

THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

Resolution 421 (2017)¹ Making public procurement transparent at local and regional levels

1. In its many forms, corruption poses a major threat to governance and democracy in Europe and undermines the confidence of citizens in democratic institutions. Its prevalence affects citizens, governments and business alike, increasing unpredictability and impeding new investment. With this in mind, at its 31st Session, the Congress of Local and Regional Authorities of the Council of Europe adopted a road map of activities for preventing corruption and promoting public ethics at local and regional levels (Resolution 401 (2016)). This roadmap includes the preparation of thematic reports, including those on transparency in public procurement.

2. As public procurement is an essential part of public service provision for local and regional authorities, an efficient procurement process is key to good governance. However, as it involves a large proportion of public expenditure and, to an increasing extent, the transfer of public resources to the private sector or to non-profit organisations, the public procurement process is particularly vulnerable to various types of corruption.

3. Corruption in the context of public procurement can take many forms. It may include the allocation of government contracts to friends or political cronies, at the expense of a transparent and competitive process, or the agreement between bidders to manipulate the tendering process.

4. The increased use of outsourcing and public-private partnerships to deliver public services can create conflicts of interest during the public procurement process. Public officials or politicians might use their insider knowledge of procurement plans, or their influence over procurement decisions, to benefit friends, relatives or allies bidding for contracts. Another significant source of corruption is the “revolving door” phenomenon, which consists of the movement of personnel from jobs in local government to jobs in the private sector, often to companies involved in local government procurement. Civil servants can take advantage of their insider information or shape the policy for awarding contracts while they are in office in order to benefit from it later, when they work for a private contractor, or to create other opportunities for themselves or friends.

5. Various risks are involved throughout the public procurement process, from the needs assessment phase to the implementation phase of the contract. In the needs assessment phase, an individual might artificially inflate the needs, hence impacting the whole competition process, or might make excessive provision for the cost of errors. In the design phase, the risks are related to the drawing-up of the specifications or to a lack of clarity in the selection criteria. In

the award phase, a corrupt official could insist on the weaknesses of a particular supplier and on the supposed advantages of another. Finally, in the implementation phase, the risks concerning the monitoring of the chosen contractor could lead to deficiencies in quality or to increasing costs and, therefore, a waste of public funds.

6. As public procurement processes become increasingly complex, local and regional authorities can also be at risk due to a lack of adequate expertise in the field of public procurement among their staff. This puts them at a disadvantage compared to companies, which often have more resources to spend on legal expertise. Local and regional government staff are often ill-prepared to carry out complex contracting procedures and to monitor their application.

7. There are a number of practical steps that local and regional authorities can take to reduce their exposure to such corruption, beginning with measures relating to transparency. Transparency at all stages of the procurement process is essential to reduce the risks of corruption and to enhance public trust in local and regional administrations.

8. The move to e-procurement systems for public procurement has been demonstrated to have had a significant effect on reducing the risks of corruption in this sphere.

9. The establishment of codes of conduct, such as a prohibition on accepting rewards, gifts and other benefits, connected with integrity training programmes for local and regional elected representatives and appointed officials, has also been shown to be useful in avoiding the risks of conflicts of interest in public procurements.

10. Corruption in public procurement is often revealed through reporting by insiders. These whistle-blowers can face reprisals and therefore need to be adequately protected.

11. In light of the above, the Congress invites the local and regional authorities of the member States of the Council of Europe to:

a. assess the different risks of corruption involved in public procurement and set up internal controls and evaluation mechanisms;

b. enhance transparency by publishing data and information on public procurement at all stages of the process, in order to encourage public scrutiny and involve civil society;

c. ensure that transparency requirements also apply to private companies which provide outsourced services;

d. simplify the procedures for public procurement in order to make them clearer and more accessible for all parties concerned;

e. introduce e-procurement systems for public procurement, whereby tender announcements and tender documents are published on a publicly accessible website and tenders are submitted through purpose-built IT systems;

f. promote integrity pacts between contracting authorities and bidders to a call for tender, in which the two parties agree to refrain from corrupt practices and submit to monitoring by civil society;

g. encourage the training of local and regional public officers to enable them to carry out complex procurement procedures and perform audit functions;

h. promote the emergence of an anti-fraud culture through education on the risks and the identification and prevention of fraud;

i. define reporting procedures which ensure that reports are treated confidentially and that a person cannot be harmed for reporting suspicions of wrong-doing;

j. introduce safeguards to prevent conflicts of interest in the public procurement process, including codes of conduct for all those involved, to make clear the ethical standards expected of them. These would include, for example, a prohibition on accepting rewards, gifts and other benefits;

k. design training programmes for the implementation of these codes of conduct;

l. consider introducing and regularly evaluating existing enforcement mechanisms, such as disciplinary proceedings and sanctions, to reinforce the application of these codes.

12. The Congress resolves to take the above considerations and recommendations into account in its revision of the *European Code of Conduct for the political integrity of local and regional elected representatives*.

1. Debated and adopted by the Congress on 19 October 2017, 2nd sitting (see Document [CG33\(2017\)13](#), explanatory memorandum), rapporteur: Amelie TARSCHYS INGRE, Sweden (L, ILDG).