

COMMITMENT #8: STRENGTHENING TRANSPARENCY IN PUBLIC PROCUREMENT

Commitment Start and End Date: January 2019 – August 2020

Lead implementing agency/actor

National Network for Open Administration working group

Commitment description

What is the public problem that the commitment will address?

In Portugal we have made important progress in the public procurement area, namely with the creation of the BASE Portal¹, containing information on all contracts entered under the Public Procurement Code (CCP)² and also with the Observatory of Public Works³. Nonetheless, perceptions of corruption in this field remain very high: according to the Special Eurobarometer on Corruption⁴ (OCT17), 92% consider that there is widespread corruption in Portugal, 55% of Portuguese respondents consider that public officials who award public tenders are corrupt, and 21% believe that corruption prevented his or her company from winning a public tender or awarding a public contract in the last 3 years. This is to a large extent due to the widespread use of the Direct Award procedure, but also to the opacity of the public procurement cycle which neither the Public Administration nor the BASE Portal is able to fully respond to.

What is the commitment?

Enhancing transparency in public procurement through:

- A.** Publishing open data on the entire public procurement cycle;
- B.** Reducing drastically the use of Direct Award Contracts, to promote competition and to ensure best value for money acquisitions;
- C.** Developing and implementing civic monitoring mechanisms.

How will the commitment contribute to solve the public problem?

A. The following actions will contribute to ensure the dissemination of timely, accessible and usable data at all stages of the procurement cycle, thus improving the transparency and quality of e-procurement

¹ <http://www.base.gov.pt>

² <https://dre.pt/web/guest/legislacao-consolidada/-/lc/view?cid=114291580>

³ <http://www.base.gov.pt/Oop/pt/Homepage>

⁴ https://ec.europa.eu/home-affairs/news/eurobarometer-country-factsheets-attitudes-corruption_en

systems:

- Adopting the Open Contracting Data Standards (OCDS)⁵, ensuring that all contracts are open by default;
- Elaborating a Manual and Guide to Procedures for the Publication of Contracts in the BASE portal which strengthens the principle of all contracts being open and public by default, and clarifies in more detail which are the exception cases;
- Following and adopting the recommendations/determinations of the European Commission on Public Procurement and e-Procurement⁶;
- Reinforcing the principle of freedom of choice of electronic platforms;

B. Publishing and making public the following additional information, for instance, will contribute to reduce the use of Direct Award Contracts:

- Detailed justification for choosing this type of procedure in "Clear Portuguese" – in a language accessible to the common citizen, avoiding legal jargon whenever possible;
- Identification by the competing entities of its business structure, with the disclosure of the effective beneficiaries;

In addition, complementary measures should be undertaken:

- Authors of any type of advice/technical support in the formulation of the Public Procurement Procedure should be identified, and prohibited to take part in any of the awarding stages;
- Identification of the jury of the contracting proceedings. All top decision makers from the Contracting Authorities are excluded from any awarding decisions;

C. Confidence in procurement is not achieved without the active participation of all stakeholders. Creating clear and useful channels for communication between governments and social groups, professionals, associations and communities affected by a specific procurement process helps to ensure that participation is translated into good government action, so we must focus on the development of tools and methodologies that encourage civic

⁵ <https://www.open-contracting.org/>

⁶ https://ec.europa.eu/growth/single-market/public-procurement/e-procurement_pt

	<p>participation and monitoring. This can be done through the application of tools of recognized impact, such as the Integrity Pacts⁷ developed by Transparency International, but also through initiatives that use open public procurement data for the involvement of citizens, companies and organizations.</p>	
<p>Why is this commitment relevant to OGP values?</p>	<p>The commitment is aligned with the axes:</p> <ul style="list-style-type: none"> - <i>Transparency</i>: it translates into enhanced transparency on one of the nuclear activities and with greater economic and social impact undertaken by the government, and corresponding accountability; - <i>Public participation</i>: public and open public procurement information catalyses the participation of non-governmental stakeholders (CSOs, journalists, academics and business) through the use of such data in a multiplicity of circumstances of high social value - research journalism, scientific research, market research, etc – and also allows for such feedback to be properly integrated into public policies, increasing confidence levels for public decision-makers; - <i>Use of ICT and digital inclusion</i>: it contemplates adoption of OCDS, one of the most powerful benchmarking and social innovation tools. <p>Furthermore, this commitment promotes the <i>accountability of the public sector</i>, by supporting the conditions of integrity in the day-to-day exercise of public administration. On the other hand, open data accessible to a broader group of stakeholders within government, including policy makers, administrators and regulators, functions such as monitoring and auditing are reinforced.</p>	
<p>Additional information</p>		
<p>Milestone Activity with a verifiable deliverable</p>	<p>Start Date:</p>	<p>End Date:</p>
<p>Implementation of the OCDS in the BASE Portal and the Public Procurement Observatory.</p>	<p>January 2019</p>	<p>August 2020</p>
<p>Make all contracts open by default and public through their availability in the BASE Portal.</p>	<p>January 2019</p>	<p>August 2020</p>

⁷ <https://transparencia.pt/pacto-de-integridade/>

Make eProcurement platforms truly empowering of free competition and competitiveness.	January 2019	August 2020
<p>Publication and public disclosure of all procedural documents relating to all phases of contracts signed by Direct Award:</p> <ol style="list-style-type: none"> 1. Justification of the choice of this type of procedure in "Clear Portuguese"; 2. Issuance of a compulsory declaration of the competing entity identifying its business structure, with disclosure of the effective beneficiaries under the terms of Law no. 83/2017, of August 18th; 3. Prohibition of participation in the procedure to the authors of any type of advice or technical support in the formulation of the procedure; 4. Typification of the behaviors that result in the impediment of the competitors; 5. The decision to hire or to participate in the jury of the Direct Award procedure must be barred to the holders of the competent body. 	January 2019	August 2020
Develop and apply tools to encourage civic participation and civic monitoring (e.g., Integrity Pacts, hackatons, etc.).	January 2019	August 2020
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