

PRINCIPAL METHODS OF PREVENTION CORRUPTION AND FRAUD IN PUBLIC PROCUREMENT

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Abstract: *In this article, we will analyze the mechanisms for combating corruption and fraud in Romania, taking into account the assessment of best practices, including operational capacities, efficiency of integrity mechanisms, control and sanctions. The phenomena of corruption and fraud in public procurement in Romania as well as the existence of these phenomena in more developed countries. The analysis was based on general literature on the phenomena of fraud and corruption, including the legal framework regulating these phenomena, taking into account the assessment of best practices, including operational capacities, effectiveness of integrity, control and sanction mechanisms. Bribery in public procurement is “embedded” in a general system of corruptible behaviors covering all categories of business, public and private. This report therefore attempts to provide - in part two - an assessment of the risks of corruption in public procurement. EU, World Bank and Transparency International data and reports have been taken for documentation. The main warning indicators can be listed as follows: bribery and illegal commissions; conflicts of interest; bid rigging; bid rigging; fictitious companies; disclosure of bid information; unbalanced bidding; bid rigging; manipulation of the bidding procedure; unjustified single-source and differentiated procurement; rigged specifications; exclusion of qualified bidders; unnecessary procurement and procurement fraud in contract implementation. In Romania, the development of corruption and fraud phenomena in the field of public procurement has a negative impact on the absorption of European funds and their existence is due to the inefficiency of the control system in the field of public procurement, which does not ensure effective monitoring and has a negative influence on the budgets of public entities.*

Keywords: *fraud, corruption, public procurement, contracts, public institutions, anti-corruption measures*

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1. Introduction

Public procurement is an important aspect of public investment that stimulates economic development, accounting for approximately 14-19% of the European Union's GDP (https://single-market-economy.ec.europa.eu/single-market/public_procurement_en). As central/local public authorities procure goods, services and

works from the public budget for the good functioning of the community, this must be done in the most efficient, effective, economical and fair way possible.

2. The main methods of fraud in the field of public procurement

Public procurement is one of the most attractive avenues for fraud and corruption because public procurement uses money from the public budget, money from taxpayers, to provide goods and services.

The organization Transparency International estimates that losses in public contracts due to corruption account for between 20% and 25% of the contract value and up to 50% in some cases (Volosin 2015).

Among public administration, public procurement is the process containing the highest risks of illegality, which can occur at virtually any stage of the procurement process of goods, services or construction works (Rustiarini et al. 2019). Offenses in this context are elaborate and refined, involving schemes such as abuse of power, corruption, speculation, bribery, favoritism, nepotism and embezzlement (Padhi & Mohapatra 2011). In this sense, these offenses are difficult to detect and measure (Mufutau & Mojisola 2016), especially after the award of public procurement contracts. As such, well-defined legislation is not sufficient to circumvent public procurement crime, and mechanisms to prevent it are often inadequate (Wensink & Vet 2013).

The implementation of e-procurement in the last decade has allowed and theoretically led to greater transparency of the public procurement process, as information is accessible to all interested parties. Another benefit of the electronic use of public procurement procedures is the decrease in the costs of conducting procurement procedures.

However, the fraud of public procurement procedures in tandem with corruption has adapted to the electronic process of public procurement, and mechanisms of fraud of the public budget have been identified at all stages of the public procurement process through simulation, circumvention/disguise of the procurement process by members of the "organization" (e.g. public institution belonging to local public administration (town halls, county councils, institutions subordinated to them, etc.). The institution represents the location of the corrupt act.

The main members who play a key role in the fraudulent procurement process, while at the same time being involved in acts of corruption, are:

- the public official who usually holds a decision-making position (ex. Head - elected or appointed, responsible for budget management - economic director, etc);
- the public institution or contracting authority where the fraudulent activity is taking place the process of procurement fraud and at the same time the act of corruption by offering bribes or other tangible benefits offered to corrupt the recipient.

Public procurement is one of the sectors most vulnerable to fraud and corruption. According to a study conducted by the World Economic Forum (<https://www.oecd.org/gov/ethics/48994520.pdf>), bribery in public procurement

alone accounts for 10-20% of total contract costs, which unjustifiably and illegally increases the public administration's expenditure by the value of the bribe offered. Thus, the public administration in this case spends 10-20% more of taxpayers' money, without any added value for the citizens (the amounts represent an illegal enrichment of the representatives with public duties who are guilty of bribery). "Because governments around the world spend about 4 trillion dollars each year to purchase goods, services and works, a minimum of 400 billion dollars a year is lost to bribery" (Peter Eigen, 2002, <https://www.transparency.org/en/cpi/2002>).

