



# TENDERIO

Improving SME's access to public procurement

## Guide to country specific elements on public procurement: Slovakia



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## TENDERIO

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## List of Acronyms

Acronym	Title
CPO	Central Procurement Organisation
CPV	Common Procurement Vocabulary
ECS	Electronic Contracting System
ESPD	European Single Procurement Document
EU	European Union
LVC	Low Value Contracts
MEAT	Most Economically Advantageous Tender
OTC	Over the Threshold Contracts
SME	Small and Medium – sized Enterprise
PPA	Public Procurement Act
UTC	Under Threshold Contracts
UVO	Office for Public Procurement
VAT	Value Added Tax

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*Within this concept, a series of national guides on public procurement was developed for Czech Republic, Estonia, Greece, Ireland, Latvia, Lithuania, Portugal, Slovakia, Spain and United Kingdom targeting to support in particular SMEs who are interested in participating in public procurement processes in EU Member States and need to know more regarding the national procedures.*

*National guides are available in the project's official website: [www.tenderio.com](http://www.tenderio.com)*

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## Executive Summary

The current guide aims to support European SMEs to access the Slovak public procurement market. In particular, it presents data and specific elements of public procurement in Slovakia along with the procedures to be followed in order to submit a bid for a Slovak public contract.

With total value of public tenders (excluding Low Value Contracts) reaching almost 4.4 billion eur in 2016, Slovakia is a small, but interesting market. Foreign bidders were successful only in 3,4% of tenders and won awards worth 3,1% of the total tender value in 2016, which indicates untapped opportunities for foreign bidders. Construction works take majority of tenders both in value (especially highway construction) and number of tenders (reconstructions of public buildings).

Long plagued by the lack of transparency in public procurement, the country is moving slowly, but steadily towards the European standards. The new EU directives on public procurement (2014) have already been transposed into the Slovak legal framework in 2015 (Act 343/2015) and became valid since 2016. The electronisation of procedures is improving, however, local know-how language remains barrier for foreign bidders, especially for smaller contracts.



## 1 Introduction

The current guide was elaborated under the activities of the TENDERIO project. TENDERIO project is funded by the COSME program of the European Union (Grant Agreement No 739966) and aims to increase SMEs' access to public procurement in EU.

This guide is addressed to SMEs and to any other economic operator interested in participating in Slovak public contracts and wishes to know more about the public procurement procedures in Slovakia.

Chapter one, introduces the scope and the content of this guide and lays out the concept within which it was developed.

The second chapter focuses on the potential of EU public procurement market, emphasizing the performance of European SMEs' in the cross-border procurement contracts and briefly presenting the key points of the new EU legislative framework (2014) on public procurement.

Moreover, the third chapter sets light on the current status of public procurement in Slovakia. In particular, it provides an overview of the public procurement framework in Slovakia along with a summary of key data regarding the Slovak market size, i.e. the value of tenders, the number of tenders, the market share among construction, goods and services, the top sectors, as well as data regarding the cross-border procurement i.e. the implementation of Slovak public contracts by companies located in another EU Member State.

Chapter four, briefly comments on the national procedures of public procurement in Slovakia. More specifically, it includes information regarding:

- the contracting authorities;
- the award procedures;
- the eligibility of the potential bidders;
- the publication of the contracts notices;
- the time limits for the submission of an offer;
- the bid's submission and the bid's evaluation procedure;
- the award criteria;
- the complaints and the prejudicial objections.

In addition, the fifth chapter lists key points for the SMEs that are interested in submitting offers in Slovak public contracts. The guide concludes with a reference on how TENDERIO platform could support European SMEs in applying for a public contract abroad.



## 2 Public Procurement in EU

According to European Commission, the term “Public Procurement” refers to the process by which public authorities, such as government departments or local authorities, purchase work, goods or services from companies, i.e. the building of a state school, purchasing furniture for a public prosecutor's office, contracting cleaning services for a public university etc<sup>1</sup>.

### *Public procurement market in EU*



Every year nearly 2 trillion euros are paid in Europe for public contracts, i.e. 14% of EU GDP.



At least 250.000 public authorities conduct public procurements annually.



Public authorities are the major buyers in sectors such as energy, transport, waste management, social protection and the provision of health or education services.



The estimated value of general government expenditures on works, goods, and services -excluding utilities- has increased by 4,2% in 2015. Almost all EU Member States increased their expenditure on public contracts between 2014 to 2015<sup>2</sup>.



The estimated value of tenders published in the Tenders Electronic Daily<sup>3</sup> (TED) in 2015 was 450.21 billion euros which stands for 6.9% more than it was in 2014.

Overall, the public procurement represents a substantial portion of the EU economy offering lot of opportunities and innovation prospects for the European SMEs.

### *European SMEs' participation in cross-border procurement*

The term “cross-border procurement” refers to a procedure by which a public contract in a Member State is partly or fully performed by firms located in another EU Member State.

