# AnnexProcurement Monitoring Report

**In view of the Member States' reporting process
under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU**

# General information

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| **Scope of reporting** |
| Period 1 January 2017- 31 January 2017 |
| **General information** |
| Number of procurement procedures (i.e. the number of calls for competition): 262 Above / 1490 belowNumber of awarded contracts: 2619 contracts  |
| I**nformation on monitoring and reporting bodies** |
| The Treasury of the Republic of Cyprus, through the Public Procurement Directorate, is the body responsible for performing monitoring activities required by the public procurement directives and hence is in charge of drafting the respective Monitoring Report based on the results of the monitoring activities undertaken, to be provided to the European Commission. |

## Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds

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| **Estimation of the aggregated total value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds** | Below threshold procedures conducted: 1490Value of below thresholds procedures: 175.921KThe methodology used for the estimation is explained in **Annex I.** |

## Most frequent sources of wrong application or of legal uncertainty, including possible structural or recurring problems in the application of the rules

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| **II.1.** **Qualitative reporting on application of public procurement rules** |  |
| Main sources of wrong application or of legal uncertainty | * The treasury of the Republic of Cyprus during its involvement in the field of Public Procurement as competent authority from the accession of Cyprus in the EU in 2004, has identified that the main issue and the basis on which the procurement environment is challenged is the absence of the role of the Professional procurer. This is not a Cyprus specific limitation, but rather an EU wide weakness that was admittedly identified and in the last couple of years is tackled through various initiatives undertaken by the Commission towards bringing up the importance of professionalisation in the field of Public Procurement. In Cyprus the Competent Authority has submitted a proposal to the Council of Ministers to officially create a role for Professional Procurers that would be academically and practically certified as competent and capable to undertake purchasing on behalf of Contracting Authorities. It is anticipated that this would tackle the issue of assigning procurement tasks, in addition to the normal course of business, to individuals that were employed based on their own professional background, irrelevant most of the times to procurement activity, ( i.e teachers, policemen, doctors engineers etc).
* In the same proposal to the Council of Ministers it is requested that a central purchasing Unit is established to act a service centre to smaller Contracting Authorities that cannot sustain a professional procurement function, in order to undertake procurement on their behalf, as they handle a very limited number of competitions (less than 10 annually).
* The absence of professional Procurers limits the capacity of Contracting authorities to undertake proper market sounding prior to the publication of Competition which affects in several occasions the competitiveness and quality of tender Documents.
* Administrative errors have also been noted, in the decisions in the Tenders Review Authority that typically affects the procedures like i.e the composition of the Deciding Bodies, Attendance of Observers, Quality of minutes etc.
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| Specific legal provisions (from EU or national law) which appear to raise significant problems of application | No specific Legal Provisions either from National or EU Legislation where identified that create any material problem or concerns to the Competent Authority, as observed in practice in the two years of the implementation of the latest procurement legislation. Overall, we consider the Law and Directive to be clearer and more cohesive than the previous Regime which in our opinion achieves the goal of ensuring the legal certainty of the Procurement environment.  |
| An assessment on whether a wrong application of rules might exist, by observing patterns of application of the rules which do not by themselves constitute cases of wrong application of the rules, but nonetheless point at structural or recurring problems yielding a sub-optimal outcome. | * Systematic use of Lowest Price as an award criterion, as it considered by Contracting authorities as simpler and more objective, in terms of evaluation of the tenders received. The Price-Quality award criterion is used in limited cases and usually involves the award of services contract. Additionally, the use of cost award criterion is limited to like vehicles, and IT and office equipment.
* Contracting authorities usually select open procedure than the restricted one, in conducting their competitions as it is found to be less time consuming.
* In certain occasion there is an absence of interaction with the market prior to the publication of the competition could result in non-realistic or outdated specifications and the final outcome of the procurement procedure could not be the best possible.
