

PUBLIC PROCUREMENT PROCEDURES AND ITS CYCLES

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ABSTRACT

The goal of procurement is to ensure the most efficient, transparent and fair manner for the use of public funds and resources.

The main goal of the governments as purchaser is the provision of goods and services of appropriate quality and at a competitive price. Procurement procedures should create fair opportunities for all providers and should be designed in such a way as to ensure a good value of money and minimize the risk of corruption and favoritism.

State Purchase of goods and services from the private sector represents a significant part of public expenditure in most countries.

Achieving better functioning market economy is one of the priorities of the EU. One way to achieve this goal and other elements essential to good governance associated with it is to create an efficient procurement system, in which competition is encouraged to link with public sector contracts.

In the context of EU accession, the reform of public procurement laws, and the structure and administrative procedures are a primary task for the candidate countries. This reform is a precondition for EU membership and for the opportunity to benefit from pre-accession assistance for which the candidate countries have the right.

This paperwork aims to present a clearer picture of how procurement, under the initiatives taken by the European Union, enabling greater participation of governments, and remove administrative and trade barriers between member countries. Many countries have established a central procurement agency, to oversee the procurement activities of contracting entities in line ministries and other public bodies covered by public procurement-law.

State purchase of goods and services from the private sector, represents a significant part of public expenditure in most countries. Such activities are regulated by national legislation on public procurement and guided by international standards of transparency open and fair competition¹.

Achieving better functioning of market economy is one of the priorities of the EU. One way to achieve this goal and other elements essential to good governance associated with it is to create an efficient procurement system, in which competition is encouraged to link the contracts with public sector. A sound policy and procurement practices can reduce the cost of public expenditure, to provide timely results, to promote private sector development, to reduce lost time, delays, corruption and government inefficiency.

Measures for the improvement of the procurement procedures include: a comprehensive public procurement law, establishing a central body for public procurement, which should have full responsibility for the design and implementation of public procurement policy and national training programs; developing the capacity of spending units in efficient procurement procedures, and establishment of effective control and the review of complaints regarding the procedures².

1.1.1. Priority tasks in the context of EU accession

In the context of EU accession, the reform of public procurement laws, and the structure and administrative procedures are a primary task for the candidate countries. This reform is a precondition for EU membership and for the opportunity to benefit from pre-accession assistance for which the candidate countries have the right. Some of these countries have made good progress with reforms, but in some other countries efforts are still needed to build a satisfactory

Procurement system³. Most countries in Central and Eastern Europe have hundreds of contracting unit. These vary from large organizations, well staffed and effective leadership, the organization of smaller unions that have weaker staff and less good terms. Organization of public procurement should provide support to these units.

In many transition countries, the private sector remains relatively underdeveloped. For this reason, the government has a legitimate interest in promoting the training of procurement staff, as well as government agencies and the private sector. Suppliers to *the private sector should be informed about legal and institutional framework of public procurement system and on ways of competing for government contracts. They should also be trained for specific skills, such as negotiating and managing contracts. Awareness raising seminars for policy makers and media campaigns for the general public are necessary to explain the importance of public procurement and to provide support for an efficient and transparent procurement system.*

¹SIGMA – A joint initiative of OECD and European Union, finance by the programme “phare” of EU.

Positive changes that are in the economic growth of some developing countries and countries in transition refer to significant changes on fiscal policy oriented towards stable macroeconomic conditions, increasing domestic savings and investments⁴.

In terms of conducting training, organization of public procurement can optimize the formation of a national institutional network (like universities and government agency trainings). In each of these institutions ORPP can train and certify a group of trainers. Further on this group could initially oversee the trainings, and later on license other trainers to conduct the training activities with a larger scale. The role of government as a buyer is very large. Government is the largest buyer with a considerable market value in the economy of a country. Procurement of goods and services by public bodies reach an average of 15-25% of GDP. In absolute predictions that means spending billions of Euros every year.

This topic aims to present a clearer picture of how procurement, under the initiatives taken by the European Union, enables greater participation of governments, and removes administrative and trade barriers between member countries. Electronic governance is a priority of the European initiative and public procurement is one area where new technological changes can improve and simplify the way a government operates. Part of this topic is the evidencing of these initiatives and monitoring their implementation in our country and in the region, to make a step forward towards European integration⁵.