SMEs account 99,8% of the registered enterprises in Europe (20,8 million SMEs) and they are considered to be the backbone of the EU28 economy. European SMEs could participate in procurements across borders either directly or indirectly through its local subsidiaries (Figure 1). However, the past years the overall participation of European SMEs in public procurement across borders is considered to be low.

<sup>1</sup> <http://ec.europa.eu/growth/single-market/public-procurement/>, 2017

<sup>2</sup> DG GROW G4, 2016. *Public Procurement Indicators 2015*.

<sup>3</sup> The online version of the 'Supplement to the Official Journal' of the EU, dedicated to European public procurement.



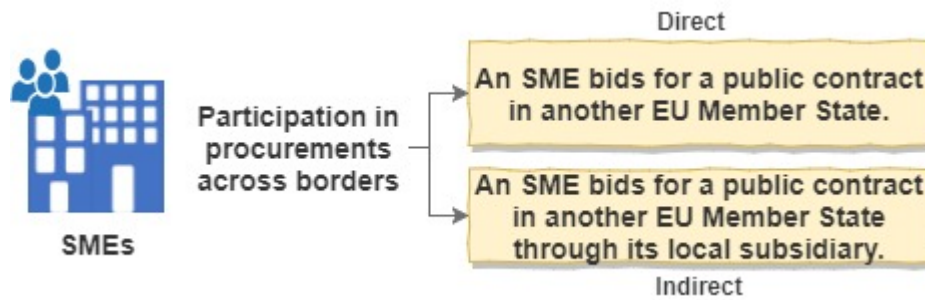



Figure 1: How European SMEs can participate in cross border public procurements


 The share of European SMEs in direct cross-border procurement accounts for 27% in terms of number of awards and 24,5% in terms of the value of awards, which is significantly lower compared to their contribution to the European GDP (58%)<sup>4</sup>.

The share of European SMEs in indirect cross-border procurement is estimated at 3% both in terms of number and value of awards<sup>5</sup>.

### **Obstacles to SMEs' participation in cross-border procurement**

The low level of SMEs' participation in cross-border procurement the past years was due to (Figure 2):

<sup>4</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*

<sup>5</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 2017. *Measurement of impact of cross-border penetration in public procurement.*



Figure 2: Main obstacles that SMEs face when they participate in cross-border public procurement

Despite the fact that SMEs are facing difficulties in their participation to cross-border public procurement, however the contracting authorities/entities see high potential in cross border contractors as they could benefit by having a better choice in terms of quality and price and by concluding contracts when there is absence or limited availability of suppliers at national level.



European Commission has introduced legislative measures to improve SMEs' access to public contracts, aiming to open up national public procurement markets and increase the levels of cross-border public procurement.

### **Legislative Framework**

In 2014, the EU Parliament and the European Council introduced a new common legislative framework on public procurement and concessions aiming to simplify the procedures and encourage the SME's to access public contracts and concessions contracts. The reform included the following directives:

- 2014/23/EU on the award of concession contracts;
- 2014/24/EU on public procurement;
- 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

More specifically the new EU directives aim to (Figure 3):



Figure 3: Objectives of the new EU directives on public procurement

The reform of public procurement legislation reduces the bureaucracy and makes public procurement in Europe more efficient within a single market facilitating that way the SMEs' participation in public contracts.



### 3 Public Procurement in Slovakia

There have been 3408 active procurers in Slovakia in 2016. Of these, 2387 came under the category of Public Procurers (see section 4) More than two thirds were represented by regional and municipal entities<sup>6</sup> as can be seen in the Table 1:

Entity	Number
Public administration entities	236
Regional and municipal entities	2151
<b>Total Public procurers</b>	<b>2387</b>
<b>Procurers</b>	<b>43</b>
Other subjects	978
<b>Total subjects</b>	<b>3408</b>

Table 1: Procurer type vs number

The Figure 4 show, that almost three quarters of tenders were Under the Threshold Contracts (Low Value Contracts are not included in the statistics) in 2016. For explanation of the contracts regarding the threshold values see Section 4.

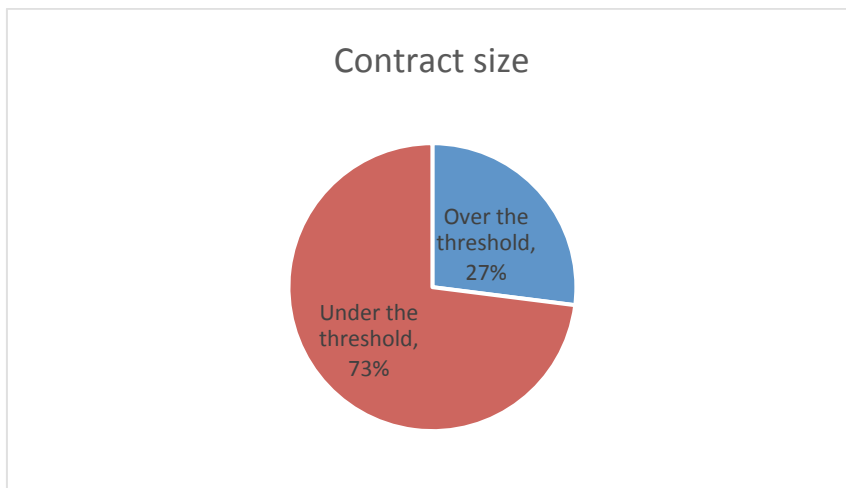


Figure 4: Contract size - Over the threshold vs under the threshold

Considering the value, the situation was opposite. Over the Threshold Contracts value in 2016 was 83% of total, reaching 3.65 billion euro. Total value of public tenders (excluding Low Value Contracts) reached almost 4.4 billion euro.

