PUBLIC PROCUREMENT TRANSPARENCY INDEX

REPORT ON PUBLICATION OF THE PUBLIC PROCUREMENT DOCUMENTS BY GOVERNMENT CABINET

March 2015, Prishtina
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This report is funded by British Embassy in Prishtina, as part of the project “Transparency and Accountability in Public Procurement in Municipalities”. The project aims to increase transparency and regularity of procurement process at municipal level in Kosovo, through empowerment of local NGOs for monitoring public procurement procedures.

Views in this report are of KDI/TIK and do not necessarily correspond with views of the donor.
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Introduction

Expenditures related to public funds through public procurement in Kosovo are largely closed to the public, and as a result there is insufficient oversight by civil society, media and public itself. Due to this, Kosova Democratic Institute (KDI) / Transparency International Kosova (TIK) initiated the development of this Public Procurement Transparency Index. This was completed by comparing and measuring access to public documents, budgetary transparency, procurement transparency, public auction transparency and complaints to PRB. The objective of this index is to put pressure on central institutions to provide more transparency and more open governance. Access to information related to public expenditures through public procurement would enable the public to become better informed about where their taxes end up. Simultaneously, more transparency prevents irregularities, mismanagement, and corruption in these institutions.

Methodology

Measuring transparency in public procurement has an added value since this sector is one of the most sensitive issues through which it is alleged that public money is mismanaged and abused. KDI and TIK developed a new methodology for measuring public procurement transparency. The index is the first for the Government of Kosovo, and it aims to measure the level of public procurement transparency of the ministries and the Office of Prime Minister. In December 2014, KDI and TIK prepared a similar index for the municipal level, by measuring the transparency of municipalities in specific pillars and indicators.

Public Procurement Transparency Index has five pillars with a total of 23 indicators. Through this index institutions were measured and compared in the following pillars: 1. Access to public documents; 2. Budgetary transparency; 3. Procurement transparency; 4. Transparency in public auctions; and, 5. Complaints to PRB. Measurement for these indicators was completed for entire 2014. The data were retrieved from three sources: (1) institutions’ websites, (2) requests for access to official documents, and (3) website of the Public Procurement Regulatory Commission (PPRC).
Transparency in public procurement

Access to public documents

Out of the five measured pillars of the transparency index, the first is about access to public documents. The purpose of measuring these indicators is not only to observe to what extent the Law on Access to Public Documents is being implemented, but to also see how citizens, civil society organizations as well as media use this mechanism to require accountability from government institutions. Emphasis was placed to requests for access to public documents related to public procurement.

According to our data, a total of 239 requests for official documents were submitted to 19 ministries of the Government of Kosovo and Office of the Prime Minister (OPM). According to data that institutions provided with regard to access to office documents, out of this number of requests, 64 were requests related to documents of public procurement procedures. On the other hand, institutions rejected 9 requests for access to public documents and none of those requests had to do with public procurement. The data does not include data from the Ministry of Infrastructure and the Ministry of Education, Science and Technology, which did not provide their data related to the index by ignoring requests for access to official documents and information.

Ministry of Trade and Industry (MTI) is the institution to which the highest number of requests were addressed with regard to access to official documents with 33 requests. Out of these requests, only seven (7) had to do with public procurement documents. On the other hand, MTI is closely followed by the Ministry of Health (MH) with 30 requests for access to official documents, out of which 16 were about public procurement. Compared to MTI, MH had a higher number of requests for documents that are related to public procurement. Ministry of Foreign Affairs (MFA) had the lowest number of requests or said otherwise, it did not have any request for access to official documents or public procurement documents.

The institution with the highest number of rejected requests for access to public documents is the OPM, which out of 19 requests for access to documents rejected five (5) of them. Other institutions that rejected access to public documents include the following: Ministry of Agriculture, Forestry and Rural Development (MAFRD), Ministry of Diaspora (MD), Ministry of Justice (MJ), and Ministry of Economic Development (MED). Each of these four ministries rejected one (1) request for access to public documents.
Conclusions

In 2014, Kosovo institutions received a very low number of requests for access to public documents. This number of documents is even lower with regard to requests for documents pertaining to public procurement. This shows that media, civil society and citizens find other forms to obtain official documents and that they do not prefer access through formal requests. It seems that bureaucracy and delays in responding to requests has contributed the most to this situation. Furthermore, there is no executive institution which would review citizens’ complaints for access to documents and which would have the authority to force Kosovo institutions to make documents available. Currently, the Institution of Ombudsperson (IO) has some such competences, but this institution does not have the power to force any institution to provide documents and it also has very long procedures to handle cases. In this way, formal request is not the best alternative to obtain public documents.