* Inconsistency in the provision of the information regarding the award of Contracts resulting in a misleading picture of the Public Procurement Market in Cyprus. As the market is small both in numbers and value figures can easily be distorted from year to year.
* the relatively high number of procedures (decreased from 38% in 2016 to 30% in 2017) utilizing the negotiated procedure without the publication of a call for tenders, employed mainly for the purchase of pharmaceutical products (more than 90% of the cases). This is due to the small total number of above threshold procedures in Cyprus which is distorted because of the pharmaceutical products and medical equipment that are necessary and are under patent protection.
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| **II.2 Supporting documents** |  |
| Please provide any available evidence of the issues identified under section II.1. | * Circulars interpreting and provide guidance on issues like
	+ Social and other Special services
	+ Use of price quality ratio as an award criterion in services especially for consultants in the construction sector
	+ Input of data regarding the award of contracts in the platform
	+ Clarifications during the evaluation
	+ Replacement of the third party on which the Economic operators relies on
* Reports extracted from the eProcurement Platform showing the number of open procedures initiated in relation to the total numbers’ competitions announced as well as the award criterion used.
* Decision of the Tenders Review authority
* Single Market Scoreboard Report
* Monitoring of Procurement Activity in Cyprus as a Help desk Function and Training Agents.
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| II.3. Quantitative indicators  |  |
| Number of procedures challenged before a review body | 42 Procedures have been challenged before Tenders Review Authority during 2017 |
| Number of complaints brought before a review body  | 44 complaints have been brought before Tenders Review Authority during 2017 |
| Number of complaints on which the review body has already made a decision  | The Tenders Review Authority has decided for 38 complaints brought before the Authority during 2017  |
| Number of complaints upheld by the review body  | 6 complaints have been upheld. Decision was issued in January 2018.  |
| Average length of review procedures  | Approximately 3.5 to 4 months |
| Histogram of values of procedures, covering also procedures below the thresholds  |  |
| Numbers of procedures audited, total and by auditing body | According to the Regulations on the Coordination of procedures for the award of Supplies, Works and Services of 2007 (KDP 201/2007), Regulation 19, the Auditor General of the Republic, or their representatives, has the right to attend as independent observers in the sessions of the Evaluation Committees, to express his views on the issues discussed and to request that they will be recorded in the minutes kept. The same right is assigned to the Accountant General of the Republic, heading the Competent Authority on Public Procurement, as well as to the Attorney General of the Republic. Furthermore, the PPD reviews the agendas of the Tender Boards submitted by the contracting authorities and if issues are identified, our position is stated in writing. In cases where major issues occur which cannot be resolved otherwise, a representative of the Accountant General of the Republic attends the relevant meeting. Therefore, the involvement of the Competent authority the Auditor General and the Attorney General in the several steps during the procedure provides the opportunity for ex- ante monitoring and give the right for intervention early in every process which limits both the need and undertaking of ex post auditing and monitoring activities.  |
| Number of audit findings, total and by auditing body  | The response in the above question is also valid for this part, Furthermore, the Auditor General publishes any findings of audits conducted on a sample basis or based on analytical review methods employed during the auditing work as prescribed by the Constitution or in the course of the ex post Administrative audits. |

## Prevention, detection and adequate reporting of cases of procurement fraud, corruption, conflict of interests and other serious irregularities

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| III.1. Qualitative reporting on fraud, corruption, conflict of interests etc. |  |
| Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities including fraud and corruption | * According to the Regulations on the Coordination of procedures for the award of Supplies, Works and Services of 2007 (KDP 201/2007), Regulation 19, the Auditor General of the Republic, or their representatives, has the right to attend as independent observers in the sessions of the Evaluation Committees, to express his views on the issues discussed and to request that they will be recorded in the minutes kept. The same right is assigned to the Accountant General of the Republic, heading the Competent Authority on Public Procurement, as well as to the Attorney General of the Republic.

