes/conflict-of-interest>. Conflict of interest especially in public procurement procedures is regulated in Article 91 of PPA. Furthermore, the Civil Servants Act (Article 100) defines a conflict of interest for public servants in all situations. The acts define the conflict of interest and specify the correct procedure to avoid it.

The Ministry of Public Administration in cooperation with Transparency International Slovenia also developed and published The Integrity in Public Procurement Handbook. The Handbook

presents institutes and actions provided for by the legislation to manage corruption risks and other unethical practices. The Handbook presents the risks and actions/recommendations to reduce corruption risks in public procurement procedures. Actions are sorted by individual phases/activities in public procurement procedures and include case studies and practical examples.

3. Electronic procurement

All information on public procurement is published on national public procurement portal and some information, required by the EU, is also published on Tenders Electronic daily (TED) – a portal owned by the European Commission where information on certain public procurement of all EU member states can be found.

After the first e-notice on public procurement (invitation to tender) is published, a dossier of this procedure is created on the national public procurement portal and there all information on this procedure can be found. The public procurement portal is available to general public free of charge and without any registration and there all relevant information on procurement procedures can be found, i.e.:

- Invitation to tender with all relevant information on procedure and with the procurement documentation.
- Any questions the contracting authority received from the public during the period between publication of the call for tenders and the time-limit to receive tenders (only questions made through the procurement portal are allowed and are anonymous). All answers and changes to procurement documentation are also published here.
- Contracting authority's decision on the award of the contract together with the evaluation of the procurement criteria and possible exclusions of certain contractors, following the pre-set award criteria and exclusion grounds (these are pre-set in the procurement documentation and must follow the rules as set by the PPA, especially articles 67, 67a and 75).
- The notice on the award of the contract.
- The information that a request for a review was submitted is published in the dossier of the procedure, followed by certain information on the appeal procedures. The decision of the National Review Commission is also published here.
- The contract itself is published here (without protected data, e.g., personal data, security data, business secrets), followed by potential annexes to the contract.
- Monthly payments made to contractors based on the contract are reported by the contracting authorities through a special portal and publicly published in this dossier.

Slovenian procurement procedures are fully digitalized, meaning that all tenders must be submitted electronically. We have electronic opening of bids, all further communications (clarifications, supplementations) need to be done electronically, there are e-auctions and a dynamic purchasing system in place. All can be done through a state-owned information system for electronic management of procurement procedures called e-JN information system, but the private sector may develop commercial tools. The PPA in Article 37 includes minimal standards for these electronic tools. The state-owned e-JN information system is publicly available through registration and its use is free of charge for both contracting authorities and economic operators. It offers several modules, like e-submission, e-auctions, dynamic purchasing system, electronic verification of exclusion grounds in some official records, electronic communication. It also opens all tenders

received and creates the minutes of the opening automatically, the minutes are available to general public.

4. Legal Protection

In all procurement procedures there is the possibility of appeal, as provided in the ZPVPJN act. Legal protection against infringements in public procurement procedures is provided in the following steps (Article 2 of ZPVPJN):

1. the pre-review procedure, which takes place before the contracting authority;
2. the review procedure, which takes place before the National Review Commission for Reviewing Public Procurement Award Procedures (hereinafter: the National Review Commission); and
3. first-instance court proceedings, which take place before the district court that has exclusive jurisdiction under the law governing courts (hereinafter: the court).

The National Review Commission is an independent state body with a recognized nature as a judicial body, as stated the EU Court of Justice in the Medisanus case (C 296/15). As a preliminary issue in the Medisanus case, as an element of the assessment of whether the status of a court of law can be upheld by National Review Commission, the Court also took into account the elements of its independence and, in paragraph 34 of the judgment, states that members of National Review Commission “as to their appointment and the duration and reasons for the termination of their mandate, have guaranteed all assurance provided for by the Judicial Service Act, so that their independence is guaranteed”. Members of National Review Commission have the status of a state official (they are not civil servants), they are appointed and dismissed by the National Assembly of the Republic of Slovenia (Article 61 of ZPVPJN). The same applies to judges, following the Judicial Service Act. National Review Commission does not therefore constitute an administrative body in the Slovenian legal system but is an independent judiciary *sui generis* body.

The system of legal protection in Slovenia is efficient and quick, as the specialized judicial body in the field of public procurement enables fast and quality decision-making.

The National Review Commission cannot start a review procedure *ex officio*, but under specific conditions (Article 6 of ZPVPJN), the safeguards of public interest, i.e., Court of Audit of Slovenia, Commission for the prevention of corruption and the Competition Protection Agency may submit a review in an individual procedure. The time-limits for submitting the review are longer in this case.