Overall, ministries of the Government of Kosovo did not reject many requests for official documents. The only two irresponsible institutions with regard to this, the Ministry of Infrastructure, and the Ministry of Education, Science and Technology, are leaders when it comes to non-observation of legal and constitutional provisions for access to documents since for more than two (2) months did not respond to our requests to provide information related to this index. The Ministry of Infrastructure denied access to documents in the past too, having up to seven (7) month delayed responses to requests.

Budgetary transparency

In this pillar, KDI measured budgetary transparency of the government ministries, which is necessarily related to public procurement. In this sense, businesses and citizens need to have required information on tendering procedures to be followed by government institutions as well as those that they plan to implement in the future. In this pillar, we measured to what extent the ministries publish budget, procurement plan, audit reports, budgetary hearings, and financial reports.

One of the most important documents of each institution is the budget managed by each ministry or government department. In Kosovo, Ministry of Finances (MF) publishes general budgetary information for all public institutions in Kosovo. However, we are interested to find out how many of government cabinet ministries publish data on the budget under their management. Through websites of these institutions, we found that none of the ministries or the OPM publishes their budget, with exception of MF, which publishes Kosovo’s budget every year.

Compared to Kosovo’s municipalities, the central government turns out to be far less transparent. Same as budget itself, the form in which the budget was spent is of great importance. We checked websites of institutions to see whether they publish written financial reports for the budgets under their management. Out of 19 ministries and OPM, we found that only five (5) of them have
published any financial report (quarterly, semi-annual or annual). The other 14 ministries and OPM did not publish written financial reports in 2014.

Futher, we checked whether there was any eventual publication of a procurement plan, which is a very important document for businesses, media and civil society, and which enables planned monitoring of tendering procedures. Despite the fact that each institution possesses this document, none of the government institutions published it on their websites. Eventual publication of procurement plans would assist businesses to prepare their offers better for the upcoming bids. In the same way, these institutions do not publish their auditing reports either (internal and external). None of the institutions published auditing reports. These reports are important since they provide an assessment on how the institution managed its budget and competences. Consultations with the public in relation to financial planning are also low. Only eight (8) ministries reported to have held consultation meetings with the public for budgetary hearings.
Budgetary Transparency

- Publication of budget on the website
- Procurement plan on the website
- Audit report in webpage
- No. of public hearings for 2014
- No. of reports of financial expenditures 2014

Ministry of Trade and Industry
Ministry of Infrastructure
Ministry of Health
Ministry of Foreign Affairs
Ministry of Internal Affairs
Ministry of Labour and Social Welfare
Ministry of Environment and Spatial Planning
Ministry of Culture, Youth and Sports
Ministry for Communities and Returns
Ministry of Kosovo Security Forces
Ministry of European Integrations
Ministry of Economic Development
Ministry of Finances
Ministry of Justice
Ministry of Diaspora
Ministry of Agriculture, Forestry and Rural Development
Ministry of Education, Science and Technology
Ministry of Local Governance Administration
Ministry of Public Administration
Office of the Prime Minister of the Republic of Kosovo
Conclusions
All ministries of the Government of Kosovo and OPM, with exception of the Ministry of Justice, exercises very low budgetary transparency. These ministries lacked the elementary budgetary data on their websites, and it can even be stated that their websites do not have any financial data. Ministries lacked documents such as budget, auditing report, financial report, procurement plan, and consultation with public over budget.

Transparency in tendering process
In this pillar, we measured the transparency of these institutions in public procurement. Four indicators were compared to see the difference of announcements among the websites of respective ministries, OPM and announcements that these institutions have published in the PPRC website. Considering that the PPRC website largely serves businesses and economic operators, we wanted to see to what extent ministries publish announcements for tenders in their websites. This publication is important also for the tenders in lower amounts than 10 000 Euros, which announcements are not published in websites of ministries and OPM.