<sup>6</sup> Data source: Office for the Public Procurement [statistics](#).

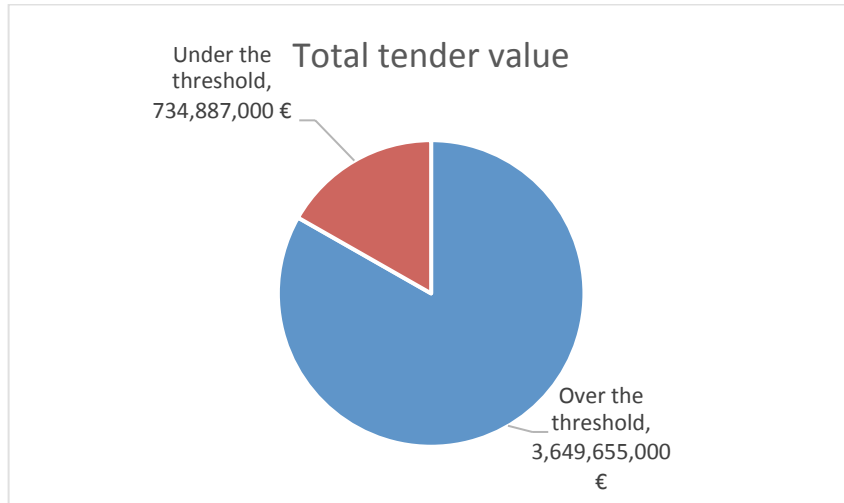


Figure 5: Total tender value

Construction works take majority of tenders both in value (especially highway construction) and number of tenders (reconstructions of public buildings), as shown in the Figure 6. Goods and services are subjects to almost an equal number of tenders, but the overall value of service tenders tends to be much higher. The value is usually driven by expensive IT contracts related to the creation of various e-government services.

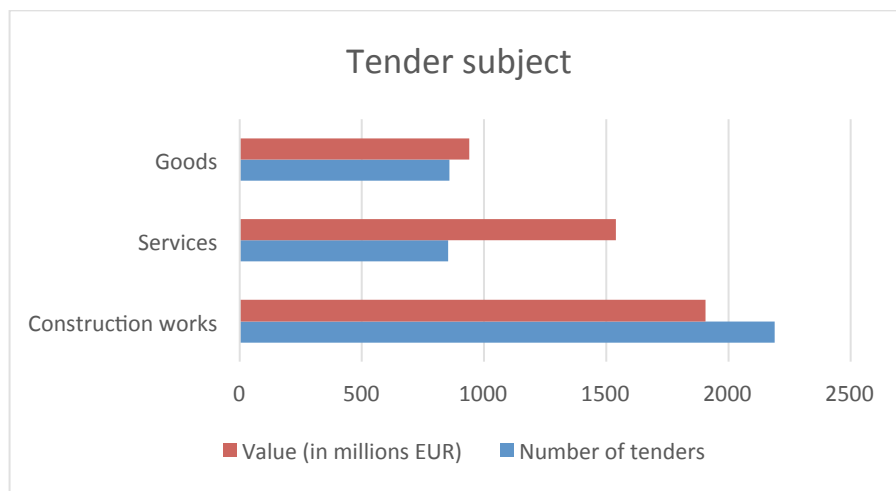


Figure 6: Tender subject

Majority of tenders is awarded in open procedures. Table 2 also shows, the tenders awarded in the Competitive Dialogue Procedures were worth only 3,8 million euro and Innovative partnership contracts were not awarded.

Award type	Value (in million EUR)
Public award procedure	2388
Narrow award procedure	689
Competitive Procedure with Negotiation with prior Publishing	25
Direct Negotiated Procedure	544
Competitive Dialogue Procedure	3,8
Innovative partnership	0
Blueprint competition	0,34

Table 2: Award type vs value



Foreign bidders were successful only in 3,4% of tenders and won awards worth 3,1% of the total tender value in 2016. Almost two thirds of successful foreign bidders were coming from Czech Republic, followed by German and Austrian bidders. This shows that Slovakia is largely unexplored country for foreign bidders. This has been traditionally caused by the low quality and user unfriendliness of the tender procedures. However, this has been steadily improving and the new 2016 Public Procurement Act hopes to bring the procedure standards closer to the European par.