Furthermore, the PPD reviews the agendas of the Tender Boards submitted by the contracting authorities and if issues are identified, our position is stated in writing. In cases where major issues occur which cannot be resolved otherwise, a representative of the Accountant General of the Republic attends the relevant meeting. * Within the context of reducing / preventing corruption in public procurement a Manual on Bid- rigging has been issued with the contribution of the Public Procurement Directorate and was circulated to all contracting authorities/entities.

The Manual is based on the OECD Guidelines for fighting bid rigging in public procurement and aims on one hand at informing the contracting authorities/entities about bid rigging in public procurement (Collusive tendering) and the various forms it can take and on the other, about the various preventive measures that can be adopted to mitigate the risk of bid rigging.Seminars analyzing the Manual were organized in cooperation with the Commission for the Protection of Competition.* Furthermore, as competent authority we have established a central phone and email address where any interested party may report any complaints or even suspicion for fraudulent or corrupt practices.
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| Describe the actions undertaken and/or mechanisms put in place to ensure compliance with the new provisions on the prevention, detection and adequate reporting of conflicts of interests  | * A National Code of Conduct for the Award of Public Contracts (‘Code”) has been prepared by the Public Procurement Directorate ([http://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/41884241D7099A25C2257F1100431D27/$file/Εθνικός%20Κώδικας%20Δεοντολογίας.pdf?OpenElement](http://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/41884241D7099A25C2257F1100431D27/%24file/%CE%95%CE%B8%CE%BD%CE%B9%CE%BA%CF%8C%CF%82%20%CE%9A%CF%8E%CE%B4%CE%B9%CE%BA%CE%B1%CF%82%20%CE%94%CE%B5%CE%BF%CE%BD%CF%84%CE%BF%CE%BB%CE%BF%CE%B3%CE%AF%CE%B1%CF%82.pdf?OpenElement)) which establishes the principles that should be respected and adopted by officials and public officers involved in public procurement procedures (i.e. integrity and impartiality, objectivity, transparency, honesty etc). The Code deals with various issues such as bribery accepted by the public officers, conflicts of interests, confidentiality etc. At the same time, the Code is used as a standard of behaviour that is consistent with the principles of the EU in the public procurement field (i.e. the principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency.
* Regulations on the Coordination of procedures for the award of Supplies, Works and Services of 2007 (KDP 201/2007), provides that, before taking up their duties, the President, his representative and the members of all Boards and Committees, including the Consultants, are obliged to sign a Declaration that they will execute their duties with conscientious and impartiality, without any fear or favour and will observe strict confidentiality during the execution of their duties. In case the President or his representative or any other member of any Board or Committee has any interest, financial or other, direct or indirect, in relation to any competition that leads to the award of the contract or has any particular relation or any blood relationship or any relationship by marriage up to the fourth grade with any person who has evident financial or other interest in the whole procedure, is obliged to disclose this interest, relationship or kinship to the Competent Board or Committee and to withdraw from the relevant meeting. (Regulation 21)

Furthermore, the Regulation provides that the simultaneous participation of members of adhoc technical committees to any other Committee or Board that deals with the same matter for which the relevant ad hoc technical committee has been appointed, is incompatible.Likewise, the simultaneous participation of members of the Evaluation Committee in a Tender Board that deals with the same matter for which the relevant Evaluation Committee has been appointed, is also incompatible (Regulation 22). |
| III.2. Factual reporting |  |
| Please provide any available factual information on the actions/mechanisms and measures described under section III.1. above demonstrating compliance with the new provisions on the prevention, detection and adequate reporting of public procurement irregularities and conflicts of interests  | * *A National Strategy have been developed against corruption under Ministry of Justice.*
* *National Code of Conduct*