1.1.2. Basic requirements

The basic requirements are based on four aspects:

- procurement legislation in line with European Community directives and other international obligations;
- efficient procedures, including a central procurement organization (OPP) with primary responsibility, the creation and implementation of procurement policy;
- efficient exchange of information between the OPP and the public procurement units with relevant agencies, and
- efficient procedures for resolving disputes, financial control and audit.
- Development of a functional legal and administrative coherent framework⁶;
- trained personnel, developing training programs and "training of trainers";
- effective mechanisms to prevent fraud, waste and corruption, which can be reinforced by systems of internal control and external audit;

1.1.3. Procurement legislation

Governments must respect the Government Procurement Agreement (GPA) of the World Trade Organization, which sets legal obligations for national systems and procurement practices. In the context of EU accession, many Central and Eastern Europe have experienced problems because their legislation is based in the United Nations (UNCITRAL) and not in the detailed guidelines on specific EU-funded expenses from external sources, procurement procedures must also comply with the rules laid down by creditors or foreign donors, such as the World Bank⁷.

The legal basis for the trade office of the British Government is ministerial decree, while in Italy is the legislative decree with two ministerial decrees. The legal basis of Malta's Department of agreements is the total funding and the general act of audit or financial control.

The legal basis of corporate bodies in Austria's central procurement is often regulated in the law firm along with the law or decree, authorizing the company to implement certain functions of procurement.

Significance of legal basis of the central procurement body is the relation of inclusion of the independence of parliament and the respective government, resulting in the mixture. If the institution is regulated by ministerial decree or statute of internal arrangements and procedures of the government, relevant ministry or the government can change the functions or its rights, as has the possibility to repeal them without any involvement of the legislature. Thus, the legal bases make the institution a dependent part of the government.

Countries with legislation drafted by UNCITRAL Model Law must change their current laws in cases when contracts exceed the limit of the EC. UNCITRAL Model Law allows the opportunity for local bidder's preference, which is inconsistent with the EC directives and basic provisions of the treaties. It also predicts that the government may exclude potential suppliers from certain countries. Any such waiver is in contrary to basic norms of the EU if the country addresses a member or a participant. Even with regard to technical methods of procurement, there are differences between the EC directives and the UNCITRAL model law.

²Arben Mala, Management of the publik expenditures , Tiranë, 2004 page 27

³Ibid, page 211

⁴Strategy of economic growth – N.Daci, Skender Berisha, Agim Zajmi.

⁵The integration of the region under the public procurement optics, Dr. Rovena Bahiti, Doreza Sinanaj.

⁶SIGMA a unified initiative of OECD and EU.

⁷Arben Mala, Public expenditure management, page 211.

Some countries of Central and Eastern Europe have already modified their procurement legislation, in accordance with EC directives and others are preparing the draft. However, these new laws, not all meet the EU requirements. Some contain elements such as the continuation of national preferences, incomplete coverage (ie excluding the public service sector, which is covered by the guidelines, two-stage bidding, and direct procurement) and inadequate procedures for reviewing complaints. Regarding procurement, the EC directives dealing only with large contracts, but should also be regulated the procurement operations that do not achieve this goal. Obviously, these rules must meet the basic obligations of the Treaty of Rome.

1.1.4. A central body of public procurement

Many countries have established a central procurement agency, to oversee the procurement activities of contracting entities in line ministries and other public bodies covered by public procurement law. This body should be responsible for drafting the rules and regulations, establishment of an information system and a system for all government publications to ensure that government purchasing entities employ qualified personnel, to develop a training and conduct of overall procurement systems. Central procurement body (OQP) may be an independent body or almost independent, who reports to the Government or Parliament, a subordinate agency or department of the Ministry of Finance or the Ministry of Economy⁸.

In many transition countries, the purchasing function is decentralized itself. In other countries, although less and less, there is a central purchasing unit. In principle, the centralization of purchases has the advantage of the possibility of achieving lower prices, due to pooling of purchases. However, the results are often disappointing because of problems such as slow and bureaucratic response to customers, inefficient encounter of large, losses, small leaks, and slow reactions to changes in the technology market.

