

# SPAIN'S 2020 ANNUAL PUBLIC PROCUREMENT OVERSIGHT REPORT

EXECUTIVE SUMMARY

## Executive summary of Spain's 2020 Annual Public Procurement Oversight Report.

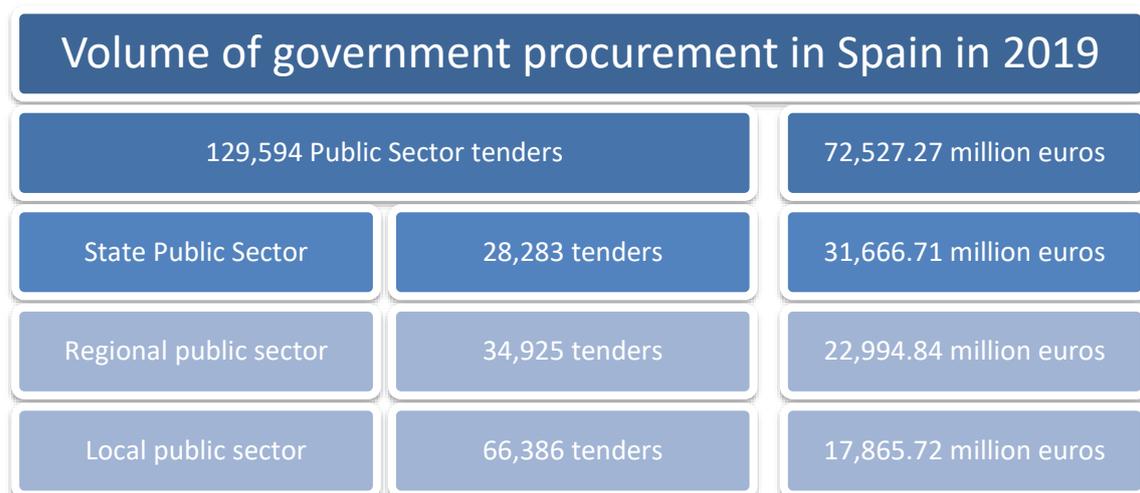
The Independent Office for Procurement Regulation and Oversight (OIReScon), on xx, has approved Spain's 2020 Annual Public Procurement Oversight Report (IAS 2020), in compliance with the mandate of section 332.9 of the Public Sector Contracts Act, Law 9/2017 of 8 November on Public Sector Contracts, transposing into Spanish law Directives 2014/23/EU and 2014/24/EU of 26 February 2014 (LCSP), of the European Parliament and the Council. Said report shall be forwarded to the European Commission.

This annual oversight report sets out the main conclusions of the monitoring and oversight activity carried out by the authorities with jurisdiction, **a list of the main breaches detected by external and internal monitoring bodies** in the area of government procurement, **information on the prevention, detection and proper reporting of cases of fraud, corruption, conflict of interest**, as well as on any **collusion issues** detected.

Likewise, it includes **information on the most common sources of the incorrect application of legislation or legal uncertainty**, through **oversight actions directly carried out by OIReScon**. Of these actions those aimed at overseeing the principled of Openness and Transparency required by the LCSP, the assessment of procurement compliance as a strategy for social, environmental, or innovative public policies, the implementation of e-procurement or the professionalisation of public procurement in its formative aspect should be highlighted.

The following are extracted as **main conclusions**:

The main **government procurement figures in 2019<sup>1</sup>** amount to:




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<sup>1</sup> Not counting minor procurement.

In terms of tendering, 52.23% of public sector procurement is for local authorities, although in economic terms the state public sector has the highest weighted percentage (43.7%).

77.65% of public sector procurement is handled in accordance with the open or simplified open procedure. The average processing time for the open procedure is 123 days (4.1 months), whereas the simplified procedure has an average processing time of 85 days (2.8 months).

In terms of participation, in the open procedure the average number of tenderers is 4.30 (4.25 in the "simplified" version), the regional public sector being where there is on average a higher participation level in the open procedure (5.22 tenderers).

Insofar as the reduction in economic cost obtained from the amount for which the tender is finally awarded is concerned, the open and simplified open procedures obtain the greatest reduction with, on average, 14.13% and 15.69%. Given that the average drop in unadvertised business transactions is 3.39%, it can be concluded that greater turnout undoubtedly affects final contract price and, in particular, influences the decrease regarding the base tender budget.

As was already the case for the IAS 2019 report, there is still no aggregated data on minor government procurement, making a systematic analysis impossible.

