BIG DATA FOR PROCUREMENT

THE IMPORTANCE OF CORRECTLY ACQUIRING AND USING INFORMATION IN PUBLIC PROCUREMENT

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Success of public procurement

• The success of the procurement project depends on two factors
• 1st How much the information which is acquired and which is being used (such as the needs of the contracting authority, the way of fulfilling the specific need and the final outcome of that selection) is based on the reality of the situation
• 2nd The effectiveness of the audit system created by the state, combined with sanctions which the state uses to prevent possible corruption and collusion
ANALYSIS AND EXECUTION PROCESS

Transparency

• Satisfying the needs of the public
• Information must be precise, accurate and reliable
• Reality and not fiction
• “transparent refers to (of a material or article) allowing light to pass through so that the object behind it can be distinctly seen” – Oxford dictionaries
• Capacities of state/local administration
• Accurate data – estimated number and exact number are two different things
• Accountability of state authorities
• “corruption alone costs the EU economy 120 billion EUR per year, just slightly less than the annual budget of the European Union” - EU ANTI-CORRUPTION REPORT, COM(2014) 38 final, Brussels, 3.2.2014
International practice

United States of America

• The strongest economy in the world
• E-government
• System Award Management system – SAM
• Online Representations and Certifications Application (ORCA) database
• Digital Accountability and Transparency Act of 2014 (DATA Act)
• The Federal Government Procurement Data Quality Summary for the 2009 – 2014
• Conduct annual data verification and validation of agency procurement data captured in the Federal Procurement Data System (FPDS)
• Completeness/timeliness - the six year weighted average was 97.7%
• Accuracy - the six-year average for agency accuracy samples was 95.2%
European Union

• Specific economic and political union between 28 member states

• Specific legal structure which is composed of primary and secondary legislation


• There must be a distinct difference between when a member state *should* conduct and when a member state *must* conduct a certain action.
• The Directives will be applied if the estimated value of public procurement is same or above the one defined in the Directive
• Publication in Tender Electronic Daily (TED)
• E-Certis
• Internal Market Information System (IMI)
Serbia

- Turbulent history in the Balkans
- First Law on Public Procurement was adopted in 2002, second in 2008 and third in 2013
- Important progress has been made since 2002
- Amendments were made in 2015
- In 2017 new Law on Public Procurement will be adopted
ANALYSIS
The *relevance of proper analysis*

- Analysis - a detailed examination of the elements or structure
- How can be sure that we have the right information?
- 2008 financial crisis – reduction in staff
- Constant change demands further expansion of knowledge in order to better organize public procurement
• Cooperation with relevant stakeholders – private sector and academic society
• Private sector – initiator of innovation
• Academic society – examine, acquire, and transfer new information regarding the world we live in
• Dual education system (Germany, Austria, Switzerland)
• Military research, research for pharmaceutical companies etc...
• Previously dominant belief - public procurement is a legal or economic activity which does not require special preparation
• Public procurement is a interdisciplinary which requires knowledge legal, economic and technical sciences
• Proper and thorough analysis is the most important activity
• Negative Examples: M1 highway, Volkswagen engine, medical treatment
The relevance of collaboration and cooperation

- The government should increase collaboration and cooperation with the private sector and the academic society.
- One the reason why developed countries have the advantage when it comes to education, science, economy.
- In Serbia the Chamber of Commerce and Industry of Serbia is collaborating with other stakeholders in organizing competition for best innovation and The Collaborative Grant Scheme Program.
THE EXECUTION OF PROCUREMENT PROCEDURES

• If the procurement project is fairly simple then the open or restricted procedure will be used

• If the procurement project is complex then it is likely that negotiated procedure or competitive dialogue will be used

• Relevant element of procurement procedure is the award criterion – lowest price or most economically advantageous tender (MEAT)
Most used award criterion

Source: *Public Procurement Office of Serbia ** Public Procurement Portal Croatia; Report for 2015
CONTROL SYSTEM