When looking more into details of tender subjects, we can use data from the first half of 2017. The data was published by company edata.sk<sup>7</sup>. The top 10 subjects, ordered by number of tenders are listed in the Table 3:

Subject	Number of tenders
Construction works (unspecified)	755
Agricultural products	149
Road construction works	83
Exterior lightning	78
Security cameras	74
Construction works related to sport, culture and leisure	62
Buildings construction works	58
Construction works related to art buildings	43
Woodcutting related services	43
Construction works related to pavements	41

*Table 3: Top 10 sectors*

Various kinds of construction works are the most common subject of a tender in Slovakia. Notably, agricultural products come second.

<sup>7</sup> <http://www.edata.sk/statistika/>



## 4 National Procedures on Public Procurement

As in many east European Member States, public procurement practices in Slovakia were in desperate need of improvement in the nineties and early 2000'. Omnipresent lack of transparency and rule breaking began to recede after joining the EU and transposition of EU public procurement rules. Yet, Slovakia is tailing several EU rankings when it comes to tendering – according to the Public Procurement Scorecard in 2016, only five member states had higher ratio of a single bidder and only two had slower decision period.

Major reform came with the completely new Public Procurement Act No. 343/2015, which became valid in April 2016 and put Slovak law in line with EU directives. The law introduced a number of important changes, like the ex-ante control possibility for all parties, “market availability test” and many others. Most importantly, it introduced electronic processes to all public procurement in Slovakia (since March 2017).

Important actor when it comes to public procurement in Slovakia is the Office for Public Procurement (UVO), which is the central state administration authority for public procurement. UVO is responsible mainly for:

- creates the conceptions of public procurement,
- executes the state administration in the field of public procurement,
- executes the supervision over the public procurement, decides in particular about the objections of tenderers, candidates, participants or persons,
- imposes the sanctions for an administrative offences,
- cooperates with the European Commission and ensures the fulfilment of reporting obligations to the European Commission,
- submits the Report on the results of the public procurement annually
- maintains The List of Operators, Register of persons with the prohibition on the participation in public procurement, Register of the Final Beneficial and Evidence of References,
- certifies the systems to make the eAuctions,
- methodically guides the participants of the public procurement process,
- publishes on its web site all methodological guidelines for participants and all its decisions on objections
- maintains and makes available to contracting authority and contracting entity on its web site all formalities necessary to ensure an electronic communications,
- publishes the notifications using in public procurement
- provides information to the Antimonopoly Office of the Slovak Republic
- in the procedure for determination of invalidity of the contract will give its opinion on legal or factual matters
- accesses and updates the complete list of databases, which contain information about the operators in the system e-Certis

There are several registries a bidder should be aware of:

- The Procurement Journal (collects all tenders)
- Registry of public procurers
- Profiles of public procurers



- Registry of economic subjects (registry of bidders)
- Prohibited entities (registry of entities prohibited from entering procurement)
- Registry of the partners of public administration

Except the last one, which is run by the Ministry of Interior, the remaining registers are run by UVO.

## 4.1 Procuring Authorities & Procuring Entities

There are four basic types of procurers under the Act 343/2015 in Slovakia:

1. Public procurer
2. “Quasi” public procurer
3. Procurer
4. Central procurement organization

A public procurer can be:

- Slovak republic and all its entities
- Municipalities
- Regions
- Alliances of municipalities or regions
- Legal entities created in public interest, not having commercial goals and financed or controlled by the State, municipality or a region.

Altogether, the registry of public procurers had 6930 entities (August 2017) on record.

A “quasi” procurer is:

- A contracted private entity, which has to act as a public procurer if it they receive funds from a public procurer and is subcontracting. It has to follow various sets of public procurement rules depending on number of criteria, like budget and co-financing.

A procurer can be:

- Private entity, financed or controlled by a public procurer and doing business in seven defined sectors (various utilities, post and transport)
- Private entity, with a special status set by a law, doing business in seven defined sectors (various utilities, post and transport)

In reality, this means procurers obliged to follow the 343/2015 law are the state owned enterprises like the Slovak railways, and partially state owned enterprises like the electricity or gas distribution companies. It is important to note, that if procurer receives funds from a public procurer, the procurer will become a public procurer (the same as in the previous category of “quasi” procurers).

- Central procurement organization

A public procurer or a procurer can outsource the procurement process to one of the Central procurement





organization. A Central procurement organization (CPO) can also provide infrastructure (typically e-auction system) for procurers. As an example, the Interior ministry can serve as the CPO for all its entities and procure cleaning services for them, so instead of tens, or hundreds separate procurement actions, there is a single one. A CPO can either serve as an intermediary in the procurement process using mandatory contract, or procure goods and services in its own initiative and then resell them to other procurers in a separate process (typically used for mass-consumed unified goods and services with easily predictable demand).