1.2. Procurement cycle and its phases

- Procurement Planning
- Calculating the value and classification of the contract
- Determination of the procurement procedure
- Preparation of Tender Dossier
- Announcement of the notice - publication
- Opening and evaluation of tenders
- Giving and signing of contract
- Contract Administration

1.2.1. Procurement Planning⁹

It is a set of forecasts and programs developed by the relevant authorities (CA) for prior coordination and synchronized of future actions in order to achieve certain goals with effectiveness of high quality at an optimal time¹⁰. Planning is the basic function of management, because all other functions (organization, leadership and control) implement the decisions taken at the time of planning. During the final planning process are defined the general objectives and specifics, as well as programs and projects that should be followed to achieve them¹¹. According to World Bank rules, the procurement plan is part of project preparation, because they have to prepare an acceptable plan to procure the legal deadline, provided: separate contracts for supplies, services and jobs¹².

In procurement planning include:

- Preliminary Procurement Plan
- The final plan of procurement
- Links with budget preparation
- Determine the availability of funds.

1.2.1.1. Preliminary and final plan of procurement

It should be prepared for each fiscal year by the contracting authority and submitted to the APP. The plan should identify in reasonable detail, all goods, services and works that the contracting authority intends to procure over the next fiscal year. Design competitions and works concession, but in a reasonable manner should be included in the plan, as much as possible.

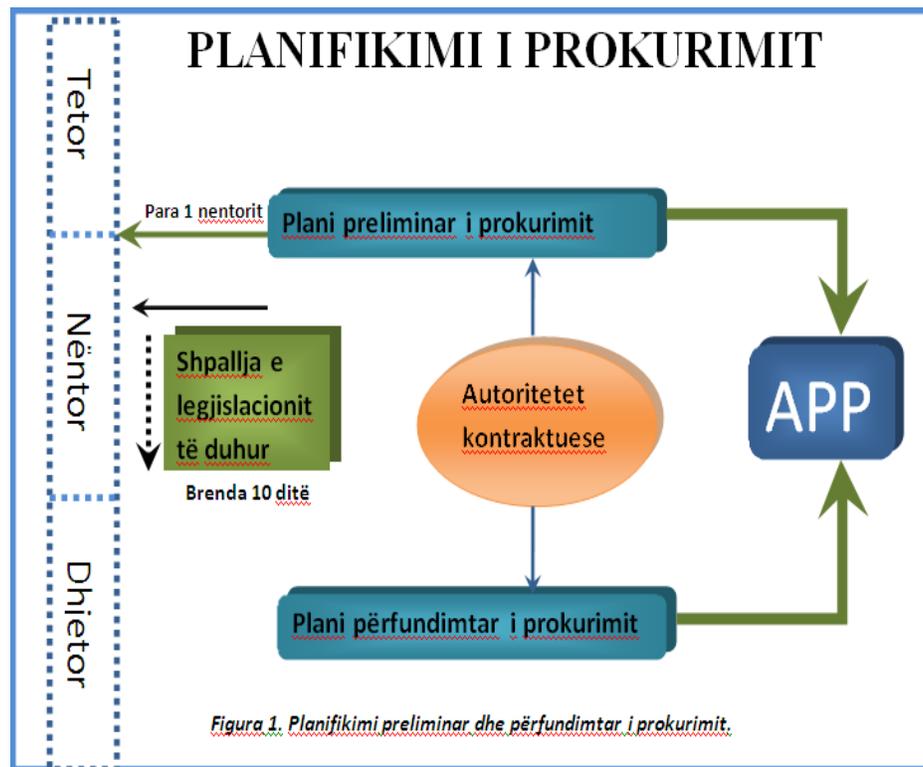
The deadline for submitting a preliminary procurement plan PPA is 60 calendar days before the start of the fiscal year, which means no later than November 1 of each year. Once legislation is necessary for the fiscal year, the final version of the procurement plan shall be prepared by each contracting authority and sent to the PPA.

⁸Arben Mala, Public expenditure management, page 212.

The purpose of this plan is that the PPA to provide information collected on the intended procurement in general, in order to identify the products of common use and all items and other products can be provided more efficiently through the implementation of a consolidated and joint procurement. PPA may conduct the procurement of any article or substance, on behalf of the contracting authorities

The deadline for submitting the final version of the plan is 10 calendar days after the promulgation of legislation to absorption.

These planning activities are closely related to the preparation of budgets for next fiscal year. Special attention is paid to links between procurement plans and budgets.