Given the poor management of these archaic phenomena in public procurement, the price paid by government for goods, services and works is unduly increased, impacting on the size of public expenditure and therefore affecting taxpayers' resources. Equally important is also the fairness and transparency of the entire procurement process which otherwise leads to poverty and inequality among the population (Gupta, S. et al., 2002).

Efforts have been made to implement good governance principles in the public procurement process at both national and international levels, with a particular focus on developing criteria for the design and award of procurement contracts.

As it follows from international practice, Directive 2014/24/EU, refers to the introduction of new monitoring and reporting requirements (the obligations covered in Art.83-85). The new obligations refer to " Each Member State shall transmit to the Commission, by April 2017, and every three years thereafter, a monitoring report including information on the prevention, detection and adequate reporting of cases of fraud, corruption, conflicts of interest and other serious irregularities in public procurement. On the basis of the reports received from the Member States, the Commission regularly publishes a report on the implementation and best practices on national public procurement policies in the internal market". In relation to public procurement, Member State governments are obliged to implement additional measures to combat corruption, including in relation to public procurement procedures.

Measures to prevent corruption Law no. 98/2016 on public procurement provides for the importance of preventing, identifying and combating situations related to conflicts of interest, aspects stipulated in art. 58 which obliges the contracting authority thus "to take all necessary measures to prevent, identify and remedy situations of conflict of interest, in order to avoid distortion of competition and ensure equal treatment for all economic operators".

However, public procurement procedures tend to be rigged in order to obtain unjustified and illegal advantages. The underlying elements of public procurement fraud are opportunity, financial pressure and justification.

For example, as a form of fraud in public procurement is the conflict of interest that arises when the public official responsible for public procurement procedures makes advantageous decisions for personal gain.

It should be noted that the provisions of the European directives transposed and legislated in the national legal framework combat fraud, in particular conflict of interest, so that the European Commission is proposing clear recommendations on conflict of interest. At the same time public procurement is a breeding ground for corrupt activities and other practices such as favoritism and bribery. Corrupt activities could be exemplified by bribery, illegal commissions, discrepant bids,

influencing an official act by offering/receiving benefits, officials with responsibilities in the procedure providing confidential information only to certain participants, information unavailable to other participants, manipulation of bids by selecting/canceling/modifying bids on false grounds, etc.

In general, conflict of interest is defined as any situation in which a person exploits his or her professional or service capacity for personal gain.

According to European Union legislation on conflict of interest situations, the Financial Regulation (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of October 25, 2012 on the financial rules applicable to the general budget of the Union and repealing Regulation (EC, EURATOM) No 1605/2002, OJ L 298, 26.10.2012) with its implementing rules (Regulation (EU) No 1268/2012 on the implementing rules for Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ L 362, 31.12. 2012) Articles 57 and 32 respectively stipulate the following "Financial actors and other persons involved in the management and implementation of the budget, including preparatory acts, audit and control of the budget, shall not take any measures which may bring their own interests into conflict with those of the Union. (...) 2. For the purposes of paragraph 1, there is a conflict of interest where the impartiality and objective exercise of the functions of a financial actor or other person as referred to in paragraph 1 is compromised for reasons involving family, emotional life, political life or national affinity, economic interest, or any other interest shared with a recipient."

For the purposes of Article 57 of EU Regulation 966/2012, acts that could constitute conflicts of interest may take the following forms:

- Giving to oneself or to another person undue direct or indirect advantages;
- Refusing to grant a beneficiary rights/advantages to which he/she is legally entitled;
- committing abusive acts or failing to comply with mandatory acts.

According to ANAP Strategy (<http://anap.gov.ro/web/wpcontent/uploads/2015/12/Strategia-Nationala-Achizitii-Publice-final.pdf>) in order to prevent and remedy conflicts of interest, contracting authorities have the following obligations:

- Inclusion of the entire procurement process and contract management;
- Compliance with EU directives as well as national public procurement legislation;
- inclusion of a dedicated chapter for conflict-of-interest declarations;
- Inclusion of a paragraph on bribes/invitations etc. which could be a means of influencing the procurement process (these could occur both during and after the procedure);
- Recording all cases of conflict of interest and how to deal with them;
- Including sanctions to discourage conflicts of interest;
- Dealing with Pantouflage (situations where employees leave a public sector organization, in particular from a position in government or local government).

