

# Maximising the Benefits of Effective Competition in Public Procurement in Slovenia





OECD Public Governance Reviews

# Maximising the Benefits of Effective Competition in Public Procurement in Slovenia

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# Foreword

In Slovenia, public procurement is a key economic activity accounting for 13.7% of GDP and 27.6% of government expenditure. For this reason, Slovenia recognises public procurement as a strategic tool to support broader public policies and contribute to the country's economic growth and recovery. Indeed, public procurement has a significant impact on the quality of services provided to citizens and on the economic and social development of countries.

To secure value for money in their public procurement processes, public buyers usually rely upon open and competitive bidding processes to ensure optimal participation from suppliers. However, many OECD countries, including Slovenia, experience difficulties in attracting an adequate number of suppliers in their public procurement procedures. In addition, several countries show a high rate in the use of non-competitive processes such as direct awards or negotiated procedures without prior publication.

Access to procurement opportunities is a key principle of a sound public procurement system. The 2015 OECD Recommendation on Public Procurement highlights that ensuring broad access to the public procurement market promotes competition and creates a level playing field and is thus essential for achieving value for money and for driving innovation, quality, and efficiency. A healthy level of competition provides benefits for both governments and businesses by stimulating economic productivity and SME development. Studies on the cost savings from increased competition in procurement markets conclude that rules and procedures that promote transparency and competition tend to reduce contractual prices substantially. A competitive environment can increase the trust of citizens and the private sector in the public procurement system, as it fosters integrity and reduces the risks of unfair market practices.

Creating a healthy competitive environment in public procurement has nonetheless proven difficult. Improving access and competition in public procurement requires a multi-pronged approach, encompassing a wide array of stakeholders and addressing multiple root causes.

This report analyses the root causes behind low supplier participation in public procurement opportunities, single bidding problems, and the high use of negotiated procedures without prior publication in Slovenia. Based on this analysis, it suggests measures to boost the level of competition in the public procurement market. This report was developed under the project "Increasing competition in the Slovenian public procurement system through promoting collaborative public procurement" and designed by Slovenia, the OECD and the European Commission (EC).

The project is part of the OECD work on strategic public procurement that helps governments design and implement policies that respond to today's societal, environmental and economic challenges, especially when it comes to creating sustainable growth and jobs. It also builds on the 2015 OECD Recommendation on Public Procurement. Data for the report were gathered through desk research of existing procurement practices in Slovenia, surveys of Slovenian contracting authorities and economic operators, interviews with key stakeholders, and data analysis of Slovenian's procurement portals (e-JN and e-Narocanje).

The report was approved and declassified by the Public Governance Committee on 16 January 2025, and prepared for publication by the Secretariat.

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The report was funded by the European Union via the Technical Support Instrument, and implemented by the OECD, in co-operation with the Directorate-General for Structural Reform Support (DG Reform) of the European Commission. The OECD expresses its gratitude to the European Commission for their support for this project, particularly Mr. Daniele Dotto, former Deputy Director of DG Reform, Mr. Kjartan Björnsson, Deputy Director & Head of Unit Governance and Public Administration, and Mr. Thomas Giacoletto, Policy Officer and co-ordinator of the project in DG Reform.

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# Executive summary

In recent years, Slovenia has consistently ranked among EU countries with a high rate of single-bid procedures, as reported by the European Union's Single Market Scoreboard: 51% in 2022, up from 44% in 2021. Until recently, Slovenia also had high rates in the use of negotiated procedures without prior publication (26% in 2020).

To improve the efficiency of the public procurement system, the Government of Slovenia has committed to several measures in its Recovery and Resilience Plan. One of these commitments includes reducing the proportion of negotiated procedures without prior publication in all transparently published procedures to 14% by end-2024, as measured by the European Single Market Scoreboard. In the meantime, Slovenia has taken steps to address some of the root causes identified in this report, including enacting an amendment to the Public Procurement Act to further simplify procurement processes and creating the Public Procurement Academy to strengthen the capacities of procurement professionals.

Despite these policy actions and a reduction in the rate of negotiated procedures — 11% in 2022 — Slovenia continues to face challenges with supplier participation in procurement processes. Although its public procurement system is built on strong legal foundations and driven by transparency and efficiency, certain shortcomings that could limit competition still remain, even when open and transparent procedures are used.

As such, this report provides an in-depth quantitative analysis of competition in public procurement in Slovenia, a detailed assessment of the institutional and regulatory frameworks and the potential impediments to competition, and recommendations for future reforms and policy actions, including for building the capacities of contracting authorities and the private sector to improve bidders' access to procurement opportunities.

## Key findings and recommendations:

### ***Improving public procurement data governance and data availability***

- Slovenia has become one of the OECD countries that make the most information about the procurement process available to the public, thanks to its various platforms. E-JN serves as a tool to submit bids, e-Narocanje publishes procurement opportunities, and e-Revizija is the central tool for legal protection in procurement processes. However, data governance could be further improved by merging the different platforms to create a single-entry portal for all steps in the procurement process. Furthermore, the Public Procurement Act should be revised to require the preparation and publication of the procurement plans on the portal(s). Other improvements could include monitoring the impact of eForms on data quality and competition and exploring the use of artificial intelligence for data collection and analysis.

### ***Improving monitoring and control of the procurement system***

- Slovenia has several mechanisms to monitor and control the procurement system, particularly regarding negotiated procedures without prior publication, including a new *ex ante* mechanism undertaken prior to the launch of the procedure. Several steps can be taken to strengthen these monitoring and control mechanisms. The MPA should monitor the efficiency of the new *ex ante* mechanism and measure its impact on the rate of use of negotiated procedure without prior publication. Furthermore, collaboration among entities responsible for monitoring public procurement (DKOM, Court of Audit, Competition Protection Agency, Commission for the Prevention of Corruption) should be further strengthened, particularly through the development of a shared portal to better co-ordinate data collection and sharing information for certain cases. These institutions should also focus monitoring activities more on improving competition in public procurement.
- The MPA should consider developing an action plan to tackle issues in competition in public procurement, with concrete measures in the short, medium and long terms. These measures could include actions recommended by this report, such as the improvement of the e-Procurement system, promoting better co-ordination among key actors, enhancing the capacities of contracting authorities and economic operators, and raising awareness of corruption risks. The MPA could also consider developing a performance measurement framework for public procurement and report regularly on its results.

### ***Understanding the impact of centralised purchasing on competition***

- Centralised purchasing in Slovenia is undertaken by the Ministry of Public Administration. Its use is compulsory for some contracting authorities through government decision. However, given the structural characteristics of the procurement market in Slovenia, there are still many contracting authorities that implement similar public procurement procedures individually. Centralised and joint procurement are therefore under-utilised, leaving smaller contracting authorities sceptical about the efficiency of centralised procurement. The Government should consider conducting an in-depth analysis of the performance of centralised purchasing to better understand its impact on competition in public procurement and promote it to different contracting authorities. The use of a dynamic purchasing system should also be encouraged to increase participation of SMEs.

### ***Building the capacity of key procurement stakeholders and professionalising the procurement function***

- Slovenia has made several efforts to offer training to contracting authorities through the creation of the Public Procurement Academy. The Government should pursue its capacity-building efforts, targeting several stakeholders by:
  - Improving the capacities of contracting authorities to ensure that they are preparing, planning and conducting their procurement procedures in a way that makes procurement opportunities more attractive for the business sector (e.g. strategic planning for seasonal trends, making preparation and publication of procurement plans mandatory, making the most of the ESPD, favouring best price-quality ratio as an evaluation method, extending bid preparation timeframes, using lots, and applying better contract management practices.).
  - Strengthening the role of the Public Procurement Academy by including a mandatory certification scheme to increase the recognition of the procurement profession. The academy should provide training and practical tools on key topics such as market engagement, the use of quality criteria, collaborative approaches, and preventing collusion and corruption.

- Improving the capacities of economic operators by engaging professional associations in supporting less experienced firms, facilitating joint ventures and subcontracting, and pursuing current initiatives to boost SME engagement. The Government of Slovenia should also strengthen engagement and consultations with the private sector during reform processes affecting the public procurement system and inform them regarding legal changes in the system to ensure legal certainty.
- Asking the Competition Protection Agency to regularly provide data on mergers and acquisitions to help contracting authorities with market analysis, and provide training on competition practices.

# **1 Increasing efficiency in public procurement systems: Why competition matters**

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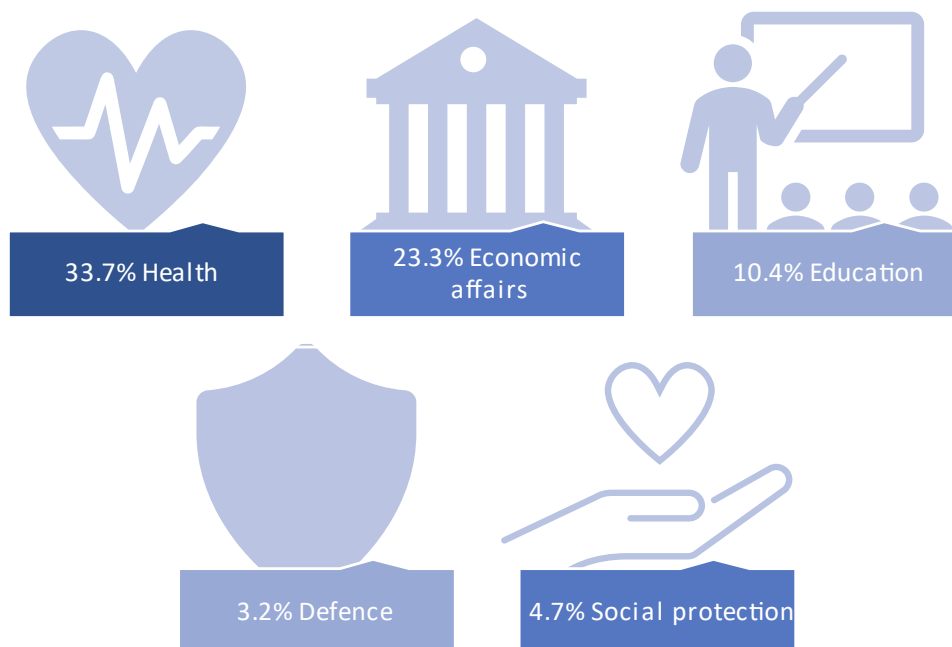
This chapter presents the latest evidence on the critical role of competition in public procurement systems. Competition is widely recognized as a powerful mechanism for achieving value for money in public spending. Research consistently demonstrates that competitive procurement procedures can lead to significantly lower costs. However, many countries face persistent challenges that undermine competition, including a high rate of use of non-competitive procedures and a prevalence of single-bid procedures. Understanding the underlying causes of these issues is crucial for identifying opportunities to strengthen procurement systems and maximize their effectiveness.

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Public procurement is a key pillar of strategic governance and plays a pivotal role in the efficient allocation of resources, driving economic growth, and delivering public services to citizens. The main goal of public procurement is to purchase goods, works, and services to ensure the best public service-delivery to citizens. To achieve this goal, public buyers shall ensure value for money when conducting procurement processes, either by selecting the lowest-priced offer or by considering price and non-price factors such as quality or environmental considerations.

Public procurement has therefore the potential to greatly influence the markets, as it accounts for a large share of public expenditure, approximately 12.9% of GDP and 27.8% of government expenditure in OECD member countries in 2021. This is even more true in Slovenia, with 13.7% of GDP and 27.6% of government expenditure. (OECD, 2023<sup>[1]</sup>) Public procurement impacts many areas of public service delivery in OECD countries, and is key in many sectors (see Figure 1.1).

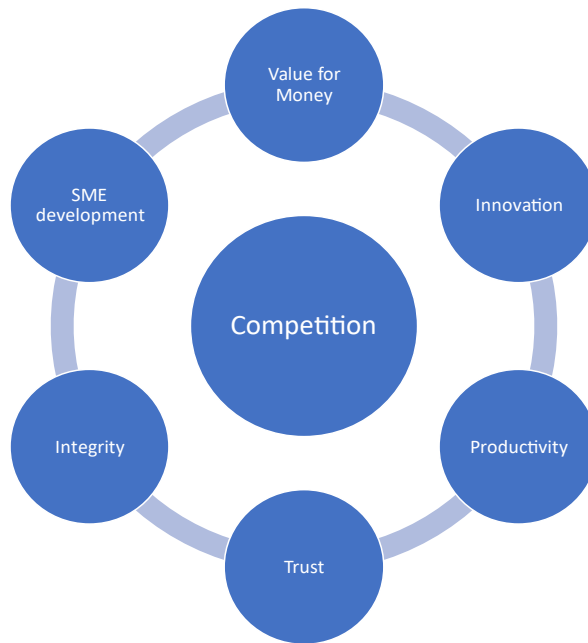
**Figure 1.1. Share of procurement spending in Slovenia**



Source: (OECD, 2023<sup>[1]</sup>)

Given the importance of procurement spending, as a main rule to ensure value for money, public buyers rely on competitive bidding processes, with the goal of ensuring optimal participation from the private sector. Competition creates a market environment that fosters innovation and diffusion of new technologies and makes businesses more productive and competitive both domestically and when competing overseas. Competition brings many benefits to the procurement system, including trust from both the economic operators and the civil society (see Figure 1.2). (OECD, 2019<sup>[2]</sup>)

Figure 1.2. Benefits of competition



Source: (OECD, 2019<sup>[2]</sup>)

The level of competition is usually guaranteed by the degree of access to public procurement opportunities. As such, one of the principles in the Recommendation of the OECD Council on Public Procurement is the principle of access, which highlights the importance of a sound competition in public procurement and encourages Adherents to the Recommendation to encourage intense competition in public procurement (see Box 1.1).



### Box 1.1. OECD's Recommendation on Public Procurement – Principle of Access

The OECD Recommendation on Public Procurement recommends that Adherents facilitate access to procurement opportunities for potential competitors of all sizes. To this end, Adherents should:

- i) Have in place coherent and stable institutional, legal and regulatory frameworks, which are essential to increase participation in doing business with the public sector and are key starting points to assure sustainable and efficient public procurement systems. These frameworks should be as clear and simple as possible, avoid including requirements which duplicate or conflict with other legislation or regulation, and treat bidders, including foreign suppliers, in a fair, transparent, and equitable manner.
- ii) Deliver clear and integrated tender documentation, standardised where possible and proportionate to the need, to ensure that: 1) specific tender opportunities are designed so as to encourage broad participation from potential competitors, including new entrants and small and medium enterprises and 2) the extent and complexity of information required in tender documentation and the time allotted for suppliers to respond is proportionate to the size and complexity of the procurement, taking into account any exigent circumstances such as emergency procurement.
- iii) Use competitive tendering and limit the use of exceptions and single-source procurement.

Source: (OECD, 2015<sup>[3]</sup>)

However, non-competitive procedures and distortions to competition are still recurring issues in many OECD countries' public procurement systems. The use of non-competitive procedures (usually without prior publication, or general visibility) should normally be used only exceptionally and only in duly justified cases as they undermine the efficiency of public procurement, but the rate of their use is still quite high in some countries. (OECD, 2015<sup>[3]</sup>) Recent data show some improvement on the use of less transparent procedures in Slovenia. As per the European Single Market Scoreboard, Slovenia was amongst the countries with the highest shares of negotiated procedures without prior publication, but managed to decrease to 11% in 2022, from 19% in 2021 and 26% in 2020. (European Commission, 2023<sup>[4]</sup>)

Other risks that hinder competition include complex public procurement rules and the use of non-standardised bidding documents, which impede broad participation from potential competitors, including new entrants and SMEs, as well as obstacles such as regulatory burden, financial constraints, lack of technical expertise, collusive practices and request for bribes, faced by the private sector for participating in public procurement processes. (OECD, 2015<sup>[3]</sup>)

In addition to non-competitive procedures, a low number of bids in open competitive procedures is also a major concern in Slovenia. Indeed, low prices and/or better products are desirable for public buyers because they usually result in resources either being saved or freed up for use on other goods and services. As such, single bidding, where only one bidder submits a bid in a procurement process, tends to lower value for money by increasing prices, for example by 9.6% in a 2009-2014 EU-wide dataset of contracts (Fazekas, 2022<sup>[5]</sup>).

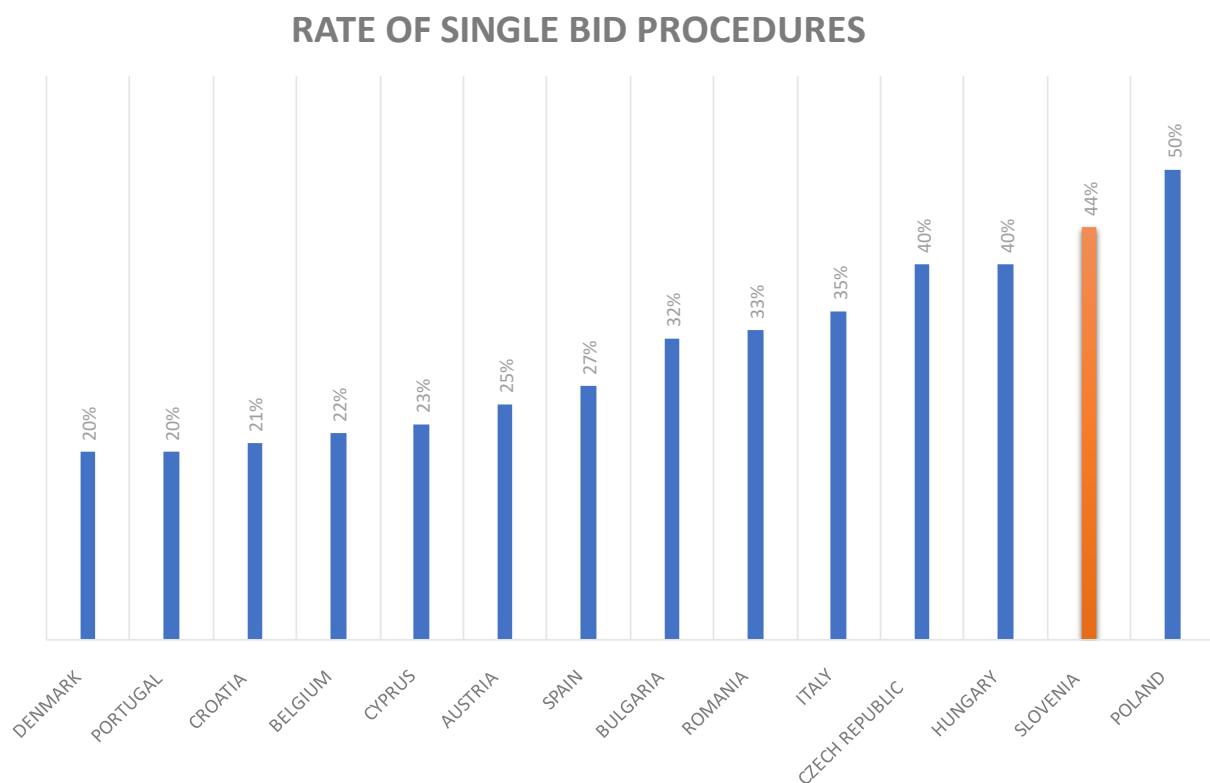
The resurgence of single-bid procedures is also an endemic issue in several European Union (EU) countries. As such, the European Court of Auditors has assessed the level of competition for public procurements in the EU's single market over the period of 10 years up to 2021 and found that the level of competition has decreased significantly, with a lack of awareness that competition is a prerequisite for value for money. The report also highlighted that EU member states have not made systematic use of data available to identify the root causes of limited competition and took only scattered actions to reduce

obstacles to competition in public procurement. The report describes an increasing trend in market concentration across all industrial and services sectors over the period examined, coinciding with similar global trends according to OECD. A specific recommendation from the report is to deepen the analysis concerning root causes behind low competition and to put forward measures to overcome key obstacles to competition and promote best practice. (European Court of Auditors, 2023<sup>[6]</sup>).

On the other hand, OECD countries started to pay attention to the issue of competition and single-bidding in public procurement. For instance, the National Audit Office of the United Kingdom recently issued a report on lessons learned regarding competition in public procurement, which emphasizes the importance of healthy competition in public procurement and provides several recommendations to public buyers to enhance it. (National Audit Office of the UK, 2023<sup>[7]</sup>) The OECD is also assisting some of its member countries, such as Hungary, in identifying the root causes of low competition in public procurement.

Slovenia is among the EU countries with the highest rate of single-bid procedures according to the European Union's Single Market Scoreboard, with 44% in 2021, but this issue is common among most EU countries (see Figure 1.3). The rate is calculated based on the notices published on the European Union's Tenders Electronic Daily portal.

**Figure 1.3. Rate of single-bid procedures among selected European Countries**



Source: (European Commission, 2021<sup>[8]</sup>)

In the EU Council Recommendation on Slovenia's 2019 National Programme, the Council stated that there are weaknesses regarding competition and transparency in public procurement in Slovenia, as indicated notably by the high ratio of contracts arranged through negotiated procedures. The Council also noted weak safeguards against collusion and corruption, especially in local procurement processes. As such the Council recommended for Slovenia to take action to improve competition, professionalisation and

independent oversight in public procurement. (Council of the European Union, 2019<sup>[9]</sup>) To address these systemic issues in the public procurement system, the Government of Slovenia has made several commitments in its Recovery and Resilience Plan (RRP), adopted by the Council of the European Union on May 31<sup>st</sup>, 2022 (see Box 1.2). (Council of the European Union, 2022<sup>[10]</sup>)

### Box 1.2. Recovery and Resilience Plan (RRP) of Slovenia: Commitments to improve the procurement system

The RRP contains several measures in “Reform Component C: Creating systemic conditions for investment growth” that aim to increase public and private investment by simplifying procedures in the area of construction and spatial planning and by reforming the public procurement system. Six of these measures are closely related to improvements in the public procurement system in Slovenia:

**Table 1.1. List of Measures in the RRP of Slovenia**

Measure No.	Description
174	Entry into force of the amendment to the Public Procurement Act, which should simplification of procedures to enable supplementation and clarification of bids when selecting tenderers, and elimination of abnormally low tenders;
175	Decrease the proportion of negotiated procedures without prior publication in all transparently published procedures to 14 % as measured by the Single Market Scoreboard;
176	Completed technical assistance to support the implementation of public procurement reforms;
177	Completed independent analysis of the impact of public procurement reforms and formulation of measures and targets to improve the system;
178	Alignment of Slovenia’s public procurement databases with the European Commission’s database and transmission of the data necessary for the full publication of public procurement indicators in the Single Market Scoreboard;
179	Public Procurement Academy is operational

Source: (Council of the European Union, 2022<sup>[10]</sup>)

Among the measures envisaged by the RRP is the decrease of negotiated procedures without prior publication to 14% of the total number of procedures. Slovenia already fulfilled this measure in 2022 with a decrease to 11%, however single-bidding remains among the highest in EU member countries. As such, this Report aims at analysing the root causes behind the low competition and prevalence of the high level of single-bid procedures in Slovenia, the sectors that are most affected, and it provides key recommendations to tackle this issue. In addition, the Report is assessing the potential impact of recent public procurement reforms on competition, as foreseen in measure 177 of the RRP.

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# 2 The state of play of competition in Slovenia

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This Chapter provides an overview of the state of competition in the Slovenian public procurement market. The Chapter first describes the methodology used to measure competition, then it presents the results of the analysis based on different variables (general overview, state of competition in various sectors, regions etc.).

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## Methodology used to measure competition

To explore competition in the Slovenian public procurement system, this Report follows a methodology that i) measures different aspects of competition in public procurement based on publicly available administrative data, and ii) enumerates the key factors which are likely to impact competition directly or indirectly.

Regarding competition, the Report considers five indicators: (1) single bidding, (2) number of bidders, (3) market entrants, (4) market concentration, and (5) non-local suppliers. Beyond competition, the analytical framework includes further indicators which are likely to impact competition directly or indirectly. These additional indicators describe the economic fundamentals for competition, the characteristics of organisational capacity, tender and contract design and last but not least transparency. These factors will be analysed in depth in Chapters 3. and 4.

Table 2.1 presents the variables and indicators used in the analytical framework, however, to ensure the readability of this Chapter, Annex A, B and C include the more detailed description of the methodology, such as the details of data collection, processing, and data quality or the precise definitions and descriptive statistics of variables used in the analysis.

**Table 2.1. Overview of variables and indicators**

Category	Indicator name	Indicator class	Indicator description
<b>Competition</b>	Single bidding	binary	If the lot/contract receives one bid, the indicator takes the value 1, if it receives more than 1 bids, it is 0
	Number of bidders	continuous	Count of bidders that submit a bid in a bidding process. The indicator is trimmed to remove extreme outliers, several times more than the median number of bidders for a given market.
	Market entrants	binary	This indicator takes the value of 0, when a supplier was awarded a contract in the previous year and 1 if it wasn't (i.e. when it is the first time it wins a government contract in the period)
	Market concentration	numeric	The share of supplier in total annual winner contract value (lower deciles less concentrated markets), by winner-year-supplier. <sup>1</sup>
	Non-local supplier	binary	This indicator takes the value of 1 if the buyer's settlement is different from the supplier's settlement, otherwise it is 0
<b>Economic fundamentals</b>	Year	categorical	Year when the call for tenders took place
	Month	categorical	Month when the call for tenders was published
	Sector	categorical	2- or 3-digit CPV codes <sup>2</sup> that represent the different product markets of the purchased products.
	Region	categorical	Region of the buyer as defined by the NUTS2 classification <sup>3</sup>
	Market size	numerical	Total contract value in each market for the whole period. Market size is calculated at 2- and 3-digit CPV by summing the total value of all contracts within the market.
	Number of potential suppliers on the market	numerical	How many distinct suppliers have won a contract in the market
<b>Organisational capacity</b>	Buyer type	categorical	Buyer type following procurement classification such as central government/local/regional authority, etc.

	Buyer's average decision period length per bid	numerical	Average number of days between bid submission deadline and contract award date (by year and buyer per item)
	Award criteria	categorical	Which criteria are used for awarding contracts: price only or MEAT
<b>Tender and contract design</b>	Procedure type	categorical	Tender procedure type, following a standard and simplified set of categories (the existing total of 167 procedure types were classified into 6 generic categories)
	Tender description	numerical	Length of tender description measured in the number of characters
	Contract size	numerical	Total award value of the contract
	Number of lots	numerical	Number of lots of the tender
	Ex-post modification of contracts	binary	Whether any corrections or modifications were made to the awarded contract after contract award (modification='1,' no modification =0)
<b>Transparency</b>	Call for tender publications	binary	Tender launched with call for tenders (yes='1,' no=0)
	Length of advertisement period	numerical	Average number of days between publication of call for tenders and bid submission deadline

Source: Authors' own work

Determinants of competition, more precisely single bidding, encompass a range of factors which are not readily modifiable through policy intervention, as well as a wide range of factors which can be influenced through policy action on the short to mid-term range. Considering such a wide variety of determinants for single bidding and in general for competition allows the Report to identify the most powerful levers comprehensively and precisely for improving competition in public procurement in Slovenia.

The empirical analysis draws on data from publicly available official government sources, such as the e-Procurement system (<https://www.enarocanje.si>) as well as data made available by the Slovenian authorities. The data was combined between the various sources in order to identify and include in the analysis framework agreements and centralised procurement tenders. The analysis draws on data for 96,559 public procurement contracts representing approximately EUR 19.5 billion for the period 2017-2022 (see Table 2.2). Public procurement officials record the data into a variety of standard procurement forms. The data collection methodology compiles such information from different structures and standardise them into a harmonized structure. The collected data is further processed to remove likely erroneous records and values (e.g., currencies which no longer exist).

**Table 2.2. Annual number of contracts in the dataset**

Year	Number of contracts
2017	13576
2018	17008
2019	16617
2020	17095
2021	15944
2022	16319

Source: e-Narocanje and e-JN systems

The data processing pipeline considers modifications and cancellations occurring during the tendering process to identify the final correct record of each tender and contract. Unfortunately, due to source data errors, some records must be excluded from the analysis as they lack information on key variables, such as number of bidders. In addition to automated checks of data quality, manual checks on a sample of the dataset were also performed in order to ensure that the dataset as closely as possible replicates the source publications (i.e., comparing sample records in the dataset with the corresponding official publications). More details on data processing and data quality can be found in Annex A.

To identify the determinants of single bidding in Slovenia, fixed effects binary logistic regression models were estimated for the full dataset on the contract level (following the data quality and sample selection procedures described above). As such, each policy-relevant impact identified should be interpreted taking into account differences by year, sector and region. This means that the estimated effects of changes in procurement practices are not biased by differences across these major dimensions. Such comprehensive modelling means that the most complete models can accurately predict over 81% of single bidding outcomes (that is 0s and 1s combined) across the whole public procurement market of Slovenia.

## The level of competition in public procurement in Slovenia

This section presents the state of play of competition in public procurement in Slovenia along a number of related dimensions, based on the methodology presented in Section 2.1. More precisely, the section conceptually describes and provides an overview of the trends of competition in public procurement, with special focus on trends of single bidding, which is the main dependent variable of the analytical framework, as well as further indicators that aim to capture competition or lack thereof, such as the number of bidders, share of non-local bidders, market concentration, and market entry throughout the period of analysis, between 2017 and 2022.

The descriptive analysis in this Section includes not only country-wide results but also a deep dive into 7 sectors with varying spending value and varying single bidding share:

- IT services
- Laboratory, optical and precision equipment
- Repair and maintenance services
- Transport equipment
- Medical equipment, pharmaceuticals, and personal care products
- Business services
- Architectural, construction, engineering, and inspection services

### 2.1.1. Competition trends over time

Considering the potentially wide range of activities needed to be undertaken by central governments and local authorities to ensure continuity of public service delivery, governments' spending on public procurement in OECD countries amounts to 4.5-20.9% of GDP (OECD, 2023<sup>[1]</sup>) Slovenia's 13.7% of GDP ranks slightly higher than the OECD's average (12.9%), and slightly below OECD-EU's average (14.8%). Considering such figures, the primary aim of the public procurement process is to ensure the promotion of the best value for money, and subsequently promote open and fair competition. To ensure that this blueprint is followed, public agencies have to secure and provide competitive bidding processes within the relevant markets. Therefore, public procurement process should be designed to encourage open competition by promoting higher participation of potential bidders. (Spagnolo, 2012<sup>[2]</sup>)



Between 2017 and 2022, Slovenia's share of single bidding varied between 36.1% (2019) and 43.5% (in 2022). After a period of downward trend between 2017 (41.4%) and 2021 (36.4%), in 2022 a more substantial increase can be observed in the share of single bids, reaching 43.5%. (Table 2.3).

**Table 2.3. Average single bidding per year (Slovenia 2017-2022)**

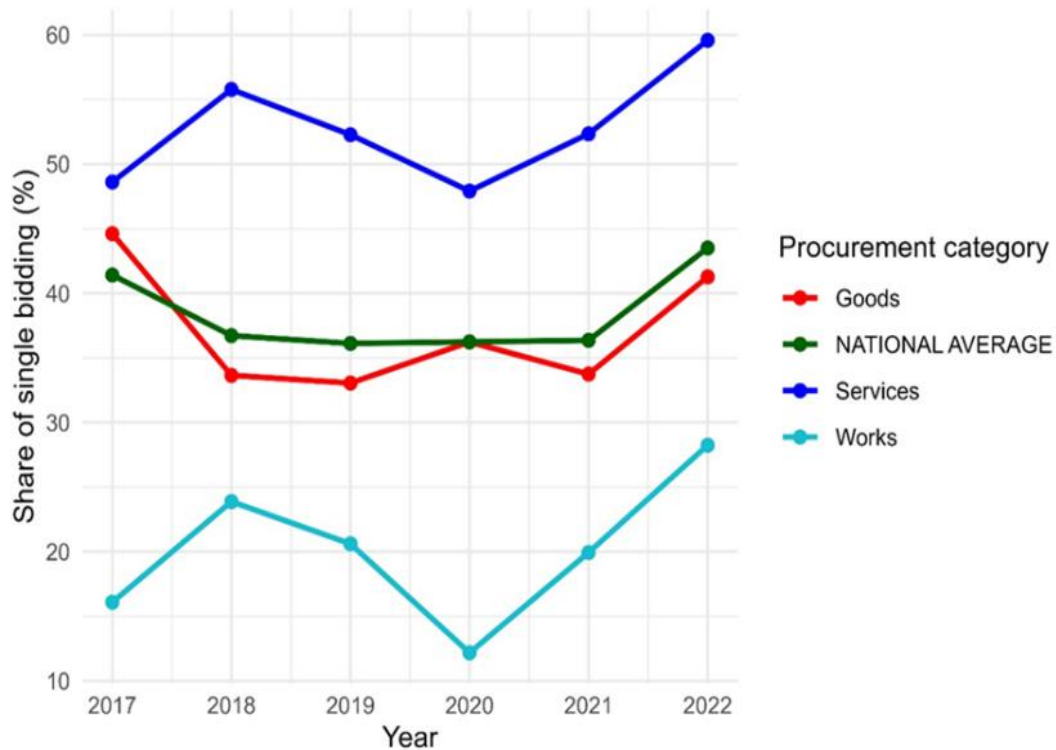
Year	Average (single bids)
2017	41.4%
2018	36.7%
2019	36.1%
2020	36.2%
2021	36.4%
2022	43.5%

Source: e-Narocanje and e-JN systems

### **2.1.2. Single bidding**

Two trends can be detected across the different procurement categories. Services and works follow similar pathways, although from different starting points. After an initial increase between 2017 and 2018, a steady decline until 2020 can be noticed (Figure 2.1). Nevertheless, since 2020, there is a continuous increase until the end point of the analysis, 2022. Services share of single bidding varies between 48.6% in 2017 and 59.7% in 2022. Works has a much lower starting point of 16.1% in 2017, and further declining to 12.2% in 2020. However, since 2020, an upward trend can be noticed and the share of single bidding for works reaches 28.2%. Unlike works and services, goods' trajectory follows a different pathway. Between 2017 and 2018 there is a sharp decline in the share of single bidding, from 44.6% to 33.6%. This decline is followed by a second period, 2018-2021, when there is not much change, and the share of single bidding fluctuates between 33.1% and 33.7%. In spite of this trend, in the last year of the analysis, and similar to the other two procurement categories, a sharper increase in the share of single bidding is detected, to 41.2%.