## 4.2 Threshold amounts

The thresholds are defined by legal acts issued by the UVO. The current (August 2017) limits were issued in April 2016. All of them are defined in 343/2015 Public Procurement Act and listed in the table 4:

Threshold	Procurer	Contract definition
135 000 EUR	Slovak republic	Delivery of goods and services
135 000 EUR	Public procurer	Delivery of defense goods defined by law
209 000 EUR	Public procurers (Except Slovak republic)	Delivery of goods and services
209 000 EUR	Public procurer	Delivery of defense goods undefined by law
750 000 EUR	Public procurer	Delivery of defense services defined by law
418 000 EUR	Procurer	Delivery of goods and services
1 000 000 EUR	Procurer	Delivery of defense services defined by law
5 225 000 EUR	All procurers	Construction services
5 225 000 EUR	All procurers	Concession contract
135 000 EUR	Slovak republic	Blueprint competition
209 000 EUR	Public procurers (Except Slovak republic)	Blueprint competition
418 000 EUR	Procurer	Blueprint competition

Table 4: Threshold, procurer, contract definition



The thresholds are regularly updated. Please use the current version of the Law 343/2016 for reference.

There are three groups of tenders, depending on its value:

### Over the threshold contract (OTC)

OTC contracts are all contracts with value exceeding the thresholds mentioned in Table 4. As a part of SME support, some parts of over the threshold contract can be separated from the OTC process. There are two rules which have to be fulfilled:

- The separated part cannot exceed 80 000 EUR for delivery of goods and services and 1 000 000 EUR for construction services
- The sum of all separate parts cannot exceed 20% of the overall contract value

However, separating one compact contract into several separate contracts in order to move the whole contract



from OTC process to UTC (and thus operate under the less strict rules of UTC) is illegal and closely watched. For example, a construction of a building cannot be separated into independent parts like terrain works, wall construction, roof construction etc. Also, services and goods which are not essential for the particular construction cannot be included in the contract (thresholds for construction contracts are higher than for goods and services delivery).

### Under the threshold contracts (UTC)

UTC contracts have to have value below the thresholds mentioned in Table 4 and in the same time, have value higher than the thresholds listed in table 5:

Threshold	Contract definition
15 000 EUR	Delivery of standardized goods <sup>8</sup> except food, services or constructions, except defence services
50 000 EUR	Delivery of goods, except food
40 000 EUR	Delivery of food
50 000 EUR	Delivery of services, except defence
200 000 EUR	Defence services
150 000 EUR	Construction services

Table 5: Threshold vs contract definition

UTC may use ECS to facilitate the award process. ECS is an online portal, operated by the Ministry of Interior, where all standard UTC have to be submitted. Also, suppliers can post offers on the ECS, without aiming at a defined procurer. Unlike in the OTC procedure, the offers do not have to be created each time a new tender appears – the procurers can use the ECS like an “e-shop” with ready-made offers. Also OTC and Low Price tenders can be posted on the ECS, but is not obligatory. While the OTC have to follow strictly defined types of procedures (see Table 6), UTC procedures are much more loosely defined.

Procurer can accept the published offer with lower price, if there are at least three offers published at the EM in that time. After preliminary accepting the offer, the supplier has to provide full offer according to the procurer requirements

### Low value contract (LVC)

All contracts below the UTC thresholds. The procurer may use “market survey” method by coming directly to at least three potential contractors with a demand for n offer.

The main difference is in the complexity of the tender process, with OTC process being the most laborious and with the most scrutiny. Another important difference is, that UTC tenders (except food deliveries) have to use the Electronic Contracting System (ECS - <https://www.eks.sk>) for standardized goods and services. OTC and LVC tenders may use the ECS. Further conditions may apply to negate the requirement of ECS. ECS is a central trading place obligatory for public procurement and voluntary for anyone, who registers for free. It is a tool for fully automated placement of orders, which consists of sub-systems: electronic market place (e-market), dynamic procurement system and electronic support of processes of information provision, communication, explanation electronic delivery.

## 4.3 Available types of award procedures

There are the following award procedures for OTC:

Type of Procedure	Short Description
-------------------	-------------------

<sup>8</sup> Standardized goods are goods available on the mass market, which do not require customization and the procurer is not the sole client (goods like toilet paper, office chairs, laptops etc.).

<b>Public award procedure (open procedure)</b>	It invites an unlimited amount of offers, no maximum number of participants, and unlimited competition. Not suitable for complex procedures or unique services or goods. The minimum response period is 35 days (30 days if electronic communication is required). If a preliminary notice about the tender was published before, the period is cut to 15 days. In an emergency case, which requires quick closure of a tender, the law allows 15 days period.
<b>Narrow award procedure (restricted procedure)</b>	When the number of potential suppliers is very large, or where a contracting authority wants to limit access to confidential information. It can be used to reduce the number of candidates but can become over complicated. The procurer will select rules applied to ask potential bidders for bid submission. The minimum period for response is 30 days. ). If a preliminary notice about the tender was published before, the period is cut to 10 days
<b>Competitive Procedure with Negotiation with prior Publishing</b>	Circumstances may include: the contract includes design or innovative solutions, the technical solutions cannot be established with sufficient precision, a contract cannot be awarded without prior negotiation due to legal, financial or complex risks attached to it. The minimum number of bidders in this procedure is 3. Minimum response period is 30 days
<b>Competitive Dialogue Procedure</b>	Similar to competitive procedure. The subject of tender is less precisely defined and the procurer uses dialogue with bidders to find the best solution for its needs. The procedure may have several rounds, in which the tender's subject is better defined and bidders drop out of the process. The minimum response period is 30 days.
<b>Innovative partnership</b>	Allowing the development of innovative goods, services or works. It may have several phases, corresponding to phases in R&D process.
<b>Direct Negotiated Procedure</b>	Very limited and narrowly defined circumstances such as where no suitable, or no bids have been submitted in the previous tenders with the same subject.
<b>Blueprint competition</b>	Specialized award procedure, used especially for architectural tenders. The winner receives predefined award money.

