

## ***EIPA Briefing 2020/2***

# **Procurement audit - helping to ensure public money is well spent in the crisis**

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**Priorities in procurement audit need to be driven by the risk that value for money will not be secured in public procurement. Auditors need to change these priorities in response to the COVID-19 crisis.**

## **Procurement audit and the response to the COVID-19 crisis**

The COVID-19 pandemic has prompted huge increases in public spending in Europe, not only as an immediate response to the crisis, but also with a view to supporting economic recovery and dealing with the longer-term social consequences. Public debate has focused mainly on where the money will come from. Attention must also be given to how it is spent.

Amid such an emergency, rules have to be relaxed, at least temporarily. EU state aid rules have been suspended, and the general escape clause of the Stability and Growth Pact has been activated. These exceptions will be reviewed in order to ensure sound public finances in the future.

This Briefing draws attention to another dimension of public spending that will require scrutiny, namely the ways in which governments provide goods, services and infrastructure through public procurement.

Procurement in times of crisis is likely to pose higher risks of wastefulness or impropriety, for example, because of the existence of extreme urgency as a justification for the use of direct awards. This could be a further blow to public trust in government when there is already questioning of the competence of public institutions to address the multiple political, economic and security challenges facing Europe. Moreover, failure to maintain the principle that contracts advertised by public bodies in one country are open to economic operators in others would cause damage to the EU's internal market.

The Briefing therefore identifies key parameters for auditors in assessing the risk of sub-optimal procurement, and how they should prioritise and conduct their audits to check if these risks have materialised, including the risk of fraud and corruption.

## Risk-based auditing – the key to effective procurement audit

Auditors do not have unlimited resources. They therefore need to use risk assessment to help them concentrate on higher-risk activities. They may identify these from an assessment of the context within which the procurement is taking place, of the nature of the procurement, or of its value.

In short, there needs to be a risk-based allocation of audit resources.

The first decision for auditors is what to audit, before determining how to audit. Effective procurement audit is based on decisions about audit priorities.

Risk-based audit rests on four key ideas:

- *The risk of error, fraud/corruption or poor value for money in public procurement is not equal at all public sector bodies or departments of public sector bodies.*

The risks can relate to decision-making processes, structures and personnel. Higher risk may be attributed from an assessment by external auditors of the status, resourcing and effectiveness of the internal audit function or, for example, where the public authority has a track record of frequent direct awards of contracts without publication of a contract notice. In the current crisis the level of risk is enhanced because of the existence of extreme urgency as a justification for the use of direct awards.

- *Not all procurements are equally risky.*

Variable risks could arise from the novelty or technical complexity of an activity, the third party selected to deliver the goods, works or services ('economic operator' in the language of the EU Public Procurement Directives) and/or the extent to which an activity is mission-critical for the procuring authority. In the current crisis, this already applies in particular to the supply of goods such as personal protective equipment for health sector and other key workers, and is likely to apply in the coming months to the procurement of vaccines.

- *Not all elements of procurement activities undertaken are equally risky.*

In the context of a public procurement using competitive dialogue or competitive procedure with negotiation, the dialogue or negotiation phase requires particular care to secure value for money for the public sector and ensure equality of treatment between those interested in the contract. The way that the Contracting Authority conducts negotiations is likely to be of particular importance in securing value for money in the current crisis.

- *The consequences of serious risks materialising from sub-optimal procurements may be much higher in some cases than in others.*

Priority may be attributed to specific kinds of activity, such as data breaches, cyber-attacks on infrastructure, defence against extreme climate events or long term service contracts, especially those which are privately financed (such as public-private partnerships), since failure here may have financial consequences for the public sector for several years. In the current crisis, this already applies to the quality of the personal protective equipment supplied given their impact on the health of citizens and key workers.

## Where can risks arise in public procurement?

Risks in public procurement can arise at any stage of the procurement process from the planning phase and launch of the procedure to the selection of suitable operators, evaluation of tenders and management of the contract once awarded.

In practice, the greatest procurement risks can arise in two elements that are often given insufficient attention by public bodies and thus demand special consideration by auditors:

- *Planning and preparation before the advertisement of the procurement*, especially where political pressures have led to the launch of the procurement before all key elements of the procurement procedure - such as the contract specification and contract conditions and the criteria by which the winning bidder will be selected - have been finalised. Failure to finalise the planning of these elements before the procurement is published can raise questions about how they may have been adapted to the needs of specific bidders, and thus make them open to potential legal challenge.
- *Failure to identify how the contract will be managed* in order to ensure that the public sector body receives what it contracted to receive when it awarded the contract. This includes both the means by which the quality and quantity of the goods, works or services will be checked (of particular importance, as noted above, in the supply of goods in the current crisis) and the adequacy of the resources dedicated to managing the contract in terms of the numbers, roles, authority and skills of those who will manage the contract. Public authorities often do not address this issue early enough or devote to it the same time and resources as when awarding the contract.

## What do procurement auditors need to do?

Having made decisions about the priorities for procurement audit, the effective implementation of the procurement audit process will normally follow an approach common to other types of audit. This will typically include the following steps:

- *Establish the decision made* by the public sector body awarding the public procurement contract.
- *Establish the audit trail* i.e. the process by which the decision was made, including identifying key documents, people making the decisions and how the decisions have been documented.
- *Follow the decision-making process from start to finish*, using a structured approach for each stage, taking account of the need to allocate audit resources to the planning and preparation phase and the contract execution phase.
- *Determine the range of sources of evidence to be used* which will include internal and external sources such as documents, meetings, inspection (including by electronic means), data analytics and third-party evidence from publicly available sources.

- *Form a judgement about the process, the award decision and the execution of award decision.*
- *Document the audit conclusions.*
- *Determine how and when to report on the decision made, including any follow-up of the implementation of conclusions and recommendations from past audits.*

## Conclusion

Procurement audit has an important role to play in ensuring that public finances are sustainable, a role which is all the more important given the pressures on public expenditure and expected increases in the level of public sector deficits and debt caused by the COVID-19 pandemic.

To ensure that they fulfil their role successfully, auditors need to know how to adapt their auditing skills and experience to the particular needs of procurement audit. The key challenges for auditors are to:

- Understand how to assess their priorities for procurement audit - audit scrutiny of procurements which are made by direct award without competitive procurement procedures due to the COVID 19 pandemic will be particularly important;
- Consider when to intervene with procurement audits, i.e. (to use a common analogy) add greater value by knowing how to arrive before and not after the car crash. In the current crisis earlier scrutiny will be necessary;
- Learn how to take into account in their procurement audits the culture of the audited bodies, which can often be critical to understanding how to interpret audit evidence.