Figure 2.1. Share of single bidding (%), Slovenia 2017 – 2022

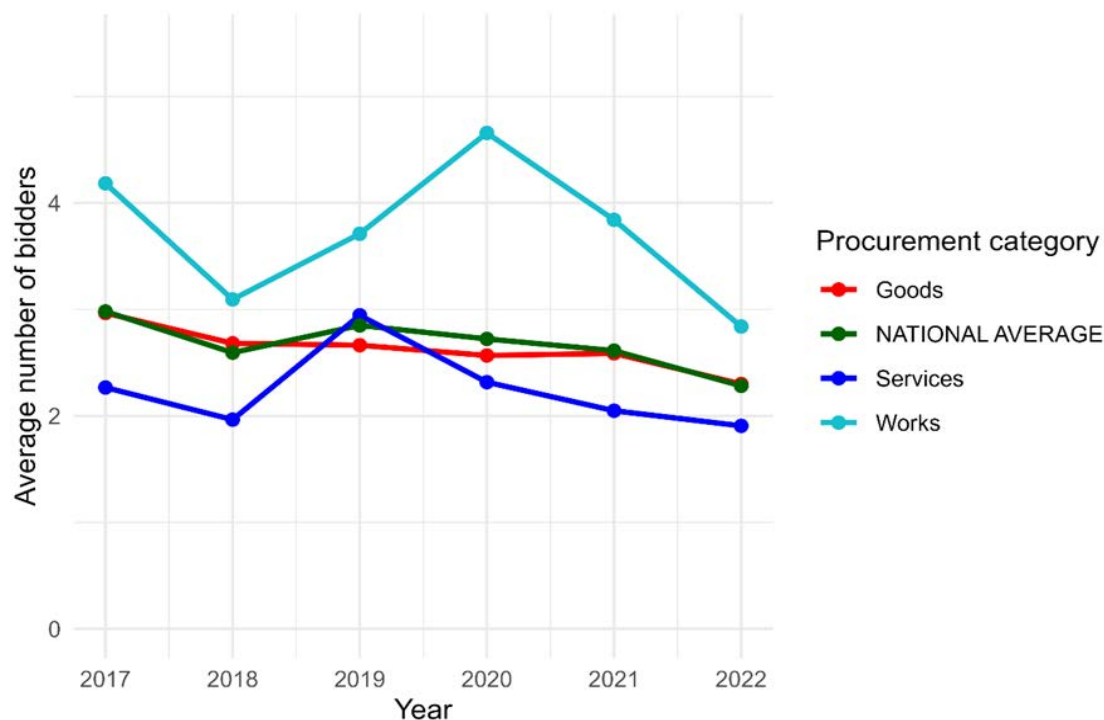


Source: e-Narocanje and e-JN systems

### 2.1.3. Number of bidders

Regarding the average number of bidders, and contrarily to the share of single bidding, all three procurement categories are much closer to each other, or at least converge to in the latter years of the analysis (see Figure 2.2). At national level, i.e., for all three categories together, the average number of bidders decreases from almost 3 bids on average in 2017 to 2.3 bids on average in 2022. Goods follow a similar trend to the national average, declining from almost 3 bids on average in 2017 to 2.3 bids on average in 2022. There are minor variations between 2019-2021, when the goods category was marginally lower than the national average. Works receives the highest number of bids on average, although it is downward trend in the last few years. After an initial decline between 2017 and 2018 from 4.2 average number of bidders to 3.1, in the next two years a sharper rise is detected reaching almost 4.7 bidders on average in 2020. Nevertheless, this encouraging trend slowly dissipates in the period between 2020-2022, when the decline is sharper than the previous rise, and the category finishes the analysis with 2.8 bidders on average. Services, similar to works, have periods of ups and downs. An initial fall between 2017 and 2018, is followed by an increase spiking at almost 3 bidders on average in 2019. Nevertheless, since 2019 there is a constant deterioration in competition extending to 1.9 bidders on average for 2022.

Figure 2.2. Average number of bidders, Slovenia 2017-2022



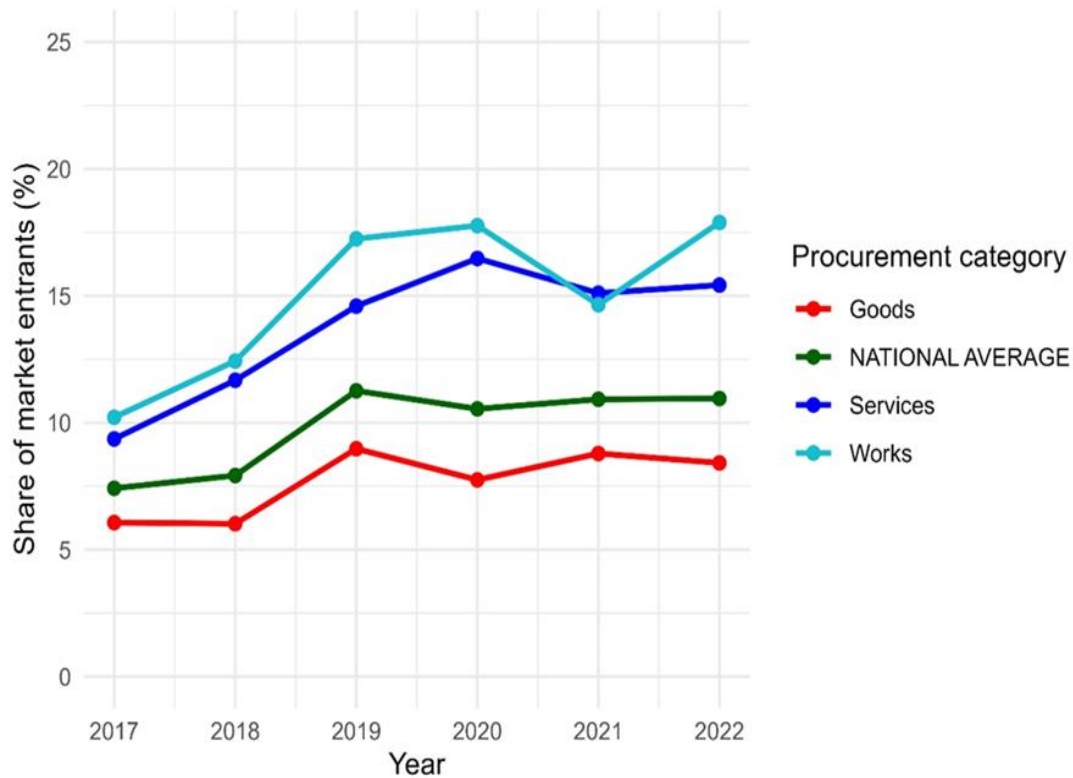
Source: e-Narocanje and e-JN systems

#### 2.1.4. Market entry

Market entry is defined as the average share of new companies that have not been awarded a contract in the preceding year, i.e., if a given supplier was not awarded a contract in the previous year in the same market, its score will be 1, otherwise, the score is 0. Lack of competition, transparency, and restrictive bidding requirements present obstacles for new companies to enter the market (Coviello and Gagliarducci, 2017<sup>[3]</sup>), (Duguay, Rauter and Samuels, 2023<sup>[4]</sup>), (Fazekas, 2022<sup>[5]</sup>). Between the start and end points of our analysis, an upward trend in the share of market entrants is detected, from 7.4% to 11% (see Figure 2.3).

However, this period is split into two pathways. In an initial path between 2017 and 2019, a growth of market entrants can be observed, reaching 11.3% in 2019. Nevertheless, this trend steadies at approximately 11% between 2019 and 2022. The three different procurement categories also experience similar developments, with some minor adjustments. For instance, the share of market entrants within works is on the rise until 2020, reaching 17.8%, before dipping to 14.6% in 2021, and again recovering to 17.9% in 2022. Goods follow the same development line as the national average, increase of market entrants until 2019, reaching almost 9%, before steadying at 8.6%. Services experience a more linear growth between 2017 and 2020, that is followed by a major drop and then consolidation at slightly above 15%.

Figure 2.3. Share of market entrants (%), Slovenia 2017-2022

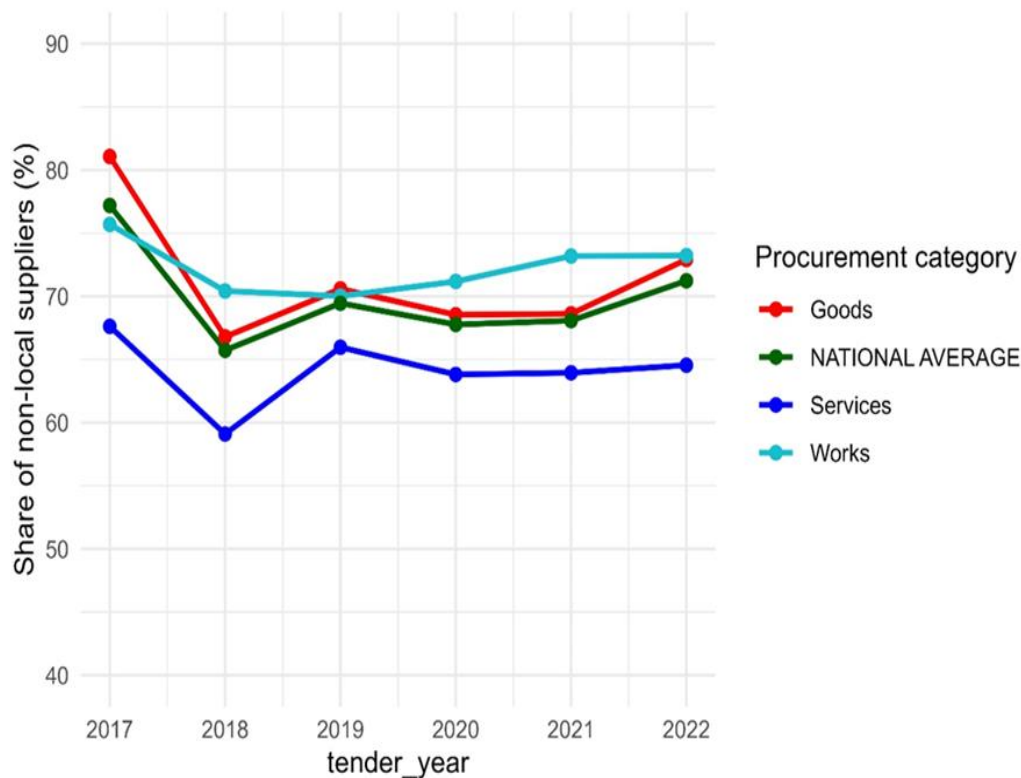


Source: e-Narocanje and e-JN systems

### 2.1.5. Non-local suppliers

The variable for non-local suppliers is defined as a binary variable that denotes whether the buyer and supplier are from the same settlement. (Lewis-Faupel, Neggers and Olken, 2016<sup>[6]</sup>) There is consistently high share of non-local bidders across all procurement categories. Compared to the start and end point of the analysis, there is a minor decline in the share, from 77.2% to 71.2% (see Figure 2.4). However, the decline mainly takes place between 2017 and 2018. The trend for goods closely shadows the national average, starting from 81% in 2017 and then dropping to 66.7%. The drop is followed by a period of consolidation around 68% that happens between 2018 and 2021. In 2022, a minor increase in the share of non-local suppliers can be observed again. In 2022, the category of works has the highest share of non-local suppliers across the three procurement categories, 73.2%. The services category remains the category with the lowest share of non-local suppliers, ranging from 67.6% in 2017 before a dip in the share to 59%. Since 2018 a stabilisation of the share can be observed at around 64.5%.

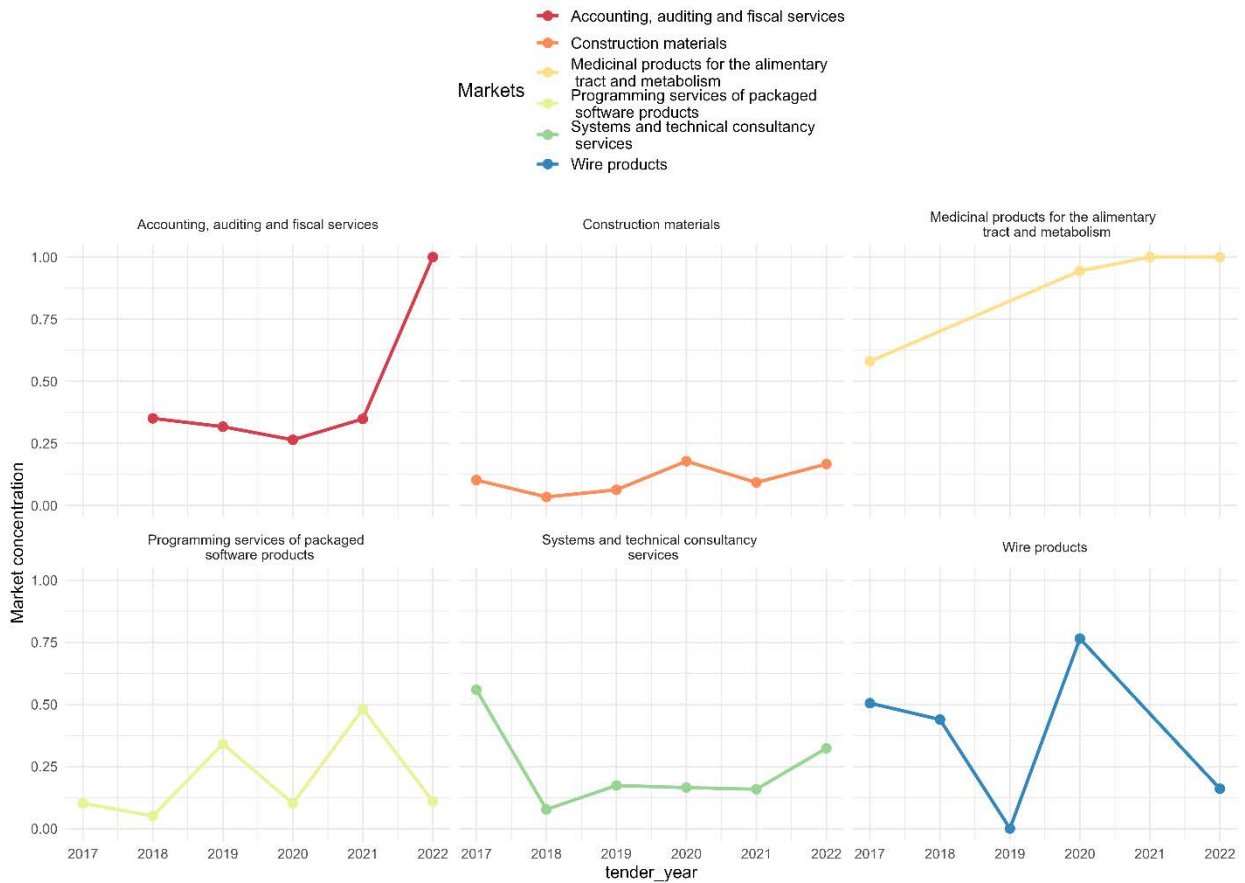
Figure 2.4. Share of non-local suppliers (%), Slovenia 2017-2022



Source: Source: e-Narocanje and e-JN systems

**Market concentration** denotes the annual winner's market share, i.e., the share of the supplier total market value per year. When the market is less concentrated and there is a greater number of suppliers that received a share from the buyer, lower averages of single bidding can be observed. (Cingolani and Fazekas, 2017<sup>[7]</sup>) In essence, market concentration aims to capture the size of suppliers relative to the size of the market/sector. Higher market concentration indicates lower competition. Figure 2.5 shows the market concentration trends for six selected sub-markets from the sectoral analysis. Construction materials and programming services of packaged software products note low to medium market concentration that varies from year to year. Accounting, auditing and fiscal services have medium to high concentration over the entire period of analysis. During the first several years a medium concentration can be observed around the 0.4 mark, that increases substantially in the last period of analysis. Conversely, systems and technical consultancy services develop from medium concentration in the first year of analysis, 2017, to low market concentration for the period 2018-2021, and then again, a medium concentration in 2022. Medicinal products for alimentary tract and metabolism develop a more linear trend over the period of analysis. In 2016, there is a medium market concentration that increases linearly until 2022.

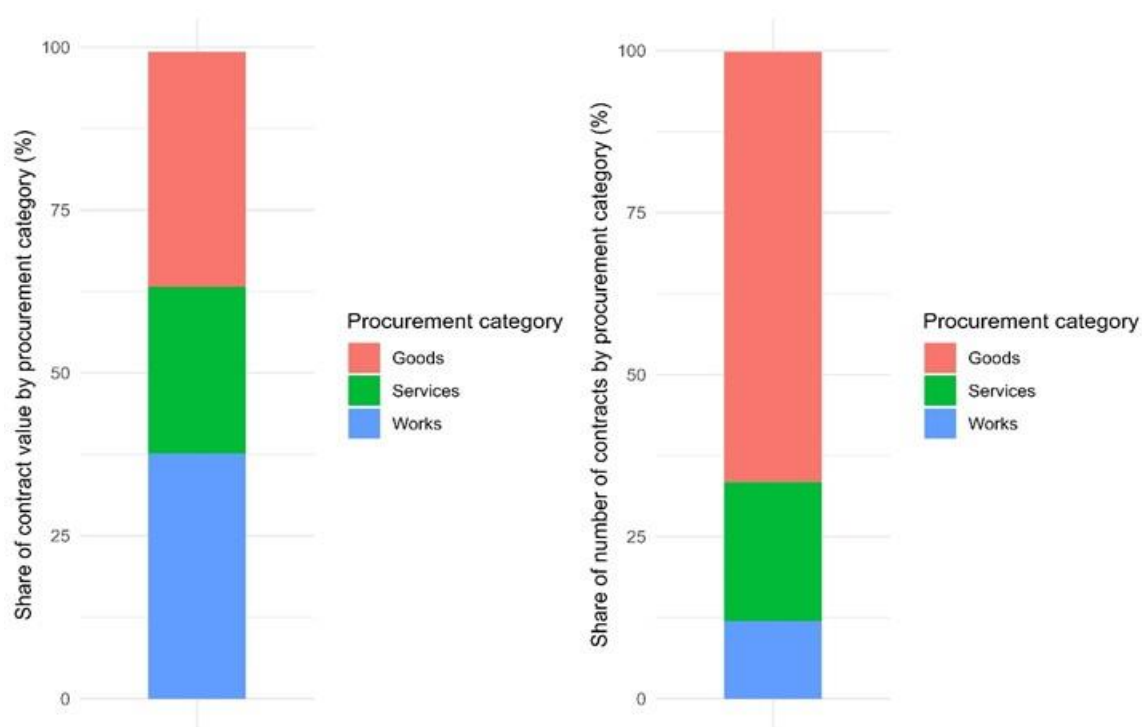
Figure 2.5. Market concentration – selected sectors (CPV-4), Slovenia 2017-2022



Source: e-Narocanje and e-JN systems >

Figure 2.6 shows the share of each procurement category (goods, services, works) in terms of total number of contracts and total value of contracts. Although the bulk of the contracts are in the goods category (right figure), the total value share of goods is the lowest (left figure). Works represent 12% of the total number of contracts, however, their total value share is 37%. The share of services contracts and values is approximately equal, with 21.5% of all contracts equalling 25.6% of the total value. As such, the figures for the goods category are the opposite of those for works category, as 66.4% of all contracts are awarded within this category, nevertheless, it only accounts for 36.1% of the total value share.

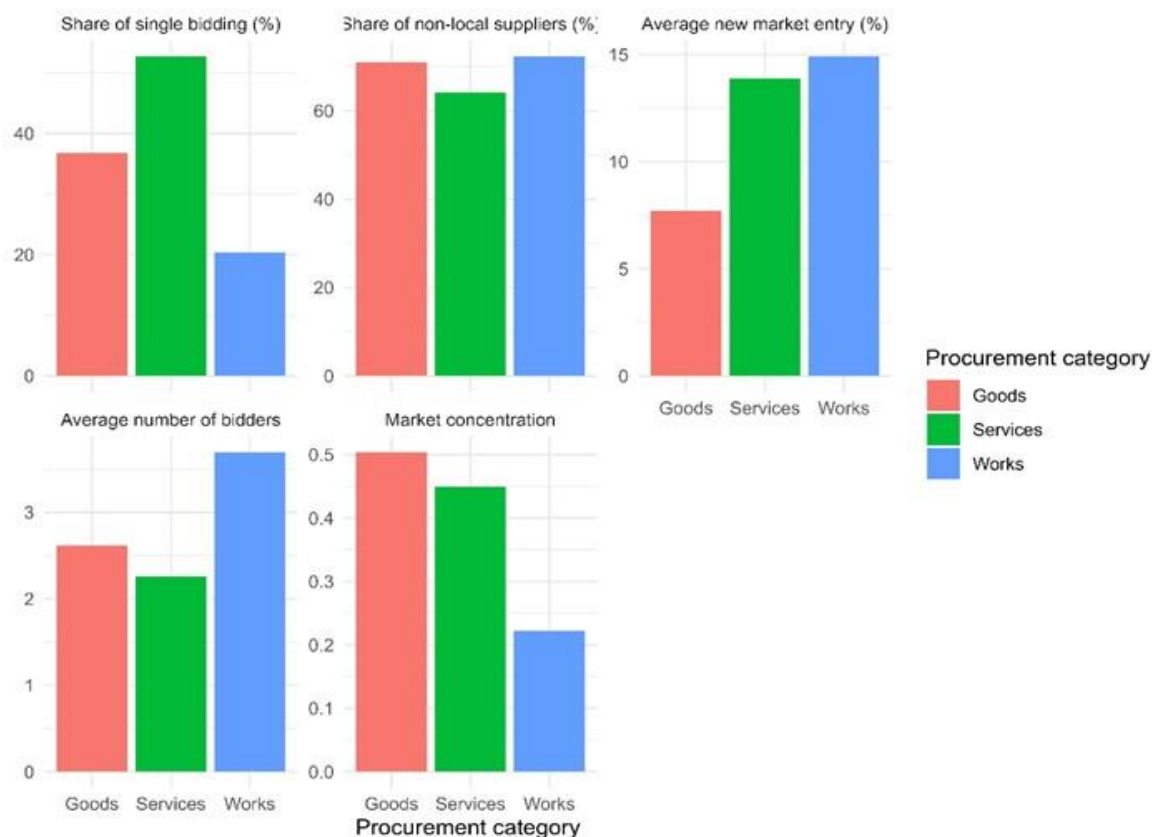
Figure 2.6. Procurement categories (goods, services, works) of awarded contracts (counts and values), Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

Across the three procurement categories, the works category has the lowest share of single bidding and the lowest market concentration as well as the highest average number of bidders. The procurement category also performs well in terms of the market entrants. Services, on the other hand, have the highest share of single bidding, more than 50%, and the lowest average number of bidders per tender, slightly above 2 bidders per tender on average. Concerning the average number of bidders and share of single bidding, the goods category, is somewhere between the other two. Its share of single bidding is slightly below 40%, while the average number of bidders is marginally above 2.5 bidders. However, the goods category is the most concentrated category and has the lowest share of market entrants. Regarding, the share of non-local suppliers, the three categories perform similarly, between 64% and 70% of all tenders being awarded to non-local suppliers (see Figure 2.7).

**Figure 2.7. Average share of single bidding by procurement category (goods, services, works), Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

### 2.1.6. Top Buyers

Table 2.4 below shows the top 15 buyers by number of contracts sorted by single bidding share with at least 100 contracts.

**Table 2.4. Top 15 buyers by number of contracts sorted by single bidding share, Slovenia 2017-2022**

Buyer	Number of contracts	Total value	Single bidding share
Pošta Slovenije	903	175795711.7	0.72
Splošna bolnišnica Izola	799	80636969.52	0.64
Onkološki inštitut Ljubljana	882	313861812.8	0.52
Zavod za gozdove Slovenije	704	17927192	0.51
Ministrstvo za notranje zadeve	1738	285645203.3	0.50
Splošna bolnišnica Celje	1333	134608891.1	0.49
Družba za avtoceste v Republiki Sloveniji	1113	1005667572	0.48
Univerzitetni klinični center Maribor	1186	558775729.9	0.45
Zdravstveni dom Ljubljana	693	71444602.68	0.43
Univerzitetni klinični center Ljubljana	4482	544410170.6	0.42



Ministrstvo za obrambo Republike Slovenije	1976	549860868	0.41
Splošna bolnišnica Murska Sobota	862	93756262.89	0.40
Sklad kmetijskih zemljišč in gozdov Republike Slovenije	1303	11516148.34	0.40
Ministrstvo za javno upravo	762	533678823	0.30
Ministrstvo za infrastrukturo, Direkcija Republike Slovenije za infrastrukturo	2045	2329414315	0.24

Source: e-Narocanje and e-JN systems

Table 2.5 below shows the top 15 buyers by total value with at least 100 contracts sorted by single bidding share.

**Table 2.5. Top 15 buyers by value sorted by single bidding share, Slovenia 2017-2022**

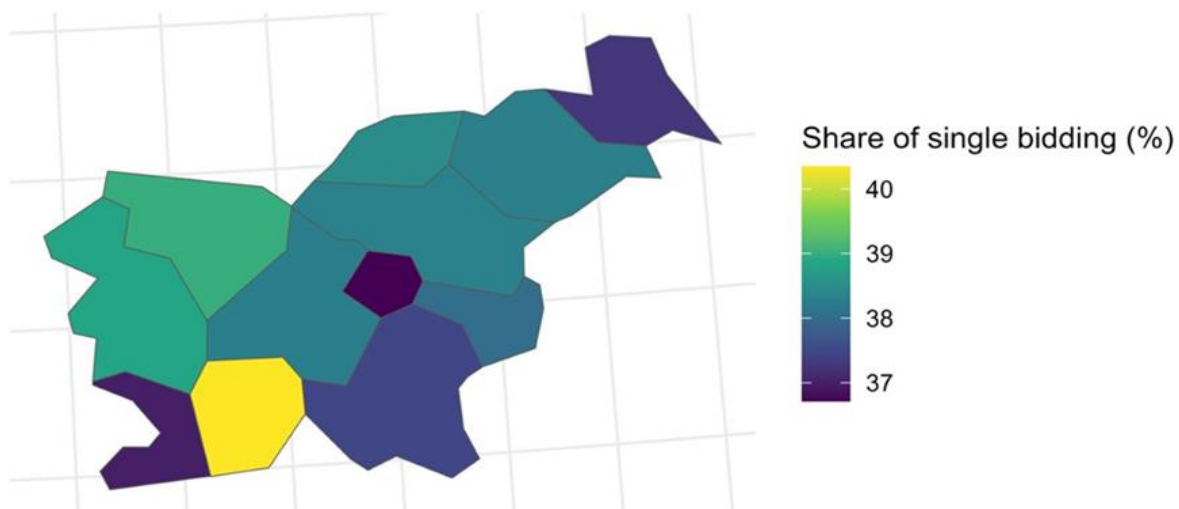
Buyer	Number of contracts	Total value	Single bidding share
Termoelektrarna Šoštanj	265	294654173.5	0.65
Slovenske železnice - infrastruktura, družba za upravljanje in vzdrževanje železniške infrastrukture ter vodenje železniškega prometa,	234	204254151.7	0.53
Onkološki inštitut Ljubljana	882	313861812.8	0.52
Ministrstvo za notranje zadeve	1738	285645203.3	0.50
Družba za avtoceste v Republiki Sloveniji	1113	1005667572	0.48
Eles, , sistemski operater prenosnega elektroenergetskega omrežja	350	440440883	0.47
Univerzitetni klinični center Maribor	1186	558775729.9	0.45
Univerzitetni klinični center Ljubljana	4482	544410170.6	0.42
Ministrstvo za obrambo Republike Slovenije	1976	549860868	0.41
Luka Koper, pristaniški in logistčni sistem, delniška družba	393	388897766.5	0.40
Javno podjetje Energetika Ljubljana	600	279176044.4	0.39
Mestna občina Ljubljana	614	464052620.2	0.37
Ministrstvo za javno upravo	762	533678823	0.30
Ministrstvo za infrastrukturo, Direkcija republike slovenije za infrastrukturo	2045	2329414315	0.24
Koroškalekarna	292	244150201.6	0.00

Source: e-Narocanje and e-JN systems

### **2.1.7. Competition differences across regions**

This Section looks at two particular trends across regions in Slovenia. Regions are defined according to the NUTS-3 level classification of buyer locations. Figure 2.8 shows the share of single bidding across all 12 NUTS-3 regions in Slovenia. The numbers are quite high for all regions in Slovenia, with a share of single bidding of at least 36.7% in Central Sava region, and highest share in Littoral-Inner Carniola. This should also be considered in conjunction with the total number of contracts awarded within the different regions, ranging from 3,334 contracts in Central Sava region to more than 12,000 contracts in Central Slovenia and Drava statistical regions. This picture can be further sophisticated by investigating how the situation looks like when the tendering procedure receives more than one bid, i.e., what is the average number of bidders across the regions.

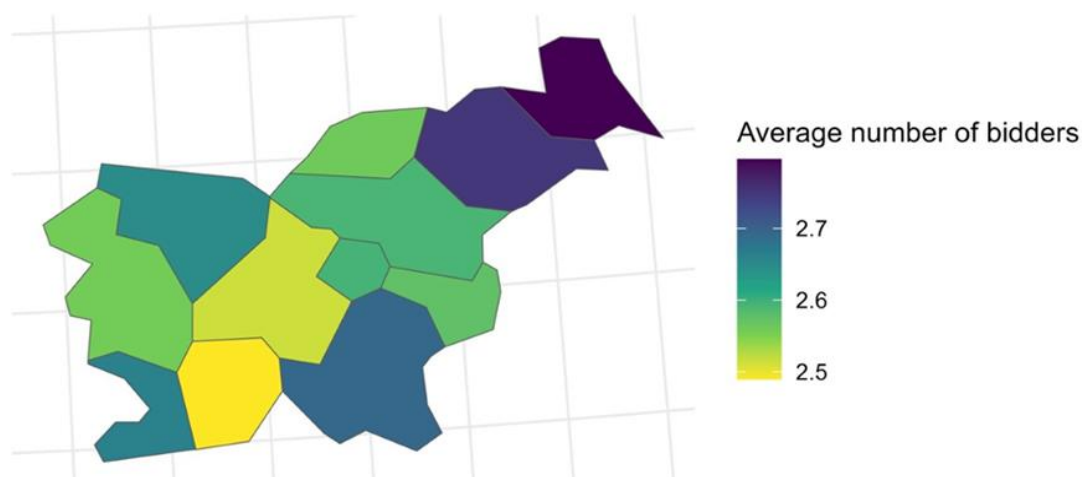
Figure 2.8. Share of single bidding across regions (NUTS-3), Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

However, with regard to the average number of bidders, interesting trends can be observed (see Figure 2.9). The regions with the highest share of single bidding also have on average fewest bidders (Littoral-Inner Carniola). However, the region with the highest average number of bidders is Mura Statistical region with almost 2.8 bidders on average, and Drava Statistical region with over 2.7 bidders on average.

Figure 2.9. Average number of bidders across regions (NUTS-3), Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

### 2.1.8. Sectoral Analysis

By examining competition both within and across sectors, valuable insights into the forces that drive various markets can be obtained. The degree of competition can have a significant impact on market dynamics, pricing structures, and overall economic efficiency. In Slovenia, IT services, repair and maintenance services, transport equipment, and software packages, and information systems are among the sectors most affected by a high percentage of single bidding, with at least 60%. However, there are also several sectors among the top 15 highest valued where single bidding accounts for less than 30%, such as food, beverages, tobacco, and related products (26.68%), office and computing machinery (26.02%), and construction work (20.52%) (see Table 2.6).

Table 2.6. Sectors (CPV 2-digit) most affected by single bidding based on the highest number of contracts, Slovenia 2017-2022

Markets	Market value	Number of contracts	Single bidding share
IT services	400349765.2	1805	77.29%
Laboratory, optical and precision equipment	174087235	1369	69.83%
Repair and maintenance services	1227826535	3232	63.37%
Transport equipment	837532476.4	3368	63.12%
Transport services	351462826.8	1919	59.35%
Sewage-, refuse-, cleaning-, and environmental services	582155696.6	3101	48.98%
Medical equipment, pharmaceuticals and personal care products	2665190196	17103	43.88%

Agricultural and forestry services	210866105.5	1956	42.64%
Construction structures and materials	257863785	1379	41.55%
Business services	460734620.5	1801	39.98%
Architectural, construction, engineering and inspection services	689603260.9	3030	38.28%
Food, beverages, tobacco and related products	627945821.8	28107	26.68%

Source: e-Narocanje and e-JN systems

**Table 2.7. Sectors (CPV 2-digit) most affected by single bidding based on the highest market value, Slovenia 2017-2022**

Markets	Market value	Number of contracts	Single bidding share (%)
IT services	400349765.2	1805	77.29%
Repair and maintenance services	1227826535	3232	63.37%
Transport equipment	837532476.4	3368	63.12%
Software package and information systems	308538887.7	1129	61.56%
Transport services	351462826.8	1919	59.35%
Sewage-, refuse-, cleaning-, and environmental services	582155696.6	3101	48.98%
Medical equipments, pharmaceuticals and personal care products	2665190196	17103	43.88%
Electrical machinery, apparatus, equipment and consumables; Lighting	369902264.4	925	43.03%
Financial and insurance services	444566599.4	812	40.15%
Business services	460734620.5	1801	39.98%
Architectural, construction, engineering and inspection services	689603260.9	3030	38.28%
Petroleum products, fuel, electricity	840877435.3	1103	34.45%
Food, beverages, tobacco and related products	627945821.8	28107	26.68%
Office and computing machinery	317626920.1	2452	26.02%
Construction work	6955724016	11353	20.52%

Source: e-Narocanje and e-JN systems

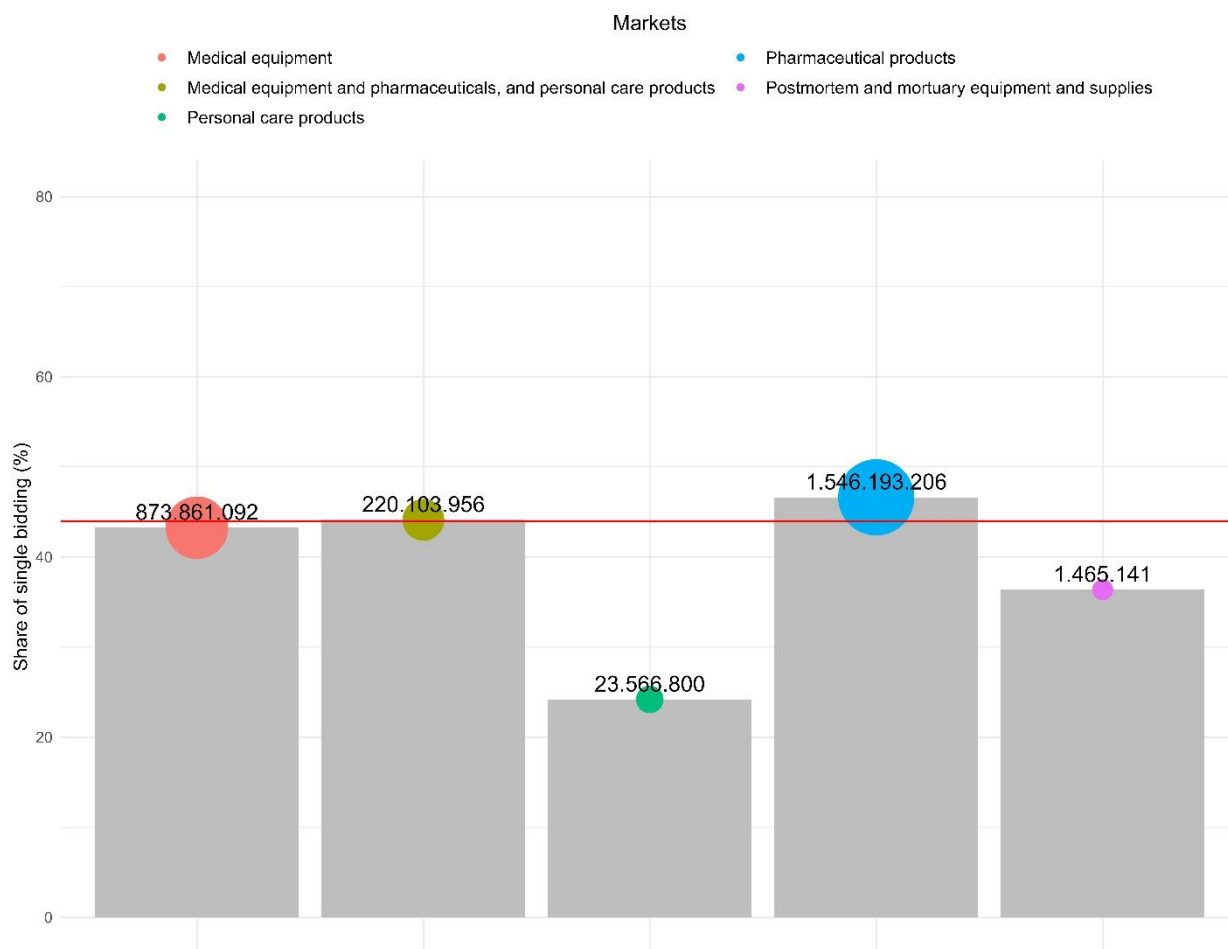
It is crucial to consider the findings from both tables (Table 2.6 and Table 2.7) as they provide valuable insight into the scale of various sectors in terms of contract numbers and values. Additionally, analysing the data can reveal the distribution of contract sizes within each market. For example, some markets might have a high number of contracts but with lower values, while others have fewer contracts but with higher values. In the next sections, several sectors will be analysed separately, taking into account factors such as the proportion of single bidders, the average number of bidders, and the relative size of submarkets.