*Table 6: Types of procedures for OTC*

The award procedure for LTC is only loosely defined. The law requires award process that would consider reasonable cost and care, corresponding to the value of the tender.

#### 4.4 Who is eligible to participate?



Tendering is opened to any legal entities both from Slovakia and other countries. All participants have to register in the Public Sector Partners Portal and reveal their ownership structure. There are several obstacles, which may prohibit an entity from participation. It may be either personal connection to the tendering authority, or had previously broke some of legal rules in Slovak republic. These may include number of environmental, social (illegal work), or tendering rules. Also, the participant should not have tax or social/health insurance debts.

#### 4.5 Tenders Publication

Procurers use the Bulletin (<https://www.uvo.gov.sk/evestnik>) to publish tender notices. The tenders are also sent to the Official Journal of the EU (and the supplement TED - <http://ted.europa.eu>). Procurers use their own communication channels (websites) to a various extent. The use of electronic marketplace (when eligible) is considered equal to the notification of the Bulletin. The Bulletin also publishes Preliminary notices about future tenders in some cases.

Access to public contracts all around the EU is provided also by the [TENDERIO](http://www.tenderio.com/) platform (<http://www.tenderio.com/>). SMEs can access public procurement in their country or abroad by using a tender search engine that aligns live tender opportunities most suited to their business needs and expertise.

#### 4.6 Time limit of submitting an offer for a public contract

According to the law, the period starts to run the next day after the conclusive action (for example, the response period start to count the day after publishing). If the last day fits Saturday, Sunday, or a state holiday, the deadline end moves to the next working day.

If the commission asks the bidder for any clarifications, these need to be responded within 2 days (electronic communication) or within 5 days (non-electronic communication). If a selected subcontractor in a bid does not fulfil requirements of a tender, the bidder has to offer a replacement subcontractor within 5 days.

A potential bidder needs to respond (send an offer) within usually within 30 days.

Type of Procedure	Response limit
<b>Public award procedure (open procedure)</b>	The minimum response period is 35 days (30 days if electronic communication is required). If a preliminary notice about the tender was published before, the period is cut to 15 days. In an emergency case, which requires quick closure of a tender, the law allows 15 days period.
<b>Narrow award procedure (restricted procedure)</b>	The minimum period for response is 30 days. ). If a preliminary notice about the tender was published before, the period is cut to 10 days.



<b>Competitive Procedure with Negotiation with prior Publishing</b>	Minimum response period is 30 days
<b>Competitive Dialogue Procedure</b>	The minimum response period is 30 days.
<b>Innovative partnership</b>	The minimum response period is 30 days.
<b>Direct Negotiated Procedure</b>	Unspecified (initiated by the procurer)

*Table 7: Minimum time limit for submitting an offer*

There are number of factors, which may influence the timescale (type of communication, existence of preliminary notice, shortened emergency period, etc.), therefore it is advised to follow the timescales for each tender individually. For some of the variations see the chapter about the various award procedures. A special case is the ECS. After the procurer show a preliminary interest, a final offer has to be prepared within time limit set by the procurer, which can be as low as 72 hours.

If a tenderer needs any additional clarifications about the tender documentation, the procurer has to respond as fast as feasible, the law sets 6 days before the end of the 30 day period as a definite deadline for the procurer to answer questions. The winner should be able to respond within 10 days to sign the contract.

The results have to be published within 30 days after agreement closure. The decision to cancel a tender has to be published immediately.

#### 4.7 Public Contract Notice Contents

A typical Tender specification has five sections:



**Section 1: “CONTRACTING AUTHORITY”**

- Name;
- Contact details;
- Type of authority;

**Section 2: “SUBJECT”**

- name;
- basic type (construction works, goods, services);
- description;
- location;
- value;
- evaluation criteria;

**Section 3: “LEGAL, FINANCIAL AND TECHNICAL INFORMATION”**

- financial and technical requirements

**Section 4: “PROCEDURE”**

- type of procedure;
- deadlines;

**Section 5: “ADDITIONAL INFORMATION”**

- Appeal authority

## 4.8 How to submit a bid

When a contracting authority/entity publishes a contract notice, any interested candidate may prepare and submit an offer.

The interested bidder should check if he is an eligible candidate and make sure that he does not fall under the exclusion criteria. Then he could start collecting all the relevant to the contract notice documents as well as search for partners/consultants (especially in his first attempt). Finding local partners/consultants would help him overpass barriers related to the language or other bureaucratic specificities.

