**INFORMATION ABOUT THE LEVEL OF COMPETITION IN PUBLIC PROCUREMENT PROCEDURES IN SOME EU COUNTRIES -**

**STATISTICAL DATA ON AVERAGE NUMBERS OF SUBMITTED TENDERS AND MEASURES ADOPTED BY SELECTED EU MEMBER STATES IN ORDER TO INCREASE IT**

**INTRODUCTION**

This document is a one of deliverables prepared by the Project under Activity 4.1.3 *“Conducting an assessment and providing recommendations for strengthening competition in public procurement procedures.”*

One of the characteristics of the public procurement in Serbia, which is constantly measured by the PPO and reflected in its annual reports, **is the competitiveness of the public procurement procedures, expressed in terms of an average number of tenders submitted in procurement procedures.** In the light of information regularly published by the PPO the average number of tenders looks stable. Most recently it amounted to, both in 2022 and 2021, to 2.5 tenders per procedure. In 2023 that number fell slightly to 2.4 bids.

The Public Procurement Law adopted in 2020 contains a number of provisions and solutions, based on EU public procurement directives, purpose of which is to increase the competition on the public procurement market, such as market research or encouragement of division of procurement contracts into lots. Apparently, those solutions have not yet resulted in any significant change of situation with regard to intensity of competition for public contracts. That problem was duly noted by the PPO and analysed in the annual report for 2022. According to the information provided in the report an additional analysis of the average number was also performed of submitted bids by type of public procurement subject and by public procurement subject, according to Common Procurement Vocabulary (CPV) codes. According to the PPO one of the factors that works limiting competition is insufficient market research conducted by contracting authorities. In some cases, a contracting authority, due to insufficient knowledge of the situation on the relevant market, as well as inadequate determination criteria for the qualitative selection of economic operators, narrows the circle of potential bidders.

**The PPO has requested from the Project information about average number of tenders submitted in EU countries as well as information about legislative and practical measures adopted in order to increase competition on the public procurement market. In response to this request the Project has conducted research in selected EU countries, the effect of which is information provided below.**

**POLAND**

The annual reports produced by the Public Procurement Office (<https://www.gov.pl/web/uzp/sprawozdania-o-funkcjonowaniu-systemu-zamowien-publicznych>) on the functioning of the public procurement in Poland contain separate information about the level of competition below and above the EU threshold.

In the first case information is gathered by the PPO from the Polish Procurement Bulletin, in the second – Tenders Electronic Daily (TED). Thus, in the most recent report published by the PPO, for 2023, the PPO estimates that in 2023 there were on average 2.64 bids per procedure below EU thresholds (2.43 in 2022, and 2.59 in 2021). The biggest competition took place in so called “the basic procedure with possibility of negotiations” (it is in Poland the standard procurement procedure applied for contracts valued less than EU thresholds). As regards the object of procurement: there were on average 3.51 bids in procurement for public works (3.00 in 2022), 2.22 for supplies (2.10 in 2022) and 2.72 for services (2.59 in 2022). In 61 % of procurement procedures there was at least one tender submitted (58 % in 2022). On the other hand, only one tender was received in 18 % of procedures for works, 47 % for supplies and 39 % for services.

**Compared with 2022, in 2023 the competition below EU thresholds increased in all aspects.**

In case of procurement above the EU thresholds, in 2023, according to the PPO, the average number of bids per procedure was 2.12 (in 2022– 2.18).

As regards type of procedures, there were on average:

* 2.72 in the restricted procedure
* 2.11 in the open procedure
* 1.71 in the negotiated procedure with publication
* 2.62 in the competitive dialogue

Per the object of procurement the biggest number of tenders were submitted in procedures **for award of public works contracts – 3.89** (w 2022 r. – 3.45), followed by services – 2.51 (2.37 in 2022) and the least for supplies – only 2.01 (in 2022 r. – 2.11).