#### *Health sector: medical equipment and pharmaceuticals*

Figure 2.10 uncovers nuanced variations in procurement practices within the medical equipment and pharmaceuticals sector, where the overall share of single bidding for essential goods stands at 43.9%. Notably, medical equipment procurement falls slightly below the sector average. Despite this, the substantial market, valued at EUR 873.8 million, underscores its significance. In contrast, pharmaceutical products surpass the sector average, indicating a distinct proclivity for single bidding. The pharmaceutical products market, valued at EUR 1.55 billion, notably contributes to the high single bidding share. This divergence highlights the sector's heterogeneity, prompting a deeper exploration into the factors influencing procurement strategies. Relatively lower reliance on single bidding in medical equipment (both

within this sector and compared to the national average) may stem from product complexity, while heightened single-bidding share in pharmaceuticals poses the question to further explore into more details of what happens in its sub-markets and in relation to the average number of bidders. These insights can provide a valuable compass for stakeholders navigating the complexities of the sector, guiding strategic planning and decision-making effectively.

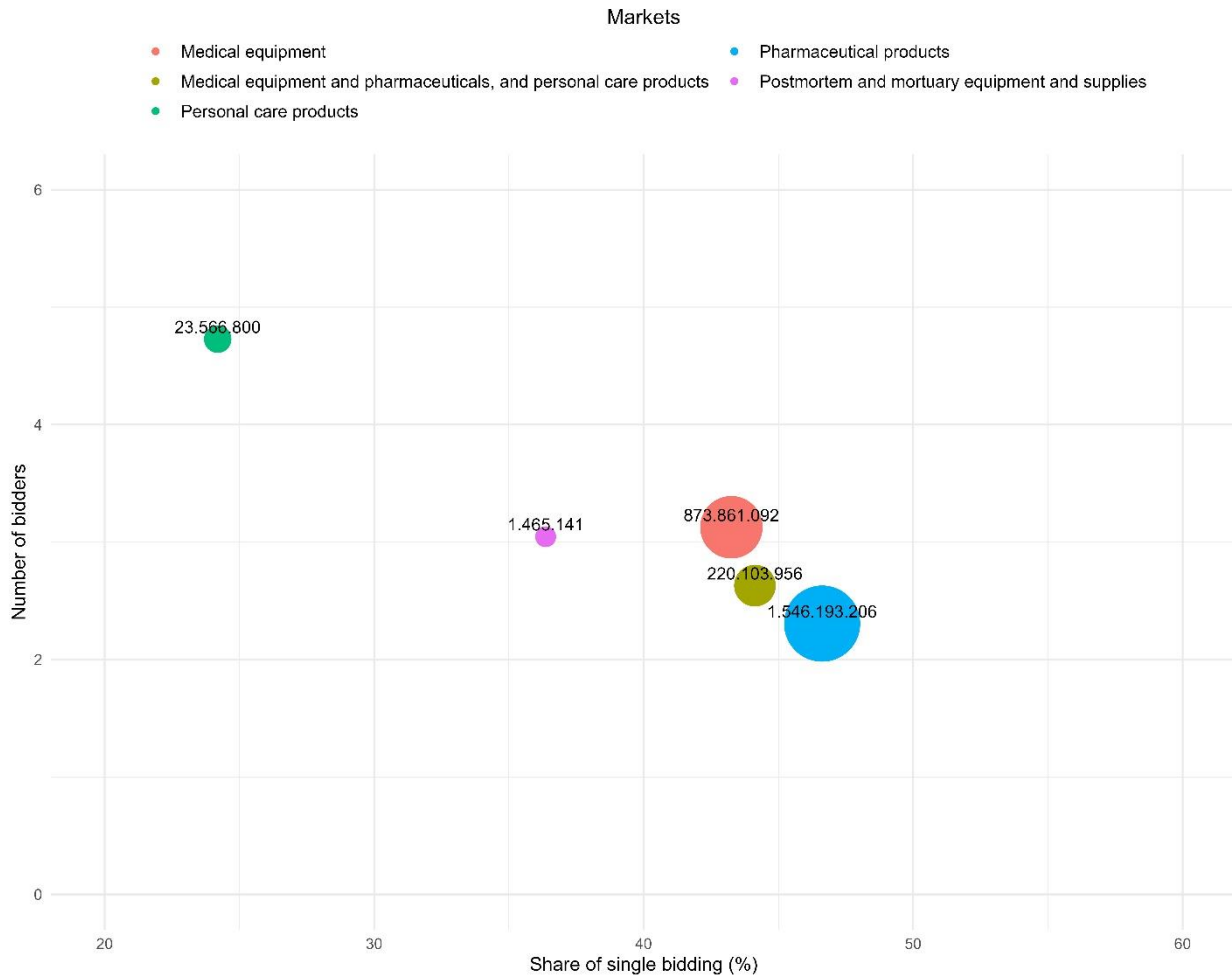
**Figure 2.10. Medical equipment, pharmaceuticals and personal care products, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

Following up on the findings from Figure 2.10, the analysis explores in more detail the relationship between the average number of bidders and the share of single bidding. Figure 2.11 shows that the personal care products submarket, in addition to the lowest share of single bidding, also has the highest average number of bidders. The challenges for the largest sub-markets, medical equipment, and pharmaceutical products, are further exposed with the relatively low average number of bidders. These trends underscore the importance of developing strategies for stimulating competition, as two competition indicators present challenging developments within the market.

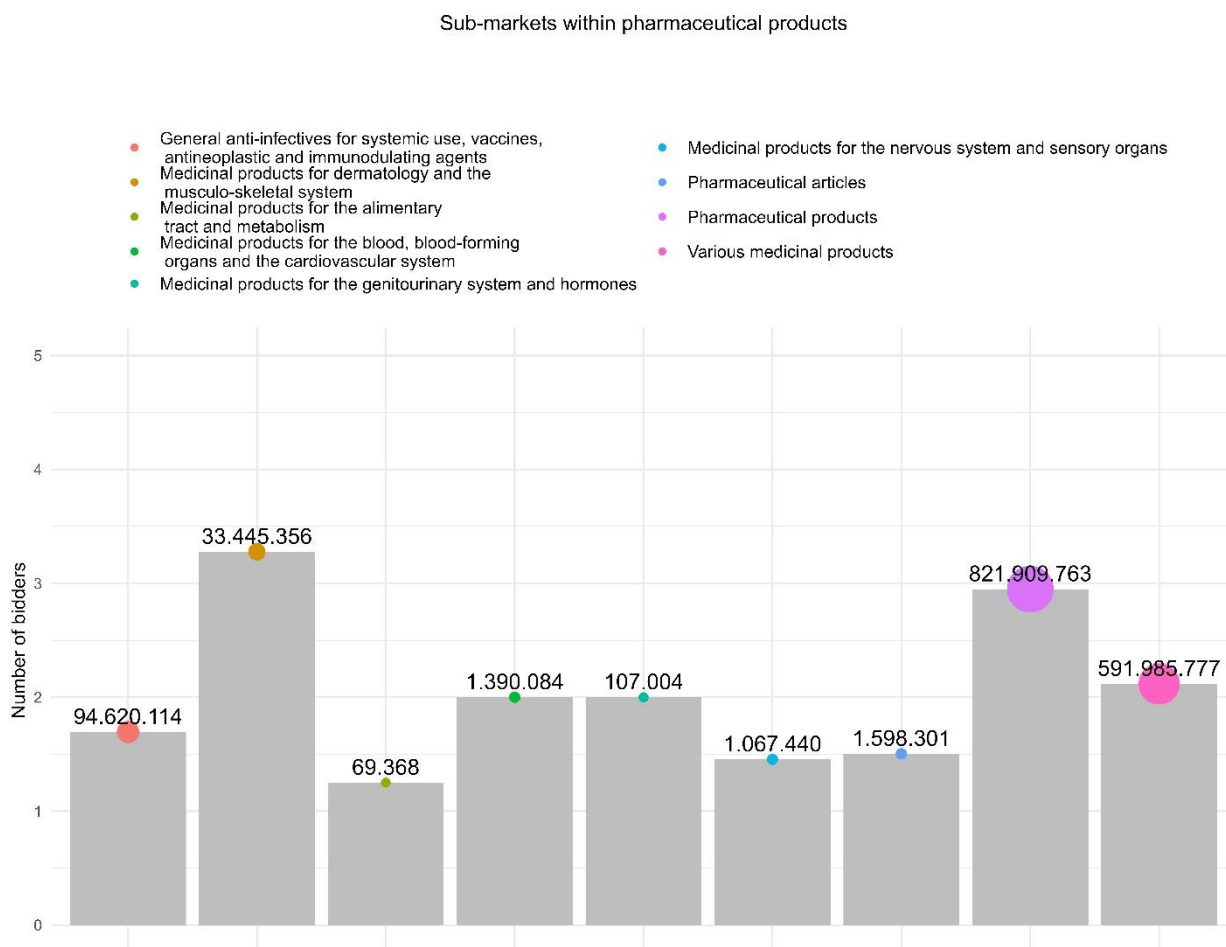
**Figure 2.11. Medical equipment, pharmaceuticals, and personal care products – single bidding and number of bidders, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

It's worth noting that while there is typically a low number of bidders in the pharmaceutical sector, there is variation within its sub-sectors. Figure 2.12 illustrates this range, showing that smaller submarkets - such as procurement of medicines for the alimentary tract and metabolism - tend to have an average of 1.3 bidders, while larger markets, such as procurement of medicinal products for the dermatology and musculoskeletal system, have an average of over 3 bidders. The two largest sub-markets also have their differences in the average number of bidders: pharmaceutical products have an average of just under 3 bidders, while various medicinal products have an average of just over 2 bidders. This trend can potentially be explained by the dynamics between generic and patented medicines. Generics tend to have a more competitive supplier base, resulting in a higher average number of bidders. Patented drugs, on the other hand, often operate within a more restrictive supplier framework, resulting in a less competitive environment with a higher prevalence of single bidding. All in all, the pharmaceutical sector is a nuanced landscape where varying degrees of competition coexist, shaped by the nature of the medicines being procured.

**Figure 2.12. Pharmaceutical sector – number of bidders in the different sub-markets, Slovenia 2017-2022**



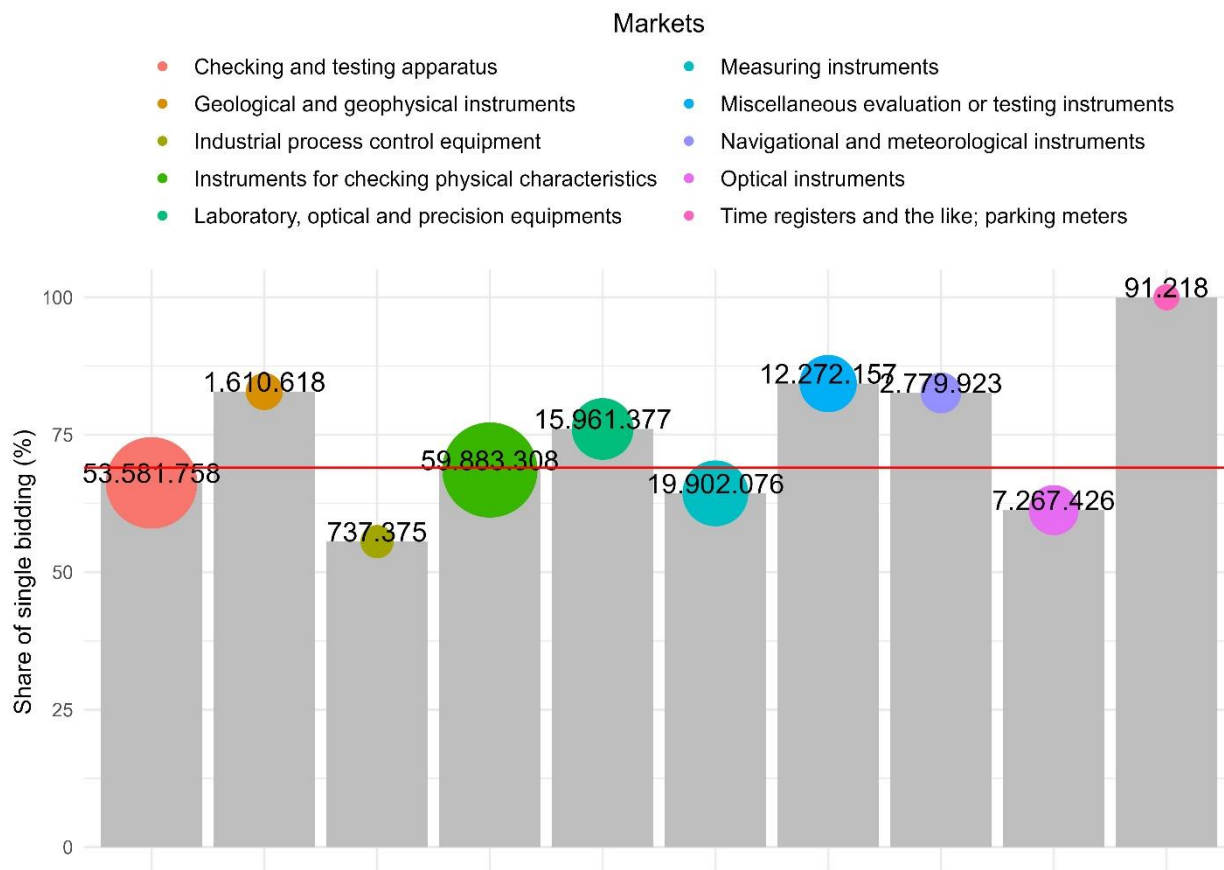
Source: e-Narocanje and e-JN systems

### *Laboratory, optical and precision equipment (excl. glasses)*

Laboratory, optical and precision equipment is not in the top 15 in terms of value, but it is in the top 15 in terms of contracts. Therefore, with the second-highest share of single bidding (69.8%) and a relatively high number of contracts, the analysis examines it in more detail (see Figure 2.13).

First, there are several CPV 3-digit markets with a much higher share of single bidding than 80% and one market with a 100% share of single bidding (time registers and the like). However, the latter market is an example of a relatively small market. Second, several medium-sized CPV 3-digit markets are positioned around the market average of around 70% share of single bidding, such as the measuring instruments market. Finally, it is encouraging to note that some larger markets, such as checking and testing apparatus and instruments for checking physical characteristics, are below or at least equal to the market average.

Figure 2.13. Laboratory, optical and precision equipment (excl. glasses), Slovenia 2017-2022

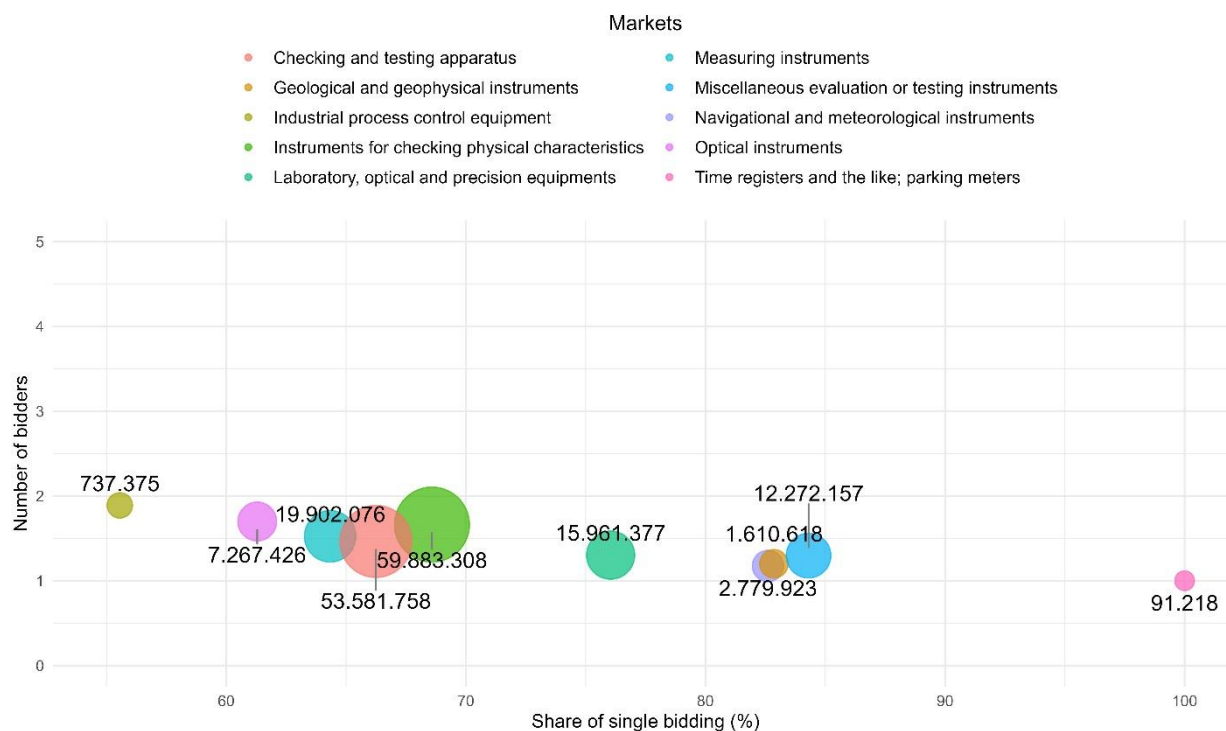


Source: e-Narocanje and e-JN systems

When the share of single bidding is cross-tabulated with the average number of bidders, a distinct cluster emerges within the CPV 3-digit markets (see Figure 2.14). A significant number of markets fall within the range of 60% to 80% single-bidding share, coupled with an average of 1.2 to 2 bidders. The concentration of markets in the range of 60%-80% of single bidding and the range of 1.2-2 average bidders suggests a common pattern in procurement dynamics. However, two markets in particular deviate from this cluster; the time registers and the like category has a 100% share of single bidding, resulting in an average of only 1 bidder. Conversely, industrial process control equipment shows a share of single bidding of less than 60%, accompanied by an average of around 2 bidders. The market for "laboratory, optical and precision equipment" faces significant competitive challenges. Both competition indicators, the high share of single bidders and the limited average number of bidders, underline the lack of intense competitive dynamics.



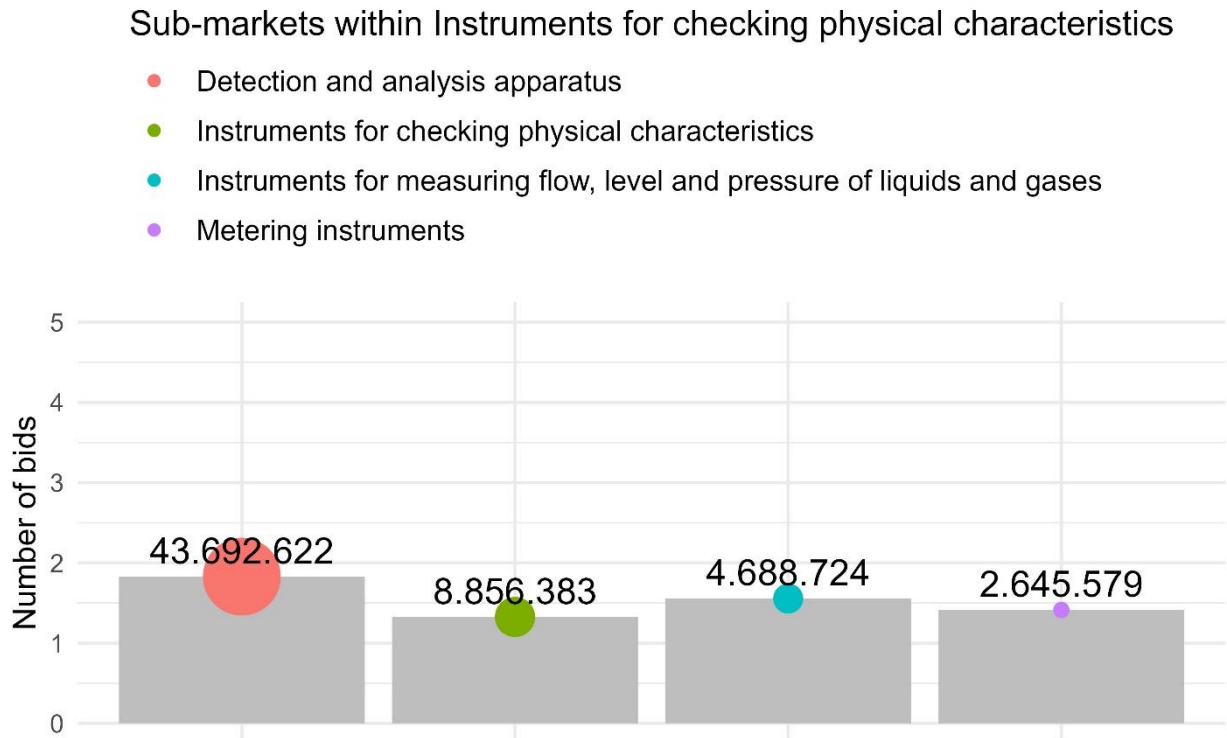
**Figure 2.14. Laboratory, optical and precision equipment (excl. glasses) – single bidding and number of bidders, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

The market for laboratory, optical, and precision equipment is facing some significant challenges, as shown in Figure 2.15. The largest sub-market, which is instruments for checking physical characteristics, has an average share of single bidding for the market of 68.6%. It also falls in the middle when it comes to the average number of bidders, with all other sub-markets having fewer than two bidders. The second-largest sub-market only has an average of 1.3 bidders. This unique competitive landscape is a clear indication of the challenging position of the market. The consistently low average number of bidders across all sub-markets raises concerns about the level of competition and a potential lack of diversity in supplier participation.

Figure 2.15. Instruments for checking physical characteristics sector - Number of bidders in different submarkets, Slovenia 2017-2022

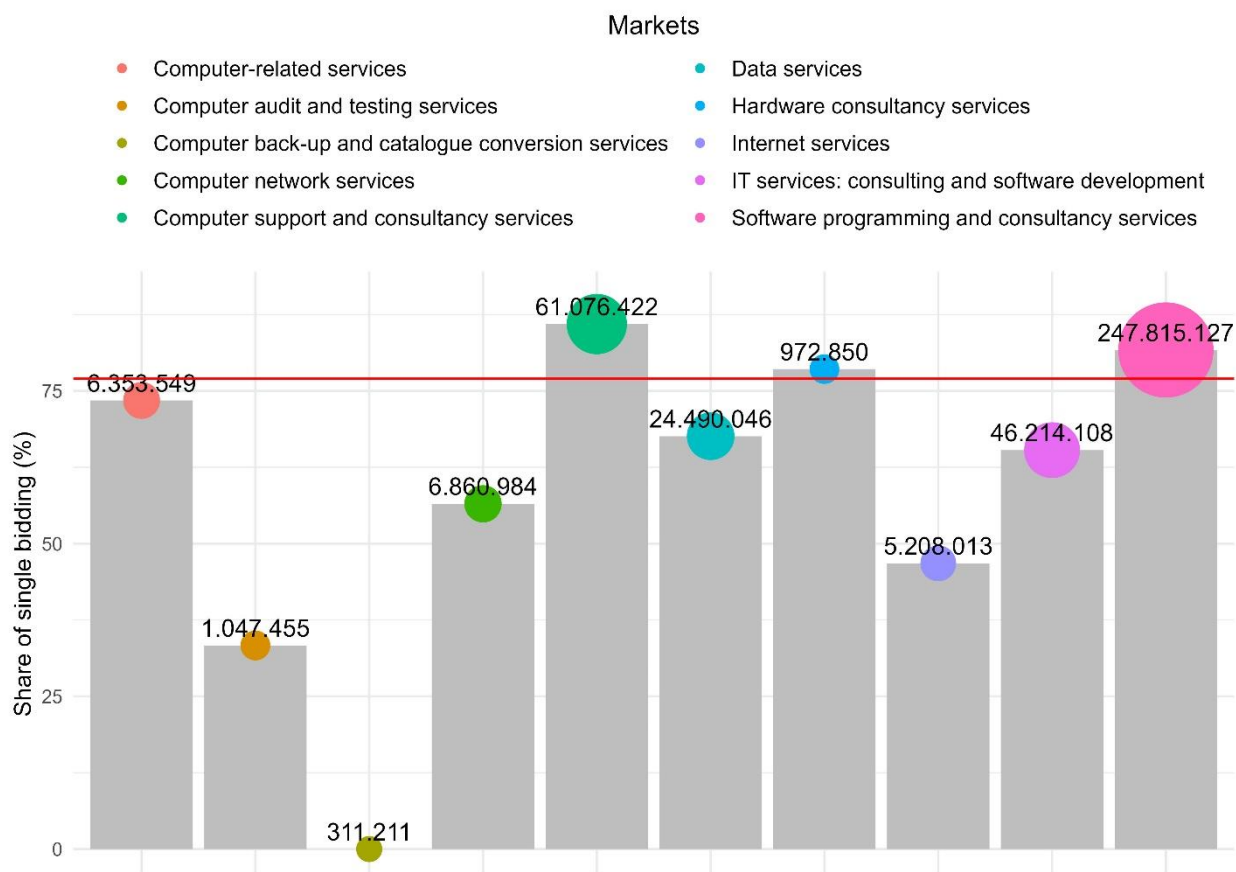


Source: e-Narocanje and e-JN systems

### IT sector

Figure 2.16 highlights the notable disparities within the IT services sector, revealing distinct procurement dynamics affecting different sub-sectors. Despite being the largest, both computer support and consultancy services and software programming and consultancy services demonstrate higher-than-average instances of single bidding. Conversely, smaller segments such as computer network services or internet services exhibit significant variations, with below-average rates of single bidding. Encouragingly, the third-largest sub-sector, IT services, consulting, and software development, surpassed the sector average, performing relatively well. However, it is important to note that even within this relatively successful sub-sector, the proportion of single bidding remains significant. This sector-wide trend of single bidding, exceeding 50% in most cases, necessitates a nuanced examination of the underlying factors to improve competition.

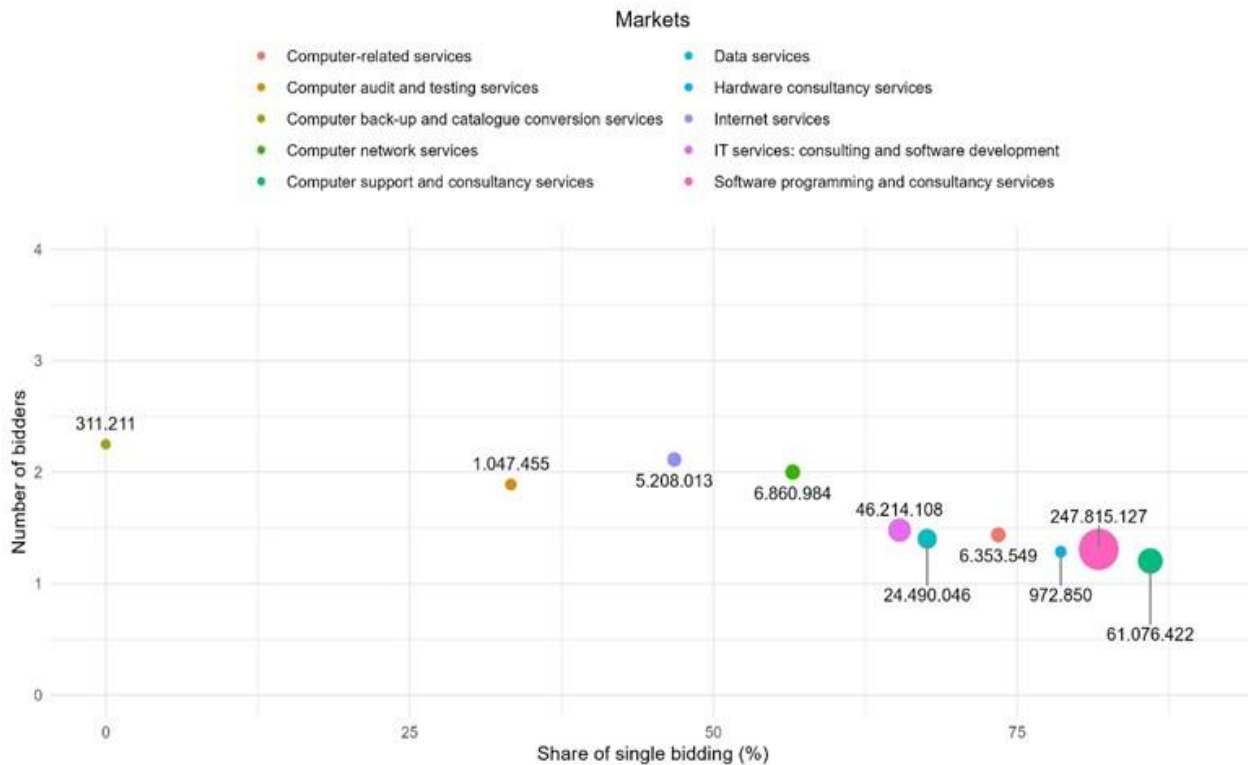
Figure 2.16. IT services, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

Within the IT services sector, the cross-tabulation of the average number of bidders and the share of single bidding unveils a concerning trend similar to the previous scenario in the Laboratory, optical, and precision equipment sector. Across almost all sub-sectors, there is a limited significant deviation in the average number of bidders, ranging from 1.2 to 2, although the share of single bidding ranges from 33% to 85% (Figure 2.17). Even the two largest sub-sectors, Computer support and consultancy services and Software programming and consultancy services, exhibit the lowest average number of bidders at 1.2 and 1.3, respectively. This uniformity is indicative of the overall lack of diversity and competition within the sector and highlights the need for increased attention and strategic interventions to stimulate and enhance competition. The persistence of this trend highlights a crucial area for improvement in fostering a more dynamic and competitive procurement landscape within the IT services sector.

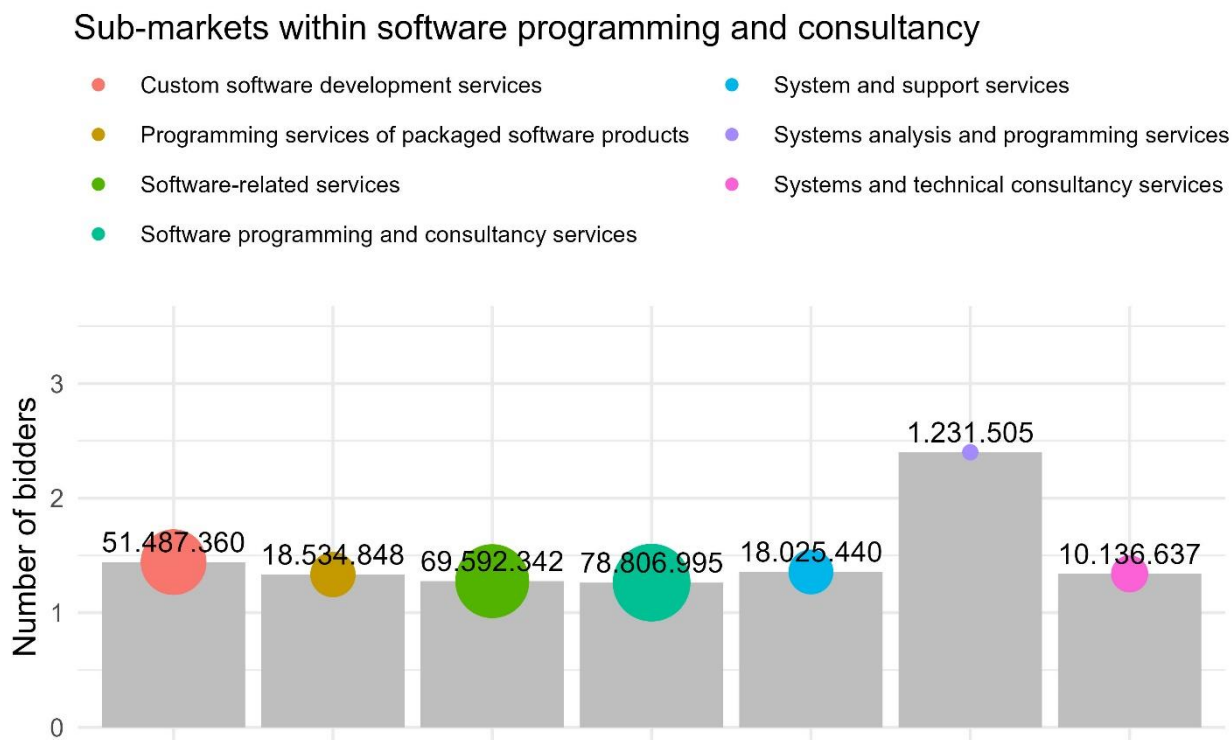
Figure 2.17. IT services – single bidding and number of bidders, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

A closer look at the IT services sector's largest market, software programming and consultancy, reveals a concerning trend across all submarkets (Figure 2.18). The problem becomes apparent when looking at the average number of bidders, a key indicator of competition. Only the smallest sub-market, systems analysis and programming services, exceeds an average of 2 bidders. In stark contrast, all other sub-markets struggle, with an average of less than 1.5 bidders. This significant uniformity raises alarms, as it suggests a widespread lack of diversity and competition within the Software programming and consultancy market. It is worth noting that the two largest sub-markets, software related services and software programming and consultancy services, are the worst performers in terms of the average number of bidders, with figures of 1.26 and 1.27 respectively. This worrying scenario raises questions about the accessibility and openness of procurement processes. The limited number of bidders suggests potential barriers to entry, preventing a more diverse pool of suppliers from participating in these critical segments.

Figure 2.18. Software programming and consultancy sector – Number of bidders in different sub-markets, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

### *Transport equipment and auxiliary products to transportation*

The Transport equipment and auxiliary products to transportation sector exhibits a notable prevalence of single bidding, and a closer look reveals three distinct trends within this sector (Figure 2.19). First and foremost, the largest sub-sector, motor vehicles, stands out with an almost 75% share of single bidding. This trend is mirrored by motorcycles, bicycles and sidecars, making them the two sectors that exceed the sector's average in terms of reliance on single bidding. This concentration in the largest sector raises concerns about potential limitations in supplier diversity and competition.

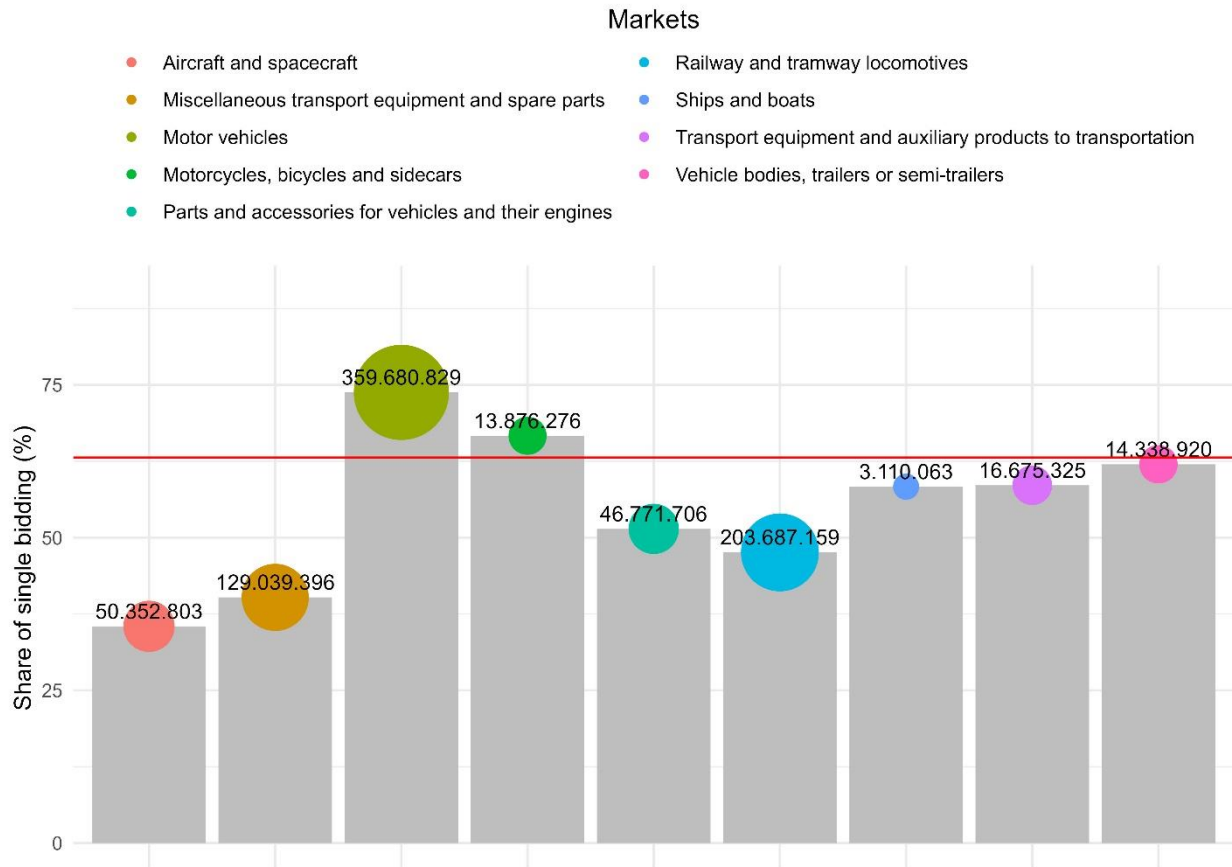
Second, there is a contrasting pattern among the three smallest sectors within the transport equipment sector. These sub-sectors demonstrate a share of single bidding slightly below the sector average. While these smaller sectors may escape the high prevalence of single bidding seen in larger counterparts, the challenge remains to stimulate healthier competition.