Dissatisfied stakeholders may submit a civil lawsuit before regular civil courts (claim for damages, contestability of the concluded contract) and in some case there is also the possibility of an administrative dispute procedure before the Administrative Court of Slovenia (article 39a of ZPVPJN).

National Review Commission publishes yearly reports on their work, they include the description of the system and the analysis of the review procedures and are available to general public on the link: <https://www.dkom.si/sl/o-dkom/porocila-o-delu/>.

The decisions of the National Review Commission are publicly available through their web page, the individual decision, together with some information (article 6 of the Rules on e-Revision portal) are also available in the dossier of the individual procedure on the national procurement portal.

On January 1, 2021, a new e-Revision portal was established. Any communication, notification, service and exchange of information and documents between the contracting authority, the applicant, the National Audit Commission, the successful tenderer, and the safeguards of public interest must go through the e-Revision portal unless otherwise provided for by the ZPVPJN (Article 13a of ZPVPJN).

The e-Revision portal is owned by the National Review Commission and its use is free of charge. Users need to register, the request for a review in procurement procedures can be submitted only through the e-Revision portal and there all communication and exchange of documents must later be conducted. It offers a fast, easy, and secure way of communication between stakeholders. The information on the appeal that is made public, is then seen in the dossier of the procedure on the national public procurement portal as already described above.

National review commission also acts as a minor offence authority in addition to its primary competence (i.e., deciding over disputes in public procurement). It has the power to prosecute minor offences committed in public procurement procedures as defined in the PPA, in Public procurement in Defence and Security Act and in ZPVPJN.

5. Negotiated procedure without prior publication

Negotiated procedure without prior publication (Article 46 of PPA) is the only procedure where invitation to tender is not previously published on national procurement portal and thus represents a less transparent procedure. It can be used only in specific cases, listed in article 46 of the PPA (numerus clausus) and is strongly regulated. The Slovenian legislation strictly follows the EU rules and includes additional safeguards to promote transparency in this procedure.

The contracting authority must execute the procedure and negotiations using electronic tools for submission and communication as with other procedures. The chosen contractor must comply with all the exclusion grounds as are pre-set by the PPA and the procurement documentation. After choosing the contractor, the contracting authority must publish its decision and the award e-notice on the public procurement portal, so that all interested economic operators can see the procedure took place and can appeal if they suspect a breach of legislation. A request for review before the National Review Commission and the courts is allowed as in all other procedures. After the award of the contract, the contract and potential future annexes must be published on national procurement portal, as well as all monthly payments.

Before starting the negotiated procedure without prior publication, contracting authorities must notify all three safeguards of public interest, i.e., Court of Audit of Slovenia, Commission for the prevention of corruption and the Competition Protection Agency, of the intent for starting these procedures with the description and justification of the reasons. Contracting authorities do not need their approval for the execution of the procedure, but not notifying the safeguards constitutes an offence under article 111 of PPA. The safeguards of public interest may, after receiving the ex-ante notifications, start any investigative actions according to their jurisdiction.

According to the Slovenian and European statistics the share of negotiated procedures without prior publication in Slovenia has noticeably decreased and represent 9,49 % in 2023 (page 13 of the annual statistics report for the year 2022, available here: <https://ejn.gov.si/direktorat/porocila-in-analize.html>).

6. Procurement below the national threshold

For the contracts where the estimated value (without VAT) is below the national thresholds for the use of the public procurement rules (Article 21 of PPA), contracting authorities are still obliged to comply with the principles of economy, efficiency, and effectiveness. Each contracting authority may adopt its internal rules for these procedures. Additionally, there are some principles of transparency in place for these contracts, because there is no obligation to use e-notices on national procurement portal. The contracting authorities must annually publish on the public procurement portal a list of public procurement contracts awarded in the previous year, whose estimated value is below the thresholds for the use of the PPA and equal to or higher than EUR 10,000 without

VAT. This record of public procurements must contain the description of the subject, the type of subject and the value of the awarded contract without VAT and the name of the business entity to whom the contract was awarded (paragraph 2 of Article 21 of the PPA).

The contracting authority must also in 30 days after awarding this contract (below the national threshold) notify all economic operators who submitted a bid in the process.

7. Monitoring

The Ministry of Public Administration, responsible for the public procurement policy, annually prepares statistical reports, publicly available here: <https://ejn.gov.si/direktorat/porocila-in-analize.html>.

National Review Commission publishes yearly reports on their work, they include the description of the system and the analysis of the review procedures and are available to general public on the link: <https://www.dkom.si/sl/o-dkom/porocila-o-delu/>.