([http://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/41884241D7099A25C2257F1100431D27/$file/Εθνικός%20Κώδικας%20Δεοντολογίας.pdf?OpenElement](http://www.treasury.gov.cy/Treasury/treasurynew.nsf/All/41884241D7099A25C2257F1100431D27/%24file/%CE%95%CE%B8%CE%BD%CE%B9%CE%BA%CF%8C%CF%82%20%CE%9A%CF%8E%CE%B4%CE%B9%CE%BA%CE%B1%CF%82%20%CE%94%CE%B5%CE%BF%CE%BD%CF%84%CE%BF%CE%BB%CE%BF%CE%B3%CE%AF%CE%B1%CF%82.pdf?OpenElement)* *Manual of Bid Rigging*
 |
| III.3. Quantitative indicators |  |
| Statistical distribution of buyers by frequency of actual competition  | Due to the small number of competitions above threshold in Cyprus the data is analysed as follows:Number of Contracting Authorities that have awarded procedures during 2017 (above Thresholds): 37Number of Procedures: 262Number of procedures (including negotiated procedures) with 1 bidder: 115Only two buyers have awarded more than 3 procedures in which only one Economic operator participated over the reporting period.Ministry of Health has the vast majority of these type of Procedures due to the patents in Pharmaceuticals products as reported below |
| Statistical distribution of buyers by frequency of using a negotiated procedure without the prior publication of a call of competition  | Number of Procedures above threshold: 262Number of Negotiated Procedures: 96Number of Negotiated Procedures conducted by Ministry of Health: 91Number of Negotiated Procedures by other Contracting Authorities: 5 (IT Systems Maintenance mainly) |
| Quantitative assessment of collusion risks  | Due to the small size of the Cyprus economy, Risk is assessed empirically based on media reporting and knowledge of cases brought before the competition Authority on an ad-hoc basis.  |
| Risk of undiscovered conflict of interest  |  Due to the small size of the Cyprus economy, Risk is minimised as the Competent authority received Directly complaints from Economic Operators that are of the opinion that the Procurement market is distorted any way. |

## Level of SMEs participation in public procurement

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| **IV.1. Qualitative reporting on SME participation** |  |
| Key challenges encountered | * Every procurement procedure either above or below the thresholds is published in a single point
* The publication of the tender documents consists an obligation for every contracting authority in order all interested EOs could retrieve the documents electronically, anytime and Free of charge
* Required supporting documents and certificates are not required by the Tenderer but only by the Contractor prior the signature of the contract in order to reduce any administrative burden for the Eos
* The clearance certification regarding tax and Social Insurance obligations is provided only by the contractor and it is associated with the date of the signature and not the date of the submission of tenders. That proved to be a sufficient measure to increase the participation of EOs especially in sectors where the economic crisis is still occurring and the cashflows are still tight.
* The submission of tenders electronically has been successfully implemented since 2014, for the procedures whose estimate value falls above threshold and for those below, since June 2018.
* Although the eProcurement system was an example of Excellence and won an award regarding its user-friendliness, during its last upgrade, the process of the submission of tenders was carefully examined and improvement steps had been taken.
* Guidance is provided to Contracting authorities, via the Standard Tender Documents to include (if necessary) selection criteria that are appropriate, and proportional to the subject matter and the size of the contract. In cases where prior experience or financial evaluation of the company is not considered as vital, it should not be included in the selection criteria to allow start ups to participate.
* Standard documents include provision that enables the Contracting Authorities to provide for Deposit to be paid to the contractors (assuming a tender Deposit Guarantee is given by the Contractor)
* The Participation Guarantee has been removed and replaced by a declaration that ensures that the contractor will not withdraw the tender
* In some cases, where subcontractors are involved, a direct payment is allowed to be made to subcontractors
* Guidance to Contracting Authorities, where possible, to divide the contract into lots i.e geographically to allow the maximum number of EOs to participate and develop fair competition