As a result of its oversight work, OIReScon stresses the need for a **single source of public procurement data**, reducing the burden on contracting bodies and tenderers, minimising the risk of oversight bodies having to use multiple information sources, promoting transparency and openness, and enabling adequate accountability.

Insofar as the **principals of openness and transparency in public procurement are concerned**, the oversight and follow-up indicators already set in IAS 2019 have been carried out, they have also been extended, since it has been realised that certain aspects listed below continue susceptible to improvement. All this without prejudice to the jurisdiction attributed to the procurement platforms of the public sector as a whole (PLACSP and those with a regional scope) in accordance with the standard.

As already indicated in IAS 2019, there is no monitoring or verification of the information published by each contracting body, nor a quantitative or qualitative uniformity of the information to be published as open data by PLACSP and the regional platforms, which directly affects the quality of the information offered.

Deficiencies remain in the publication of contractual amendments, outsourcing, subcontracting, minor procurement, and information relating to the companies taking part in tenders. Above all, it should be noted that deficiencies have been identified in the advertising of the scheduling of contractual activity (97% of them were unpublished) and preliminary market consultations (prior announcement or notice were lacking for 99.24% of them).

In **direct oversight actions**, the follow-ups and extension in the terms already addressed in IAS 2019 have been undertaken. Deficiencies have mainly been identified in compliance with the programming of contract activity and preliminary market consultations. Also, irregularities in ***the preparation phase of the contract***, this being the phase in which external monitoring bodies have detected most irregularities.

Most of the irregularities detected by the Court of Auditors and OCEX are concentrated in the procedure's preparatory phase.

The deficient **strategic use of government procurement** for social, environmental, and innovative policies has been confirmed. In particular, there has been a widespread breach of obligations relating to “reserved contracts” regulated by LCSP's fourth additional provision. On the other hand, while the praiseworthy use of the environmental criterion in public procurement is increasingly implemented (a faithful reflection of an already traditional European initiative), social and innovation criteria when used do not tend to be so adequately. Bearing in mind the weight and importance government procurement has for national GDP and the way in which it affects all economic sectors, the underuse of these criteria for the terms of admission, award criteria and special implementation terms, with non-compliance levels of between 25 and 33%, constitutes a wasted opportunity regarding the improvements that their use would entail in social, environmental, and innovative policies.

On the other hand, inertia continues to be detected in classification settings and alternative means of solvency, in many cases the desired flexibility is often lacking, affecting SMEs' access and participation in tenders.

The already identified absence of documentary trails for **the contract execution phase** on public sector procurement platforms as a whole, thus hindering follow up, is confirmed. This issue gains prominence if it is taken into account that the "Recognition of obligation", that is, the verification of the payment invoice for the contract, the "implementation of expenditure", has been, for the second year in a row, the phase most subject to review in quantitative terms by the internal financial economic monitoring bodies with a regional and local scope.

In the field of government procurement, in 2018 and 2019, the phase raising the highest number of misgivings for local and regional internal financial economic monitoring bodies was the "Recognition of the obligation" (invoice verification) phase.

On this issue **it is confirmed that the areas of risk in government procurement** detected in the direct oversight actions carried out by OIReScon substantially coincide with the outcome of the work carried out by the external and internal oversight bodies in the field of public procurement, which, in turn, coincide with the terms where the most deficiencies in openness and transparency take place (the preparation and implementation stages of the contract).

On the other hand, based on PLACSP's data, the **significant increase in e-procurement** should be highlighted. Of the total tenders held by and published in PLACSP (in absolute terms) in 2019 6.92% of them were processed electronically, by 2020 this had increased to 12.25%. Solely regarding 2019 and according to its open data, in 63.86% of the procedures processed in PLACSP the offer was presented remotely. However, the lack of information on this issue makes it difficult to assess the overall

degree of implementation of e-procurement in the different regional and local fields, since this information is only available from the Procurement Portal of the Autonomous Community of Rioja, where 86% of tenders were carried out electronically in 2019.

As stated in IAS 2019, the diversity of regional platforms and PLACSP represents a complex scenario for interested bidders facing multiple and diverse requirements (both formal and technical), depending on the geographical location and jurisdictional scope of the contracting body in whose tender they wish to take part.