Relatively low competition in public procurement is, indeed, one of shortcomings of the public procurement system in Poland. In order to get information about reasons for which economic operators are reluctant to participate in public procurement procedures the Public Procurement Office conducted in 2019 a survey on the low competitiveness in public procurement in Poland. Answers were provided by in total by 965 companies, of various sizes and representing different business activities. Having analysed opinions provided in answers to questions asked in the survey the PPO prepared a report summarising results of the survey.

Economic operators indicated as the main reasons for which they do not participate in procurement procedures:

* the price applied as the only criterion for selection of the best tender and award of contracts,
* description of the subject matter of the procurement which favours specific products or companies,
* realization by the economic operator a significant part of services outside of the public procurement market (thus public contracts are of no relevance or interest),
* too short time period for preparation and submission of bids,
* disadvantage clauses included in the draft public procurement contracts,
* too high contractual penalties applied by contracting authorities;
* too high requirements concerning economic operators;
* too complex and long procurement documentation, varying from one contracting authority to another,
* unclear description of the object of public procurement,
* too lengthy procurement process etc.

Companies participating in the survey also proposed some solutions which, once applied, would encourage them to participate more often in public procurement procedures:

* simplification and “de- bureaucratization” of the procurement process,
* providing more freedom to procuring entities as regards negotiating terms of the contract,
* simple, and clear provisions of the PPL,
* guarantee of prize indexation,
* more flexibility regarding modification of contracts,
* better descriptions of objects of public procurement,
* application of advance and partial payments,
* limiting a number of requested documents,
* possibility of negotiating, including negotiating the contract price.

Most of the solutions suggested by economic operators above were implemented in the form of legal provisions - the new PPL adopted in 2019 and applicable since 1.1.2021 contains the following:

1. **Simplification and “de- bureaucratization” of the procurement process**:
* introduction of a separate procedure for public procurement specifically for below – the EU thresholds – contract: a “basic procedure” where the PPL defines only certain minimum standards and requirements, and the rest is left to procuring entities to define,
* a new competitive procedure specific for creative works.
1. **Simple, and clear provisions:**
* completely new PPL instead of umpteenth amendment
* a clear structure of the PPL
1. **More emphasis on negotiations:**
* more flexibility in negotiated procedures,
* introduction of the basic, standard procedure below the EU thresholds
* initial market consultations,
* analysis of the needs of the procuring entity,
* mediation procedure,
* obligation of parties of the contract to cooperate in order to resolve problems they encounter during implementation.
1. **Limiting a number of requested documents:**
* Optional tender guarantee instead of obligatory one,
* Simplification of the procedure below EU thresholds (see above).
1. **Guaranteed price indexation:**
* obligation to apply price indexation **in the case of contracts longer than 12 months for services and works,**
* obligation to apply price indexation in case **when the contract is signed after 180 days since the expiry of the time period for submission of tenders.**
1. **Better description of the object of procurement:**
* Obligatory functional analysis to better define needs of the procuring entity,
* Analysis of needs of the procuring entity,
* Preliminary market consultations,
* Reports from realization of the contract.
1. **Application of advance and partial payments:**
* obligation to provide advance and partial payments,
1. **Restrictions concerning amount of damages (applied in case of non – performance) envisaged in the contract:**
* obligatory clauses in contracts limiting maximum amounts of contractual penalties.

**Examples of legal provisions related to above mentioned solutions**

**Ad 5**

**Price indexation**

*1. A contract for works or services, concluded for a period of more than 12 months, shall contain provisions concerning the rules for introducing changes in the amount of remuneration due to the economic operator in the case of a change in the price of materials or costs associated with the performance of the contract.*

*2. The contract shall specify:*

*1) the level of change in the price of the materials or costs referred to in para. 1, entitling the parties to the contract to demand a change of remuneration and the initial date of determining the change of remuneration;*

* 1. *2) the method of determining the change of remuneration: a) by reference to the index of changes in the price of materials or costs, in particular the index published in the statement of the President of the Statistics Poland, or b) by indicating another basis, in particular a list of types of materials or costs for which a change in price entitles the parties to the contract to demand a change in remuneration;*
	2. *3) the method of determining the impact of the change in the price of materials or costs on the cost of performance of the contract and determining the periods during which a change in the remuneration of the economic operator may occur;*