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| IV.2. Factual reporting  |  |
| Please report any available factual evidence or supporting document for point IV.1, illustrating the measures, achievements or challenges faced, relating to the facilitation of the participation of SMEs in public procurement | * *Standard Tender Documents*
* *Circulars containing the obligation of Contracting Authorities to*
	+ *Publish the notices and the tender documents on the Platform*
	+ *Accept Electronic submission of tenders*
	+ *Guidelines on how to upload a tender within the tender workspace*
	+ *Payments directly to subcontractors*
	+ *Use of declaration of non-withdrawal of the tender*
	+ *Division into lots*
* *Central Procurement System*
 |
| IV.3. Quantitative indicators  |  |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section IV.1. above | *Due to the small size of Cyprus economy and the low number of competitions published annually, figures can be distorted from year to year. However, in Cyprus the Public Procurement market is dominated by mainly Small enterprises.* *Therefore, participation in Both below and above threshold procurement by SMEs exceeds 95%.* |

## Information on the practical implementation of national strategic procurement

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| V.1 Green procurement ('GPP') | Green Public Procurement ('GPP') is defined as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured."[[1]](#footnote-2) A voluntary target of 50 % GPP per Member State in number and value of relevant procedures was proposed by the Commission and welcomed by the Council in 2008. |
| V.1.1 Qualitative reporting  |  |
| Key challenges encountered  | Given that the scoring of specific parameters that differentiate products between green or not, can take either the form of a minimum requirement or a scoring criterion, it is a significant challenge to ensure effective competition on equal terms between economic operators especially in small markets like the one in Cyprus.Measures undertaken to overcome the above difficulties, include consulting contracting authorities to undergo a proper market sounding and developing a good understanding of competition prior to procuring for their contracts.However, it is still difficult to quantify the impact and cost of environmentally friendly attributes in the greater extent of a bigger contract.  |
| V.1.2. Factual reporting |  |
| Please report any available factual evidence or supporting document for point V.1, illustrating the measures, achievements or challenges faced, relating to the promotion of green public procurement.  | A green procurement strategy and the resulting Action Plan has been implemented in Cyprus which is monitored and promoted by the Environmental Department of the Ministry of Agriculture. The Action Plan includes Green specifications for a wide variety of items All Directives related to Green procurement have been transposed and enforced in national legal system including the provisions for Green Vehicles, energy efficient Buildings the Provision of the Procurement Directive assisting and promoting the concept of buying environmentally responsible. |
| V.1.3. Quantitative indicators |  |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.1.1 above. To the extent possible, these indicators should be further grouped by type of legal problem. | All items included under Framework Agreements which account for nearly 10% of Total Procurement Spend, take into consideration the guidance of the Action Plan. Furthermore, Contracting Authorities are advised to considered the Total Cost of Ownership and where quantifiable ( i.e Co2 emissions, Electricity consumption, cost of disposal etc) include it in the evaluation formula. |
| V.2 Socially responsible public procurement ('SRPP') | Socially Responsible Public Procurement ('SRPP') is defined as procurement that takes into account one or several social considerations for advancing social objectives. SRPP covers a wide spectrum of social considerations, such as for example employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility. |
| V.2.1 Qualitative reporting |  |
| Key challenges encountered  |  Socially responsible purchasing is a task pursuit by a Contracting Authorities in Cyprus. To this end the Competent Authority issued a circular on the parameter’s purchasers should have in mind when undertaking their competitions. Furthermore, the Standard Tender documents used by all Contracting authorities include specific provisions, concerning social responsibility and adherence to the relevant legislation of Contactors in public and wider public Sector.However, it is a challenge to include parameters in the form of award criteria as it is very difficult to conclude at a specific cost or benefit proportional and relevant to a specific procurement. |
| **V.2.2. Factual reporting**  |   |
| Please report any available factual evidence or supporting document for point V.2.1 illustrating the measures, achievements or challenges faced, relating to the promotion of SRPP.  | * Circular
* Standard Tender Documents
* Training material
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| **V.2.3. Quantitative indicators**  |  |
| Please provide, when available, any quantitative data (statistics, etc.) illustrating the achievements and challenges identified under section V.2.1 above.  | All Contracting Authorities by using the Standard tender Documents ensure the application of the provision of the relevant legislation concerning socially responsible Purchasing. |
| V.3 Public procurement of innovation | An innovative solution is defined in 2014/24/EU Art.2 (1.22) as "a new or significantly improved product, service or process". This includes not only those solutions resulting from R&D but also those solutions resulting from activities, "including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations." Please report both dimensions of innovation procurement: Procurement of R&D and procurement of innovative solutions. |
| V.3.1 Qualitative reporting |  |
| Key challenges encountered | Innovation is difficult to achieve in the absence of professional procurers and specifically trained individuals that can articulate competitive tender documents attractive to innovative solutions. Most of the times, especially in smaller procurement markets like the one in Cyprus the task is assigned as a side duty and the speed of conclusion of a contract is pushing, rendering the proper preparation and search of innovative fields very difficult. The competent authority during training sessions is encouraging purchasers to look for innovation opportunities and offer s full support in cases where this is pursuit. |
| V.3.2. Factual reporting |  |
| Please report any available factual evidence or supporting document illustrating the measures, achievements or challenges faced, relating to the promotion and implementation of innovation procurement. | * Training Material
* Circulars
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## Replicability