The number of published tenders in ministries’ websites usually varies greatly from the number of tenders in PPRC website. This is due to the reason that non-publication of the tender on PPRC website may cause the cancellation of entire tendering procedures due to non-publication. Despite the fact that announcements published in PPRC website are incomplete and often have serious weaknesses in their content, at least they provide some data related to the initiated procurement procedure. On the other hand, the majority of ministries either don’t have public procurement section available in their websites at all, or it is not updated for a long time.
Out of 653 calls for tenders published in PPRC website, only 83 of them were published in the respective ministries’ websites. This figure exceeds the non-transparency of Kosovo municipalities themselves, which have published 31% of their tender calls in their websites.

These 83 calls for contracts were published by three (3) ministries only, and primarily by MTI which published 62 calls for contracts in its website. It is followed by MJ with 19 calls for contracts and Ministry of Kosovo Security Forces (MKSF) with two (2) calls for contracts. Other ministries (16 in total) together with OPM did not publish any calls for tenders in their websites.

Similar rate of non-publication of documents applies to publication of granting of contracts (or the announcement for the tender winner). Out of 776 announcements for granting contracts that were published on PPRC website, only 63 of them were also published in ministries’ websites. Publication of announcements for granting contracts is significantly lower and it is only at 8% of the total number of calls for tenders published in ministries’ websites.

Ministries that have published announcements for granting contracts during 2014 in their websites include: MTI with 30 announcements, Ministry of European Integrations (MIE) with seven (7) announcements, MJ with 12 announcements, and Ministry of Diaspora with 14 announcements.

Conclusions
The majority of government departments do not publish their calls for contracts or granting contracts in their websites. Through these two documents, citizens, media or other interested parties may see when one institution has published a call for tender and who won them.
Public auctions
Compared to public procurement procedures, the number of auctions is way lower and items sold through auctions are not of high value and large amounts, but we still wanted to measure the publication of announcements for these auctions. Our data reveal that auctions are not published in ministries’ websites either, and in some cases not even in the PPRC website itself. Despite the fact that it is required to announce these procedures, still the ministries do not observe this legal requirement.

Through auctions, ministries usually sell confiscated goods or equipment that are not used by the institution any longer. Usually vehicles or furniture are most often sold through public auctions. However, this category is supervised very little by institutions – neither the Office of General Auditor (OGA) nor PPRC pay attention to or control auctions.

During 2014, we have observed that a very low number of auctions occurred in these institutions. Only two (2) auctions were published in PPRC website and three (3) others in MTI website. On the other hand, there were only two (2) announcements for granting contracts on PPRC website, and there was none in ministries’ websites. It seems that there is no special announcements for these category of sales through procurement, and assets are not published before they are sold, or maybe ministries do not sell their old assets but only store them in MPA warehouses.

Compared to Kosovo municipalities, which during the first six months published 40 announcements for auctions, it seems that ministries do not use this mechanism for selling assets. Institutions that published data on auctions include MTI, OPM, MPA and MCYS.

Conclusions
Auctions, similar to other procurement procedures, have very low transparency, both in terms of call for auctions and announcements related to the auction winners.
Complaints to PRB
Complaints to the Procurement Review Body are an indicator of measurement of regularity of the process at a public institution. Usually the number of complaints is higher in institutions that have a larger budget, but these auctions provide an overview of the violations that are committed by institutions in different procurement stages. In this index, we analysed 137 complaints that were submitted by businesses against ministries of the Government of Kosovo. This was done with the purpose that the same are separated into several categories to find out at which stage there are violations of public procurement procedures. In this index, complaints of the businesses are divided into the following: unclear criteria, adaptation of criteria, unfair assessment of offers, denied access to public procurement documents, and others.

Based on the analyses of these complaints for 2014, which were submitted against ministries and OPM, we found that the largest number of complaints – 65% of them – pertains to assessment of offers stage. In this process, businesses complain about the work of commissions for assessing offers, that they were treated unfairly but not analysing their documents appropriately.