Third, certain sectors within the Transport equipment market perform above the sector average in terms of share of single bidding. Notably, aircraft and spacecraft and miscellaneous transport equipment fall into this category. Despite outperforming the market average, these sectors still grapple with high shares of single bidding. This nuanced scenario suggests that, while these sectors may have relatively better competitive dynamics, the prevalence of single bidding remains a persistent challenge, emphasising the need for strategic interventions to enhance competition.

For the largest sectors that rely heavily on single bidding, initiatives to promote supplier diversity and streamline procurement processes are imperative. In contrast, the smaller sectors should explore

mechanisms to maintain healthy competition, ensuring that their share of single bidding remains within acceptable limits. For those that outperform the market average but still facing high shares of single bidding, a nuanced strategy is required to strike a balance between promoting competition and addressing underlying challenges.

**Figure 2.19. Transport equipment and auxiliary products to transportation, Slovenia 2017-2022**



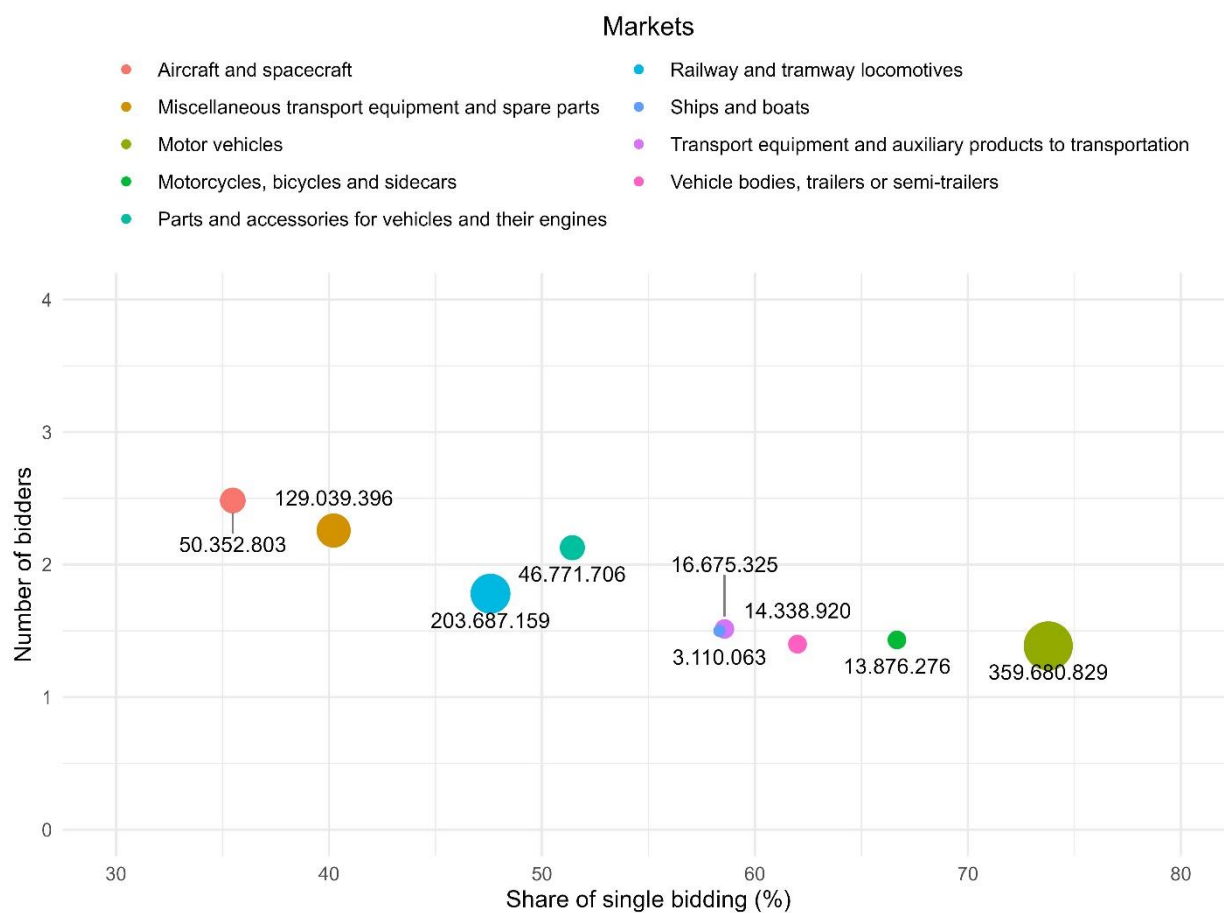
Source: e-Narocanje and e-JN systems

In contrast to the observed trends in the Laboratory, optical and precision equipment, and IT sectors, the cross-tabulation between the share of single bidding and the average number of bidders in the Transport equipment and auxiliary products reveals a distinct and noteworthy linear trend. Sectors such as aircraft and spacecraft and miscellaneous transport equipment and spare parts, have lower shares of single bidding, and exhibit a correspondingly higher average number of bidders (Figure 2.20). Conversely, the sector with the highest share of single bidding, motor vehicles, has the lowest average number of bidders. This linear relationship underscores a key dynamic within the sector, linking the prevalence of single bidding to the level of competition.

A notable exception within this linear trend is evident in the comparison between railway and tramway locomotives and parts and accessories for vehicles and engines. Although these two sectors demonstrate a similar share of single bidding, the average number of bidders introduces a nuanced distinction. Parts and accessories for vehicles and engines not only have a slightly lower share of single bidding but also stand out with a higher average number of bidders at 2.1. In contrast, railway and tramway locomotives,

while sharing a comparable single bidding share, portray a lower average number of bidders at 1.7. This discrepancy highlights a more competitive landscape in the Parts and accessories sector, suggesting a more diverse supplier pool and potentially more dynamic procurement processes.

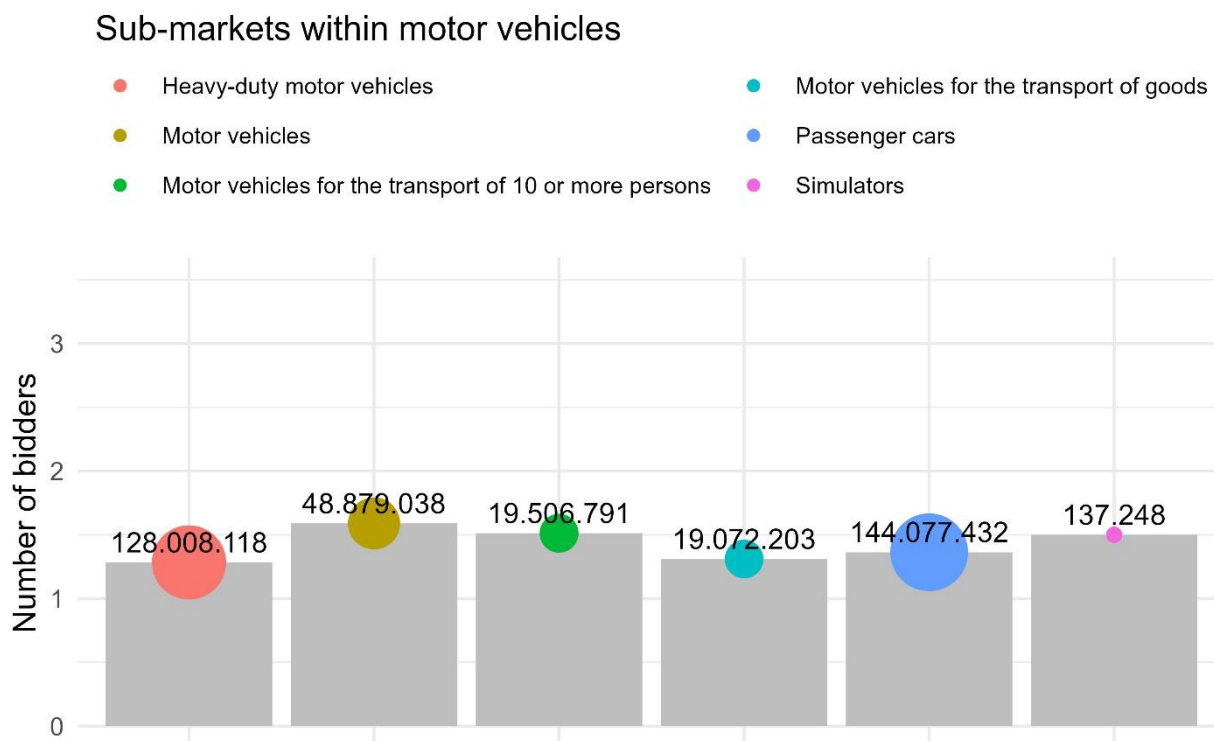
**Figure 2.20. Transport equipment and auxiliary products to transportation – single bidding and number of bidders, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

After conducting a thorough analysis of the motor vehicles industry, a worrying trend emerges (see Figure 2.21). There appears to be consistently low levels of competition across all sub-sectors. In particular, the two largest sub-sectors, passenger cars and heavy-duty motor vehicles, with average numbers of bidders at 1.28 and 1.36, respectively, illustrate this trend. The lack of competitiveness is prevalent throughout the industry, with even the most competitive sub-sector, Motor vehicles, boasting only an average of 1.6 bidders. This uniformity in the low number of bidders across sub-sectors indicates potential challenges for supplier diversity and potential barriers to entry.

Figure 2.21. Motor vehicles – Number of bidders in different sub-markets, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

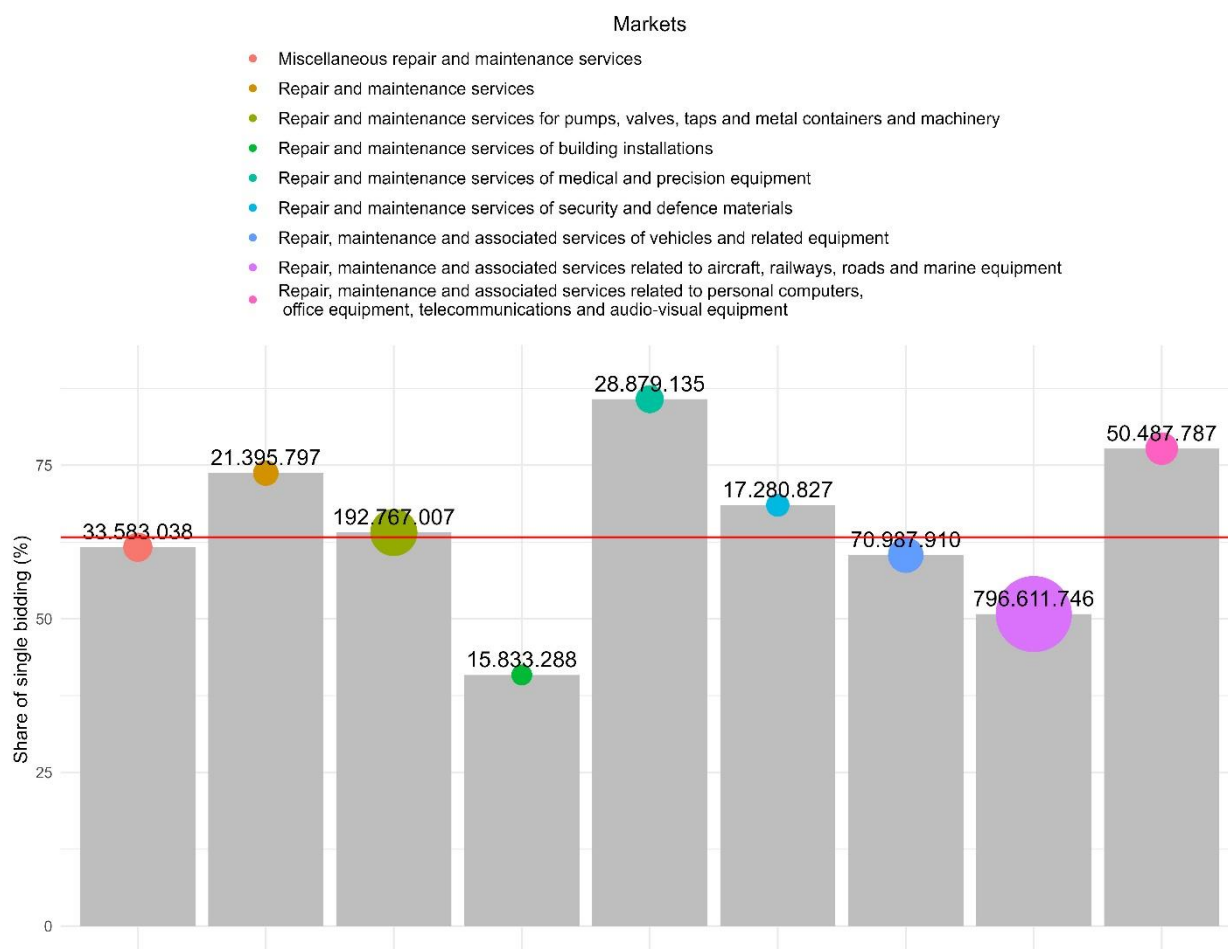
### *Repair and maintenances services*

The repair and maintenance services sector ranks among the top 15 sectors in both total value and total number of contracts. However, the sector's significant 63.37% single bidding share requires a closer examination to elucidate the underlying dynamics. Interestingly, while the majority of sub-sectors within the Repair and maintenance services sector exhibit a high incidence of single bidding, nuances in performance shed light on areas warranting further investigation. Among the sub-sectors, repair and maintenance services of building installations stand out as the sole sector with a single bidding share of less than 50%, underscoring potential differences in competitive dynamics within the broader sector. Conversely, three sectors within the Repair and maintenance services domain record single bidding shares surpassing 73%, with Repair, maintenance, and associated services to personal computers leading the pack with an impressive share of almost 78% (see Figure 2.22).

Nevertheless, amidst these variations, an encouraging development stems from the largest sub-sector, Repair, maintenance, and associated services to aircraft, railways, roads, and marine equipment. This sector demonstrates relatively better performance, managing to break the 50% share barrier for single bidding. Such resilience and competitive strength within a critical segment of the Repair and maintenance services sector are indicative of potential avenues for improvement across all markets. These trends underscore the significance of targeted interventions aimed at enhancing competition and efficiency. Despite the relative outperformance of the largest sub-sector, opportunities for improvement abound, signalling the need for comprehensive strategies.



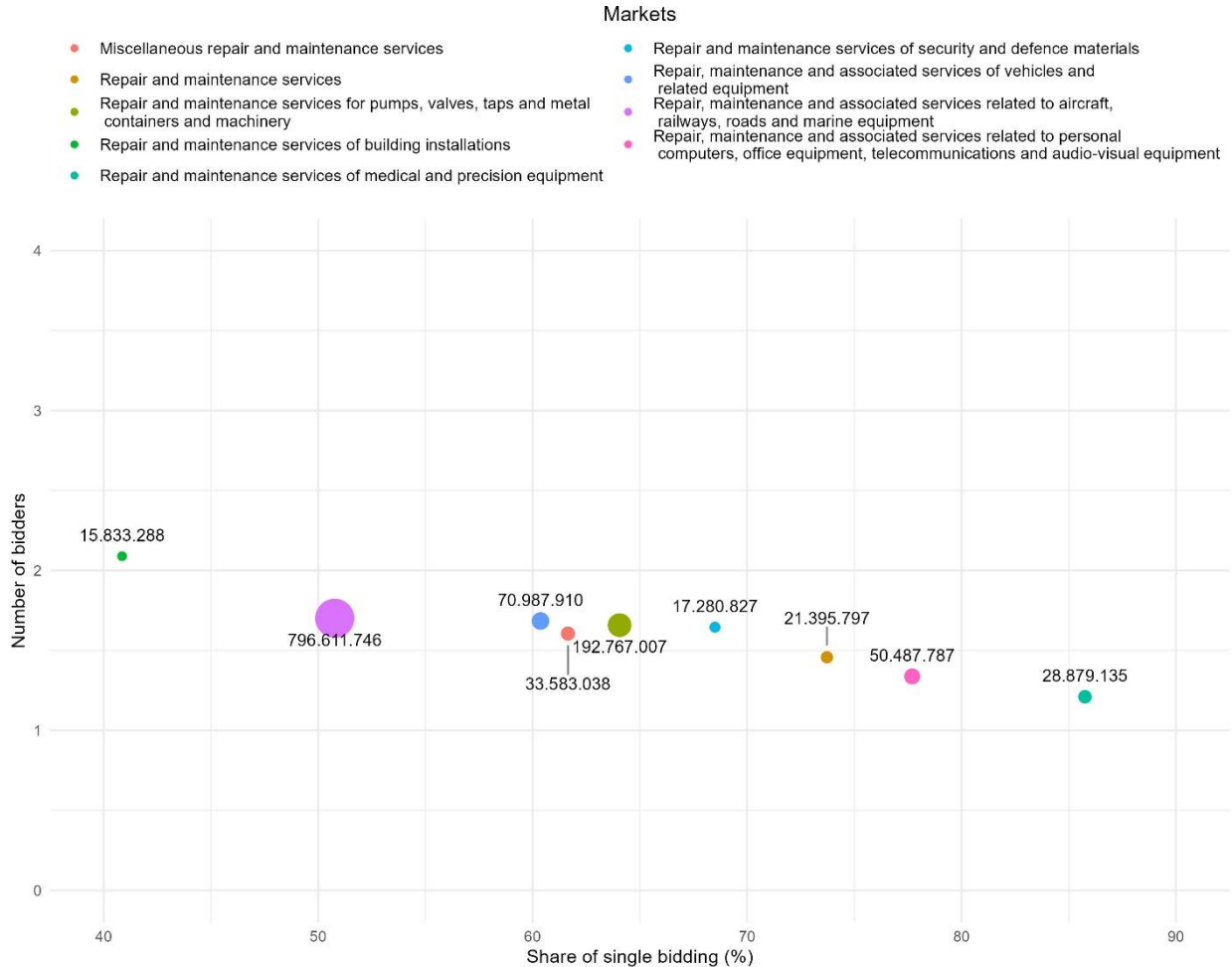
Figure 2.22. Repair and maintenances services, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

When looking at the repair and maintenance sector, an important factor to consider is the number of bidders, which can indicate the level of competition. Interestingly, only one market, repair and maintenance of building installations, has an average of more than two bidders. This suggests a lack of diversity and competition within the sector, which warrants further examination. The repair and maintenance services for medical and precision equipment market is particularly challenging, with a high percentage of single bidding and an average of only 1.2 bidders. This can represent potential barriers to entry and limited competitive dynamics in an important domain. On the other hand, the largest market in the sector, repair, maintenance, and associated services for aircraft, railways, roads, and marine equipment, has a relatively high share of single bidding at 50.7%. However, a closer look at the average number of bidders reveals a ratio similar to markets with a 60% share of single bidding, at 1.68 (see Figure 2.23). Given the size of this market, its underperformance in terms of the average number of bidders is notable.

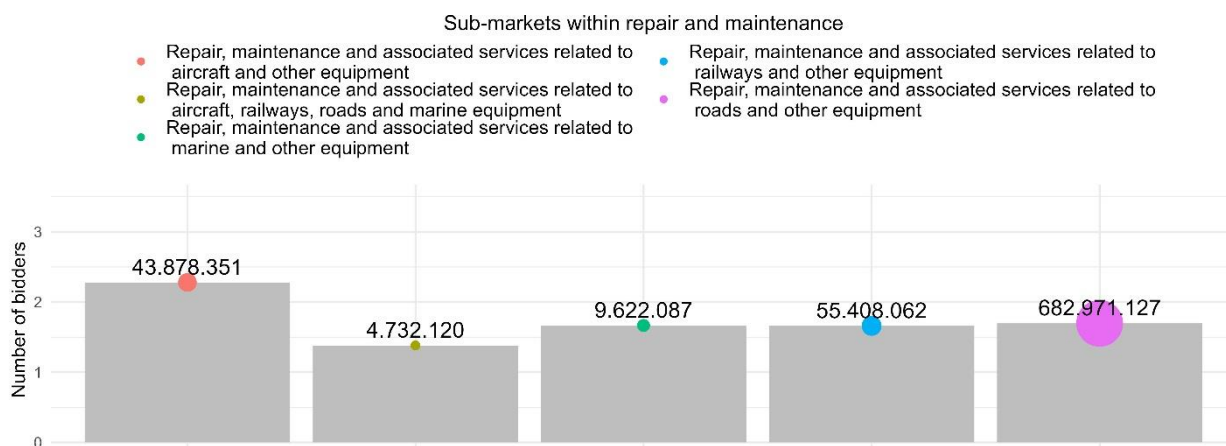
**Figure 2.23. Transport equipment and auxiliary products to transportation – single bidding and number of bidders, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

The sub-sector of repair, maintenance, and associated services for aircraft, railways, roads, and marine equipment faces a daunting challenge: a low average number of bidders (Figure 2.24). Interestingly, the repair and maintenance services for aircraft seem to fare better than the rest, with an average of more than two bidders. Unfortunately, this highlights a wider problem of limited competition, particularly concerning the Repair, Maintenance, and Associated Services related to Roads and other equipment, where the average number of bidders is a meagre 1.7. On the other hand, the repair, maintenance, and associated services related to aircraft and other equipment shows a more competitive landscape with an average number of bidders at 2.28.

**Figure 2.24. Number of bidders within Repair, Maintenance, and Associated Services for Aircraft, Railways, Roads, and Marine Equipment, Slovenia 2017-2022**



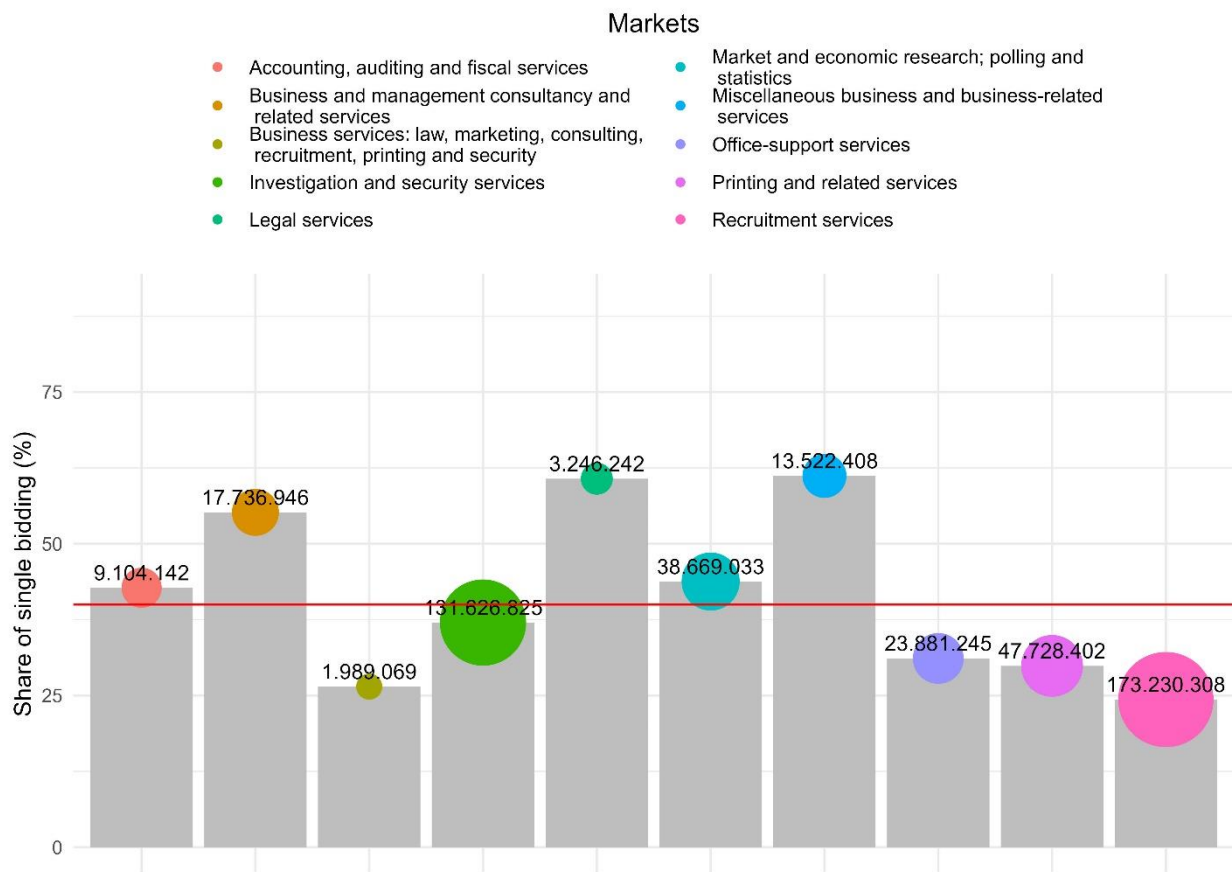
Source: e-Narocanje and e-JN systems

### *Business services*

While the business services sector has a share of single bidding below the national average and remains below the 40% threshold, Figure 2.25 reveals a nuanced landscape with substantial variability across its various markets. Notably, several medium-sized markets, including accounting, auditing, and fiscal services, business and management consultancy, and market and economic research, surpass the sector average, with single bidding shares ranging from 43% to 60%. In contrast, the largest market in the sector, recruitment services, presents promising results with the lowest share of single bidding at 24.3%. Similarly, office-support services (31%) and printing and related services (30%) showcase commendable performance, emphasising a competitive environment with a lower reliance on single bidding. These positive results may indicate a more diversified landscape and healthier competition.

Furthermore, the second-largest market, investigation and security services, outperforms both the sector and national average, with 37% of bids attracting only one bidder. This achievement signifies a competitive marketplace within this area. The positive performance of these key markets points towards opportunities that could benefit other segments within the business services sector.

Figure 2.25. Share of single bidding in business services, Slovenia 2017-2022

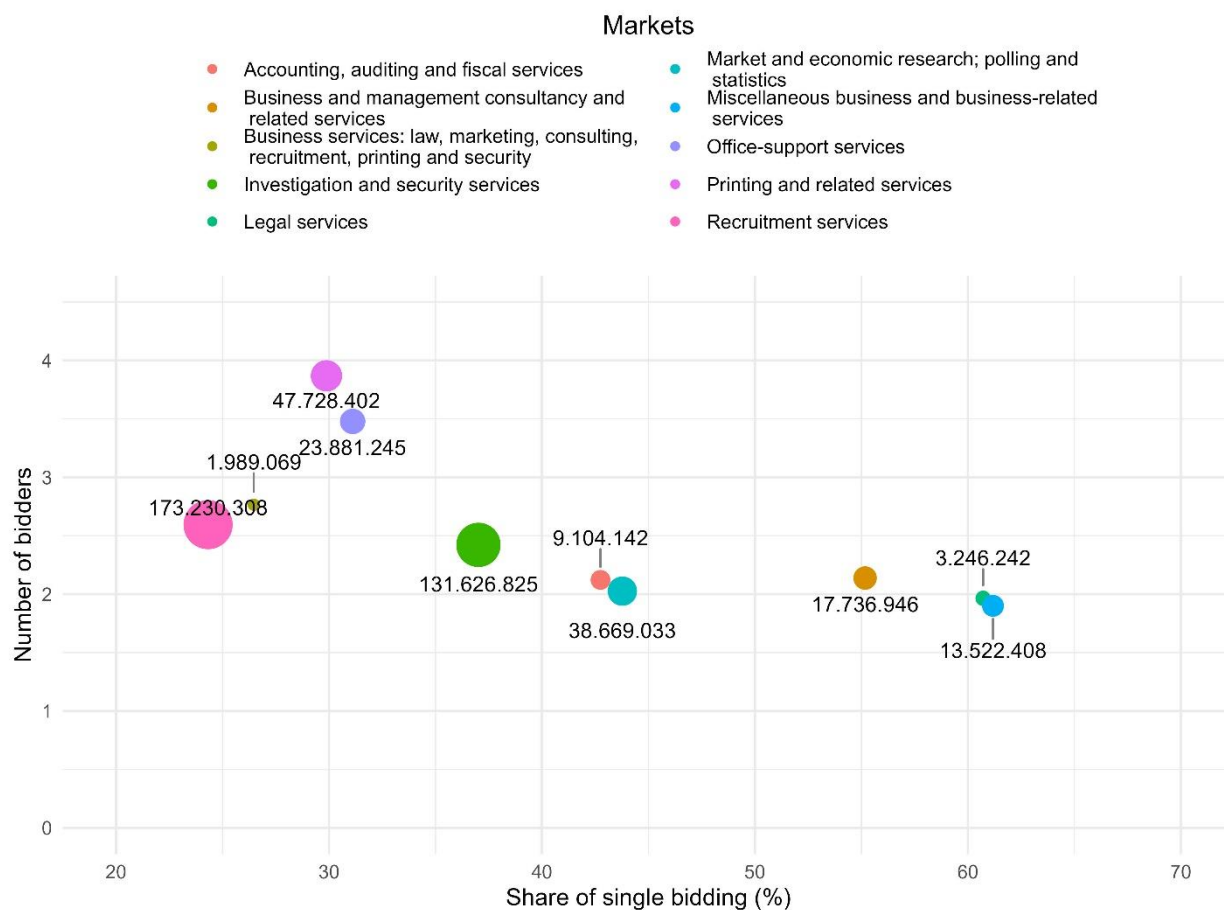


Source: e-Narocanje and e-JN systems

The cross-tabulation of the single bidding share and the average number of bidders within the Business Services sector reveals interesting trends that contribute to a comprehensive understanding of market dynamics (Figure 2.26). One overarching trend shows a more linear relationship across most markets, where the single bidding share ranges from 24% to 60%, accompanied by an average number of bidders falling between 1.9 and 2.75. This linear progression suggests a consistent interplay between single bidding share and average number of bidders, i.e., those markets that have lower share of single bidding also have higher average number of bidders.

A notable deviation from this linear trend is observed in two markets, namely office-support services and printing and related services, both of which have a share of single bidding around 30%. Despite this seemingly moderate share of single bidding, these markets stand out by showcasing a higher average number of bidders at 3.5 and 3.9, respectively. This deviation hints at a nuanced market structure within these segments, where increased competition coexists with a substantial share of single bidding. The higher average number of bidders suggests a fragmented market with multiple participants actively bidding for contracts.

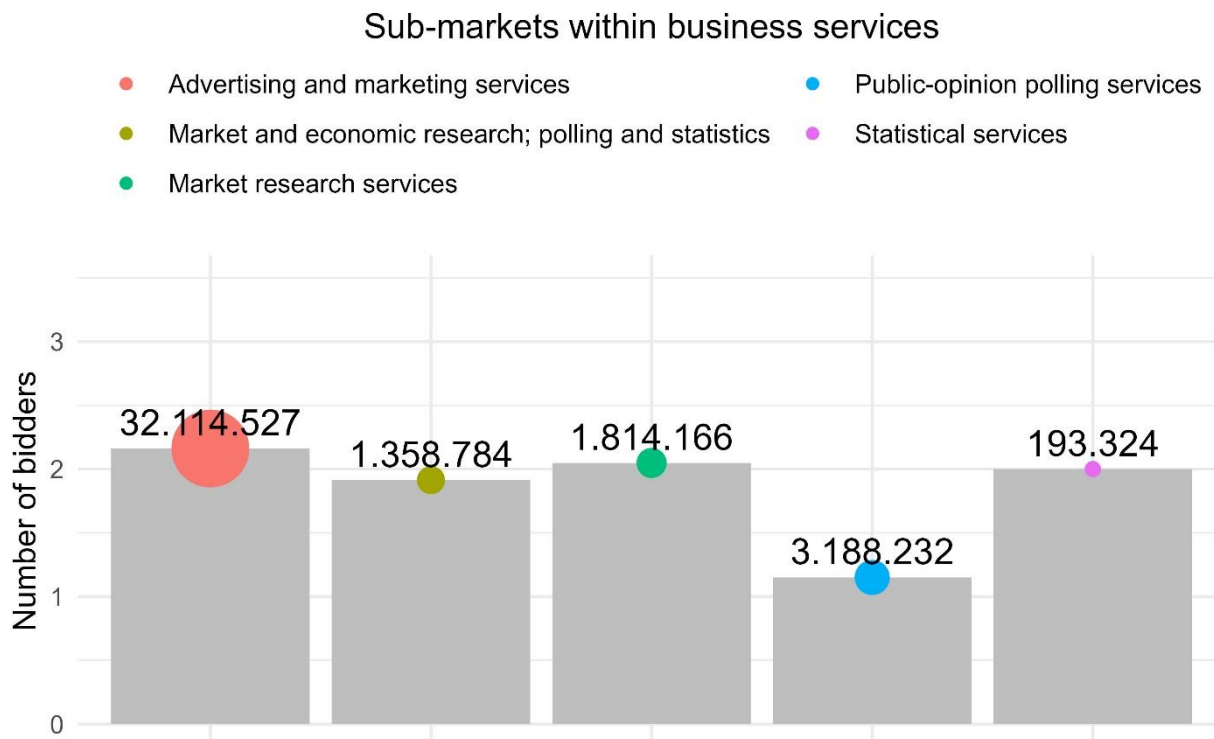
Figure 2.26. Business services – single bidding and number of bidders, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

An examination of Figure 2.27 sheds light on the nuanced market dynamics within the Office-support services sector, revealing distinct characteristics among its sub-sectors. In particular, translation and interpretation services emerge as the largest sub-sectors, showing increased levels of competition with an average of 4.6 and 5.7 bidders, respectively. Contrastingly, the remaining three sub-sectors — office-support services, reprographic services, and telephone-answering services — display a closer alignment to the market average of around 2 bidders. These segments show a more moderate level of competition, indicating a balance between bidder numbers and the prevalence of single bidding in their respective markets. However, it's important to note that telephone-answering services faces a unique challenge, experiencing a notable impact on competition dynamics with only 1.5 bidders on average. The observed market split within Office-support services suggests varying degrees of competitiveness, with translation and interpretation services standing out as particularly robust markets. In contrast, the challenges faced by telephone-answering services highlight the need for targeted interventions to address specific barriers to competition.