Within the framework of the **Professionalisation** of public procurement and specifically regarding **training**, the **absence of specific pathways** in the centres consulted and the lack of absorptive capacity of demand for training in this area has been confirmed. This has affected specialisation and the increased reinforcements and online training are insufficient to lower the pending requests for training in this field, which are rated at an average (for both general and specific training) of 166.97%.

In terms of **prevention and the fight against corruption**, the initiative of the Network of Anti-Fraud and Fraud Prevention Agencies and Offices<sup>2</sup>, of which OIReScon is a part, seeking to strengthen the handling of technical and legal issues in the context of their investigations, in particular, in the field of public procurement, is worth noting. On this point, it should be noted that almost 20% of the communications or complaints received in 2019 by the Anti-Fraud and Fraud Prevention Offices and Agencies concerned government procurement, a reflection of its importance.

Furthermore, as already indicated in IAS 2019, **the absence of a National Anti-Fraud Strategy**, hinders the coordinated action of all the agencies involved in the fight against fraud and corruption, in particular in the field of public procurement.

On the other hand, the value of the role played by **OIReScon**, as **the oversight body for government procurement**, is worth noting, systematising, and integrating the actions of all public procurement monitoring bodies, pooling the conclusions of external and internal monitoring bodies, thereby constituting one of this report's most interesting contributions to the analysis and improvement of public procurement.

4,734 special appeals regarding procurement, submitted in 2019 by bodies with jurisdiction to resolve special procurement appeals (the **administrative courts for contractual appeals**), have been analysed. This volume of contractual appeals is an average of 27% higher than the previous year.

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<sup>2</sup> Of which are part the Anti-Fraud Office of Catalonia, the Agency for the Prevention of and Fight against Fraud and Corruption of the Valencian Community, the Office for the Prevention of and fight against Corruption of the Autonomous Community of the Balearic Islands, the Municipal Office against Fraud and Corruption of the City of Madrid, the Ethical and Good Governance Postbox of the City of Barcelona, the Transparency Agency of the Metropolitan Area of Barcelona, the Prevention of Corruption Section of the Public Accounts Department (*Consello de Contas*) of the Autonomous Community of Galicia, the Accounts Auditing body of the Canary Islands, and the Anti-Fraud Coordination Service for financial interests of the European Union of the General Intervention of the General Administration of the State, recently incorporating the National Commission of Markets and Competition.

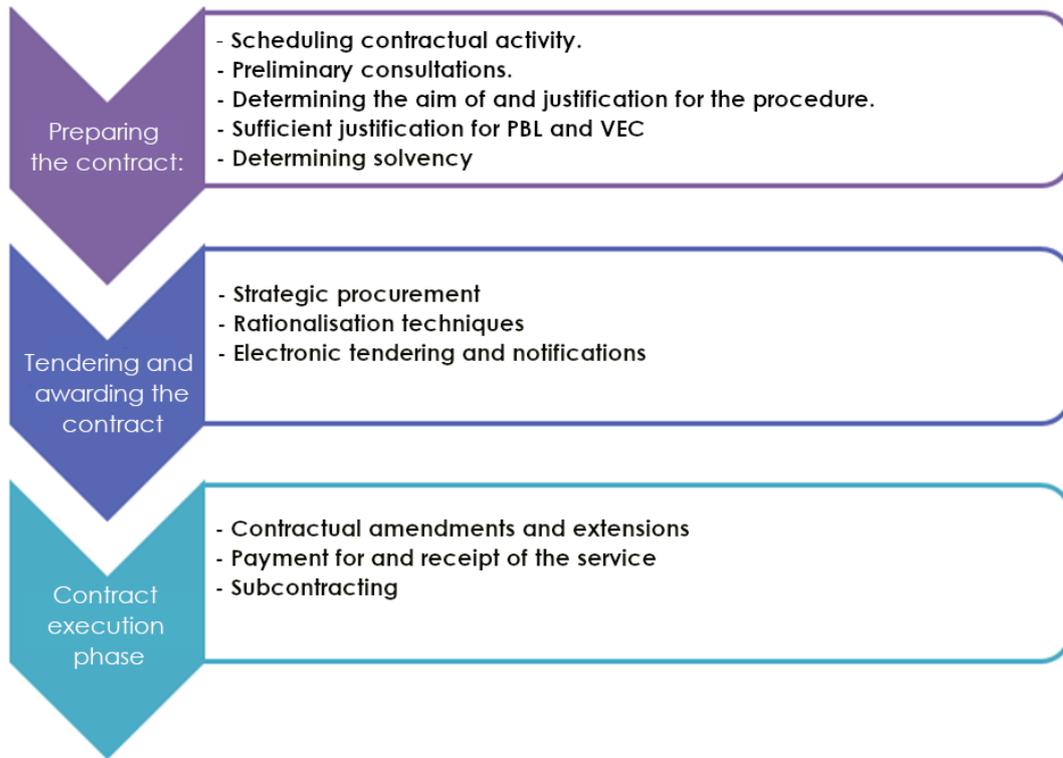
The procurement risk areas identified by OIReScon agree with the conclusions that can be drawn from the decisions of the Administrative Tribunals for Contractual Appeals. They also agree with the outcomes of the reports issued by the **external and internal monitoring bodies of financial economic management**. Specifically, the risks are concentrated in the following aspects:

Risk areas detected in the analysis of special procurement appeals:

- The drafting and definition of award criteria in bid specifications.
- Justifications for excluding tenderers.
- The reasoning behind the award decision, in particular, the assessment of the tender made by the contracting body.

The joint treatment and analysis of the findings of internal and external monitoring bodies, anti-corruption and prevention agencies and offices, competition protection agencies and OIReScon's direct oversight actions, allows this Office to establish a number of follow-up indicators and, in turn, outline a continuously updated public procurement risk map to allow preventive and not solely corrective measures to be taken in the field of public procurement. These aspects, in turn, should be built into the future National Government Procurement Strategy.

In summary, the following can be noted as the most significant issues, bearing in mind that some of these aspects may affect all procurement phases (e.g., e-procurement):



Source: OIReScon

Finally, the current IAS 2020 provides a synthesis of the work of **advisory bodies at the state and regional levels** (advisory boards or committees).

**In view of the outcomes as set out, OIReScon's Main Recommendations are:**

- 1) It is considered of paramount importance that the actions of all the agencies be directed towards unifying public procurement data in **a single data source**, allowing contracting bodies to forward the information and documentation required by the rules on openness and transparency, as well as those relating to accountability, **only once** to the internal and external monitoring bodies. On the other hand, a single data source will make information more accessible to the citizen.



In addition, mechanisms for verifying and validating published information should be structured.

- 2) Insofar as **the procurement procedure** is concerned, it is recommended that special attention be paid to a number of points and issues, specifically:
- To advertising the contracting body's **procurement schedule** (defining the aim and need for, choice of procedure, division into lots, cost structure and estimated duration of the provision, among other issues). This advertising of the schedule is essential for meeting its aims.
  - The **use of government procurement as a strategy** to promote social, environmental, and innovative policies.
  - In the drafting of the tender specifications governing the procurement (the classification and solvency appropriate for the subject-matter of the contract, the terms for acceptance, measures to favour SMEs, insufficient or inadequate budgeting, award criteria, and special implementation terms).

- 3) Regarding **the execution of the contract** and oversight actions it is concluded that:
- Payment monitoring measures should be set for outsourced companies in those contracts for which it is appropriate in law.
  - The justifications for contractual amendments and their clear differentiation from other issues such as extending contracts, must be strengthened.
- 4) The processing times for the tools used to **rationalise procurement**, must be analysed, as well as setting indicators to assess the systems for rationalising and centralising procurement, together with providing information that complies with the principle of transparency and enables their efficiency to be overseen and assessed.
- 5) It is necessary to encourage, drive, and reinforce the implementation and roll out of **e-procurement**. On this point, as already suggested in IAS 2019, the establishment of the "Electronic Public Procurement" Section of the Cooperation Committee, as regulated by art. 329.3(d) of the LCSP, is proposed to coordinate, standardise, and disseminate existing IT resources, systems, and applications, and thus enable their use and reuse in accordance with article 157 of Law 40/2015 of 1 October on the Legal Regime of the Public Sector.
- Electronic processing by administrative bodies for the resolution of special procurement appeals and that of the internal financial economic management monitoring bodies should also be encouraged and boosted.
- 6) The creation of training pathways aimed at specialisation and **professionalisation in government procurement**, with practical and not solely theoretical content, as well as adjusting the provision of training to the existing demand, which is essential as a tool to support staff in the recruitment units, is recommended.
- 7) The maintenance and enhancement of the coordination mechanisms between the existing agencies and offices seeking to **prevent and fight corruption** and the carrying out of prior public procurement analyses and reviews to direct ex officio action in detecting potential fraud in the public treasury, is likewise recommended.

Independent Office for Procurement Regulation and Oversight

Madrid, December 2020