In terms of preventing and combating corruption in public procurement procedures, we can list the following ways to achieve this:

- Review of the national legislative framework after prior consultation with the authorities competent in the detection and sanctioning of fraud and corruption in public procurement;

- Transparency of the public procurement file by making the file easily accessible to the general public, which requires clear mentions in the national public procurement legislation establishing;
- Transparency of the public procurement contract by eliminating clauses such as "confidentiality of the contract" even when it is not the case prohibiting the publication of the contract. This *modus operandi* has been used to hide extremely damaging deals for the public budget. Access to these contracts has often resulted in media scandals due to unfair treatment of the public interest, often resulting in criminal cases for those involved.
- A public register of all public procurement, covering all public procurement files carried out by the entity, including framework contracts. By giving the general public access to these files, it would be easy to cross-check existing data from the Trade Register in order to identify the real beneficiaries of the deals that have seriously damaged the state budget. The business environment complains that major tenders are won by companies owned by party members or their interlocutors or companies which make substantial contributions to electoral campaigns, which clearly shows that the objective of transparency in public procurement in Romania by ensuring free competition on the market for all competitors is not being achieved. The justification used by the authorities for directing major contracts to 'home-grown' firms is usually the trust placed in the company by the head of the contracting authority. In fact, public procurement procedures are directed only to "pet" (party-friendly) companies, which leads to the destruction of the economic environment.
- Professionalization of civil servants in public procurement by creating a body of experts in this field.
- Making purchases by the principal authorizing officer - and then passing them on to third parties. For this option to be put into practice, it is not enough to amend the law on public procurement, but also the law on local public finance, which would allow transfers between public entities in order to carry out procurement in a centralized system. As far as the choice of the most advantageous offer is concerned, the most advantageous offer from a technical and economic point of view should be taken into account when determining the most advantageous offer.
- Implementation of transparent operating regulations and operational procedures and application of effective internal working procedures;
- Training of responsible officials on irregularities, fraud, conflict of interest, etc.;
- Use of contractual models that do not allow the contractor to easily request additional;
- Training of responsible officials on irregularities, fraud, conflict of interest, etc.;

The use of contract models that do not allow the contractor to easily request additional works and the establishment of clauses that allow penalties for non-performance of works/services/goods;

One of the main sources of financing in Romania is the National Local Financing Program, a multiannual financing program with the general objective of equipping administrative-territorial units with the technical and infrastructural facilities

necessary to increase the attractiveness of the investment climate of Romanian localities.

Map of PNDL allocations for the period 2015-2023, respectively PNDL 1 - 2015-2024 or PNDL 2 = 2017-2024. Funding before 2015, when the PNDL became a multi-annual program, is not included.

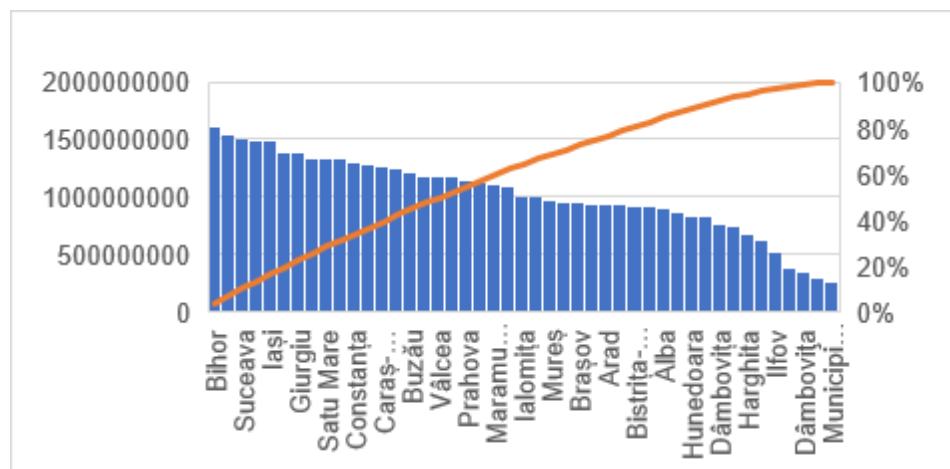


Figure 1. PNDL during 2015-2024

Source: own processing based on data taken from websites: mlpda.ro, data.gov.ro, sicap.ai, e-licitatie.ro

The projects carried out through PNDL 1 and PNDL 2 consist of water supply; other areas; water and sewerage; sewerage; county roads; municipal roads and streets; kindergartens and nurseries; public lighting; public institutions; cultural objectives; bridges and culverts; schools and health facilities.

3. In conclusion

In order to prevent and discourage these phenomena, specialized studies show that anti-corruption measures in public procurement depend on an understanding and analysis of the practices and policies established at the government level by carrying out annual checks and auditing of institutions that carry out a large number of purchases. However, unfortunately, a way to prevent such checks and to block anti-fraud and anti-corruption measures arises from the political environment, given that politicians are “interested” factors in public procurement systems, being directly involved in fraud and corruption regarding public procurement, which is why they legislate to block, diminish and/or reduce the powers of institutions with control responsibilities in combating fraud and corruption (Della Porta and Vannucci, 2007, p. 832) or/and legislate normative acts favorable to the phenomena of fraud and corruption.

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