Figure 2.27. Number of bidders within Office-support services, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

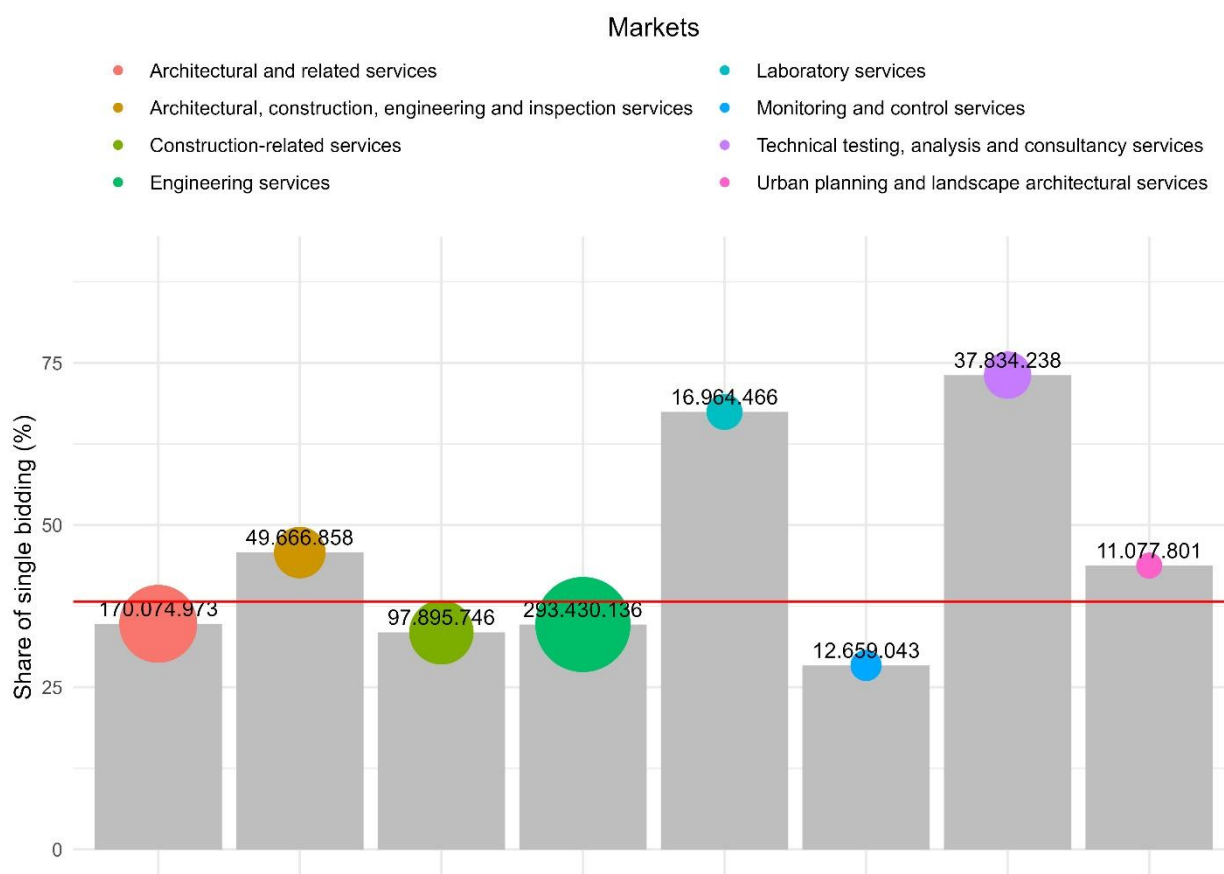
### *Architectural, construction and engineering services*

Examining the share of single bidding within the Architectural, Construction, and Engineering Services sector reveals an overall sector average below the national average at 38%. However, the sector shows substantial variability revealing distinct patterns. Among the three largest markets – Architectural services, Construction-related services, and Engineering services – only one in three tenders attracts single bids, underscoring a relatively competitive environment within these segments (see Figure 2.28).

In contrast, the three medium-sized markets - architectural, construction, engineering, and inspection services, laboratory services, and technical testing, analysis, and consultancy services - deviate from the sector average. These markets display an above-average share of single bidding, with Laboratory services facing a 67% incidence and technical testing, analysis, and consultancy services surpassing even higher at over 73% single bidding. This indicates a more restrictive procurement landscape within these medium-sized markets, where single bidding is more prevalent.

Within the two smallest sectors — monitoring and control services and urban planning and landscape architectural services — variation in the share of single bidding is also apparent. The former falls below the sector average at 28.4%, suggesting a less restrictive procurement environment. Conversely, the latter reports a slightly higher share of single bidding than the sector average at 43.8%, highlighting a moderately competitive landscape. While the larger markets exhibit a healthier competition landscape, the medium and smaller markets present challenges that may require targeted measures to enhance competition.

Figure 2.28. Architectural, construction and engineering services, Slovenia 2017-2022

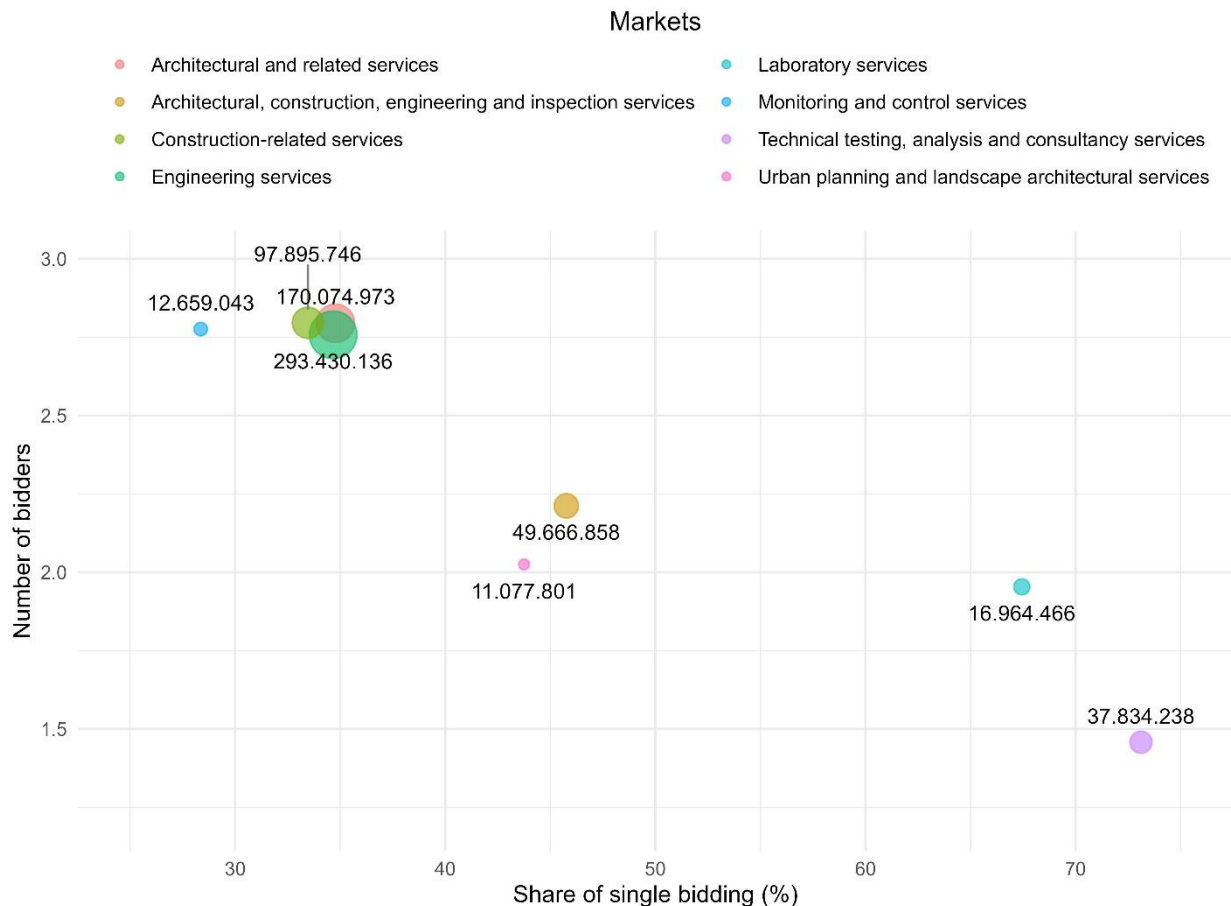


Source: e-Narocanje and e-JN systems

Figure 2.29 presents linear trends between the share of single bidding and the average number of bidders within the Architectural, Construction, and Engineering Services sector. A notable overlap among the largest sectors can be observed, where the share of single bidding hovers around 33%, accompanied by an average number of bidders approximately at 2.7. This convergence suggests a relatively healthier competition landscape within these major markets, contributing to a more dynamic and competitive environment.

Conversely, sectors with a share of single bidding substantially higher than the sector average — specifically, architectural, construction, engineering, and inspection services, laboratory services, and technical testing, analysis, and consultancy services — show the lowest average number of bidders, falling below the 2-bidder threshold. This divergence in trends indicates a less competitive procurement environment, where the prevalence of single bidding is accompanied by a lower number of active bidders. While the largest sectors demonstrate a relatively robust competition landscape, specific markets may require greater attention to address challenges posed by the higher incidence of single bidding in specific markets.

**Figure 2.29. Architectural, construction and engineering services – single bidding and number of bidders, Slovenia 2017-2022**



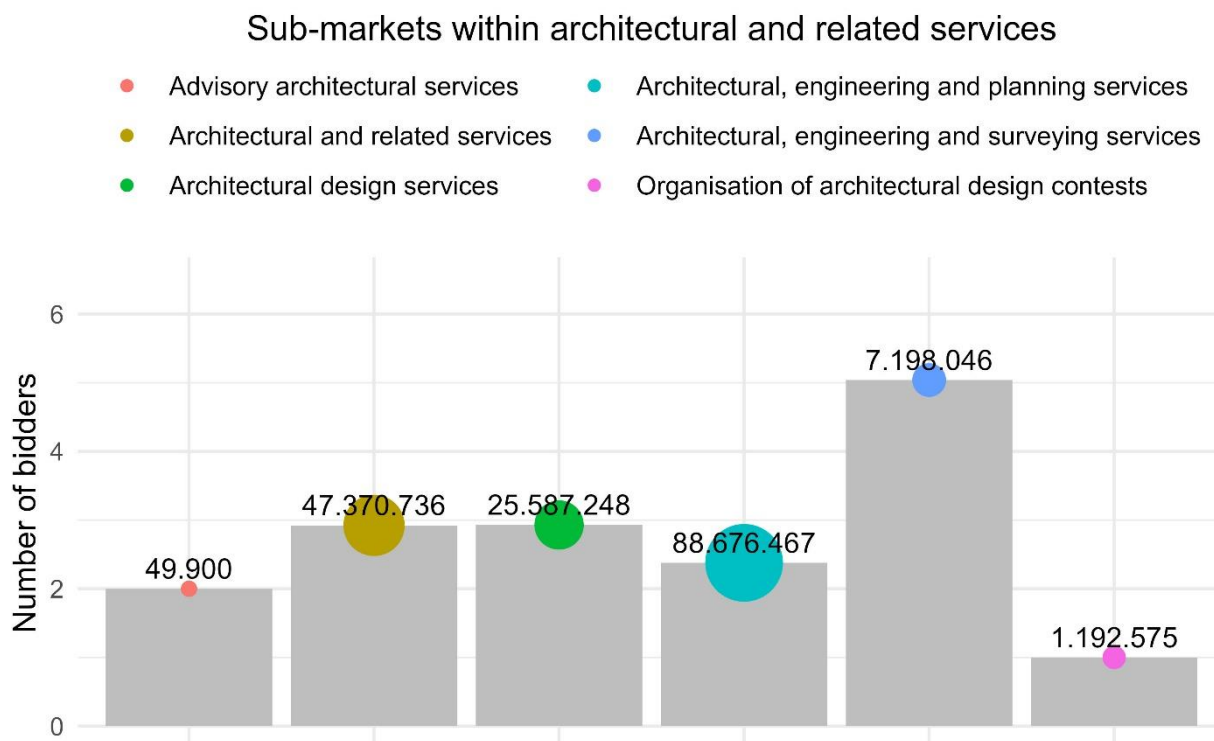
Source: e-Narocanje and e-JN systems

Figure 2.30 provides a comprehensive view of the variability within one of the largest sectors, architectural and related services, shedding light on the diverse dynamics across its medium-sized sub-sectors. Notably, these sub-sectors exhibit distinct developments, emphasising the need for a nuanced understanding of competition within the sector. The Organisation of architectural design contests sub-sector stands out with an average of only 1 bidder. In contrast, another sub-sector, architectural, engineering, and surveying services, reports an average of 5 or more bidders, suggesting a more competitive environment. This contrast in the number of bidders underscores the diversity of competition dynamics even within medium-sized markets.

Furthermore, the share of single bidding within the largest sub-sectors is marginally below 3 bidders on average. This aligns with the expectations for the larger sub-sectors, where the procurement landscape tends to attract a moderate number of bidders, thus creating a relatively more competitive environment. It should be noted that one sub-sector, advisory architectural services, stands out in Figure 2.30. Despite having no single bids, the sector only receives an average of two bids per project.



Figure 2.30. Number of bidders within architectural and related services, Slovenia 2017-2022



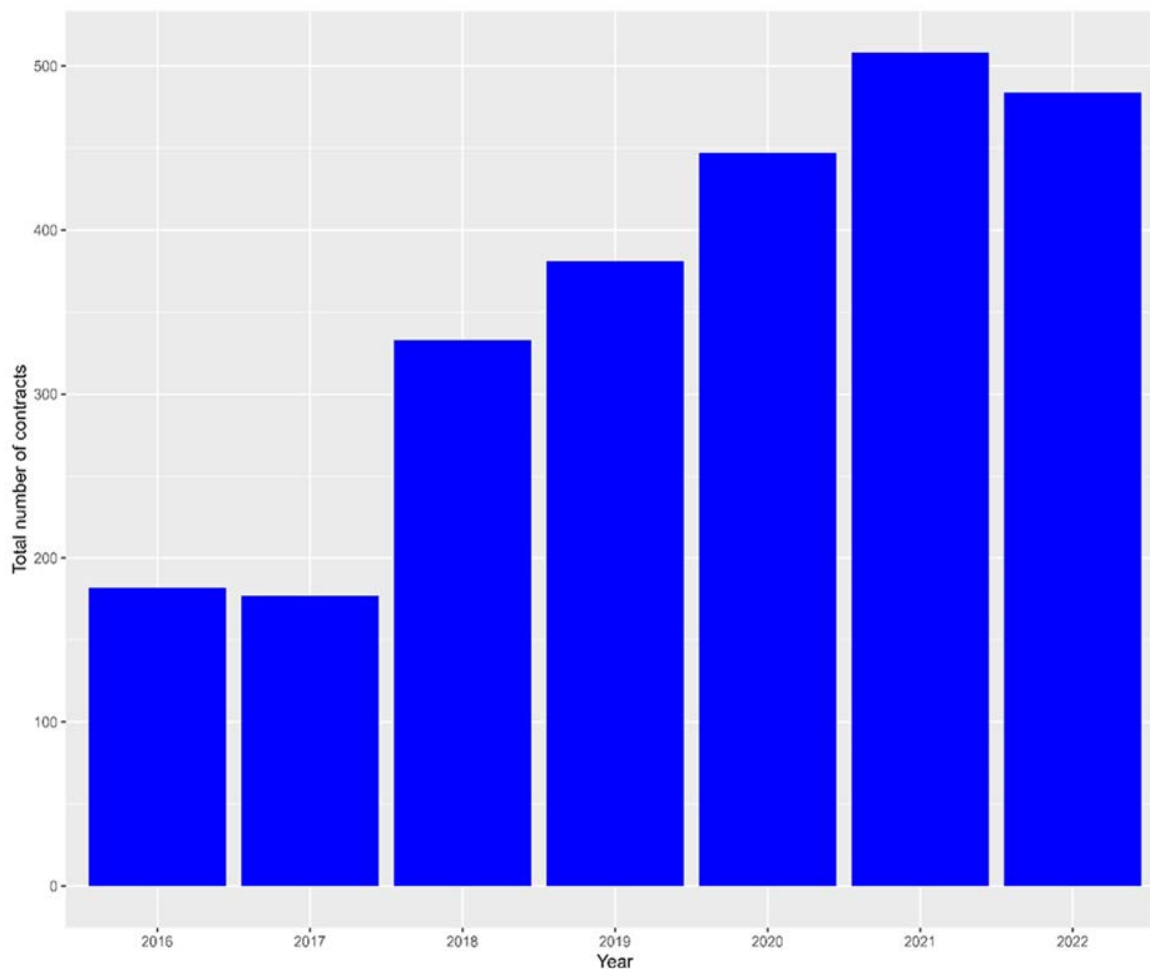
Source: e-Narocanje and e-JN systems

### 2.1.9. Negotiated procedure without prior publication

Year

A clear trend emerges when it comes to the distribution by year (see Figure 2.31). There is a constant increase in the use of this procedure between 2017 and 2021, with a particularly sharp upward trend between 2017 and 2018 when it increased by almost 50%. A minor positive sign represents the marginal decline between 2021 and 2022, when it decreased from 508 to 484 contracts.

Figure 2.31. Use of negotiated procedure without prior publication by year, Slovenia 2017-2022

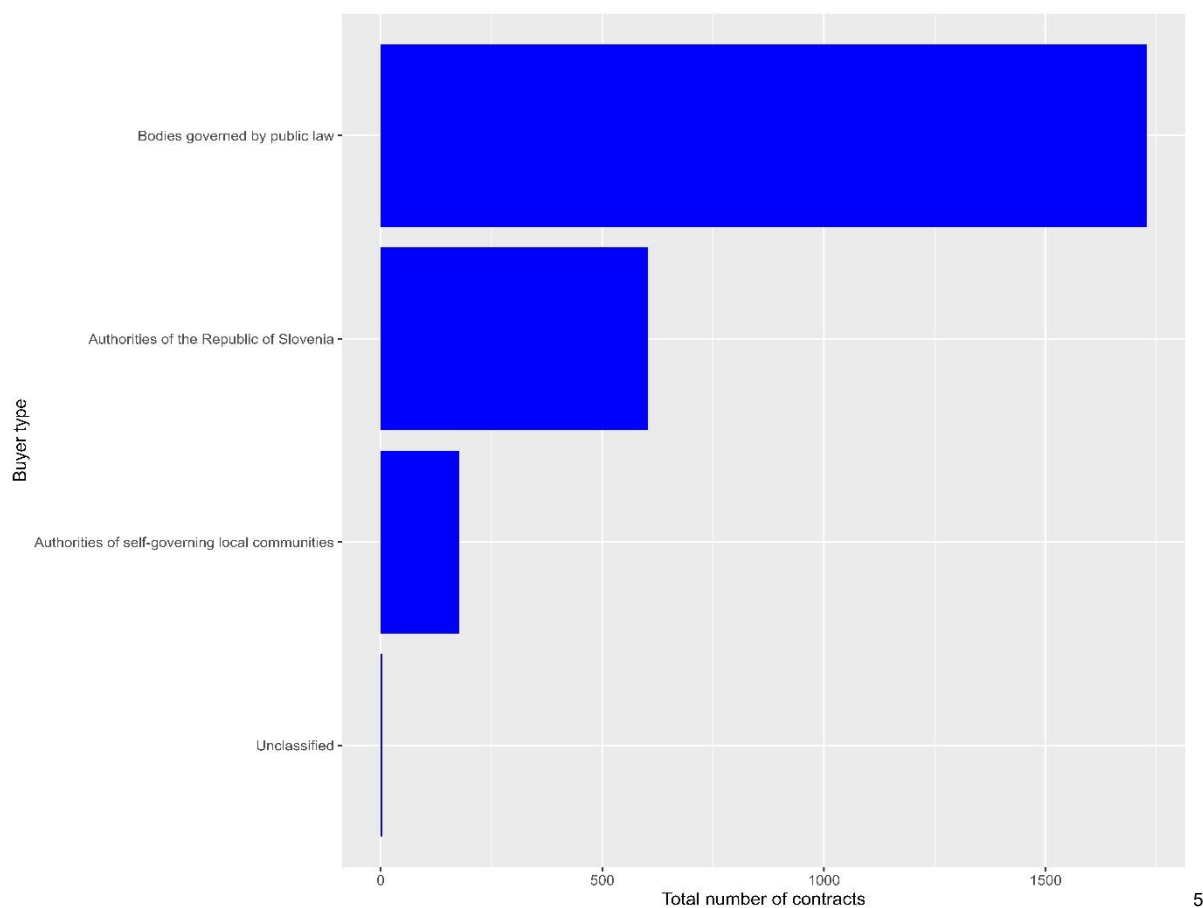


Source: e-Narocanje and e-JN systems

### *Buyer type*

The utilisation of the negotiated procedure without prior publication type is notably diverse across different entities<sup>4</sup> (see Figure 2.32). For the purpose of the analysis, the buyer types are divided following the nomenclature of article 9 of the PPA, which lists, among others, authorities of the Republic of Slovenia, authorities of self-governing local communities, and other public bodies governed by public law. The latter category, i.e. public bodies/agencies governed by public law (such as Geological Institute of Slovenia, Institute of the Republic of Slovenia for Commodity Reserves or Utilities etc.) emerges as a predominant user, accounting for over 60% of all procedures of this type. National authorities, i.e. authorities of the Republic of Slovenia (such as Ministries) have half as many contracts awarded through this procedure compared to public bodies governed by public law, indicating a more restrained usage. Furthermore, regional authorities, i.e. self-governing local communities use it even less frequently. Few entities that lack sufficient information in their name are categorised as Unclassified. The usage of this procedure type is substantially lower compared to entities with complete name classification.

Figure 2.32. Use of negotiated procedure without prior publication by buyer type, Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

### Buyers

Upon a closer examination of the top 15 buyers who frequently utilize this specific procedure type, with each having at least 30 contracts awarded and the highest value share, a notable and expected consistency pervades in terms of the share of single bidding (see Table 2.8). Although a substantial majority of these buyers receive only a single bid through these procedures, there are instances of two buyers that either approach or fall below the 50% threshold. Notably, the share of “Urad Vlade Republike Slovenije za oskrbo in integracijo migrantov” stands out as particularly encouraging, with only 28% of its 36 contracts through this procedure receiving just one bid.

**Table 2.8. Top 15 buyers who frequently use negotiated procedure without prior publication, Slovenia 2017-2022**

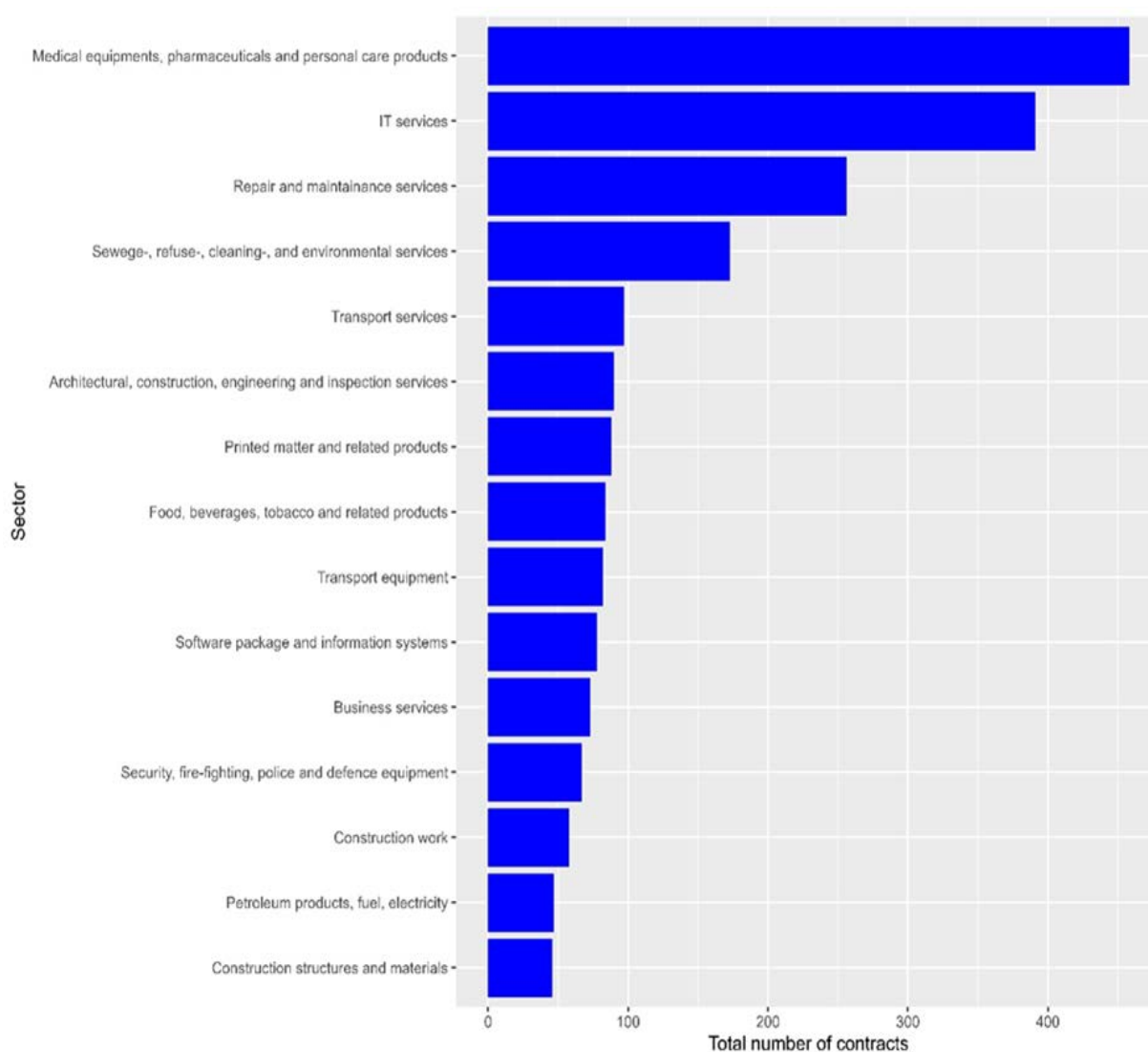
Buyer	Value	Number of contracts	Single bidding share
Centralna tehniška knjižnica Univerze v Ljubljani	14986994	31	100%
Javno podjetje Ljubljanska parkirišča in tržnice,	10159785	35	100%
Mestna občina Koper	2894290	36	100%
Splošna bolnišnica Celje	19285684	149	100%
Zavod Republike Slovenije za transfuzijsko medicino	122723093.9	70	100%
Univerza v Ljubljani, Medicinska fakulteta	47488426.62	51	98%
Univerza v Ljubljani	18490446.14	101	98%
Ministrstvo za finance, Finančna uprava Republike Slovenije	37710587	42	98%
Ministrstvo za infrastrukturo, Direkcija Republike Slovenije za infrastrukturo	55259414	40	98%
Eles, sistemski operater prenosnega elektroenergetskega omrežja	18792859	34	97%
Onkološki inštitut Ljubljana	29604045.38	50	96%
Univerzitetni klinični center Maribor	10557487.8	45	96%
Ministrstvo za notranje zadeve	68730312.4	83	94%
Univerzitetni klinični center Ljubljana	56168846	43	93%
Javno podjetje komunalno podjetje Vrhnika,	4952106.28	76	92%
Ministrstvo za obrambo Republike Slovenije	115520996.6	160	92%
Javni holding Ljubljana, družba za izvajanje strokovnih in razvojnih nalog na področju gospodarskih javnih služb	25907793.18	56	88%
Ministrstvo za javno upravo	157313794.8	101	85%
Pošta Slovenije	35192952.2	59	85%
Zavod Republike Slovenije za blagovne rezerve	188529655	62	76%
Splošna bolnišnica Slovenj Gradec	15919664	37	51%
Urad Vlade Republike Slovenije za oskrbo in integracijo migrantov	31112222.7	36	28%

Source: e-Narocanje and e-JN systems

### Sectors

Figure 2.33 shows the top 15 sectors (2-digit CPV) where this procedure is used. The top 3 sectors, medical equipment, pharmaceuticals and personal care products, IT services, and Repair and maintenance services are responsible for almost 40% of all contracts awarded through the negotiated without prior publication procedure. Sewage and cleaning services is the only other sector that has more than 100 contracts awarded through this procedure. The rest of the top 15 sectors, have 97 of fewer contracts.

Figure 2.33. Top 15 sectors (2-digit CPV) where negotiated procedure without prior publication is most used, Slovenia 2017-2022

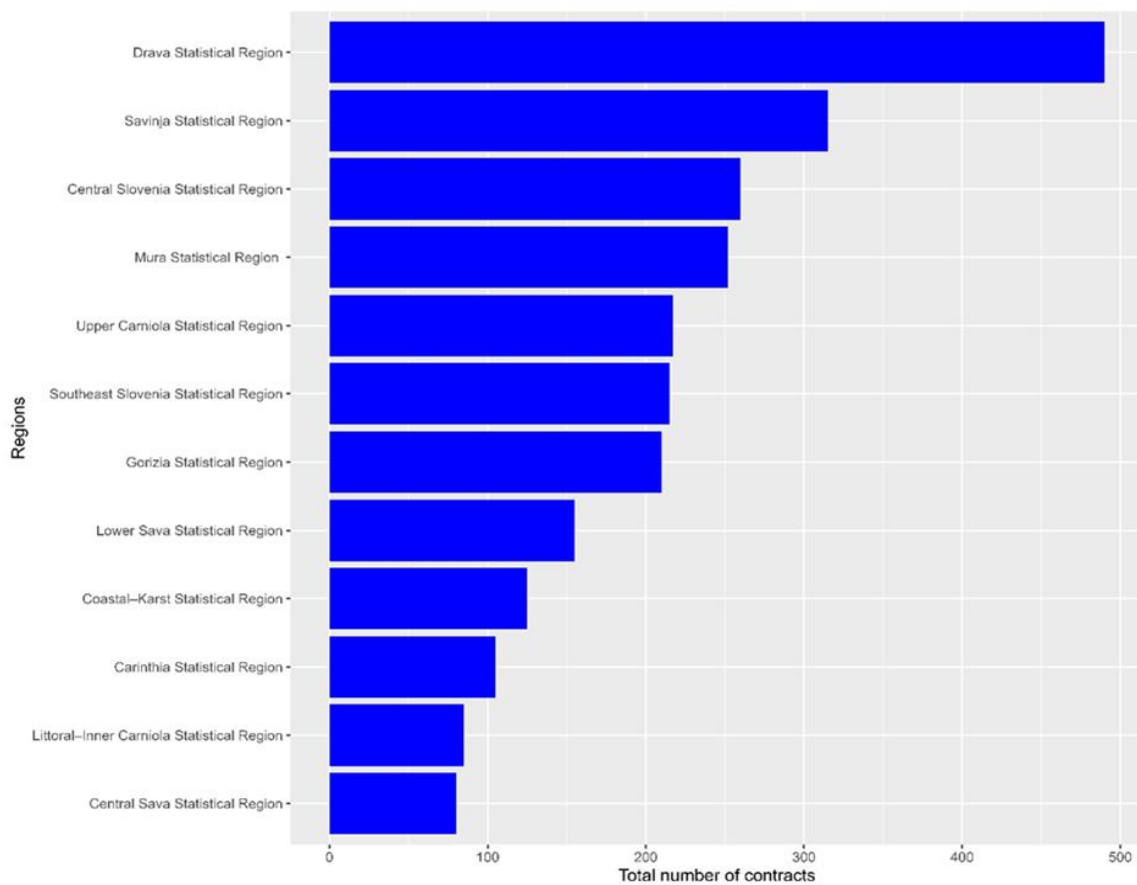


Source: e-Narocanje and e-JN systems

### Regions

When it comes to the regional distribution of the negotiated procedure without prior publication, Drava Statistical Region is by far the most frequent location for these contracts, where almost one-fifth of all contracts are awarded. In contrast, the Central Sava Statistical Region and Littoral-Inner Carniola Statistical Region are the least frequent locations with fewer than 100 contracts awarded (see Figure 2.34).

**Figure 2.34. Regional distribution of the use of negotiated procedure without prior publication, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

### **2.1.10. Summary of the analysis**

Looking at the descriptive overview of the use of the negotiated procedure without prior publication, different temporal, regional and sectoral trends can be observed. In recent years, in 2020-2022, there is an increased tendency to rely on the negotiated procedure without prior publication. The peak of this procedure was in 2021 when more than 500 contracts were awarded through this procedure, with more than 150 contracts in April. Not all buyers tend to use this procedure type to the same extent. On the one hand, regional authorities, i.e. authorities of self-governing local communities, rarely use this procedure. On the other hand, public bodies (such as public institutions and centres) and national authorities (such as ministries) rely more frequently on it. More than 40% of the contracts awarded through negotiated procedure without prior publication come from public bodies, i.e. bodies governed by public law, while only a minority of contracts awarded through this procedure come from regional authorities i.e. authorities of self-governing local communities. Although there is a propensity for single bidding through this procedure compared to the open or small value procedures, encouraging trends are noted in some sectors and regions, in which the use of this procedure is less prevalent compared to others. The procurement of medical and pharmaceutical products as well as IT services have the highest number of contracts awarded through this procedure (Figure 2.33), In addition, Table 2.8 shows that contracting authorities within these sectors have the highest share of single bidding on average. Figure 2.33 and Figure 2.34 show that there is a substantial variation of the number of contracts awarded through this procedure across sectors and

regions. To better understand why some sectors or regions tend to have a higher likelihood of using this procedure, it would require qualitative analysis to determine whether similar types of contracts across regions and sectors are less or more likely to use this procedure. The large variation across sectors and regions therefore calls for a deeper analysis to investigate whether there are comparable contracts that experience substantial variation, or whether it comes down to the different propensity of some sectors within some regions to rely on it. In the first case, a cross-learning comparison can help better understand the drivers behind the more extensive use of this procedure. In the second case, a closer investigation of the most affected sectors can put it into perspective under which conditions these sectors tend to rely on this procedure. Slovenia would therefore benefit of undertaking such an in-depth analysis regularly. The analysis may be standalone, or may be undertaken as part of an overall performance measurement framework of the procurement system (see Chapter 3).

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## Notes

<sup>1</sup> The market concentration indicator uses the Herfindahl-Hirschman Index (HHI), and it is used to determine the competitiveness of the market. In essence, the indicator measures the share of contract values for one year compared to the total annual market value. It looks at the total number of companies on a specific market and the share of each company from the total market value in a particular year. Higher values indicate higher concentration of some companies, lower market concentration, expressed through the HHI, indicates more competitive markets. The index has been standardized on a scale of 0 to 1. 0 indicates highly competitive markets. For instance, in a monopoly a single firm controls the entire market, or if there is a moderate concentration, there are several large firms that control large share of the market.

<sup>2</sup> The Common Procurement Vocabulary (CPV) system is used to standardize the references for procurement contracts within the European Union. CPV-2 is a broader category and CPV-3 is a more specific sub-category.

<sup>3</sup> NUTS 2 (Nomenclature of Territorial Units for Statistics) region in Slovenia, is a specific level of geographical classification used to subdivide the country for statistical and administrative purposes.

<sup>4</sup> National authorities include the authorities of the republic of Slovenia as per article 9 of the PPA, such as Ministries (Ministry of Health, Ministry of Public Administration). Regional authorities include authorities of self-governing local communities, such as Municipalities (Municipality of Maribor, Municipality of Ljubljana). Public bodies governed by public law are bodies established for the specific purpose of meeting needs in the general interest, they have legal personality and are financed to more than 50% by state or local authorities, for example the Medical Centre in Ljubljana, National Library, Institute for Employment. The other category includes unclassified institutions or agencies in the data processing section.



# **3** Streamlining regulatory and institutional frameworks to enhance trust in the public procurement system

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The principle of access within the OECD Recommendation on Public Procurement recommends that countries should have in place coherent and stable institutional, legal, and regulatory frameworks, which are essential to build trust in the public procurement system and to increase participation in public procurement. This Chapter reviews the institutional, legal and policy framework to identify bottlenecks and impediments to competition in Slovenia and continues the analysis of the determinants of single bidding presented in Chapter 2.

