



TRANSPARENCY INTERNATIONAL
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**ABSTRACT OF POLICY PAPER
ON SINGLE SOURCE PROCUREMENT
IN THE REPUBLIC OF ARMENIA**

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The basic presumption in public procurement is that contracts of a specified type and value should be procured using an advertised, competitive procedure that is open, fair and transparent, ensuring equality of opportunity and treatment for all candidates and bidders. There are only limited circumstances where a procedure of single source procurement or, as defined in the current Armenia Law on Procurement ‘negotiated procedure without prior publication of a contract notice’ (contract without competition) is permitted¹.

In this section of the paper, the benchmarks for the contracts without competition are discussed. In particular, where a contracting authority wishes to award a contract without competition, using what is known as the ‘negotiated procedure without prior publication of a contract notice’, then it can only do so if specific conditions set out in the EU Directive are met.

There are only very limited circumstances where a contract that is of a certain type and value, which means that it is subject to the full provisions of the Directive, may be awarded without prior publication of a contract notice and without the use of a competitive process.

The case law of the ECJ makes it clear that the availability of these derogations from the requirement to advertise using a contract notice in the OJEU and running a competitive process is very narrowly interpreted. The onus is on the contracting authority to demonstrate compliance with the conditions justifying this approach.

The derogations vary according to the type of contract and circumstance. In summary:

Derogations for public works, public supplies and public services contracts:

- Only irregular or unacceptable tenders were received: In cases where an open or restricted procedure has already been conducted and only irregular or unacceptable tenders were received, provided that the conditions of the contract are not substantially altered.
- Technical or artistic reasons or protection of exclusive rights: In cases where technical or artistic reasons or reasons connected with the protection of exclusive rights are presented, the contract can only be awarded to a particular economic operator.

¹ The main competitive procurement procedures available under the EU Directive are the open procedure, restricted procedure, competitive dialogue procedure, and negotiated procedure with prior publication of a contract notice. The open procedure and the restricted procedure are the preferred procedures and these can be used without satisfying any conditions. The competitive dialogue procedure and negotiated procedure with prior publication of a contract notice may only be used where specified conditions are satisfied. There are also special procedures set out in the Directive, which can be used for the procurement of works contracts for subsidised housing schemes, public works concessions and design contests.

- Extreme urgency: Due to events that were unforeseeable by the contracting authority, where time limits available for the open or restricted procedure cannot be complied with, and where it is judged to be strictly necessary.

Derogations for public supplies contracts:

- Products manufactured for research and development purposes only: When the products involved are manufactured purely for the purpose of research, experimentation, study or development – and not where there is quantity production to establish commercial viability or to recover R&D costs.
- Additional deliveries from an original supplier: For additional deliveries from an original supplier that are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations and where (1) a change of supplier would oblige the contracting authority to acquire material having different technical characteristics, which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; and (2) provided that the length of such contracts as well as any recurrent contracts does not, as a general rule, exceed three years.
- Supplies quoted and purchased on a commodity market
- Purchase of supplies on particularly advantageous terms: Where supplies can be purchased on particularly advantageous terms from (1) a supplier that is winding up its business; or (2) the receivers or liquidators of a bankruptcy for arrangements with creditors or similar procedures under national laws or regulations.

Derogations for public services contracts:

- Following a design contest: Where the contract concerned is to be awarded, in accordance with the rules of a design contest, to the successful candidate(s), provided that, where there is more than one successful candidate, the negotiation is undertaken with all successful candidates.

Derogations for public works and public services contracts:

- Additional requirements: For additional works or services not included in the project that was originally considered or in the original contract, where a number of tightly drawn conditions are all satisfied.

- Repetition of works or services: For new works or services consisting of the repetition of similar works or services entrusted to the same economic operator under the original contract where a number of tightly drawn conditions are all satisfied.

In this paper, the regulatory environment for the ‘negotiated procedure without prior publication of a contract notice’ is compared with the best practices. In order to assess the practice of ‘negotiated procedure without prior publication of a contract notice’, the monitoring toolkit was developed. In particular, the following monitoring questions/directions were discussed and analysed:

- 1) How frequent is ‘negotiated procedure without prior publication of a contract notice’ data updated?
- 2) What are the justifications for ‘negotiated procedure without prior publication of a contract notice’?
- 3) What is the time difference between signing contract and delivery period under the ‘negotiated procedure without prior publication of a contract notice’ method?
- 4) Are there any red flags while analysing contract prices of ‘negotiated procedure without prior publication of a contract notice’?
- 5) How frequently do procuring entities use ‘negotiated procedure without prior publication of a contract notice’ with the same supplier²? ()
- 6) What is the share and trends of ‘negotiated procedure without prior publication of a contract notice’?

Although there is almost full compliance of the legal framework on ‘negotiated procedure without prior publication of a contract notice’ procedure with best practices, our analysis indicates that ‘negotiated procedure without prior publication of a contract notice’ contains a high level of corruption risks in Armenia. In particular, we examine the ownership of those companies with which procuring entities are frequently signing contract through the on-line registration portal (e-register.am) in order to determine the presence of conflict of interest and state interference cases. In addition, our analysis indicates that ‘negotiated procedure without prior publication of a contract notice’ is the predominant procedure, almost 60% of total procurement procedures (both in 2011, 2012 and even 2013), which is far ahead of generally accepted thresholds (10% in quantity and 5% in price). According to our findings, the picture is more severe in communities where ‘negotiated procedure without prior publication of a contract

² Those who do have a dominant position in the market were excluded.

notice' is usually the only procedure for conducting procurement. This reality can partially be explained by the lack of procurement capacity. Unfortunately, there is a lack of statistics on value of 'negotiated procedure without prior publication of a contract notice' procedure, which would otherwise clarify the picture.

Finally, based on the findings, concrete recommendations were discussed.