1.2.1.2. Links with budget preparation

Procurement Plan shall correspond to the contracting authority's budget for such fiscal year. For this, the preparation of standard forms of procurement planning is coordinated with the system of budget forms. Where there are thought to have multi-year contracts, there must be reasonable grounds to expect the acquisitions to be made available to the contracting authority in such future years.

2. PROCUREMENT PROCEDURES IN KOSOVO¹³

In Kosovo these are some of the procedures developed for the use of public funds, and they are:

- Minimum value contract
- Price quotation
- Open procedures
- Restricted procedures
- Negotiated procedure after publication of a contract
- Proceedings of the publication of contract notice
- Public Contracts frame

⁹Second manual, Procurement planning.

¹⁰Economic-Financial, dictionary.

¹¹Management, Prof. Shyqeri Llaci.

¹¹Guidelines selection and employment consultancy, World Bank borrowers.

2.1.1. Minimum contract value¹⁴

The Rules Committee will have authority to establish a special procedure for contracts with minimum value. Such procedures shall provide:

- adequate competition;
- transparency;
- more effective expenditure of public funds, and
- implementation of loyalty (non-discrimination).

A trial of such a proposal could have as a key element, the publication of a notice on the website of the PPA, of the invitation for quotation of price. Procedures for contracts with minimum value is simpler than the procedure for price quotations formed to supply and services contracts of small value - when the above requirements are met.

2.1.2. The procedure for price quotations

The procedure for price quotations must be based on transparency, equal treatment, competition, non-discrimination and disadvantage. All these are available for use of the procedure for price quotations.

A contracting authority shall use the open procedure, but can also optimize the procedure for price quotations, if the thought contract has to do with:

- a low value contract for the supply or service;
- such goods and services are already available;
- need not be produced or processed, and
- there is a developed market for such goods or services.

The procedure for price quotations can also be used in emergency cases.

2.1.3. Open procedure

A contracting authority shall always use the open procedure for the award of a public contract, whenever possible, but also other procedures, only where strictly necessary and only after the conditions for the use of such procedures¹⁵. An interested economic operator should be understood as economically qualified and interested. However, only when it is reasonable due to technical or economic reasons, can be defined specific requirements for qualification in the open procedure. First of all, the fundamental principles of transparency, equal treatment, competition, non-discrimination and disadvantage, are available for use of the open procedure. These principles govern all steps of the procedure, as for example the preparation of tender dossier for the contract notice and tender evaluation procedure.

Very often, the answer to a practical problem that may occur during the course of procurement exercise will be found in the application of these principles.

2.1.4. Restricted procedures

The contracting authority may use limited procedures for awarding a contract of any type or class, if the subject of the contract is a kind of complex or specialized, so that:

- Only adequate qualified economic operators can meet the contract requirements;
- method of "pre-qualification" is more efficient for the contracting authority; and
- contracting authority has received written authorization from the PPA.

Any interested economic operator may request to participate and any qualified candidate will be invited to submit tender (this is what is meant by "pre-qualification method" mentioned above).

This means that there should be opportunities open to interested economic operators, to apply for pre-qualification. This openness created by the publication of contract notice, as for open procedures.

First, the fundamental principles of transparency, equal treatment, competition, non-discrimination and disadvantage, are available for general use and restricted procedure. These principles govern all steps of the professional skills; procedure, as for example the preparation of tender dossier for the contract notices, assessment procedures for pre-qualification, as well as for evaluation of tenders.

Very often, the answer to a practical problem that may occur during the conduct of a procurement activity could be given through the application of these principles.

¹³ www.ks-gov.net/procurement.

¹⁴ Manual of procurement procedures.

¹⁵ Law on public procurement.

2.1.4.1. Only qualified economic operators can execute the contract

When the contracting authority - without any purpose - discriminates or favors any economic operator determines that a product, service or related work may be supplied, is provided or performed only by an economic operator that has adequate technical capacity, professional and / or financial, then the contracting authority may consider the use of limited general procedure.

The reason for such a definition would be that the contract relates to products, services or work more complex or specialized. No other reason would apply.