Throughout the bid's preparation the bidder should prepare his offer ensuring that his bid focuses on the requirements set out in the specifications and that his experience is well documented.

### 4.8.1 What are the specific elements that a bid must include

The Act defines necessary tender documentation. However, the procurer can define additional requirements. The basic information can be found in Tender announcement (which contains participation requirements) and are further specified in tender documentation. All the documents that must be enclosed with the offer are specified in the contract notice. In some cases, formal written tender participation request has to be submitted by the bidder.

The bid should contain:



- The necessary documents supporting evidence of the applicant's legitimacy, as they are specified in the contract notice, or the European Single Procurement Document.
- Financial eligibility documents (bank statements, insurance documents, balance sheet, income statements etc...)

Moreover, apart from the aforementioned documents, the contracting authority/entity may request different kind of letters of guarantee depending on the award procedure – technical, environmental, or managerial.

The procurer may also request a participation guarantee. The guarantee cannot be higher than 5% of the contract value with 500 000 eur maximum (OTC) or higher than 3% and 100 000 eur (UTC).

#### 4.8.2 Where you submit the tender

An offer may be submitted electronically (procurer may state requirement for encryption), by post or personally. All submission need to contain identification details about the bidder. Tender documentation sets required elements of a bid. One bidder can submit only one bid. A bid has to be separated into two parts:

- The technical offer. In the technical offer the bidder enfold all the documents that are specified in the contract notice and prove his technical adequacy. In some cases, ISO certification is required.
- The financial offer. In the financial offer the bidder enfold the value of his offer in euro (€) calculated and presented as it is specified in the contract notice and depending on the type of contract and the selection criteria

A procurer may require the bid to be submitted as a “electronic catalogue”. Bidders will find the details about the exact catalogue form in the tender documentation.

All documentation has to be delivered to the address/ electronic address of the procurer, unless the electronic marketplace is utilized in the tender.

#### 4.9 What are the key phases after submitting the bid

The Figure 7 show the key steps after the bid was submitted by the bidder:

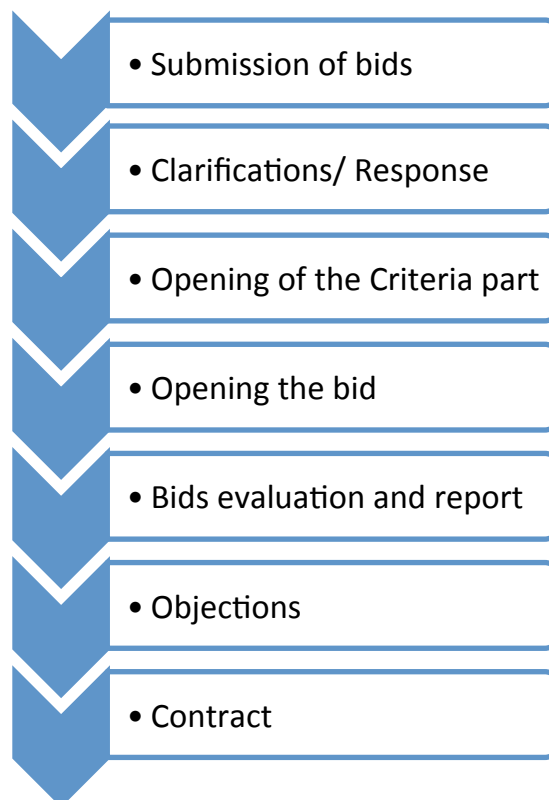


Figure 7 Key phases of procurement cycle



1. After bid submission, the phase of communication between bidders and the procurer takes place. The procurer may ask for clarification regarding the submitted bid, or the eligibility of the bidder. Vice versa, a potential bidder may ask for clarifications regarding the tender documentation. The evaluating commission may ask the bidder to further explain some unclear parts of the bid. However, the bidder cannot change its bid in this phase (change of obvious miscalculations and typos is allowed). In case the bid, or some part of it, asks “unusually low price”, the commission may ask for clarifications of the price calculation. The “unusually low price” is defined as a price 15% lower than the price average of remaining bidders, or 10% lower as the price of the second cheapest bidder. Commission may ask questions about technical, environmental or legal (illegal employees etc.) aspect of such a bid. Any clarification has to be delivered within two days (electronical communication) or within 5 days (post) after the request for clarification was provided. In the case of “unusually low bid”, the period is 5 days. In both cases, the commission can set longer periods.
2. The next phase after sending a bid (and potential clarifications or consultations) is bid opening and evaluation. First, the eligibility criteria are considered.
3. Then, the bids from relevant (criteria fulfilling) bidders are evaluated. A winner is selected and the selection is communicated. For details about bid evolution, see the following section.
4. Unsuccessful bidders may object the results before the conclusion of the tender. See the following sections for more details
5. A final phase is signing of the contract.

The bid can be disqualified, if:

- No collateral was provided (if required)
- The subject of the bid does not fulfill requirements
- Clarification undelivered on time
- Clarifications are inadequate
- Information provided in the bid are found to be untrue

The bidder will be notified about the disqualification and set the period for objections to its decision.