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## Ensuring the stability of the regulatory framework

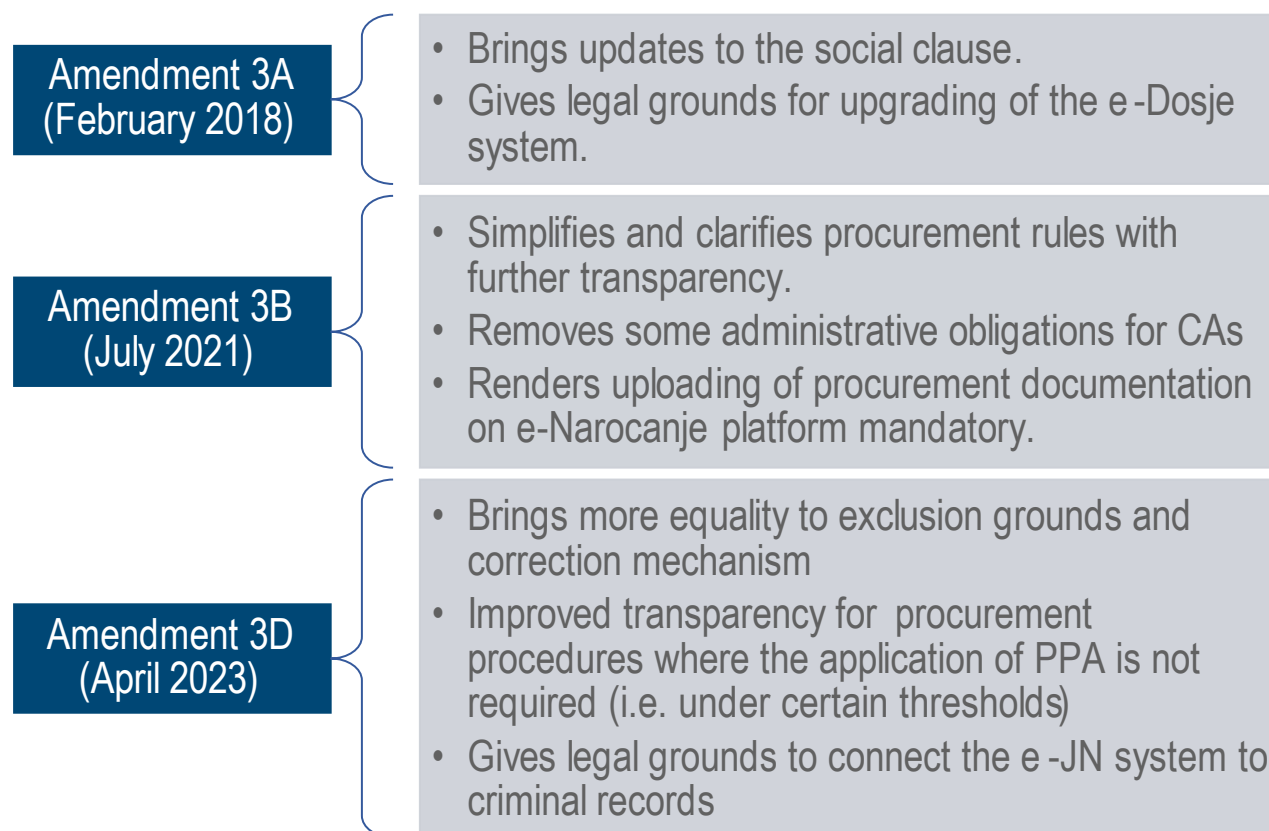
### ***3.1.1. Improving legal certainty by avoiding frequent changes in the law***

The legal framework for public procurement in Slovenia primarily relies on the Public Procurement Act (hereinafter PPA) (Official Gazette of the Republic of Slovenia, No 91/15), adopted in 2015 and which entered into force in April 2016. The PPA transposes EU Directives (Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors). In addition to the PPA, several other laws are also regulating public procurement, including the Act on Concession Contracts, the Public Procurement in the Field of Defence and Security Act, and the Legal Protection in Public Procurement Procedures Act. The PPA is complemented by secondary legislation, including:

- Decree on Financial Insurance in Public Procurement (Official Gazette of the Republic of Slovenia, No. 27/16)
- Decree on Joint Public Procurement of the Government of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 27/16)
- Decree on the Information list of Contracting Authorities and Mandatory Information in Notices for the Small Value Procurement Procedure (Official Gazette of the Republic of Slovenia, No. 37/16)
- Rules on the Unified Information System in the Field of Public Procurement (Official Gazette of the Republic of Slovenia, No. 37/18)
- Rules on the Types and Manner of Data Collection for the Annual Statistical Report on Awarded Public Contracts (Official Gazette of the Republic of Slovenia, No. 39/16)
- Decree on Green Public Procurement (Official Gazette of the Republic of Slovenia, No. 51/17, 64/19 and 121/21)

The PPA has been amended several times since its adoption, and these amendments aimed at bringing several improvements to the public procurement system (see Figure 3.1).

Figure 3.1. List of amendments to the PPA since its adoption in 2015



Source: (PWC, 2022<sup>[1]</sup>), (OECD, 2023<sup>[2]</sup>)

In addition to these amendments, another one was originally adopted in January 2022, i.e. Amendment 3C. Among its objectives was the creation of flexible conditions for procurement of medical devices and equipment justified by the COVID-19 pandemic, establishing a Central Price Record Office for medical devices/equipment, and establishing termination of contract if the bidders does not want to lower the price. This amendment was however repealed by the adoption of another law later this year titled “Law on urgent measures to ensure the stability of the healthcare system.”

Several stakeholders have indicated that frequent changes in the legislation in Slovenia have impacted the capacity of both contracting authorities and economic operators. A survey conducted by OECD with a number of contracting authorities in Slovenia has revealed that 59% believe the frequent changes to the procurement law are a deterrent to competition in procurement. (OECD, 2023<sup>[3]</sup>) As such, the legislation is seen as overly complex, as key stakeholders already need time to build capacity regarding the original law. Frequent amendments are therefore difficult to follow when a baseline capacity is not achieved, especially for smaller contracting authorities. (OECD, 2023<sup>[2]</sup>) Frequent changes to the procurement framework may cause to legal uncertainty, and complex public procurement rules impede broad participation from potential competitors, especially new entrants and SMEs.

As such, the principle of participation in the OECD Recommendation on Public Procurement highlights the needs for transparent and effective stakeholder participation. Namely, the Recommendation suggests developing and following a standard process when formulating changes to the public procurement system, which should include public consultations, invite comments of the private sector and civil society, ensure the publication of the results of the consultation phase, and explain the options chosen, all in a transparent

manner. Stakeholders from the private sector and civil society have indicated having been included in the public consultations for the various amendments to the PPA, however, strengthening the engagement with the private sector during reforms processes could help build capacity for future reforms and remove legal uncertainty. In Ireland, the Office for Government Procurement regularly engage with SMEs during procurement reforms (see Box 3.1)

### Box 3.1. The SME Advisory Group in Ireland

The Office of Government Procurement, the central purchasing body of Ireland, established the SME Advisory Group and facilitates its quarterly meetings. It is a standing group chaired by a Minister of State at the Department of Finance and Public Expenditure and Reform to discuss procurement policy and initiative design to assist SMEs, so that the voice of Irish SMEs can be heard at the highest level. The Office of Government Procurement engages with industry representatives and civil societies, including the Irish Small and Medium Enterprises Association (ISME), Irish Business and Employers Confederation (IBEC), Small Firms Association (SFA), Construction Industry Federation (CIF) and Chambers Ireland through the SME Advisory Group to exchange views and identify policy initiatives. Other business-focused public bodies that attend these meeting would include the Competition and Consumer Protection Agency; Enterprise Ireland; Inter-trade Ireland; and the Department of Business, Enterprise and Innovation.

The Office of Government Procurement holds an annual conference that covers all of the latest policy developments relevant to suppliers. Furthermore, the Office of Government Procurement, Enterprise Ireland and Inter-trade Ireland regularly hold “meet the buyers” events designed to encourage SME participation and to increase knowledge of policy in the area.

Source: (OECD, 2018<sup>[4]</sup>)

### 3.1.2. Addressing potential barriers to competition in the Public Procurement Act

#### *Leveraging the use of the European Single Procurement Document and systematic digitalization of certificate*

In the OECD survey geared toward contracting authorities, nearly 80% of respondents indicated that one of the main bottlenecks to competition in public procurement is the complexity of the public procurement system in Slovenia. (OECD, 2023<sup>[3]</sup>) In addition, in another OECD survey targeting economic operators, several respondents mentioned that the excessive bureaucracy of the procurement system deter them from participating in procurement processes. (OECD, 2024<sup>[5]</sup>)

Impediments to competition in public procurement can come from the regulatory and policy framework itself, either because the framework provides legal uncertainty to bidders, which in turn are discouraged to bid due to a lack of trust in the system, or because of the administrative burden provided by the public procurement law or other legislative act. For example, in 2021, the European Commission ran a public consultation to identify the main barriers for SMEs to access public procurement, and proposes 10 policy interventions to simplify procurement practices for SMEs, including a better usability of TED, and better accessibility to procurement platforms in general. (European Commission, 2021<sup>[6]</sup>)

One particular element that comes out from surveys is the use of the European Single Procurement Document (ESPD). The PPA mandates Contracting Authorities to accept the ESPD in lieu of certificates and entitles economic operators to reuse a previous ESPD, provided that they confirm that the information contained therein continues to be correct (Article 79). Nonetheless, one economic operator has stated that

contracting authorities require the company's details for each procurement or each ESPD separately. To ease the administrative burden of economic operators, instead of having them fill the ESPD separately each time, the data required by each contracting authority could therefore be automatically populated in the e-Procurement system either from a standard form filled by economic operators through their profile, or from previous ESPDs. Economic operators would then be able to adjust or correct the information according to the current tender. (OECD, 2024<sup>[5]</sup>)

In addition, PPA states that economic operators shall not be required to submit supporting documents or other documentary evidence where and insofar as the contracting authority has the possibility of obtaining the certificates or other relevant information directly by accessing a national database (Article 79). Economic operators have indicated that in some cases, while the contracting authority can obtain an extract from the criminal record, the contracting authority required a certificate to be notarized and sent by the economic operator, resulting in the contract being awarded to a competitor with a price six times bigger than the respondent's price.

The MPA has already issued further instructions on how to use e-Procurement information system and its modules, especially regarding the use of ESPD form and the e-Dosje model which enables electronic verification of some exclusion grounds. However, the PPA could further promote these measures, for example through a newsletter to ensure contracting authorities rely on information that is fully digitalized, and to avoid putting undue burden on economic operators to provide information.

#### *Clarifying the cases where negotiated procedure without prior publication can be used*

One particular hurdle identified by contracting authorities is difficulties in understanding how and when to use the negotiated procedure without prior publication of notice. The procedure is regulated by Article 46 of the PPA, and largely transposes Article 32 of the EU 2014/24 directive on public procurement, with some additional cases as follows:

- Where a contract in the infrastructure field is purely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, provided that the award of such a contract does not prejudice the competitive award of subsequent contracts which seek those ends.
- If the value of the public contract does not exceed the threshold above which a contract notice must be published in the Official Journal of the European Union, provided that the contract may be executed by a previously identified and final number of qualified tenderers and provided that all tenderers are treated equally.
- For bargain purchases, where it is possible to award a public supply contract in the infrastructure field by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices.

As this procedure is non-transparent by nature, the PPA put in place several safeguards to ensure integrity in these processes. This includes the obligation for contracting authorities to publish a voluntary ex-ante transparency notice on the public procurement portal or, if the value of the contract so requires, also in the Official Journal of the European Union when they award contracts using negotiated procedure without prior publication (Article 57 of the PPA). The PPA also requires that for every contract, contracting authorities shall draw up a written report which shall include the circumstances that justify the use of the negotiated procedure without prior publication (Article 105 of the PPA). Furthermore, the contracting authority must execute the procedure and negotiations using electronic tools for submission and communication as it is the case under other procedures. The chosen contractor must comply with all exclusion grounds as listed by the PPA and the procurement documentation. After choosing the contractor, the contracting authority must publish both its decision and the award e-notice on the public procurement portal, so that all interested economic operators can appeal if they suspect a breach of legislation. After the award of the contract, the

contract and potential future annexes must be published on national procurement portal, as well as all monthly payments. The justification for negotiated procedures without prior publication used by contracting authorities in Slovenia are mostly linked with technical/artistic reasons or exclusive rights, and with unsuccessful previous open procedure where no bid or no valid bid has been received (see Table 3.1).

**Table 3.1. Justification used for negotiated procedure without prior publication by contracting authorities in Slovenia in 2021**

Justification	No. of procedures	Total contract value (€)
Technical or artistic reasons or exclusive rights	434	179,227,694
Cases of extreme urgency	32	35,230,760
Unsuccessful previous open procedure – no bid or no valid bid has been received	109	42,857,759
Additional purchases of goods or additional works or services	51	9,469,802
Goods manufactured for research, experimentation, study or development	3	728,511
Pre-existing open competition (design contest)	18	14,212,000
Contract under OJEU thresholds with a previously identified final number of qualified tenderers	13	12,472,851
Other	15	11,161,621

Source: (Ministry of Public Administration of Slovenia, 2022<sup>[7]</sup>)

The OECD survey targeting contracting authorities revealed that 31% of them think that the legal framework is not clear enough regarding negotiated procedures without prior publication. One contracting authority states that the provisions allow for different interpretations, and the terminology within the legislation is too complex. For the specific case of extreme urgency, another contracting authority mentioned that it is unclear where the threshold stands between urgency and non-urgency. (OECD, 2023<sup>[3]</sup>) In addition, a 2022 study reveals that some of the interviewed contracting authorities agreed that using negotiated procedure without prior publication is sometimes unjustified and that the contracting authorities are providing vague explanations for its usage. Two interviewees justify their usage of negotiated procedures simply because of Article 46 of the PPA allows it, while one interviewee believes that provisions of this article should be more stringent. (PWC, 2022<sup>[1]</sup>)

The table above also shows that unsuccessful previous open procedure where no bid or no valid bid has been received is the second most used reason for justifying the use of negotiated procedure without prior publication, which shows the close link between single-bidding and the use of non-transparent procedures. As such, increasing the competitiveness of the market in Slovenia would not only tackle the issue of single-bidding, but also decrease the potential use of negotiated procedures without prior publication. To do so, several measures can be put in place to make the procurement market more attractive to bidders (see Chapter 4).

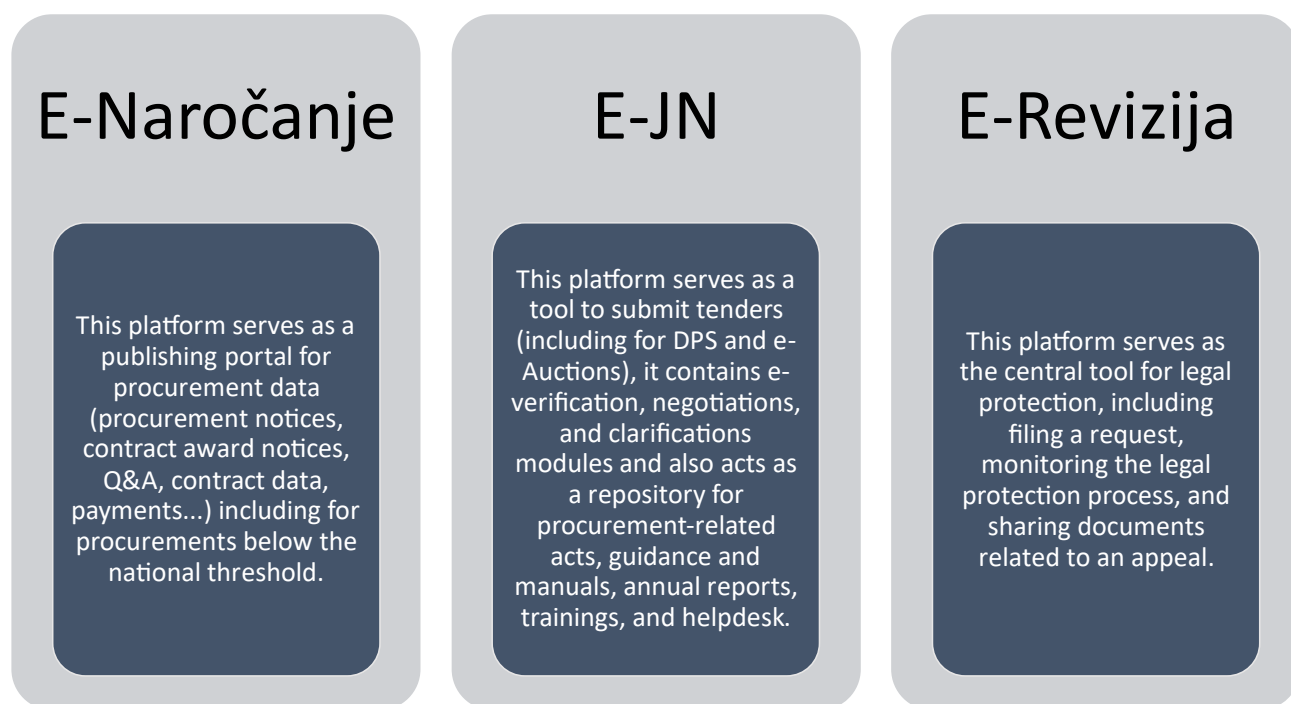
As such, the MPA has put in place further mechanisms to tackle these issues through the amendment 3D to the PPA, adopted in April 2023. The voluntary ex-ante transparency notice is now sent to the entities that are safeguards of public interest before the start of the negotiated procedures without prior publication. These institutions are competent to monitor the procurement market and are also competent to submit a review claim, and include the Court of Audit, the Commission for the Prevention of Corruption and the Slovenian Competition Protection Agency. Contracting authorities do not need their approval for the execution of the procedure, but the absence of notification to entities safeguarding the public interest constitutes an offence under article 111 of PPA. This measure contributes to ensure that negotiated procedure without prior publication is used correctly, as the voluntary ex-ante transparency notice as per Article 57 in the previous version of the PPA was published only after the negotiations were completed.

This new measure serves two purposes: 1) Better procurement planning and making contracting authorities more thoughtful when using negotiated procedures without prior publication; and 2) Giving more responsibilities to entities of safeguard of public interest by giving them structured information about these procedures and ease the identification of potential violation of the procurement law. In addition to this reform measure, the MPA recently issued sample forms to enable smoother reporting to safeguards of public interest, which also guide contracting authorities through the reasoning behind each justification and allow them to check whether all conditions for the use of negotiated procedures are met. (Ministry of Public Administration of Slovenia, 2024<sup>[8]</sup>) This last initiative has the potential to address the concerns contracting authorities expressed in their responses to surveys and interviews, and the usefulness of the forms should be further monitored by MPA.

### 3.1.3. Enhancing the use of e-Procurement system

The Public Procurement Directorate (PPD) under the Ministry of Public Administration (MPA), and especially its Division for E-Procurement, Consultation and Analytics, is responsible for managing the electronic systems for public procurement. Three digital platforms are available in Slovenia regarding public procurement (see Figure 3.2).

Figure 3.2. The electronic platforms for public procurement in Slovenia



Source: (OECD, 2023<sup>[2]</sup>)

#### *Harmonising e-Procurement systems into a single portal*

Slovenia has made great efforts in digitalizing the procurement processes, and the electronic platforms are overall well perceived in Slovenia, with a majority of surveyed economic operators indicating that the lack of knowledge of the e-Procurement system is rarely an issue for participating in procurement processes. Nonetheless, some have also suggested that the platforms should be unified into a single portal, which should be more sophisticated and user-friendly than the existing ones. (OECD, 2024<sup>[5]</sup>) Indeed, the existence of three platforms seem complicated to the economic operators that are not experienced in the

public procurement market and could represent a burden to new market entrants. Other economic operators have argued that the system could be further adjusted regarding the distribution of information to make it more accessible and open to a wider population with different levels of experience and knowledge about the system. (PWC, 2022<sup>[11]</sup>)

As such, a single platform that would be used both for advertisement of procurement opportunities, for submitting tenders, and for filing requests for legal protection would likely ease the experience of both economic operators and contracting authority regarding procurement processes. In addition, having a single portal would also enhance the quality and reliability of procurement data, not only for enabling better access to information, but also for monitoring purposes and measuring the performance of the public procurement system (see Section on performance measurement framework below). The United Kingdom for example has faced the same issue, where basic information on which procurement route was used was missing for 6% of contracts recorded on Contracts Finder, one of two public contract databases, from 2018 to 2022. In addition, information on other aspects of contracts is collected inconsistently between the two databases, and most departments do not consistently publish all contracts within the required time. The Cabinet Office of the United Kingdom is therefore working on changes to the process and its standards, including consolidating to only using one database. (National Audit Office of the UK, 2023<sup>[9]</sup>)

The creation of a single platform for all procurement data has shown to increase participation in public procurement in certain countries. Box 3.2 presents the example of Korea.

### Box 3.2. Korea: integrated e-procurement system, KONEPS

In 2002, the Public Procurement Service (PPS), the central procurement agency of Korea, introduced a fully integrated, end-to-end e-procurement system called KONEPS. This system covers the entire procurement cycle electronically (including a one-time registration, tendering, contracts, inspection and payment) and related documents are exchanged online. KONEPS links with about 140 external systems to share and retrieve any necessary information, and provide a one-stop service, including automatic collection of bidder's qualification data, delivery report, e-invoicing and e-payment. Furthermore, it provides related information on a real-time basis. All public organisations are mandated to publish tenders through KONEPS. In 2012, over 62.7% of Korea's total public procurement (USD 106 billion) was conducted through KONEPS. In KONEPS 45,000 public entities interact with 244,000 registered suppliers.

According to PPS, the system has boosted efficiency in procurement, and significantly reduced transaction costs. In addition, the system has increased participation in public tenders and has considerably improved transparency, eliminating instances of corruption by preventing illegal practices and collusive acts. For example, the Korea Fair Trade Commission runs on KONEPS, the Korean BRIAS system which is the automated detection system for detecting suspicious bid strategies. According to the integrity assessment conducted by Korea Anti-Corruption and Civil Rights Commission, Integrity perception index of PPS has improved from 6.8 to 8.52 out of 10 as the highest score, since the launch of KONEPS.

Source: (OECD, 2016<sup>[10]</sup>)

The MPA has already taken stock of these potential bottlenecks. As such, in order to further increase the efficiency of public procurement, a Digital Transformation Plan for Public Procurement is currently being developed, with the objective of improving e-procurement, increasing efficiency, simplifying processes and increasing competition in the public procurement system. The Plan is expected to be adopted in 2024, and spans until 2030. Key areas of improvement are expected to include the following:



- A single-entry point for all participants in public procurement procedures
- Automation of the implementation of procedures
- Elimination of administrative burdens
- Improved control of the implementation of public procurement procedures
- Ensuring the connectivity of the different systems

In addition, several enhancements were already brought to the e-JN information system, including a Notification feature that enables economic operators, participating as tenderers in public procurement procedures, to monitor published public procurement contracts in the e-JN information system and to prepare tenders more easily, an enhanced way for bidders to upload their supporting documents, and the renewal of the e-Dossier module, which allows contracting authorities to check the criminal record of tenderers electronically instead of physically, thanks to an interconnection with the system of the Ministry of Justice. These new features are expected to ease the administrative burden of both the contracting authorities and economic operators, and monitoring of their impact on competition would therefore be important. (OECD, 2023<sup>[2]</sup>)

### *Encouraging the publication of procurement plans on the e-Procurement systems*

Public entities have different mandates in terms of providing public services to citizens and businesses. To deliver on their mandate, those entities require the adequate human capital and the procurement of goods, services, and works. Therefore, the fulfilment of strategic goals for these entities is closely linked with procurement planning. One of the main goals of procurement planning is improving market engagement by providing economic operators with enhanced visibility on upcoming procurement opportunities, therefore increasing access to public tenders and ultimately promoting more competition. Procurement planning has two key benefits: i) ensuring a better management of time and resources for all stakeholders and ii) improving market engagement by providing economic operators with enhanced visibility on upcoming procurement opportunities (when the procurement plans are published), therefore increasing access to public tenders and ultimately promoting more competition. (OECD, 2023<sup>[11]</sup>)

In Slovenia, the PPA does not mandate preparing and publishing of the procurement plans. Article 52 of the PPA, titled “types of notices and the form and manner of their publication” contains a list of notices to be published by contracting authorities but does not include procurement plans. Only the Public Finance Act defines the preparation of a draft procurement plan and its adoption (Article 25). In addition, the publication of those procurement plans is not obligatory and just a few contracting authorities are making it publicly available on their websites. (PWC, 2022<sup>[1]</sup>)

Procurement plans are a key tool to provide visibility to the market on upcoming procurement opportunities and should contain key information to inform the bidders of future opportunities (see Box 3.3). In some OECD countries, such as Croatia and Latvia, the preparation and publication of procurement plans is mentioned in the regulatory framework or in procurement guidelines, such as Hungary, where not only the publication of plans is mandatory on the e-Procurement system, but the procurement law also mandates a minimum level of detail. (OECD, 2024<sup>[12]</sup>) In other OECD countries, a contracting authority may not launch a procurement process if the process was not included in the procurement plan. At the same time, flexibility needs to be given to contracting authorities as needs may change over time. It is generally recommended that contracting authorities may launch a procurement process that was not foreseen in the original procurement plan, but only after having amended said procurement plan and published the amended version. (OECD, 2023<sup>[11]</sup>)

### Box 3.3. Key information included in procurement plans

Procurement planning is defined as a process carried out by contracting authorities to plan purchasing requirements for a defined period.

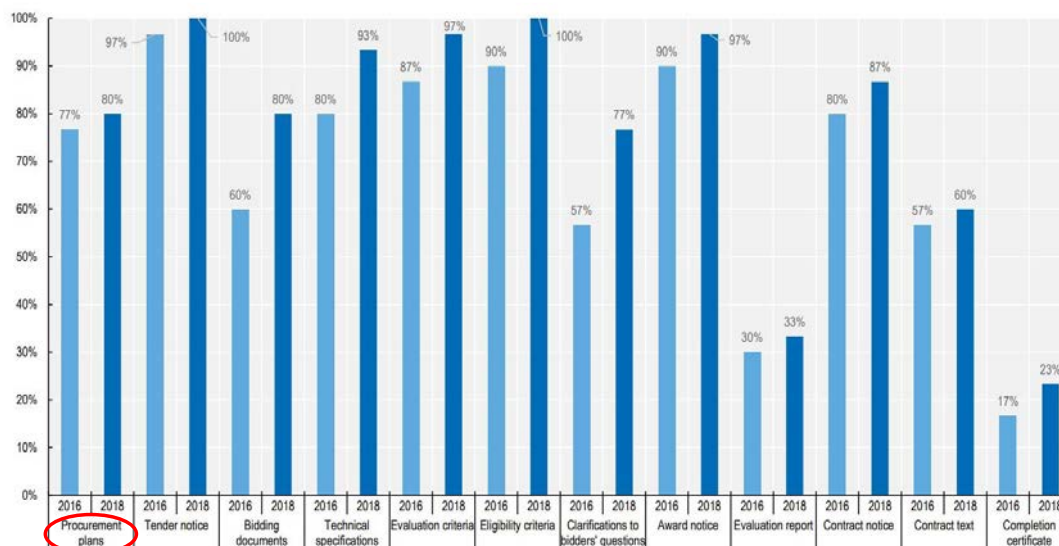
Procurement plans usually include:

- Details on the stakeholders involved in the preparation of the plan, in terms of roles, department/s and any necessary sign-offs, including any other stakeholders consulted during the process.
- Description of procurement requirements – divided by the respective category; goods, services, works.
- Respective section/department requiring the procured goods (if relevant) and any areas affected by the procurement needs.
- Estimated budget and project implementation deadlines.
- Strategy including established timelines – for expected award, delivery or implementation.
- Action Plan – delineating key tasks to be completed by each identified stakeholder, with timeframes for completion. This may also incorporate the approach the project team will adopt to select the product/s or service together with the procurement type/procedure and any respective selection criteria.

Source: (OECD, 2023<sup>[11]</sup>)

In addition to the preparation of procurement plans, their publication is also key for transparency. The absence of publication of procurement plans significantly decreases the benefits of such practice: on the one hand contracting authorities are not providing visibility to the market on upcoming procurement opportunities, and on the other hand it impacts the quality of procurement plans as well the accountability of contracting authorities. (OECD, 2023<sup>[11]</sup>) As of 2018, 80% of respondents to the 2018 Survey on Public procurement launched by the OECD have stated that procurement plans are available to the general public (see Figure 3.3).

Figure 3.3. Availability of public procurement documents to the general public



Note: Based on data from 30 respondents (OECD) that answered both the 2018 and the 2016 Surveys on Public procurement.

Source: (OECD, 2019<sup>[13]</sup>)

As such, it is suggested that the PPA should include a provision for the systematic preparation and mandatory publication of procurement plans by all contracting authorities on an annual basis, also defining a list of key information that the procurement plans should contain. The publication of the procurement plans can happen either on E-JN or e-Narocanje. The draft proposal of amendment ZJN-3D originally included a provision on the obligation for contracting authorities to prepare procurement plans. However, during the public consultations, this provision was rejected by the majority of stakeholders, who considered this obligation as an additional burden on contracting authorities, and who were unsure regarding the necessary level of detail to be contained in the procurement plans. To streamline the process, the MPA should consider developing a procurement plan template to be used by all contracting authorities, indicating the level of detail for the procurement plans. Publication of the procurement plans on the portal (s) should be user-friendly, including an easy way to amend the plans. In Tunisia and Australia for example, the national procurement portals provide full access to procurement data, including procurement plans and any modification thereof (see Box 3.4). This enhanced transparency of procurement plans would help economic operators be aware of procurement opportunities in the upcoming year and potentially increase their participation in procurement processes.

### Box 3.4. Transparency of Procurement Plans in Australia and Tunisia

#### Australia

The Australian e-procurement system, AusTender, provides centralised publication of Australian government business opportunities, annual procurement plans, multi-use lists and contracts awarded. The Commonwealth Procurement Rules state that in order to draw the market's early attention to potential procurement opportunities, each relevant entity must maintain on AusTender a current procurement plan containing a short strategic procurement outlook. The annual procurement plan should include the subject matter of any significant planned procurement and the estimated publication date of the approach to market. The rules state that relevant entities should update their plans regularly throughout the year.

#### Tunisia

In Tunisia, Article 8 of Decree no. 2014-1039 of March 13, 2014, regulating public procurement (DMP) provides that the public buyer is required to draw up a provisional annual procurement plan in line with the draft budget, according to a standard model and a defined timetable. In addition, the public buyer must publish/update the procurement plan no later than 30 days before the start of the procurement procedure on national e-Procurement system Tuneps. Originally, the procurement plans were supposed to be published on another public procurement portal which served only as a publishing portal was distinct from the Tuneps system, which served for bid submission. Therefore, the implementation of this obligation on procurement plans originally knew some difficulties, as not all contracting authorities published their procurement plans on the portal. For this reason, on May 11, 2018, Tunisia published Decree No. 416 on the generalization of the Tuneps system, which came into force on September 1, 2018. As a consequence, from 2019, a contracting authority cannot publish a tender notice if the annual public procurement plan has not been published.

Source: (Australian Government, n.d.<sup>[14]</sup>), (OECD, 2019<sup>[15]</sup>)

### *Taking full advantage of the implementation of eForms*

eForms are an EU legislative open standard for publishing public procurement data, established under European Commission Implementing Regulation (EU) 2019/1780. They are digital standard forms used by public buyers to publish notices on Tenders Electronic Daily. The eForms regulation established six standard forms, covering forty notices. The standard forms (eForms) contain fields, some of which are mandatory and other optional. eForms are expected to significantly improve the quality and analysis of procurement data. The Commission highlighted that well-implemented eForms would increase the ability of businesses and other organisations to find procurement notices, reduce the administrative burden for contracting authorities, increase the ability of governments to make data-driven decisions about public spending, and make public procurement more transparent. (European Commission, 2023<sup>[16]</sup>)

The European Commission also emphasized that eForms is not an 'off-the-shelf' solution that can be implemented 'as is', and policymakers in each member country must first define the national approach to the various aspects of eForms, such as also using them for contracts below thresholds, and defining the national governance structure for eForms. Therefore, eForms implementation in the EU member states should not consider as a low-level form-filling exercise, but rather as a key tool to build a procurement data architecture that facilitates the uptake of digital technologies for procurement governance and a way to collect information on many policy priorities, such as green, social and innovation procurement data (OECD, forthcoming<sup>[17]</sup>)

Slovenia recently implemented eForms, and the new format has been in use since January 2024. An online training and training materials regarding the updates to system and the new forms were made available on e-JN. eForms are also used for procurements below the EU threshold and above the national threshold as per article 21 of PPA. Slovenia applied the once-only principle when implementing eForms, meaning that each information is inserted only once. To make the use of eForms easier for contracting authorities, the preparation of new notices was undertaken by MPA, so they resemble as closely as possible to the previous notices in terms of structure and naming. The eForms notices are connected with the Slovenian Business Register to obtain information on entities. As such, Slovenia took a step forward in simplifying and centralizing access to public procurement data. The introduction of eForms represents a significant opportunity to enhance data quality regarding public procurement. Slovenia should therefore monitor whether the implementation of eForms has had an impact on data quality, but also competition in public procurement and whether it removed some administrative burdens on both contracting authorities and economic operators.

## A better coordination among key actors in the institutional framework

### 3.1.4. Reinforcing the control over procurement processes

#### *Enhancing the role of DKOM in legal protection*

Effective remedies for challenging procurement decisions are essential to build bidders' confidence in the integrity and fairness of the procurement system, thus encouraging their participation. Key aspects of an effective remedies system are timely access, independent review, efficient and timely resolution of complaints and adequate remedies.

In Slovenia, the remedy system is overall considered robust. Legal protection in public procurement is regulated by the Act on the Provision of Legal Protection in Public Procurement Procedures (ZPVPJN), and the authority in charge of reviewing public procurement procedures is the National Review Commission for Reviewing Public Procurement Award Procedures (DKOM). The appeals are filed through the e-Revizija portal, which was introduced in 2021, and has been deemed as user-friendly. The appeals process is twofold: 1) the economic operator files an appeal before the Contracting Authority; 2) the economic operator files an appeal before DKOM. DKOM has then 15 working days to issue a decision, and such timeframe is usually observed by DKOM unless the case is incomplete or complex and needs further expertise. DKOM's decisions can be challenged before the Administrative Court of the Republic of Slovenia in certain cases. The fee structure for complaints has a variable range. Before award of the contract, the fee rate is linked to the contract's value, extending from a minimum of EUR 1000 to a maximum of EUR 25,000. After the award of the contract, the fee is calculated as a percentage of the lowest bid submitted. All decisions of DKOM are published on DKOM's webpage, and the publication contains detailed information about the case, the decision, and its conclusion. (OECD, 2023<sup>[2]</sup>) The transparency of the process is also ensured on the portal e-Narocanje, where certain information regarding the procedure, together with the final decision of DKOM are published under the specific folder of each procurement procedure. An economic operator following a procurement process can therefore see whether an appeal has been launched and what was the decision. The information is fetched from the e-Revizija portal, which is interconnected with e-Narocanje.

Nonetheless, the remedies system could be further strengthened to address non-competitive procedures, as well as single-bid procedures. ZPVPJN explicitly states that legal protection shall be provided in the cases of negotiated procedure without prior publication for a tenderer that was not invited to participate in such a procedure but should have been invited to participate in accordance with the law governing public procurement (Article 25 paragraph 6). However, an analysis of the 2021 Work Report of DKOM indicates that in practice, few appeals are lodged against negotiated procedures without prior publication. In 2021,

DKOM solved 171 cases, out of which only 2 concerned negotiated procedures without prior publication or 1.17%. It represents a decrease compared to the 10 appeals lodged in 2021, which can be explained by the overall decrease in the use of negotiated procedures without prior publication. None of these two appeals were upheld by DKOM. (DKOM, 2023<sup>[18]</sup>) In addition, a study found that single-bidding procedures are almost never appealed against, despite the possibility to appeals against the procedure regarding the tender documentation, prior to the bid submission deadline for submission of bids. (PWC, 2022<sup>[11]</sup>)

The lack of appeals can be explained by several factors. For negotiated procedures without prior publication, the lack of transparency may explain the low number of appeals since potential bidders are not aware of the procurement process until it is already awarded, when the contracting authority publishes the voluntary ex-ante transparency notice. For single-bid procedures, potential collusive practices may play a role since the Slovenian market is quite small, with other bidders having potential agreements with the single bidder in the process.