The contracting authority must assess itself, based on relevant market conditions - and also have to convince the PPA, the request for authorization for the use of limited general procedure; the contract has really thought that type. If the contracting authority determines that only qualified economic operators can adequately execute the contract, he must determine the minimum requirements for qualification; that the interested economic operator must meet. Pre-qualification of such minimum requirements for qualification, can only be made in connection with:

- professional skills;
- economic and financial situation and, Technical and / or professional abilities.

2.1.5. Accelerated procedures and emergency

For emergency cases, there are rules that allow the use of open or restricted in terms of reduced time. Such procedures are called accelerated procedure and reduced time limits are called accelerated time limits.

In cases of extreme urgency - or emergency – there is a possibility of using the negotiated procedure without publication of contract notices.

Authorization by the PPA is always required for the use of accelerated procedures or emergency use of negotiated procedure without publication of contract notice.

2.1.5.1. Cases of extreme urgency / emergency

Determining the shortest procedure possible can be used to provide any type or class of any public contract, in emergency cases.

The procedure to be used is negotiated procedure without publication of contract notice. This procedure can be implemented with one or more economic operators selected by the contracting authority. There is no minimum timelines regarding the implementation of such procedure.

2.1.6. Public Contracts Framework

Contracting authorities may use the open or restricted procedures, to provide a public framework contract. Public framework contracts could not be provided using any other procedure.

No framework contract will have duration of more than 24 months. Framework contract can not be extended or renewed.

Under the framework contract, the contracting authority shall have the right throughout the contract period, even being in strict accordance with the terms of such contract, to sign subsidiary contracts, or to place orders with the successful bid offer, without following the procedures of this Law in respect of each such subsidiary (or preconditioned order) under the framework contract, provided that each such subsidiary contract under a framework contract to be subject to the requirements. The contracting authority may consider awarding the framework contract, only if there are present one or more of the following circumstances:

- The object of the contract are services, works or goods not classified as long term assets, and ongoing work of repairs or maintenance, or:
- When the contracting authority plans to award several identical contracts over a period to be covered by a framework contract, and the conclusion of a framework contract that will cover two or more such contracts, will reduce costs procurement and management authority.

PPRC has the authority and responsibility to develop and promulgate rules and procedures necessary for framework contracts.

Rules and procedures shall promote competition for such contracts, to ensure transparency and accountability of the process, to observe the applicable provisions of this law on the cost- effectiveness, and the principle of non-discrimination, being in accordance with best practices of member countries of the EU.

A definition of the framework agreement, together with specific rules on framework agreements. According to EU Directives, when a contracting authority enters into a framework agreement, in accordance with these guidelines, fixed-term contracts are signed, on the basis of a framework agreement during its term of validity or the implementation of the requirements stipulated in the framework Agreement. The reopening of

competition should comply with certain rules, whose purpose is to ensure flexibility and respect of the general principles, in particular the principle of equal treatment. For the same reason, the duration of the framework agreement must not exceed four years, unless justified by the contracting authorities¹⁶.

Conclusion: If the framework contract is applied it has several advantages, especially there are created more economical prices, but also of this county there are delays in carrying out the Procurement procedures and the delivery of goods¹⁷.

2.2. Public procurement system in Albania

Institutional Framework of implementation of legislation on public procurement in Albania is exercised through:

2.2.1. Public Procurement Agency

Is the central body in the area of procurement in Albania, public legal person under the Prime Minister dependency, which is funded by the state budget. Guidelines and its decisions are administratively final. Public procurement Agency of ministers council submits proposals for the procurement rules, promotes and organizes the qualification of central and local government workers, involved in public procurement actions, designs and issue public notices bulletin. Public Procurement Agency announces public notices on the bulletin the list of excluded economic operators, designs standard tender documents, which will be used in procurement procedures for procurement, to purchase electricity. It also designs specific standard documents.

In their design PPA refers to conditions of contract type, widely used in international trade for the sale of electricity, provides advice and technical assistance to the contracting authority; submits an annual report to the Council of Ministers for the overall functioning of the public procurement system; cooperates with international institutions and other foreign entities on issues related to public procurement system; plans and cooperates with the international community on foreign technical assistance to Albania in the field of public procurement, promotes and supports the use of technical standards for Albania in this area; monitors reports submitted by the contracting authorities, shall verify the implementation of public procurement procedures by requiring contracting authorities to submit all relevant information; performs checks every 6 months for procurement procedures, in case of violation of law, proposes to impose penalties or contracting authority managers or higher authorities, disciplinary measures for those contracting authorities who have committed these violations, does the administrative review of complaints; designs and adjusts its internal rules. The procurement agency excludes an economic operator from participating in procurement procedures, regardless of the penal case that could have started from 1 to 3 years. Clerks of the public procurement agency have the status of civil servants, whereas other staff is appointed by the Director of the Agency and their status is regulated by the Code of conduct.