The whole tender will be cancelled, if there were no bids, or none of the bids fulfilled the requirements of the tender. The tender can be cancelled also by the power of UVO. The procurer may decide to cancel the tender, if there were less than three bids, or the prices are deemed to be much higher than initial estimates of the procurer. All bidders will be notified about the cancellation and its reasons.





## 4.10 Contract award criteria & Bids' evaluation

Bids are evaluated by the bid evaluation commission, which is created for each tender. The commission has to consist of at least three members.

There are three possible basic evaluation criteria:

- Lowest price
- Cost efficiency, especially considering lifecycle cost (purchasing price, operational and maintenance cost during lifetime, decommission cost, environmental cost like emissions)
- Best price/quality ratio

A price or cost criteria will be always included in the evaluation. Sometime, the lifecycle cost evaluation method will be used. While a lowest unit price may be considered during evaluation, the overall price (number of units) is always considered as well.

The bidders have to be aware, that qualitative criteria can be added, like social criteria, innovative, environmental, esthetical, etc. Also features like the delivery time, technical support, the qualifications of employees and other.

The new Public procurement act made rules about the lowest price evaluation method stricter, compared to its predecessor. This was done due to number of contractors failing to deliver construction works (highways) on time and for the awarded price.

As a bidder you should be aware, that there are also some specifically prohibited criteria which will not be used (or the tender may be challenged as illegal). These include the length of guarantee period, fines, subcontracting ratio, collateral and similar criteria, which are based on events, which may or may not happen during the contract and therefore are deemed as unfair criteria. Instead, such conditions (guarantee period) should be included in the agreement conditions.

Before signing the contract, the winner has to register itself in the Registry of the partner of public sector and reveal its owners' structure. The registry was created in order to identify the real owners of shell companies, which may participate in public procurement. Failure to register in the Registry will lead to cancellations of the tender award. This counts for both OTC and UTC contracts, but not for Low value contract. The registration is done via UVO and has lifetime validity (need to be done only once), but notice about any change in the ownership structure need to be delivered within 60 days to the registry. Statement of incorrect information can lead to award cancellation and fines. The obligation to register is valid also for any subcontractors.

The procurer informs all participants about its award decision, including the winning offer price and ranking of all participants. Unless there are objections, this is the last stage in the tendering process before signing the actual contract with the winner.

The contract can be closed with the winner 16 days after sending the award results to all participants at soonest – unless there were objections raised by other participants. This period does not count if there was direct contract, or an existing framework agreement.

## 4.11 Objections

Objecting the process or the results of a tender involves one, or two actions. The first action is to formally submit "correction request" to the procurer within 10 days after the publishing of relevant documents (tender award results for example). The request need to include identification of the bidder and detailed description of the legal breach the bidder is objecting.



In the case the procurer fails to respond to the request, or the response is deemed inadequate by the bidder, the next action is to submit formal Objection to the Office for the Public Procurement. The UVO then opens investigation. A draft form for the Objection can be found [on this link](#).



## 5 Key points when you are submitting a tender in Slovakia

**01**

**Undercutting your competitors substantially (even in a subpart of the bid) may rise questions during the evaluation process.**

**02**

**Language can be a barrier, since English version of the legal rules and registrars are rare.**

**03**

**Bidders have to be prepared to reveal their ownership structure. Failure to do so may result in award cancellation and fines.**



## 6 What Tenderio offers

TENDERIO project is funded by the COSME program of the European Union (Grant Agreement No 739966) and aims to increase SMEs' participation in public procurement in EU through the development and the implementation of innovative activities that will inform, educate and support European SMEs to access international tenders.

TENDERIO helps SMEs to overcome the barriers that inhibit their participation in cross-border procurement, i.e. the language, the bureaucracy, the difficulties in finding local partners and the lack of knowledge about local tender procedures, by providing the following tools and services:

- a tender search engine which allows access to 1.500 new tenders in Europe every day;
- a benchmarking model on public procurement;
- national training sessions;
- business-to-procurers days and matchmaking opportunities;
- tailored coaching and mentoring services;
- e-conference and webinars on “how to win a tender abroad”.

Other services include a helpdesk, through which companies can access valuable information about specific tenders, country guides on public procurement, regular workshops, and an innovative “bidding laboratory” where guidance on developing successful bids is delivered.

TENDERIO also identifies possible partners and recommends expert consultancies to help you write bids and translate materials into the appropriate language for each offer.

Registration to Tenderio is free and is performed through the project's official website: [www.tenderio.com](http://www.tenderio.com)



## 7 References

- Slovak Law 343/2015 on public procurement contracts. Available at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/343/20170601> (last access October 2017)
- Directives 2014/24/EU & 2014/25/EU of the European Parliament and of the Council
- Office for the Public Procurement <https://www.uvo.gov.sk/informacny-servis/statistika-procesu-verejneho-obstaravania/2016-5c9.html>
- eData Stats <http://www.edata.sk/statistika/>