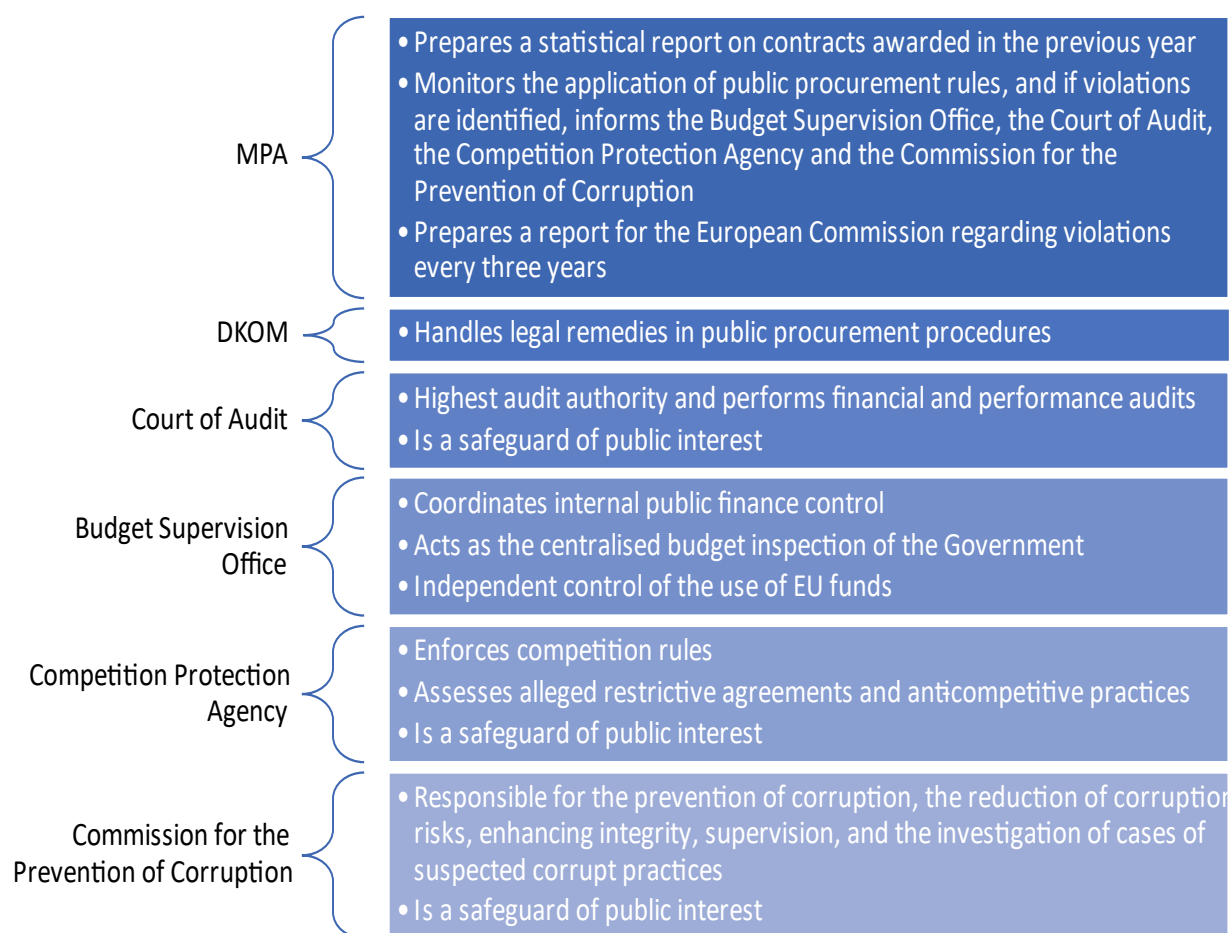
One way to increase the role of DKOM in controlling these procedures would be to leverage the newly established ex-ante notification to the safeguards of public interest before the start of the negotiated procedures without prior publication. Through the initiation of review proceedings before DKOM by the safeguards of public interest DKOM could therefore detect violations to the procurement law before the launch of the process, even though the issue is not raised by a bidder. It is therefore recommended to thoroughly monitor the activity of DKOM, and other representatives of public interest, regarding this new function.

#### *Ensuring a better coordination of controlling bodies and safeguards of public interest*

The principle of access within the OECD Recommendation on Public Procurement does not only highlight the importance of using competitive procedures, but also suggests sound institutional and regulatory frameworks to increase participation to procurement processes. Furthermore, the accountability principle recommends establishing clear lines for oversight of the public procurement cycle to ensure that the chains of responsibility are clear, that oversight mechanisms are in place and that the delegated levels of authority for approval of spending and approval of key procurement milestones is well defined. As such, rules for justifying and approving exceptions to procurement procedures should be comprehensive and clear, such as in cases of limiting competition. (OECD, 2015<sup>[19]</sup>)

Several institutions share monitoring functions in the public procurement system in Slovenia, and their role and responsibilities are well-established (see Figure 3.4).

**Figure 3.4. Monitoring and control mandates of the different stakeholders in Slovenia**



While the procurement oversight responsibilities are clearly established in Slovenia, a more structured coordination among the key actors could help better understand issues in competition and tackle them. An OECD report mentions a disconnect between procurement law and the interpretations of oversight institutions responsible for final rulings during disputes, with these rulings becoming a form of unwritten "law" driving behaviour across the system. (OECD, 2020<sup>[20]</sup>)

As such, coordination among oversight institutions plays a crucial role in ensuring consistency in the application of procurement rules and standards across the whole public sector. One way to ensure this consistency is to leverage the competency of monitoring public procurement procedures by institutions that are safeguards of public interest. As stated previously, these three entities are competent to request explanations or documentation related to a public procurement procedure at any stage and can initiate a review proceeding before DKOM if they suspect a violation of the PPA. However, there is no formal sharing of information among these safeguard institutions, hence posing the risk of different interpretation as to what constitutes a violation of the PPA, especially regarding risks to competition. The multiplicity of databases (including three platforms for public procurement, and [www.ERAR.si](http://www.ERAR.si), which monitors all public spending, including all payments from public institutions) could also make the task of safeguard institutions more complicated.

To tackle this, discussions with stakeholders in Slovenia highlighted the need for the development of a shared portal among all representatives of public interest and contracting authorities to better coordinate

data collection regarding certain cases. (OECD, 2023<sup>[2]</sup>) Several countries have taken the approach of a central database for procurement processes. In Brazil the Public Spending Observatory cross-checks the data with other government databases (see Box 3.5).

### **Box 3.5. Public Spending Observatory in Brazil : using Artificial Intelligence to detect potential fraud in public procurement**

The Office of the Comptroller General of the Union launched the Public Spending Observatory (Observatório da Despesa Pública) in 2008 as the basis for continuous detection and sanctioning of misconduct and corruption. Through the Public Spending Observatory, procurement expenditure data are cross-checked with other government databases as a means of identifying atypical situations that, while not a priori evidence of irregularities, warrant further examination.

The Observatory is composed by experienced analysts and auditors who are performing their monitoring tasks using modern technology. Indeed, in 2014, the Office of the Comptroller General created the Bidding, Contracts, and Tenders Analyzer (Analisador de Licitações, Contratos e Editais – Alice) with the objective of acting in a preventive and timely manner in relation to potential malpractices in public procurement. The system automatically collects daily information about the processes underway in the Federal Government’s main public procurement information systems, evaluates a set of risks, and raises red flags to direct the attention of the auditors and managers about situations that deviate from the reference standard. It is, therefore, a Continuous Auditing tool, with robotic automation of processes, which raises red flags about possible problems in public procurements. In 2023, Alice analysed 190,923 acquisitions on the main public procurement portals. The analyses, timely identification of inconsistencies and alerts to auditors generated 203 audit jobs worth a total of BRL 27 billion (approximately EUR 4.5 billion)

In many cases, follow-up activities are conducted together with special Advisors on Internal Control and internal audit units within public organisations. Examples of these tracks related to procurement and administrative contracts include possible conflicts of interest, inappropriate use of exemptions and waivers and substantial contract amendments. A number of tracks also relate to suspicious patterns of bid-rotation and market division among competitors by sector, geographic area or time, which might indicate that bidders are acting in a collusive scheme.

Source: (OECD, 2014<sup>[21]</sup>), (Oliveira, Monteiro da Rocha and Scatolino de Rezende, 2022<sup>[22]</sup>), (Observatory of Public Sector Innovation, 2023<sup>[23]</sup>)

Beyond the control mechanism of safeguard institutions of public interest, it is suggested that each key actor takes advantage of its procurement monitoring role and gear it toward enhancing competition. For instance, interviews with stakeholders indicated that an audit report on competitiveness was in consideration by the Court of Audit of Slovenia. Such a report could help better understand the root causes behind low competition in procurement. Similar analyses could be undertaken by the Commission for the Prevention of Corruption, which already does occasional studies on procurement practices in certain sectors, and by the Competition Protection Agency, which has extended knowledge on abuse of dominant market positions. (OECD, 2023<sup>[2]</sup>)

### **3.1.5. Creating a strategy or action plan to tackle single-bidding and a systematic monitoring system of competition in procurement**

Monitoring compliance with public procurement rules is necessary, but usually not sufficient in itself to ensure a sound public procurement system. The evaluation principle within OECD’s Recommendation on



Public Procurement recommends driving performance improvements through evaluation of the effectiveness of the public procurement system from individual procurements to the system as a whole, at all levels of government where feasible and appropriate. (OECD, 2015<sup>[19]</sup>) As such, creating a strategy or action plan to tackle single bidding could be a first step to identify concrete actions to increase competition in procurement. Putting in place a performance measurement framework could help gain more insights on competition in the public procurement system.

*Developing a strategy or action plan to tackle competition issues in procurement*

The Recommendation on public procurement contains guiding principles to assist Adherents in achieving the right balance between the primary procurement objective and broader policy objectives, so that public procurement systems support the achievement of broader outcomes. To achieve these policy objectives, many OECD countries have put in place a public procurement strategy at the national level to guide policy decisions, reform efforts, and initiatives. A survey conducted in 2018 by the OECD shows that most countries have developed policies at some level regarding Green and innovative public procurement and access of SMEs to public procurement (OECD, 2019<sup>[13]</sup>).

In Slovenia, there is no dedicated strategy in the area of public procurement per se. Public procurement is enshrined in the National Public Administration Development Strategy 2015-2020. The section on public procurement contains six measures under two thematic areas (e-public procurement, and simplification greater flexibility, efficiency, and rationality of public procurement). None of these measures focused on the improvement of competition per se, or on the role of procurement in achieving broader policy objectives (sustainable procurement for example). The new Public Administration Sustainable Development Strategy 2030 is currently being prepared. The strategic priorities in public procurement include measures related to professionalisation, competitiveness, sustainability, digital transformation etc. Nonetheless, Slovenia could greatly benefit from adopting standalone procurement strategies to address some of these areas, including regarding competition in public procurement. For instance, the Government of Sweden has devised a procurement strategy that formulates six policy objectives, including one on competition (see Box 3.6).

### Box 3.6. Sweden – National public procurement strategy for a sustainable future

Sweden developed a National Public Procurement Strategy in response to the challenges faced by its public sector – challenges that are common to most public sector organisations around the world. These included changes in the world such as climate, the environment, demographic trends and migration flows, and citizens' expectations of service. The strategy is designed to be a catalyst for new ideas in the public sector, and contains 6 policy objectives:

1. Public procurement as a strategic tool for doing good business.
2. Effective public purchasing.
- 3. A multiplicity of suppliers and well-functioning competition.**
4. Legally certain public procurement.
5. Public procurement that drives innovation and promotes alternative solutions.
6. Public procurement that is environmentally responsible.
7. Public procurement that contributes to a socially sustainable society.

Policy objective 3 states that well-functioning competition, with a multiplicity of actors, goods and services, is crucial in enabling public procurement to meet the society's needs in the best way possible. Including more, and new, tenderers in public procurements contributes to prevent bid rigging. When more companies and other organisations are able and wish to tender in public procurements, competition is strengthened, and fresh ideas are stimulated. As such, under this objective, the Government of Sweden has identified the following measures to tackle low competition:

- Improve trust in the public procurement markets and the conditions for competition: When trust towards the public procurement process becomes eroded, fewer suppliers decide to participate in tendering.
- Taking the supplier's perspective into account in public procurements: To ensure that suppliers do not feel excluded from participating in public procurements, account needs to be taken of the supplier's perspective in the process. This includes drafting tender documentation to encourage companies and organisations to submit tenders and offer new, innovative solutions.
- Enable better interaction and more dialogue: Effective dialogue before, during and after public procurements can create better understanding of the authority's specific needs, and consequently how the procurement documents are formulated – but can also improve knowledge and understanding of the solutions that the market can offer.
- Provide the right conditions for small and medium-sized enterprises: In many cases, small enterprises can offer flexible solutions that meet particular needs. The point is to design sufficiently attractive public procurements which both large and small enterprises want and are able to participate in.

Source: (Government Offices of Sweden, 2018<sup>[24]</sup>)

Beyond general public procurement strategies, the MPA could devise a strategy or action plan directly aimed at increasing competition and decreasing single-bidding. Such a strategy was for example developed in Hungary, where, in March 2023, the government endorsed an action plan (Government Decision 1118/2023) to increase competition in public procurement, which contains 14 different measures for the time period of 2023 and 2026 and targets different stakeholders and areas of procurement such as improvements to the e-Procurement system and capacity-building of contracting authorities and SMEs

(see Table 3.2). The Government of Hungary regularly monitors the implementation of the action plan and has also published a revised version of the Action Plan in March 2024.

**Table 3.2. Measures contained in the Action Plan on Increasing Competition in Public Procurement**

Measure Number	Measure Description
1.	Analyses and research supporting the evaluation and the increase of the level and intensity of competition in public procurement (development of the performance measurement framework) with the involvement of the OECD
2.	Automatic access to databases used to determine the existence of exclusion grounds
3.	Possibility to set up automatic notifications in the Electronic Procurement System (EKR)
4.	Development and extension of search function based on CPV codes in the EKR
5.	Providing anonymous access to procurement documents in the EKR
6.	Review of the rules on remedy fees
7.	Supplementing mandatory information to be published as part of preliminary market consultations with draft selection criteria and award criteria
8.	Update of the guidance on methods and practices to avoid single bid procurements with new best practice examples
9.	Public procurement training for SMEs
10.	Grant programme for SMEs
11.	Publication of new guidance on conflict of interest
12.	Publication of guidelines on corruption risks affecting the fairness of competition in public procurement
13.	Organising conferences and information events on organisational integrity for civil servants and other participants in public procurement
14.	Development of guidelines for the preparation of procurement contracts on effective handling of uncertain market conditions and making business risks for winning tenderers more proportionate

Note: The above measures are contained in the first version of the action plan dated March 2023. The action plan is currently under revision.  
Source: (OECD, forthcoming<sup>[25]</sup>)

As such, taking the above as an example, Slovenia could create such an action plan with measures to improve e-Procurement, better coordination among key actors, enhance the capacities of contracting authorities and economic operators, raise awareness on corruption risks etc.

### *Putting in place a procurement performance measurement framework*

Large amounts of information on public procurement procedures and contracts are published for transparency reasons, and this data offers many opportunities to provide insight into potential improvements and efficiencies in the public procurement system. This Report illustrates that competition cannot be assessed comprehensively through a single measure as, for example, the number of bidders does not fully correlate to the effectiveness of competition. However, further analysis of public procurement data helps gain insights and learn lessons on competition and competitiveness in the public procurement system and a structured, comprehensive performance measurement framework can facilitate the use of data for this purpose.

The OECD Recommendation on Public Procurement also highlights the need to drive performance improvements by evaluating the effectiveness of the public procurement system, from individual procurements to the system as a whole, at all levels of government, where feasible and appropriate. It suggests its adherents to i) assess periodically and consistently the results of the procurement process; and ii) develop indicators to measure performance, effectiveness, and savings of the public procurement system for benchmarking and to support strategic policy making on public procurement. (OECD, 2015<sup>[19]</sup>) To assist adherents in this regard, the OECD has developed a comprehensive performance measurement framework that countries can use to create their own framework. OECD's framework is designed to be

flexible, customisable, and scalable, depending on the needs of the country or organisation wishing to use it, with 259 indicators and 45 sub-indicators (see Box 3.7).

### Box 3.7. The OECD public procurement performance measurement framework

In 2023, the OECD published a framework for measuring efficiency, compliance and strategic objectives in public procurement. Given institutional and regulatory differences across countries, the proposed framework is designed to be flexible, customisable, and scalable, depending on the needs of the country or organisation wishing to use it. The measurement framework:

- Assesses the performance of public procurement at three levels, focusing on procurement procedure (tender level, contracting authority level and national level), depending on the existence of data and possibility to aggregate them.
- Identifies three categories of indicators, related to compliance, efficiency and achievement of strategic objectives.
- Covers the whole procurement cycle (from planning to contract management).
- Can be used by different stakeholders (contracting authorities, procurement authorities, central purchasing bodies, etc.).

In total, the OECD framework accounts for 259 indicators and 45 sub-indicators distributed as follows:

Category	Total indicators	Total sub-indicators
Compliance	68	32
Efficiency	128	13
Strategic	63	0
<b>Total</b>	<b>259</b>	<b>45</b>

Source: (OECD, 2023<sup>[26]</sup>)

Slovenia does not have a procurement performance measurement framework or key performance indicators for public procurement. Articles 107 and 108 of the PPA only warrants for the MPA to prepare a statistical report on contracts awarded in the Republic of Slovenia in the previous year. However, the systematic measurement of procurement performance, especially in the area of competition could help identify the areas or sectors where competition is particularly low. The Hungarian government, as part of its RRP, committed to set up a comprehensive measurement framework to regularly assess the performance of the public procurement system and to analyse the reasons behind the limited competition in the sectors most affected by the low level of competition. The development and implementation of this framework that was inspired by the OECD comprehensive measurement framework was published in September 2022, and its results for 2019-2022 were published in February 2023. The measurement framework developed by the Hungarian government includes 77 indicators and 57 sub-indicators. The original framework contained several indicators for competition, however the depth of the analysis was deemed insufficient by the Government and has since then introduced additional indicators to measure competition as part of the updated performance measurement framework, which was published in early 2024.

Prior to the development of the performance measurement framework, the government of Hungary had also developed a single-bid reporting tool to monitor and report on public procurements awarded with single-bids, as part of another commitment under the RRP. As such, government Decree 63/2022 (28. II.) on measures to reduce the number of single-bid public procurements mandated the Minister in charge of public procurement policy to i) continuously monitor the data on the proportion of single-bid public procurements, and ii) to prepare and publish on the e-procurement platform (EKR) an annual report providing an analysis of single bidding. (OECD, forthcoming<sup>[25]</sup>) The single-bid monitoring tool measures several indicators (see Box 3.8)

### Box 3.8. Single-bid reporting tool: analysis of the evolution of single-bid public procurement in Hungary

The Single-bid reporting tool uses the following indicators to analyse the trends of single bidding:

- Number and share of single-bid procurement processes compared to the total number of procurement processes.
- Value and share of single-bid procurement processes compared to the total value of procurement processes.
- Number, share and value of single-bid procurement processes by subject-matter (goods, services and public works).
- Number, share and value of single-bid procurement processes by main groups of CPV code.
- Number, share, and value of single-bid procurement processes by place of performance (i.e., by country).

Each of these indicators is further broken down into:

- Above vs. below EU thresholds
- Funded by EU funds vs. funded by national funds.

Source: (Prime Minister's Office of Hungary, 2023<sup>[27]</sup>)

Nonetheless, the Hungarian government realized that the analysis of single-bid procedures is only a starting point to identify the areas where single bid procurements are the most prevalent, and such an analysis alone is not sufficient to understand the state of play of competition in general and to highlight the systemic issues that could cause these single-bid processes. Indeed, to assess the level of competition in public procurement, it is pivotal to consider specific competition indicators beyond single-bid procurement and to read them in the light of other indicators which may either have a direct or indirect impact on the level of competition including, but not limited to:

- The number of negotiated procedures without prior publication
- Bidding practices such as time allowed for bidding, or decision-making speed by contracting authorities
- Cost of procurement processes for both contracting authorities and economic operators
- Number of active framework agreements and dynamic purchasing systems and the number of bidders within them
- Number of market consultations held
- Number and share of contracts awarded to SMEs

The government of Hungary continues use the single-bid reporting tool as part of its commitments with the European Union, but also uses the indicators contained in the performance measurement framework to deepen the analysis on competition. Therefore, a public procurement performance measurement framework should contain several indicators which help understand the level of competition, in addition to those on single-bidding. Because of the sheer volume of spending it represents, well performing public procurement can and must play a major role in fostering public sector efficiency, establishing citizens' trust and advancing the government's agenda. Regular reporting on the performance of the procurement system also helps build trust in the system.

It is therefore recommended that Slovenia develop its own performance measurement framework. The public procurement measurement framework that OECD has developed could be a good starting point for Slovenia to develop its own framework. As for the body in charge of the performance measurement framework, it is suggested that the Public Procurement Directorate within the MPA, and particularly the Division for e-procurement, consultation and analytics be in charge of undertaking this annual analysis. This recommendation is also justified by the fact that MPA already undertakes the yearly statistical analysis of procurement.

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# **4** Reinforcing the capacities of contracting authorities and economic operators in Slovenia

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The adequate capacity of both the public and private sectors is a key element to ensure a sound procurement system in order to deliver efficiency and value for money in the use of public funds. Administrative burdens, and low capacities of economic operators are often cited as major causes of low competition in Slovenia. This Chapter looks at measures to be undertaken specifically in Slovenia to improve both contracting authorities' and economic operators' capacities to increase competition.

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The procurement workforce at the contracting authorities is expected to have technical knowledge to ensure compliance with the regulatory framework, such as knowledge of the public procurement law and bylaws, knowledge on drafting tender documents and setting evaluation criteria, but in order to foster competition, they are also expected to enhance their knowledge of the market and observe good practices throughout the procurement cycle to ensure an optimal number of bids.

Economic operators are also expected to have a sound capacity and knowledge regarding the procurement system in order for them to be able to submit bids. If the contracting authorities do not foster attractiveness of procurement opportunities, or if economic operators have low capacity to answer to procurement opportunities, the impact on competition may be tremendous. There are several enablers of effective competition from both buyer and supplier perspective throughout the public procurement cycle, as for example the National Audit Office of the United Kingdom summarised it in a recent report (see Table 4.1)

**Table 4.1. Enablers of effective competition on the buyer and supplier sides**

Aspect of procurement	Contracting Authority's Perspective	Economic Operator's Perspective
Skills, capabilities and resources	The buyer has sufficient resources and skills to manage the procurement process properly.	The supplier has sufficient resources and skills to participate in the procurement process properly.
Understanding the market's capability	The buyer has carried out sufficient monitoring and engagement to know what the market can deliver.	The buyer's requirement is clear and easy to understand.
Setting realistic requirements	The buyer makes a sensible buy-build decision and sets requirement level at stretching but achievable.	The supplier is able to meet the requirements of the buyer.
Clear and fair communication	The buyer writes a detailed and clear specification and provides good quality answers to questions raised by potential suppliers.	Suppliers' bids will be considered fairly and comprehensively.
Facilitating choice	The buyer receives enough bids to offer choice.	Costs of bidding are not too high.
Satisfying requirements and innovating	Enough bids satisfying the requirements of the procurement are received.	There is opportunity to innovate and demonstrate strengths.
Bid deliverability	Bids received have strong certainty of deliverability.	Bids are costed, measurable, achievable, realistic and there is a time by which the service is to be delivered.
Price and profit balance	Bids are priced correctly and expected price is well understood.	Contracts provide an opportunity for suppliers to make profits.

Source: (National Audit Office of the UK, 2023<sup>[11]</sup>)

## Improving contracting authorities' procurement practices and knowledge of the market

### 4.1.1. Improving contracting authorities' practices throughout the procurement cycle

#### *Leveraging the use of market engagement tools*

Engaging early with the market can increase the level of competition in procurement processes, as it allows the private sector to gain awareness on future procurement opportunities, but it also helps government officials benefit from suppliers' knowledge of markets and trends and understand the capability and

capacity of suppliers prior to formulation of a procurement plan and strategy. The level of detail of this analysis also impacts the overall efficiency and success of procurement operations and increases the potential to obtain best value for money.

Early engagement with the market can have long-term consequences on competition in public procurement. Studies have shown that high bid costs, lack of confidence in evaluation and lack of feedback can deter participation from bidders in future opportunities. As such, contracting authorities that improve engagement with the market have shown to get increased levels of competition in subsequent procurement processes. However, studies have also shown that contracting authorities often take too cautious approaches to engagement with the market and are not always clear on what they can and cannot do, hence why capacity-building in this area is key. (National Audit Office of the UK, 2023<sup>[1]</sup>)

Market engagement can also increase trust in doing business with the public sector. Furthermore, such engagement can also be used for civic participation from a broader range of societal actors than simply potential bidders seeking to work with the public sector. This can support more deliberative and democratic approaches with civil society, helping to increase transparency and build trust in public sector decision making that affects communities. (OECD, 2022<sup>[2]</sup>)

In a survey geared toward contracting authorities in Slovenia, several contracting authorities have highlighted market analysis and preliminary market consultations as tools they have used that had a positive impact on the intensity of competition over the past three years. (OECD, 2023<sup>[3]</sup>). As Box 4.1 shows, beyond preliminary market consultations, there are several tools and methods to engage with the market and potential bidders in the preparatory phase of the procurement procedure, such as issuing a request for information, publishing annual procurement plans, using surveys or organising market engagement events. (OECD, 2023<sup>[4]</sup>)

#### Box 4.1. How to engage the market and collect information on the market?

Different methodologies can be used to engage the market.

##### Direct engagement mechanisms:

- Publish procurement plan.
- Organise public events to meet with suppliers.
- Meet with key suppliers (taking into account integrity risks).
- Request for quotation (RfQ)/questionnaires.
- Publish Prior Information Notices (PINs).

##### Getting information from third parties

- Commission a consultant (public and transparent selection).
- Use market analysis or sector study reports published by specialised companies or trade unions.
- Consult other contracting authorities with experience in similar procurement.

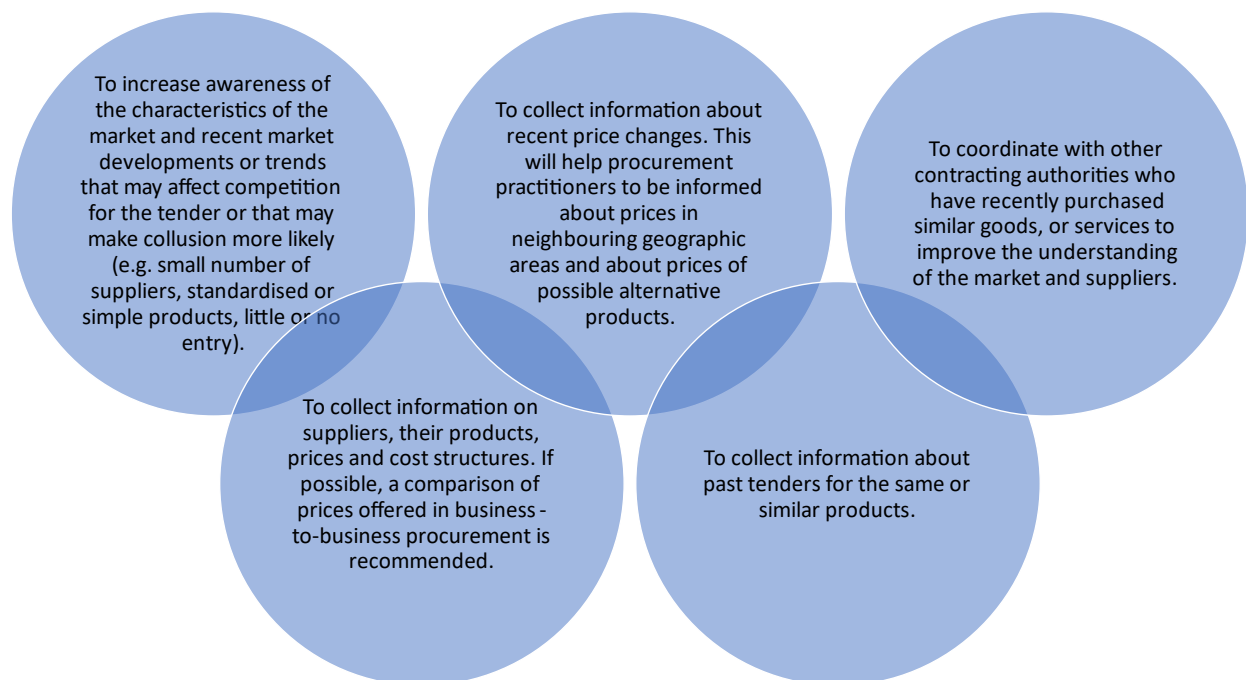
Source: (OECD, 2023<sup>[4]</sup>)

However, the success of early market engagement with the economic operators depends on a proactive and constructive approach by contracting authorities and suppliers for its success. Contracting authorities also need to be prepared to receive constructive criticism from potential suppliers and take useful learning from it.

Prior to market engagement, contracting authorities should perform a needs analysis, and then check whether these needs can be met by the market. The definition of needs should follow a functional and performance-based approach by identifying the performance, functionalities, quality, and quantity of the solution required, but without being oriented towards specific products, services, and brands available in the market. Once these needs are defined, the contracting authority should try to understand whether the market can meet the identified needs. A sound market analysis is key to understand the characteristics, capacity and capability of the supply market and their capacity to respond to priorities and policy objectives of the procuring entity. (OECD, 2023<sup>[4]</sup>)

Before engaging with the market in a consultation process, the contracting authorities are advised to carry out market research/market study to gather information on the market structure, suppliers' capabilities, market leaders, new entrants, price trends, alternatives as well as information on how other buyers operate in this market – both public and private sector buyers. The information can be used by procurement practitioners as input to define procurement requirements, select the appropriate tender method, analyse and evaluate submitted proposals from bidders. A market study may also be used to solicit ideas and opinions on the feasibility of requirements and the capability and capacity of the market to deliver. (OECD, forthcoming<sup>[5]</sup>) The results should lead to the identification of opportunities and risks which will inform strategic options to consider. Figure 4.1 summarises the advantages of carrying out a market study in the pre-tender phase.

**Figure 4.1. The advantages of a market study**



Source: (OECD, forthcoming<sup>[5]</sup>)

However, similarly, to running market consultations, carrying out market study requires that contracting authorities have the adequate capacity to do so. Further guidance could support entities in choosing the appropriate method for analysing the market. In this context, MPA should consider providing further guidance (including templates) and capacity building activities to contracting authorities on these tasks. For instance, the Scottish Government provides not only guidance but different tools and templates to contracting authorities in its Procurement Journey (a web-based guidance that guides contracting authority

throughout the whole public procurement cycle, from planning to contract implementation) on how to carry out market research (Scottish Government, 2021<sup>[6]</sup>). Another example is the State Government of Queensland, Australia that provides guidance to contracting authorities regarding market analysis (see Box 4.2).

#### Box 4.2. State of Queensland, Australia: Supply market analysis guidance

The state government of Queensland, Australia, provides procurement staff with detailed guidelines on conducting market analysis. The objective is to ensure that, once complete, the market analysis provides a strategic understanding of:

- how a market works
- the direction in which a market is heading
- the competitiveness of a market
- the capability and capacity of a market
- key suppliers and the value that suppliers place on the contracting authority as a customer
- how suppliers or markets can be developed to better meet contracting authority requirements
- the sustainability performance and capability of the market
- how to manage variances in pricing over time or between suppliers

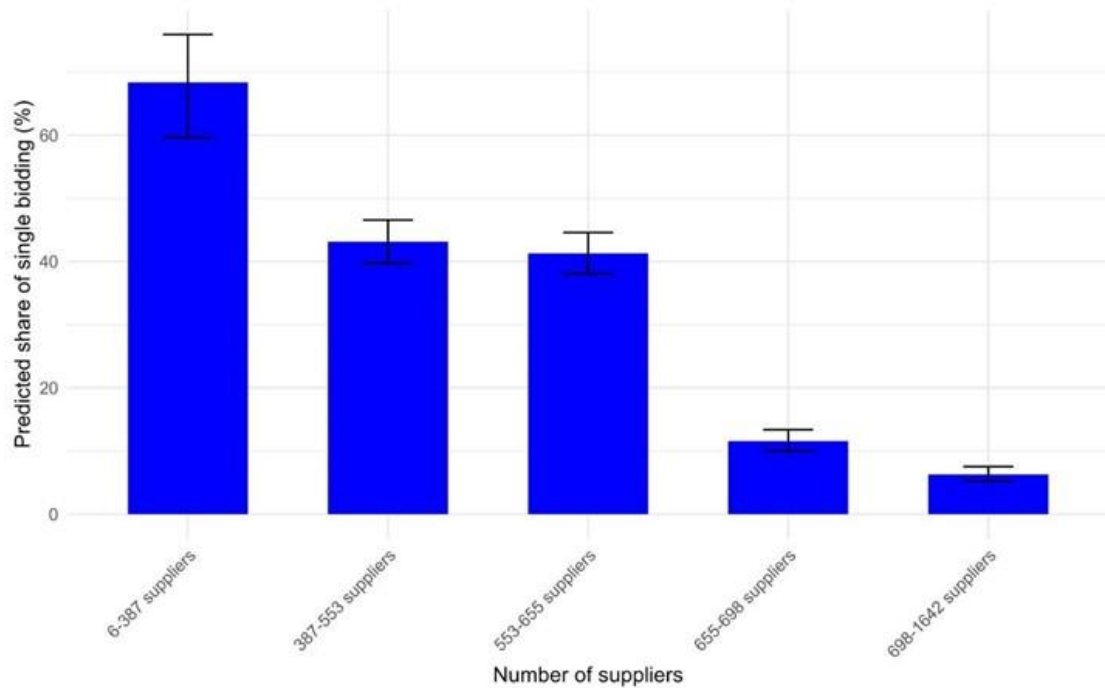
The guidelines provide a step-by-step guide for conducting market analysis. Guidance is provided on how to conduct common market and economic analysis tools, such as PESTEL analysis and Porter's Five Forces. It also includes recommended practices that have been implemented by contracting authorities, and a range of questions that the analysis should be able to answer.

Source: (OECD, 2019<sup>[7]</sup>)

Understanding the dynamics of a market through market engagement tools could help contracting authorities identify the number of market players within each relevant market.

Chapter 2 also looked at additional indicators and found that more suppliers within each relevant market indicates decreased incidence of single bidding (see Figure 4.2). Using quantiles, the number of suppliers was split into 5 categories. Using the 6-386 suppliers category as a reference, categories starting from at least 387 suppliers exhibit a significant impact, leading to a reduced share of receiving a single bid. More strikingly, in the last quantile, representing markets with over 698 suppliers, a mere 6.3% of tenders are predicted to receive a single bid. The strategic encouragement of new entrants emerges as a key policy avenue to effectively mitigate instances of single bidding. Therefore, encouraging market entry of new potential suppliers should be a strategic policy to reduce instances of single bidding. The Slovenian Competition Protection Authority could also play a role in building contracting authorities' capacity to undertake market analysis in those markets that were identified in Chapter 2.

Figure 4.2. Predicted share of single bidding (number of suppliers), Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

Nonetheless, the use of market engagement tools should abide by the principle of proportionality, and it should depend on different elements such as the complexity of the procurement and the estimated value of the contract. (OECD, 2023<sup>[4]</sup>) It should also take into account the specificities of the different markets. As such, market engagements tools can be also tailored for certain sectors with highly technical products such as medical equipment, or products where price volatility is high such as foodstuff. These tools can be created in collaboration with the private sector, and especially business associations, so both parties can benefit from these dialogues. In some countries, the private sector itself has developed collaborative tools to help contracting authorities better plan and conduct their procurement processes (see Box 4.3).