Businesses also often complain to PRB that institutions did not allow them to access documents and offers of other companies. Usually, many institutions, violating the Law of Public Procurement, close offers of companies, by referring to the provision on business secret. In many cases, business secret is used to close the offers with regard to price per item, which is absolutely prohibited with the Law on Public Procurement, which stipulates that prices at any case cannot be protected as business secrets. Based on the analysis of these complaints, we have found that in 8% of cases, businesses were not allowed to see offers of other companies, and they complained to PRB about this.

Businesses had issues with tender dossiers as well, with requirements set in these dossiers in particular. In 10% of complaints, businesses complained that requirements are either very unclear...
and that they cannot prepare their offer based on those requirements (6%), or the criteria were very specific and adapted to a specific known operator (4%). Meanwhile, 17% of complaints did not have to do with any of these categories. Based on the analysis of these complaints, we observe that with exception of cases related to assessment of offers, businesses hesitate to submit complaints to PRB. This may be interpreted as lack of trust on this institution, or lack of capacities of Kosovar companies to handle the legal side of tenders and oppose tender dossiers at PRB.

Ministries the largest number of complaints about them included: Ministry of Infrastructure (MI) with 27 complaints, followed by MCUS with 20 and MH with 16 complaints. Meanwhile, ministries with least number of complaints about them with regard to procurement procedures included Ministry of Foreign Affairs (MFA) and Ministry for Communities and Returns (MCR), which did not have any complaint during 2014. Ministry of Local Governance Administration (MLGA), Ministry of Diaspora and Ministry of European Integrations (MIE) had only one complaint each at PRB.

Conclusions

Electronic procurement in Kosovo would create the situation where 90% of these complaints would not even exist since it would avoid issues such as wrong assessment of offers, access to official documents and direct contact between procurement officers and economic operators.
Complaints to PRB

- Ministry of Trade and Industry
- Ministry of Infrastructure
- Ministry of Health
- Ministry of Foreign Affairs
- Ministry of Internal Affairs
- Ministry of Labour and Social Welfare
- Ministry of Environment and Spatial Planning
- Ministry of Culture, Youth and Sports
- Ministry for Communities and Returns
- Ministry of Kosovo Security Forces
- Ministry of European Integrations
- Ministry of Economic Development
- Ministry of Finances
- Ministry of Justice
- Ministry of Diaspora
- Ministry of Agriculture, Forestry and Rural Development
- Ministry of Education, Science and Technology
- Ministry of Local Governance Administration
- Ministry of Public Administration
- Office of the Prime Minister of the Republic of Kosovo

- Unclear criteria
- Fixing criteria
- Unfair selection of the winner
- Rejected requests for access to public documents
- Other

Total
Most transparent ministries

Out of 19 ministries and the Office of the Prime Minister that were monitored, we concluded that only two (2) ministries had relatively good level of transparency in finances and public procurement. Ministry of Trade and Industry and Ministry of Justice published information on public procurement in their websites. Actually the Ministry of Justice published detailed weekly financial reports, and despite some occasional weaknesses of these reports, this is a practice that needs to be appreciated and should be followed as such by entire Government cabinet. However, none of the ministries of the government cabinet was not sufficiently transparent, and based on our 23 indicators each of them had weaknesses in publication of documents.

Annex to the Report
Testing of access to official documents and information at Government institutions

KDI and TIK tested the access to official documents and information, by submitting requests to respective institutions to obtain information and documents. Out of 20 institutions that were contacted, nine (9) responded within the require timeline of seven (7) days, while nine (9) other ministries had delays from one (1) to 30 days. Two (2) ministries of the Government of Kosovo, MI and MEST did not respond at all despite waiting for their response to our requests for more than two months.

<table>
<thead>
<tr>
<th>Institution</th>
<th>Request submission date</th>
<th>Response acceptance date</th>
<th>Delays</th>
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<tr>
<td>Office of the Prime Minister of the Republic of Kosovo</td>
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<td>19 January 2015</td>
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<td>16 January 2015</td>
<td></td>
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<td></td>
<td>Ministry of Justice</td>
<td>14 January 2015</td>
<td>04 February 2015</td>
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<td>8</td>
<td>Ministry of Finance</td>
<td>15 January 2015</td>
<td>22 January 2015</td>
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<td>9</td>
<td>Ministry of Economic Development</td>
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<td>Ministry of European Integration</td>
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