The relevance of an effective control system

- Reduction of abusing public funds, i.e. reducing the chances for corruption and collusion
- The common element for these two activities is the intention, of an individual of a group, to achieve their personal goals or interests by avoiding the rules, and utilizing fraudulent and/or other illegal activities
- Siemens case in Russia
CONTROL SYSTEM COMPARISON

United States of America

- Public Procurement is audited by Government Accountability Office (GAO)
- Established in 1991 as relevant support for Congress
- An efficient bid procedure – obliged to deliver the final decision within 65 to 100 days
- No need for legal representation
- Hearings are non-person
It is important to state that when a bid protest is filed to the GAO, the automatic stay of contract award is activated.

However there are exceptions:

“urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General”;87 or

“performance of the contract is in the best interests of the United States”

GAO will issue a recommendation to the contracting authority.

GAO recommendations are not legally binding.
Source: Congressional Research Service using data from GAO
European Union

- the member states have an obligation to establish a control/audit body regarding public procurement
- The European Court of Auditors was established to improve EU financial management
- The European Court of Auditors has just recently released a special report regarding public procurement by EU institutions - *Special Report - The EU institutions can do more to facilitate access to their public procurement*, European Court of Auditors (ECA), [http://www.eca.europa.eu/Lists/ECADocuments/SR16_17/SR_PROCUREMENT_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_17/SR_PROCUREMENT_EN.pdf)
• “When revising their procurement rules in 2015, EU institutions did not facilitate access to their public procurement by simplifying rules and clarifying grey areas to the fullest extent possible”

• “Not all procedural choices fostered competition on the broadest possible basis. Most EU institutions had no policy for preliminary market consultations prior to starting the formal procurement procedure.”

• “Unnecessary hurdles make life difficult for potential tenderers who want to identify procurement opportunities offered by the EU institutions and benefit from them. The visibility of the EU institutions’ procurement opportunities on the internet is poor. The information available is patchy and spread over many different websites. The search function of TED (Tenders Electronic Daily) did not always produce satisfactory results. Tools which allow tenders to be submitted electronically have not yet been rolled out in a comprehensive and harmonized manner.”
• “It is difficult for economic operators who believe that they have been unfairly treated to obtain a rapid review of their complaints and receive compensation for damages”

• “Information on the outcome of the EU institutions’ procurement activities is not accessible in a way that allows effective monitoring by the discharge authority and the wider public in order to increase transparency and build up confidence. Such information is only provided piecemeal and most of the time not in a harmonized manner.”

• “As the procurement activities of the EU institutions are largely decentralized, cooperation amongst them can bring improvements thanks to mutual learning and cross-fertilization. We noted considerable cooperation and exchange of experience between the different institutions and, in the case of the bigger institutions, between the different procurement units. However peer reviews, which are the most advanced tool for a structured exchange of best practices, were not used.”
Serbia

• If an economic operator considers that the procurement procedure, in which it is participating, is not being lawfully-conducted, it can file a request for protection of rights to the Republic’s Commission for the Protection of Rights in Public Procurement Procedures.

• Law on Public Procurement from 2013 had a legal gap

• If a request for protection of rights was filed, automatic suspension would be activated

• In addition to that, the definition of “interested party” who can also file a request for protection of rights was not precise
Filled complaints in 2014

Source: Public Procurement Office of Serbia
• Amendments to the Law on Public Procurement were made in 2015 and the legal gap was removed
• It is important to mention that the economic operator has the right to file a complaint to the Administrative Court if it is not satisfied with the decision of the Republic’s Commission
• Special measure of supervision has been added to the Law on Public Procurement in 2013, and it is called a “civil supervisor”
• Audits of the procurement procedure are executed by the State Audit Institution
Conclusion

• Information is the most important asset
• Method of acquiring the information must be up to date and it must be verified
• Collaboration and cooperation with the private sector and the academic society is necessary
• There is no perfect control system
• Defining a measure, adopting laws in order to improve public procurement is important, however implementing those measure, laws and making them function properly in reality is far more important
THANK YOU FOR YOUR ATTENTION