This section should provide information allowing anyone to fully replicate the quantitative results presented in the report.

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| Links to datasets used to prepare the report | <http://www.treasury.gov.cy/treasury/treasurynew.nsf/page21_gr/page21_gr?OpenDocument>[www.eprocurement.gov.cy](http://www.eprocurement.gov.cy) |
| Files used to obtain the results from the datasets | N/A |

**Annex I:**

**Methodology for estimating the value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds**

### 1. Classification and methodology

Indicate the basic characteristics of the methodology used by selecting from the options below. Description of the methodology is to be given in the subsequent section.

#### 1.1. General approach:

1. [data available under national publication requirements]
2. [sample-based estimates]
3. [combined]

Please note that in our opinion using existing administrative data is preferable, as it implies both lower administrative burden (no additional data collection is necessary) and higher data quality.

If a sampling approach is taken, both the source of the sample and the sampling methodology, provided in the following subsection, must be able to withstand careful scrutiny. This ensures that the estimate is representative of the whole Member State.

#### 1.2. Source of data:

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|  Scope:Source of data: | above national publication thresholds [✓] | below national publication thresholds [✓] |
| [e-notification platforms] |  |  |
| [e-submission platforms] |  |  |
| [invoices] |  |  |
| [budgets] |  |  |
| [other] |  |  |

### 2. Methodology description

Indicate, amongst others, information on the sources of data, approaches taken to deal with possible missing data and erroneous data, and representativity of the sample used (if a sample-based approach was taken). If methodology is different depending on the thresholds or source of data, please clearly indicate this, including the relevant thresholds.

# Annex 1

Methodology for estimating the value of procurement which would have been covered by the directives if its value had exceeded the relevant thresholds

Classification and methodology

The total value of the procurement procedures is calculated using the awarded value for each contract which was inserted by the Contracting Authority in the eprocurement system following the award of the contract. The same figure should be reported in the Contact Award Notice (CAN) published in the eProcurement system, in cases where publication of an award notice is involved.

The above methodology is based on the data already available in the eProcurement platform and consist of published data under national publication requirements as well as data imported in the platform by Contracting Authority regarding simplified procedures where no publication of a notice is required. All contracts whose awarded value is above 2000 Euro, are supposed to be posted in the platform according to a Contracting Authority’s national obligation.

eProcurement Platform is the only source of data used for the collection of the information needed. The Platform is an e-notification and also an e-submission platform and it is obligatory to be used for all Contracting authorities in Cyprus for procedures both below and above thresholds.

A contract notice is not possible to be published using any other means of publication either in European Publication Office nor in Cyprus Gazette. Therefore a comprehensive list of all the publications is kept in the platform and occasionally a sample check is performed to ensure that the results of the procedures are also published in the platform and in publication offices

1. Commission Communication (COM (2008) 400) "Public procurement for a better environment" [↑](#footnote-ref-2)