2.2.2. Procurement Advocate

Protects the lawful rights and interests of candidates, bidders or suppliers of illegal acts or omissions of improper contracting authorities in the field of public procurement, through monitoring and investigation of administrative procedures of public procurement.

Procurement lawyer conducts investigations for possible violations of the PPL. He is elected by the Assembly on the proposal of the Council of Ministers.

Procurement lawyer is prohibited:

a) To belong to political parties or organizations, b) Perform any other political activity, public and professional, with the exception of teaching, c) Take part in the management organs of social organizations, economic and commercial.

¹⁶Kosovo public procurement law, article 36 A

¹⁷Directive 2004/18 EC of the European Parliament and of the Council of 31 march 2004

Procurement Advocate presents an annual report within the first 3 months of each year. He reports to the Assembly whenever requested by the Parliament, or at his request. The annual and special reports, in each case are made public and published on the website, no later than 7 days from the submission to Parliament.

2.2.3. Contracting Authority

It is responsible for the procurement of public funds, which are made available. The contracting authority shall keep records and complete documentation for procedures performed to determine the winner of the contract, in order to allow the control¹⁸. Relevant references in the European legislation:

- Directive 2004/18/EC on the coordination of procedures for public procurement of works, goods and services.
- Directive 2004/17/EC on the coordination of procurement procedures on water, energy, transport and postal services.

2.2.4. Electronic public procurement and the region, comparative views - Possibilities of cooperation

Prevalence of EPP between Member States and regions, is a major challenge for most public authorities. Its effective use will determine the degree of benefit for buyers, suppliers and regional economy as a whole. Network effects are important in this area and therefore, achieving a balanced development in all Member States is critical to extract the full potential of this shift "online" public procurement.

The speed of its application in all member states will be crucial for further growth in Europe. The challenge for policy-makers and public buyers is to ensure that technical and legal conditions do not create obstacles to the European common market and to allow open competition, effective and fair in the public procurement across Europe.

Efforts to harmonize the legislation on procurement through international agreements have been partially successful. WTO Agreement on Government Procurement, requires non-discrimination against foreign companies from central and local government (in the role of buyers), and transparency in rules and procedures. Also, requires local governments to establish procedures - known as "bid protests", by which, frustrated vendors can advertise procurement decisions and to regain the rights, if such decisions have infringed the rules of the agreement¹⁹. United Nations Commission on International Trade Law (UNCITRAL) has drafted a model law for the Procurement of Goods, Construction and Services (1994), based on best practices in this field. UNCITRAL Law's model has influenced the legislation of some Balkan countries like: Albania, Croatia, Moldova and Romania.

RECOMMENDATIONS

Continuous reformation of the public procurement system in Kosovo. Electronic procurement system and full implementation in practice is more than necessary to achieve the International standards of public procurement for EU candidate countries.

Standard documents for the application of procurement procedures, and forms of contracts to be reduced and unified for all contracting authorities in Kosovo.

Kosovo contracting authorities to apply procurement procedures and regulations that promote efficient procurement, based on procurement contemporary practices and new technology, such as framework agreements and electronic procurement.

Audit department remains within the central institution to public procurement, which makes professional procurement audits in the context of public funds.

Economic Operators who do not comply with signed contracts with the contracting public authority, to be included in the blacklist of the central institution of public procurement and prohibit to them the tendering and from participating for a specific time and it should be provided with a separate paragraph at LEP.

To reduce as much as possible the use of low value and minimal contracts, using public framework agreements, and centralized procurement.

Most support of the central institutions of public procurement in Kosovo as a carrier of the development of the system.

¹⁸Law nr. 9643, on 20.11.2006 "For public procurement", amended.

¹⁹Dr.Rovena Bahiti – MBA, Doloreza Sinanaj, Development and economic integration in the region- challenges of Balkans, region integration under the oversight of electronic procurement, page 133.