The Ministry of Public Administration also developed the Statist application, which allows daily control of the situation in the field of public procurement. The application is in use since January 2016 and contains information on public procurement from January 1, 2013, onwards. The application offers easy management of statistical data and is free of charge and free of registration, available to general public. It allows to the media and the civil society entities to exert control and analysis over different aspects of public spending, using several criteria. The statist application offers a search engine using different criteria, using the procurement data that derives from e-notices that are mandatorily published on national public procurement portal. The data can be followed through to the individual procurement dossier on the national procurement portal where all information on this procurement procedure is available as already described above. All the connected data offers a high degree of transparency of public spending through public procurement and is also used by monitoring institutions and the safeguards of public interest (Article 6 of ZPVPJN) in review proceedings, their investigations or in the minor offence proceedings.

8. Further actions planned and specific challenges Slovenia is facing

Slovenia has been, in the last four years, implementing a number of activities to increase professionalisation in the field of public procurement. Rapid social and technological change, the lengthening of the working life, the complexity of planning and implementing public procurement procedures and contract performance, etc., are all reasons why there is an increasing need to professionalise public procurement staff. The acquisition of new knowledge and skills through various channels is crucial for more efficient work, the economy and effectiveness of public sector operations, the promotion of secondary objectives of public procurement, etc. It is increasingly becoming clear that the problem is not the complicated procedure, but rather the lack of knowledge of those involved in the procedures and their unwillingness to take risks or to undertake procedures that are not well established. The Ministry of Public Administration has developed a Competence Assessment Guide for Public Procurement (the Competence Model Handbook) which focuses on the development of competences in individuals who carry out, participate in, or make decisions in public procurement procedures with contracting authorities. The Handbook also contains core and job-specific competences, which have already been prepared by the Ministry of Public Administration in 2019 as part of the preparation of the Competence Model for Civil Service Employees, with the aim of increasing the competence and integrity of civil service employees

through the upgrading of the human resources management and training system within the framework of the Establishment of the Competence Model project.

To provide adequate training in the field of public procurement and to ensure the (highest) level of competence of staff working in the field of public procurement, based on the handbook, the Ministry of Public Administration then prepared the Public Procurement Academy Programme. The programme was implemented, and the Public Procurement Academy became operational on January 1, 2023. It offers a set of trainings to individuals, and it also provides a common meeting point for the exchange of knowledge, experience, and cooperation.

Alongside, to enhance professionalisation in the field of public procurement, the Ministry organises webinars on specific relevant topics. The webinars are easily accessible online and free of charge, video is later available on the e-JN information system. The Ministry also offers extensive consultation services free of charge, operated both in writing and via phone. On the e-JN information system there is also a lot of material available for easier implementation of procurement procedures, e.g., sample procurement documentation and sample contract clauses, guidelines on some types of procurement, FAQ, etc.

The Ministry of Public Administration will continue to develop their educational and consultation services, since the biggest challenge for the contracting authorities remains being familiar with the procurement rules and the rules governing the subject-matter they are procuring. Easier management of procurement procedures can also be achieved through better development of e-procurement tools that guide users through the process. A six-year project aimed at improving professionalization through actions described will start in 2024.

The second goal of Slovenia in the field of public procurement in the last years was also enhancing the level of competition on Slovenian procurement market. In 2022, the Republic of Slovenia together with European Commission and an external contractor implemented the project “Technical assistance for the implementation of public procurement reforms, with an emphasis on increasing competition in the public procurement market”. The technical support project included a comprehensive analysis of the state of competition in the Slovenian public procurement market and formulated recommendations for further action, delivery of recommended actions is in progress.

Since April 2023, a new project of the Republic of Slovenia and the OECD, funded by the European Commission (TSI Mechanism), titled “Increasing competition in the Slovenian public procurement system through promoting collaborative public procurement” is in progress. The project includes further analysis of the Slovenian public procurement market, including analysis of reforms already implemented. The second aspect of the project addresses forms of collaboration in the Slovenian public procurement market that can have an impact on increasing competitiveness. The project will also include execution of pilot projects on collaborative public procurement.

Slovenia will continue with development of e-procurement tools. The Digital Transformation in Public Procurement Plan is in preparation. Through the Plan, the Ministry of Public Administration will analyse the existing e-procurement systems/tools and prepare a plan of actions and measures to ensure a better user experience and the elimination of administrative burdens, to improve the monitoring/supervision of public procurement procedures, to allow better interconnectivity of the different systems and to keep pace with new information technologies. A six-year project on improving the e-JN information system with new modalities will start in 2024.