*4) the maximum value of a change in remuneration permitted by the contracting body as a result*

*of the application of the provisions on the rules for changing the amount of remuneration.*

*3. If the contract has been concluded after 180 days from the expiry of the time limit for the submission of tenders, the initial date for determining the change in remuneration shall be the day of the opening of tenders, unless the contracting body sets an earlier date.*

*4. A change in the price of materials or costs shall be understood as an increase in prices or costs respectively as well as a reduction thereof in relation to the price or cost adopted to determine the remuneration of the economic operator included in the tender.*

*5. The economic operator whose remuneration has been changed in accordance with para. 1 to 3 shall be obliged to change the remuneration of the subcontractor with whom he has concluded the contract, to the extent corresponding to changes in the prices of materials or costs related to the subcontractor’s commitment, if all of the following conditions are met:*

*1) the subject of the contract is works or services;*

*2) the duration of the contract exceeds 12 months.*

**Ad 7**

**Advance payments and partial payments**

1. The contracting body may grant advance payments for the performance of the contract if this possibility has been provided for in the contract notice or in the procurement documents.

2. The contracting body may grant further advance payments provided that the economic operator proves that he has performed the contract in terms of the value of advance payments previously granted.

3. The contracting body may require the economic operator to lodge a security on the advance payment in one or more of the following forms:

1) the bank sureties or sureties of a cooperative savings-loan fund, however the surety of the fund is always a financial surety;

2) bank guarantees;

3) insurance guarantees;

4) sureties granted by entities referred to in Article 6b para. 5 point 2 of the Act of 9 November 2000 on the establishment of the Polish Agency for Enterprise Development;

5) bills of exchange with the surety of bank or cooperative savings-loan fund;

6) by establishing a pledge on securities issued by the State Treasury or by a local government unit;

7) by establishing a registered pledge on the terms specified in the Act of 6 December 1996 on the Registered Pledge and the Pledge Register (Journal of Laws of 2018, item 2017).

4. The contracting body shall require the lodging of a security on the advance payment if the expected value of advance payments exceeds 20% of the economic operator’s remuneration.

5. Where a security on the advance payment is required, the contract shall specify the form or forms of the security, the amount of the security and the manner in which it is lodged and returned. The contract may provide for the possibility of changing the form of security during the performance of the contract.

**Ad 8**

**Solutions concerning contractual penalties in the contract as well as protecting economic operators:**

***The contracting body and the economic operator selected in the procurement procedure shall be obliged to cooperate in the performance of a public contract, hereinafter referred to as ‘the contract’, in order to properly perform the contract.***

***The proposed provisions of the contract shall not provide for:***

*1) the liability of the economic operator for delay, unless it is justified by the circumstances or scope of the contract;*

*2) charging contractual penalties for the behavior of the economic operator not related, directly or indirectly, to the subject-matter of the contract or its proper performance;*

*3) the liability of the economic operator for circumstances for which the contracting body is solely responsible;*

*4) the possibility of limiting the scope of the contract by the contracting body without indicating the minimum value or amount of the performance of the parties.*

***The contract shall contain*** *provisions specifying in particular:*

*1) the planned termination date of the service, supply or works and, if necessary, the planned time limits for the performance of individual parts of the service, supply or work, specified in days, weeks, months or years, unless an indication of the date of performance of the contract is justified by an objective reason;*

*2) the conditions for payment of remuneration;*

***3) the total maximum amount of contractual penalties which may be claimed by the parties;***

* 1. *4) in the case of contracts concluded for a period longer than 12 months: a) the amount of contractual penalties charged to the economic operator for non-payment or untimely payment of the remuneration due to subcontractors for the change in the amount of remuneration,*
	2. *b) rules for introducing changes in the amount of remuneration in the case of a change of:*
	3. *- rates of tax on goods and services and excise duty,*
	4. *- the amount of the minimum wage or minimum hourly rate determined pursuant to the Act of 10 October 2002 on the minimum wage for work,*
	5. *- the rules of being subject to social or health insurance or the amount of social or health insurance contribution rate,*
	6. *- the rules for the collecting and amount of contributions to employee capital plans (…),*
	7. *- if these changes affect the costs of performance of the contract by the economic operator.*

**PORTUGAL**

In order to analyze the level of competition existing in public markets, Portuguese authorities analised a sample of procedures carried out by electronic platforms reporting to BASE portal (www.base.gov.pt).

According to the recent report published at: <https://www.base.gov.pt/Base4/media/jv0fv3zp/relat%C3%B3rio-anual-da-contrata%C3%A7%C3%A3o-p%C3%BAblica_2022.pdf>,

on average **2.4** tenders were submitted per each contracting procedure. As regards types of contracts, it is worth highlighting the case of competitive procedures for public works, with **2.7 tenders per procedure**, compared to goods and services (**2.3 tenders per procedure**). In ca. 38% of procedures for supplies and services and in around 43% of procedures relating to public works there were at least two tenders submitted. More than 5 proposals were presented in ca. 13% of competitive procedures for public works and around 8% in the case of contracts for goods and services.

**SLOVENIA**

According to the report published by the Slovenian Public Procurement Directorate (<https://ejn.gov.si/direktorat/porocila-in-analize.html>) in 2022 the average number of submitted tenders was **2.85 tenders per procedure** (the report for 2022, p. 25). In case of 2,118 (27.7%) procedures contracts were concluded on the basis of only one submitted tender.

**SLOVAKIA**

Public Procurement Office in Slovakia published a statistical report on public procurement for 2023 (<https://www.uvo.gov.sk/index.php?eID=dumpFile&t=f&f=33812&token=2ed80f1d2ac7414db54fc8547e00a3a6d762938e>).

According to the report, in **2023** the average number of tenders per procedure was **2.88** (the report, p. 20). In 32.9 % procedures only one tender was submitted.

**BULGARIA**

According to the annual report published by the Public Procurement Agency (<https://www2.aop.bg/wp-content/uploads/2024/05/stat-report_MF_for-2023_20240509.pdf>) in **202**3 the average number of bids resulting in the conclusion of a public contract was 2.82. As regards types of procurement procedures the average number of bids varied from 1.2 in the competitive procedure with negotiations, through 1.69 in the restricted procedure and increased to 3.77 in the case of the open procedure.

**CZECHIA**

The average number of bids in Czechia for both public and sectoral contracting authorities in 2022 was about 3 bids per procedure. It was a year-on-year decrease (3.4 in 2021). According to the subject matter of public contracts, the highest average number of bids was in public works tenders – about 4.3 bids per tender, followed by services - 3 bids and supplies, where the 21 average is 2 bids[[1]](#footnote-1).

**CROATIA**

The Public Procurement Directorate in the Ministry of Economy, published statistical report on public procurement in Croatia in 2023 (<http://www.javnanabava.hr/userdocsimages/userfiles/file/Statisti%C4%8Dka%20izvje%C5%A1%C4%87a/Godi%C5%A1nja/Statisticko_izvjesce_JN_2023.pdf>)

According to the report in 2023 the average number of tenders submitted in public procurement procedures was **3.26** (fewer than in 2022 – 3.69). It is noted that bigger competition was in case of procedures organized by public sector authorities than utilities contracting entities (respectively 3.39 and 2.12) (report p. 57).

**SWEDEN**

According to the annual report prepared by the Swedish Public Procurement Office (<https://www.upphandlingsmyndigheten.se/statistik/upphandlingsstatistik/statistik-om-annonserade-upphandlingar-i-sverige-2022/48-anbud-per-upphandling-2022/>), in 2022 a total of 53,683 tenders were submitted in the procurements. On average, **4.8 tenders** were received per procurement procedure. The most common number of tenders (typical value) was 2 and the median value was 3. The average number of tenders decreased compared to the previous year when the average was 5.5. In 60 % of the procurements in 2022, 1–3 tenders were received. In 21 % of procurements, only 1 tender was received. It was on par with the previous year. In 8 % of the procurements, more than 10 tenders were received.

**SPAIN**

The independent authority for regulation and supervision of public contracts (OIRESCON <https://www.hacienda.gob.es/es-ES/Oirescon/Paginas/HomeOirescon.aspx>) published its annual report on public procurement in Spain in 2023 <https://www.hacienda.gob.es/RSC/OIReScon/informe-anual-supervision-2024/ias2024-modulo1.pdf>). Accordingly, the average number of tenders per procedure was estimated to amount to 2.99 (p. 120).

**HUNGARY**

According to the report published by the **Hungarian Public Procurement Authority** (<https://kozbeszerzes.hu/media/documents/flash-report-h1-en-final_2iBHrg0.pdf>) the average number of bids in the first trimester of 2024 was 2.2 (3.1 bids above EU thresholds and 1.5 below the thresholds). It is similar to data for previous periods (2.3 and 2.01 in 2023 and 2022 respectively). As compared with previous reporting period the share of procedures in which only one bid was submitted fell significantly (to 27.9 % from 38 in 2022).

Hungary is one the worst performers among EU Member States in terms of the single bid issue (number of procedures with only one tender submitted). In 40 % of procurement procedures conducted in 2021 there was only one tender submitted (it is an identical score as in the Czech Republic). In the EU worse performers were only Slovenia and Poland (respectively, 44 and 50 %)[[2]](#footnote-2).

Recovery and Resilience Plan (RRP) of Hungary contains commitments to tackle low level of competition by adopting Action Plan by March 2023 and then updating yearly.

**Target of single bid rate specified in the Action Plan is “Below 15% by the end of 2024”**

Hungary put in place several measures to tackle single bidding and increase competition in public procurement.

First, the Government adopted a decision regarding competition in procurement, containing the following elements:

* Mandatory market consultations for certain procurement processes
* Obligation for selected CAs to prepare action plans to curb single bidding
* Annual monitoring of competition

Second, the Public Procurement Performance Measurement Framework contains several indicators measure the occurrence of single-bidding (by CPV, subject-matter, geographical area etc.).

Third, the Action plan to reduce single bidding 2023- 2026, adopted in March 2023, contains 14 measures to increase competition such as revising the remedy fees, providing grants to SMEs, issuing guides on corruption and conflict of interest etc.

Action plan to reduce single bidding in Hungary envisages the following initiatives:

1. Analyses and research supporting the evaluation and the increase of the level and intensity of competition in public procurement (development of the performance measurement framework) with the involvement of the OECD

2. Automatic access to databases used to determine the existence of exclusion grounds

3. Possibility to set up automatic notifications in the **Electronic Procurement System (EKR)**

4. Development and extension of search function based on CPV codes in the EKR

5. Providing anonymous access to procurement documents in the EKR

6. Review of the rules on fees paid by economic operators when they submit appeals

7. Supplementing mandatory information to be published as part of preliminary market consultations with draft selection criteria and award criteria

8. Update of the guidance on methods and practices to avoid single bid procurements with new best practice examples

9. Public procurement training for SMEs

10. Grant programme for SMEs

11. Publication of new guidance on conflict of interest

12. Publication of guidelines on corruption risks affecting the fairness of competition in public procurement

13. Organising conferences and information events on organisational integrity for civil servants and other participants in public procurement

14. Development of guidelines for the preparation of procurement contracts on effective handling of uncertain market conditions and making business risks for winning tenderers more proportionate

OECD, which cooperates with Hungary on the issue of increasing the level of competition, after revising the Action Plan, submitted the following recommendations:

* Analysis and research on the low level of competition in the Hungarian public procurement system,
* Reducing administrative burden related to public procurement procedures,
* Promoting better access to business opportunities for business sector,
* Improving procurement capabilities of the different stakeholders.
1. National Public Procurement Strategy 2024 – 2028, <https://portal-vz.cz/wp-content/uploads/2024/08/NSVZ_STRATEGIE_EN_online-verze.pdf>, p. 24. [↑](#footnote-ref-1)
2. Source: OECD, February 2024, OECD WORK ON INCREASING COMPETITION IN PUBLIC PROCUREMENT [↑](#footnote-ref-2)