In Slovenia, the Chamber of Commerce and Industry has taken a similar initiative by developing a web-based Food Catalogue application for public procurement, which allows public institutions to correctly label food products and create lots for procurement, to extract CPV codes, EAN codes, nutritional values, allergens, etc. The catalogue is informative and provides constant market analysis and product data. The public sector can create generic lists of the types of food products to be procured and send out notices for selected lots.

### Box 4.3. Examples of collaborative market engagement tools developed by the private sector

#### The Netherlands: The Dutch Public Procurement Expertise Center – PIANOo

The Dutch Public Procurement Expertise Center, which serves as an expertise centre for the government, can be found in the PIANOo webpage in two languages – Dutch and English.

It is part of the Netherlands Enterprise Agency, which is a part of the Ministry of Economic Affairs and Climate Policy. PIANOo brings experts in specific areas together, pools knowledge and experience and provides advice.

It also fosters dialogue between government contracting authorities and the private sector. Apart from serving contracting authorities, it also serves economic operators, therefore, both procurement and tendering professionals can benefit from it.

PIANOo organises meetings, produces publications and works with expert groups chaired by university professors specialising in the field. One of the key topics at the moment is market knowledge and the position of procurement within the organisation. Related to the topic of market knowledge, PIANOo prepared a publication "Know the Market - What do we need to know about markets to guarantee good procurement", which deals with relation between the knowledge about the market and formulation of needs as well as effectiveness of procurement. Moreover, it provides the market knowledge checklist, which is divided into three parts for use:

- the Market Knowledge Checklist for assessing information at market level;
- the Product Knowledge Checklist for products (read also services and works);
- the Company Knowledge Checklist for specific suppliers.

#### Germany: Bitkom's manuals on vendor-neutral tendering of various IT products

Bitkom, Germany's digital association was founded in 1999 and currently represents more than 2 700 companies of the digital economy, which produce an annual turnover of €190 million, including €50 million in exports, and employ more than 2 million workers in Germany. Its members also include 1 000 SMEs and over 500 startups. Its members offer software, telecommunications and internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy.

Bitkom has several working groups specialising different aspect of the digital economy. The Public Contracts Working Group is focusing on issues related the public procurement of digital solutions. As the public sector is the largest buyer of digital in Germany, it has enormous market power and therefore considerable influence on competition. The Working Group, in collaboration with relevant ministries and other stakeholders, developed several manuals and other materials that support public buyers' in designing their tender requirements and contracts in a way that creates a fair and transparent competitive environment. For example, the Working Group worked closely with the Federal Ministry of Interior (BMI) on the development of contract terms for the purchase of IT services or with the Competence Center for Sustainable Procurement (KNB) of the BMI Procurement Office on the declaration on social sustainability for IT procurement.

Bitkom, through the Working Group, also developed several guidelines on vendor- and product-neutral tendering of different IT products and services, again in collaboration with representatives of the public sector (e.g. the BMI Procurement Office, the Federal Office of Bundeswehr Equipment, Information Technology and In-Service Support (BAAINBw), the Federal Employment Agency, Berlin Police, ITDZ Berlin). The guidelines for product-neutral procurement are sorted by product groups (such as notebooks, PC desktops, laptops, server, monitors, archive, home office) and are updated regularly to

comply with regulatory developments and technological standards. They address the aspect of product-neutral tendering as well as legal requirements for the product to be procured and information on environmentally friendly procurement. Bitkom's manuals on vendor-neutral tendering of different product categories encourage contracting authorities to formulate their tenders in a non-proprietary manner that avoids the use of brands or the reference to specific manufacturers, while leveraging current technical standards. This is consistent with legal requirements in Germany, which mandate equal treatment of suppliers and market products by using descriptions of the procurement objects based on factual and non-discriminatory criteria. Indeed, Bitkom considers vendor-neutral tendering as an opportunity to ensure fair and open competition, prevent early technical determination, and avoid lock-in effects. As the number of competing suppliers increases when the tender is based on factual and technical criteria, better options and savings are realised, minimising obstacles to change providers as deemed adequate.

In the case of public tenders, contracting authorities are advised to draft a list of criteria that allows comparison of different offers and sufficient differentiation. Such award criteria should be needs-based, vendor-neutral, and transparent. However, Bitkom also recognises that technical complexities may lead to difficulties in describing the desired performance of computing equipment. In consequence, it recommends the use of technical standards and benchmarks.

Source: (PIANOo, 2011<sup>[8]</sup>), (Bitkom, 2022<sup>[9]</sup>),

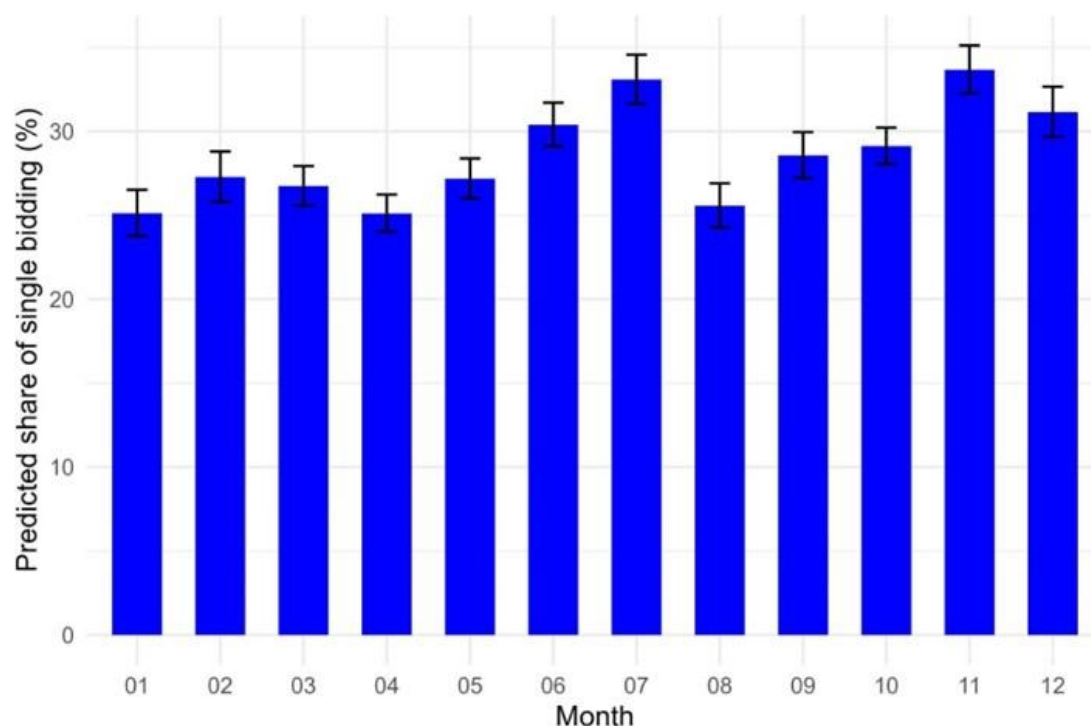
### *Considering seasonality in procurement*

Recent studies have shown close association between the end of year spikes in spending and certain procedures receiving only a single bid. (McCue, Prier and Lofaro, 2021<sup>[10]</sup>). Building on this insight, an analysis of procurement patterns in Slovenia reveals an additional trend of increased single bidding during the summer months, particularly in June and July (see Figure 4.3). The data illustrates a substantial increase in the predicted share of tenders receiving only one bid in November and December, reaching 33.7% and 31%, respectively, compared to 25.1% in January. Similar spikes are noted in June (30.3%) and July (33.1%).

Inefficient planning of budget expenditures throughout the fiscal year may contribute to a surplus of funds remaining in the last few months of the year. Therefore, when the need arises to relocate these funds, contracting authorities can experience rushed procedures and shortened advertisement periods that lead to increased share of single bidding. Lack of competition can also arise because of the holiday season for potential suppliers or contracting authorities. The seasonality factors therefore call for a better planning of procurement processes throughout the year on the side of contracting authorities. International evidence points out that seasonality of spending not only leads to higher single bidding rates, but also considerably higher prices, especially close to the end of the financial year or holiday periods when economic operators are less responsive.



Figure 4.3. Predicted share of single bidding, Slovenia 2017-2022



Sources: e-Narocanje and e-JN systems

#### *Choosing the adequate procurement procedure*

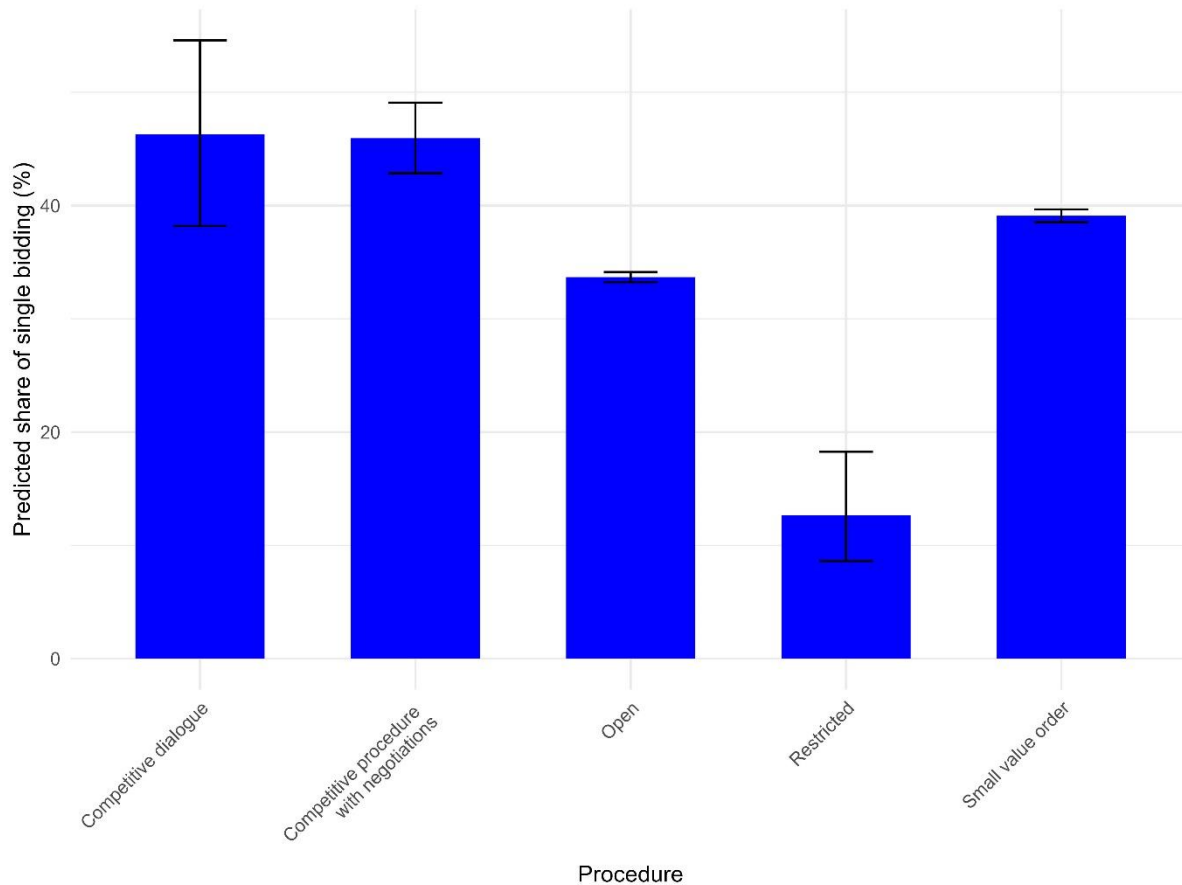
Slovenia's public procurement system transposes EU directives, and therefore traditional EU procurement processes can be used under the PPA. As such, the hierarchy of procurement procedures represents a trade-off between the amount of competition versus a more targeted approach. The more open the process, the more the process enables new entrants such as start-ups and SMEs to engage, thus encouraging wide participation. Open procedures can include processes such as competitive dialogue and phases. However, they also require significant investment of time and resources on the part of procurement officials. As procurement becomes more targeted, more specific strategic exceptions can be made. This may also mean that specific partners for the procurement process can be selected that match the needs the procurement processes are trying to meet. (OECD, 2020<sup>[11]</sup>)

The predictive analysis of the different types of procurement procedure shows diverging results (see Figure 4.4). Both the competitive dialogue and competitive procedure with negotiations types show the highest predicted share of single bidding, standing at 46.2% and 46%, respectively. These results suggest that procedures, which involve a more direct interaction between the buyer and potential suppliers, may lead to a higher share of single bidding. Similarly, the Small Value Order procedure, which is often favoured for tenders below the threshold, also shows a substantial predicted share of single bidding, reaching almost 40%. It underlines the need for attention even in smaller-scale procurements.

On the other hand, the open procedure type, which is more frequently employed for tenders above the threshold, exhibits a lower predicted share of single bidding, with approximately one in three tenders receiving a single bid. The results suggest that the openness and accessibility inherent in the open procedure can contribute to a more competitive environment that encourages diverse participation. It is also important to note that while the restricted procedure type demonstrates a remarkably low predicted share of single bidding at 12.7%, the limited number of observations (172) for this procedure type in the

dataset should be taken into consideration, i.e., the relatively small sample size may affect the robustness of predictions for this specific procedure type, warranting a cautious interpretation. It is therefore recommended that open procedures be encouraged in Slovenia to maximize competition.

**Figure 4.4. Predicted share of single bidding per type of procedure, Slovenia 2017-2022**



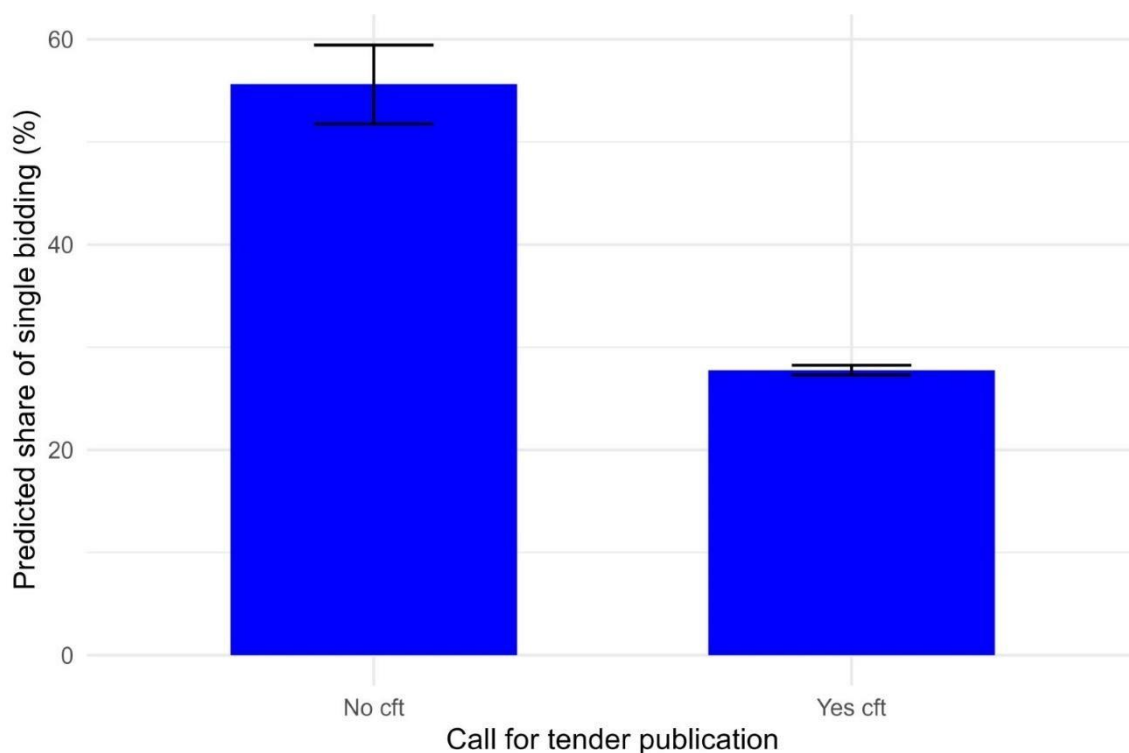
Source: e-Narocanje and e-JN systems

### *No call for tender*

The analysis highlights that there is a significant and substantial association between the presence of a call for tender publication and the share of single bidding in the procurement process. In instances when the procurement lacks a call for tender publication, the model predicts a substantial 55.7% of tenders receiving a single bid. (see Figure 4.5)

Conversely, when a call for tender is published, the predicted share of receiving a single bid significantly decreases to 27.7%. The findings emphasise the importance of ensuring that bidders have access to comprehensive information on procurement opportunities. The act of publication not only promotes competition but also facilitates a more level playing field, encouraging diverse participation. This stark contrast highlights the crucial role of transparency and accessibility of information in promoting competition. Furthermore, the results indicate that a combined effort to promote transparency, robust information dissemination, and commitment to best practices in tender publication can serve as effective measures to lower the share of single bidding.

Figure 4.5. Predicted share of single bidding (call for tender publication), Slovenia 2017-2022



Source: e-Narocanje and e-JN systems

*Developing better procurement processes and tender documents enabling optimal competition*

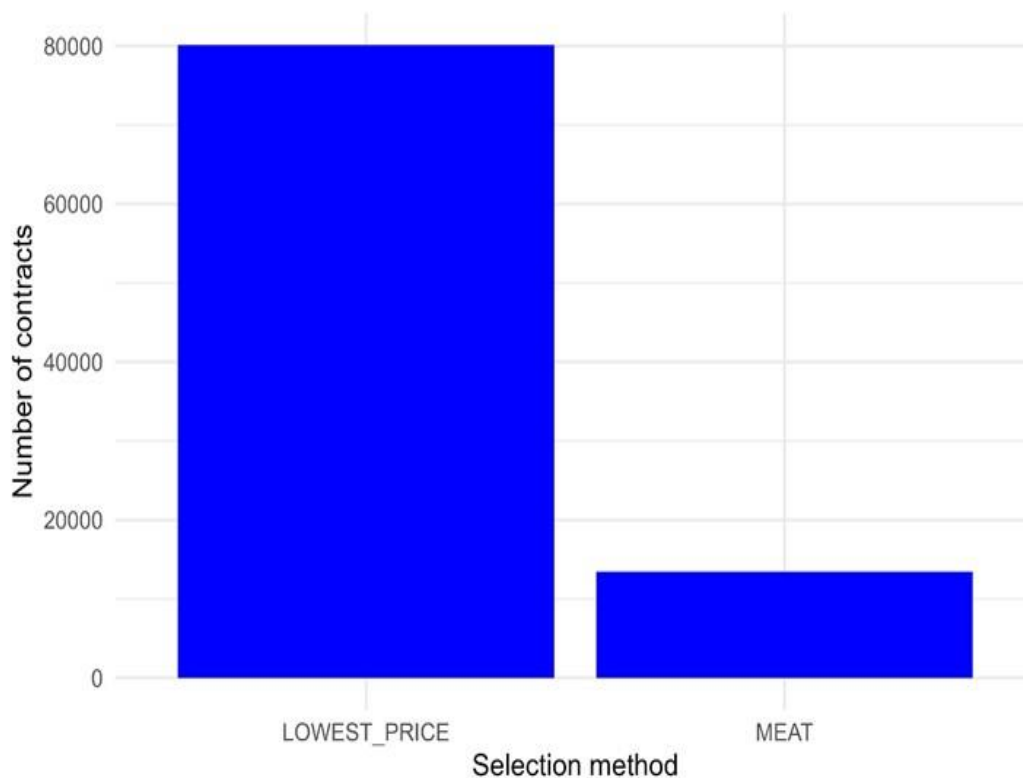
Tender documents are central in the tendering process as they detail both what is being procured but also based on what economic operators will be selected, and what the contractual relationship will look like once the procurement is awarded. They usually contain three key elements that can influence whether or not economic operators will participate to the procurement process, including 1) technical specifications; 2) qualification and evaluation criteria; and 3) contract conditions.

As such, the first key element concerns **technical specifications**. In Slovenia, an issue highlighted by stakeholders concerns the drafting of technical specifications that are favouring a specific bidder. Indeed, audits performed by the Court of Audit reveals that entities sometimes tweak technical specifications to favor a specific bidder, and that contracting authorities select more expensive bidders, bidders with no professional standing, or select bids that do not satisfy technical specifications. (OECD, 2023<sup>[12]</sup>) These findings were already raised by a 2020 OECD study, where 80% of respondents to a survey believed that technical specifications are generally tailor-made, and 73% believe that some bidders are involved in the drafting of technical specifications. (OECD, 2020<sup>[11]</sup>) It is therefore recommended that Slovenia takes stock of the capacities of the technical experts or personnel involved in the drafting of technical specifications to ensure these specifications abide by the procurement principles of equal treatment and integrity.

The second key element, **evaluation criteria**, are crucial for a sound competition in procurement processes. A persistent finding is that price as a sole evaluation criterion is prevalent in Slovenia (see

Figure 4.6). Most economic operators that responded to a 2023 survey also highlighted that the price criterion is a deterrent to their participation to procurement processes and that contracting authorities should take into account additional non-price criteria when evaluating bids. Similar findings were found in the abovementioned OECD report, which highlighted the perception among Slovenian businesses that the government is concerned more with pricing and less with value. Overall, the OECD observed that procurement seems to be treated less as a strategic asset to achieve better results, and more as a means to an end where speed, the absence of risk and low prices are the primary concerns. (OECD, 2020<sup>[11]</sup>) Some OECD countries have tried to tackle this issue by providing extensive trainings to contracting authorities regarding the most economically advantageous tender and the use of best price-quality ratio. Other countries, such as Croatia, have rendered the use of non-price criteria mandatory at a minimum weight of 10%. As the Slovenian procurement system is based heavily on the respect of law, an amendment to the PPA which makes the use of MEAT criteria as the default method, and the use of price-only criterion as an exception could help tackle this issue. Providing extensive training on developing evaluation criteria and raising awareness on the usefulness of non-price criteria in achieving strategic objectives could also help in this direction.

**Figure 4.6. Number of contracts per evaluation method, Slovenia, 2017-2022**



Source: e-Narocanje and e-JN systems

Another issue highlighted by stakeholders is the lack of balance of **contract conditions**. In a survey targeted economic operators in Slovenia, some of them have indicated that contracting authorities should consider better conditions for suppliers as parties to the contract, including the possibility to withdraw from the contract without cost or sanction in case of breaches by contracting authorities of contract conditions, or drastic changes to the contract. Indeed, economic operators may decline to submit a bid due to these unbalanced contract conditions, hence impacting competition overall. (OECD, 2024<sup>[13]</sup>)

As such, the contract is usually part of tender documents and is considered the cornerstone of the process as it defines the relationship between the contracting authority and a supplier and reflects the requirements of the tender documents. A well-drafted contract is therefore critical to a successful engagement and delivery, especially since taxpayers' money is at stake. The contract should cover various elements including prices and payments, personnel, governance, a detailed description of what will be delivered, and terms of delivery themselves. The risks must be fairly allocated and clearly described in the contract, along with safeguards for each party such as non-performance clauses, delays, force majeure etc.

As for the engagement with the market, contracting authorities may need support from policy-making authorities to build their capacity for developing sound public contract conditions, for different types of subject-matters or different values. One way of doing so is developing model contracts to be used by all authorities, at least for standard purchases, with clear risk management tools for usual contract risks, dispute resolution mechanisms and designated persons on either side (public and private) to manage the contracts and related disputes. New Zealand, for example, has developed model contracts (see Box 4.4). (OECD, 2016<sup>[14]</sup>)

#### Box 4.4. New Zealand: Government Model Contracts

The New Zealand Ministry of Business, Innovation and Employment (MBIE) has developed a set of standard conditions of contract for routine government purchases. These conditions are called government model contracts (GMCs).

The 2<sup>nd</sup> Edition GMCs were launched by MBIE in October 2011 and the 3<sup>rd</sup> edition was launched in February 2020, replacing the 1<sup>st</sup> Edition GMCs that were launched in July 2010. The development and implementation of GMCs is part of the Government Procurement Reform Programme and has been mandated by a Cabinet Directive requiring MBIE to create a standard, simple, plain English set of conditions of contract for common goods and services to be used by all Public Service Departments and State Services.

The GMCs are aimed at low-value, low-risk common goods and services. They have been designed as the default government contract. It is up to each agency using the GMCs to determine what constitutes low-value, low-risk common goods and services. This definition is subjective and will depend on the size of the agency and the scale and complexity of its procurement function.

Through the use of GMCs across the Public Service and State Services, Government aims to:

- provide simple, plain English contracts that are easy to use for both agencies and suppliers
- provide a fairer balance of risk between buyer and supplier
- standardise the treatment of legal risk in low-value, low-risk contracts
- reduce the need for negotiations and legal advice in routine purchases
- promote consistent practice across government
- promote process efficiencies in high-volume, low-value transactional contracting
- simplify doing business with government
- support improved procurement practice and align with international best practice.

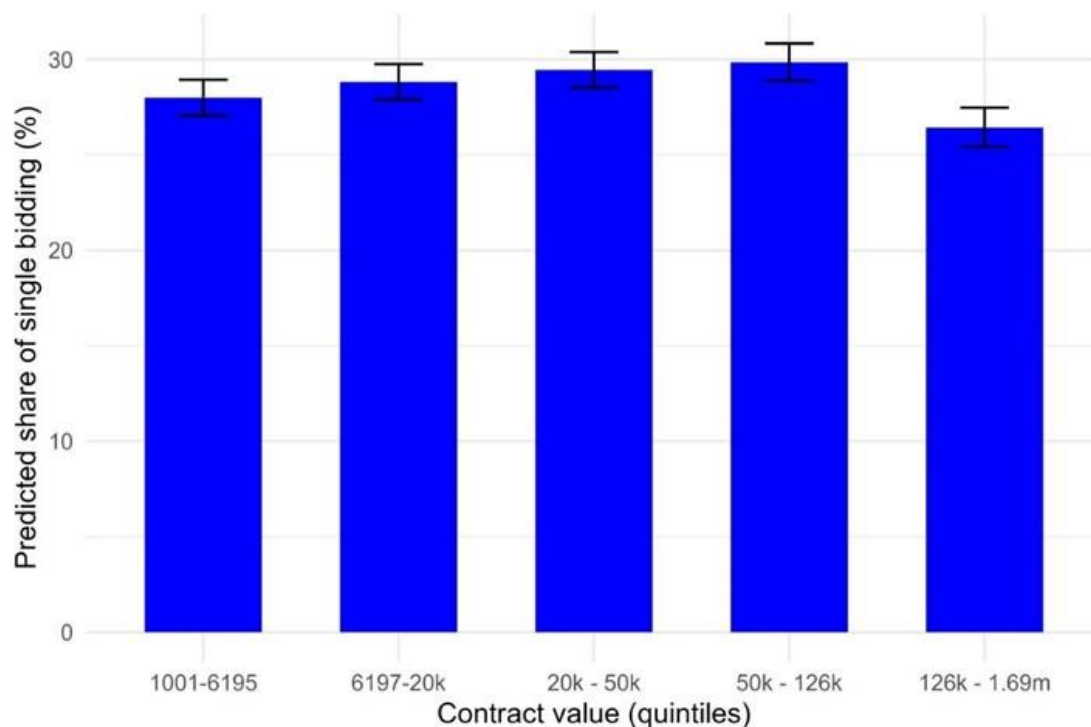
To advance with the simplification of procurement documents for contracting authorities, the Government launched automated templates in May 2024. Contracting authorities can now use a web-based editor, with several pre-filled templates already where they only have to populate information tailored to the procurement process. Contracting authorities can then export a Word version of the contract at the end. These automatic templates (which include procurement plans, advance notice, request for information, registration of interest, request for proposal, request for quotes, government

model contract, and outcome agreement) are expected to facilitate the work of contracting authority as it makes the process of creating procurement documents quicker and easier, reduces the risk of error, and creates better consistency in procurement documents overall. In turn, this may ease the task for suppliers to do business with government. “Classic” GMCs template can still be used as well.

Source: (OECD, 2016<sup>[14]</sup>), (Government of New Zealand, 2024<sup>[15]</sup>)

When it comes to the **size of the contract**, smaller contracts are associated with lower incidence of single bidding (see Figure 4.7). The analysis predicts that the top quintile is predicted to have around 26.4% of contracts with only one bid, while the first quintile is expected to have 28%. Quintiles 3 and 4 are anticipated to have the highest single bidding rates at 29.5% and 29.8%, respectively. It’s worth noting that these quintiles align with the small value order procedure type utilised for below threshold publication, which also has a higher predicted rate of single bidding.

**Figure 4.7. Predicted share of single bidding (contract value), Slovenia 2017-2022**

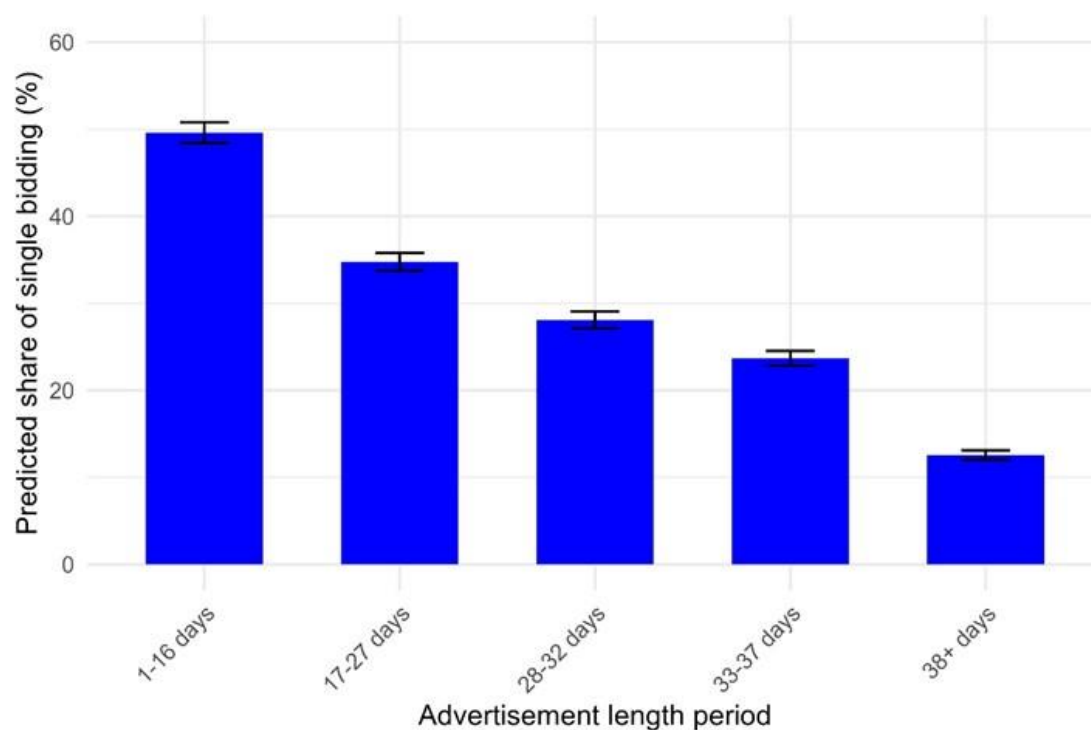


Source: e-Narocanje and e-JN systems

**Time allowed** to potential bidders for preparing their bids, i.e., advertisement period length has noticeable impact on the incidence of single bidding as well (see Figure 4.8). A reasonable amount of time, starting from at least 17 days, substantially and significantly lowers the incidence of single bidding. Almost half of the contracts whose advertisement length period was less than 17 days are predicted to be single bids. In contrast, the next group, whose advertisement length period is between 17 and 27 days experiences a reduction of over 15% in the share of single bidding, with the model predicting 34.7% of awarded contracts as single bids. Similar trends persist for groups that allow for even longer advertisement periods. Providing more than 38 days for potential bidders further diminishes the predicted share of single bidding to a mere 12.5%. A similar pattern can be observed when looking at contracts procured through the small value order

procedure, where the general linear trend remains the same (see Figure 4.8). It is essential to underline that each category in this analysis comprises roughly equal numbers of observations, underscoring the importance of affording sufficient time for bid preparation and submission. This highlights the significance of careful planning and consideration of advertisement periods to foster more competition.

**Figure 4.8. Predicted share of single bidding (advertisement period length), Slovenia 2017-2022**



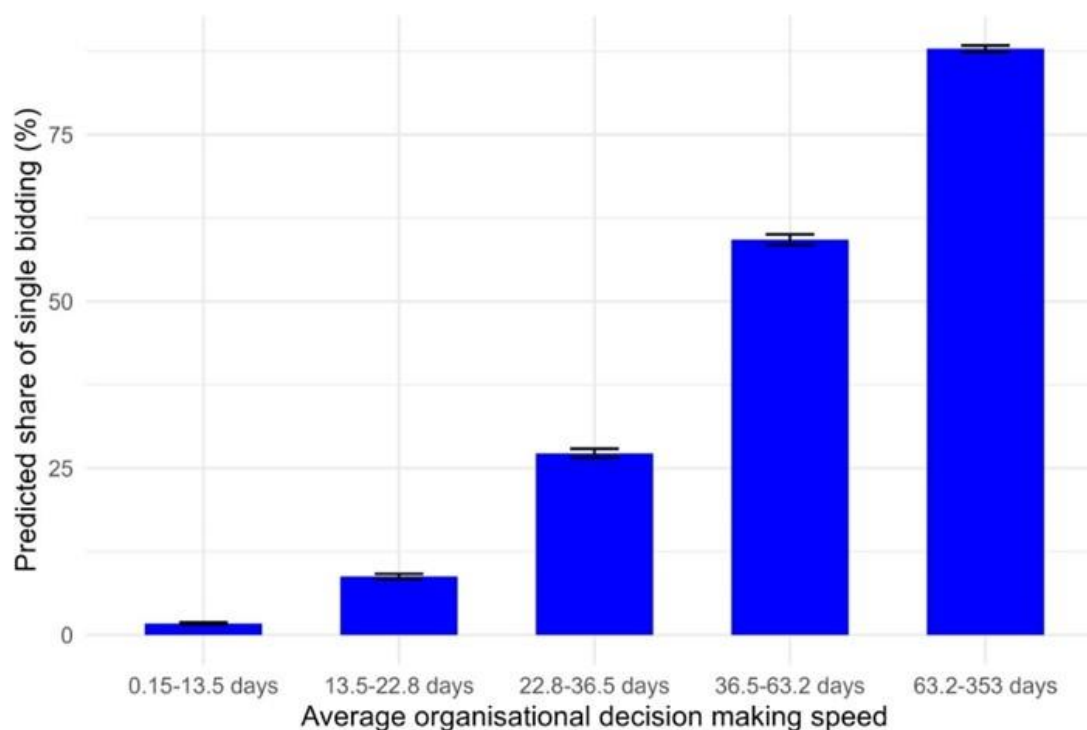
Source: e-Narocanje and e-JN systems

The **decision-making speed**, i.e., the time taken by contracting authority to reach a decision regarding the award of the contract, is also crucial, as lengthy procedures are considered a risk since they are time and cost consuming and can cause uncertainty for both the public buyers and companies. (European Commission, 2021[4]) As such, the analysis of the procurement data shows a positive association between the average organisational decision-making speed and the likelihood of single bidding in Slovenia (see Figure 4.9). The variable has been analysed by calculating the average for each contracting authority within the year and standardising it based on the number of bids it received. The findings underline that entities demonstrating speedier processes in evaluating submitted bids and awarding contracts are associated with a lower share of single bidding.

Comparing entities with efficient decision-making processes (less than 2 weeks for bid evaluation and contract award) to those taking longer (at least 37 days, spanning the last two quantiles), the analysis predicts a stark contrast. The model predicts that a mere 1.7% of tenders received a single bid when the entities are more efficient. Similarly, those taking two to three weeks for evaluation show a lower likelihood of attracting only one bid, standing at 8.7%. However, a notable surge is already observed in the share of single bidding when the evaluation period extends beyond three weeks, reaching 27.2%. For contracting authorities whose decision-making duration surpasses 63 days (last quantile) there is a notably higher predicted share of single bidding, standing at 87.9%.

Entities that streamline their processes and expedite decision-making contribute to fostering a more competitive bidding environment, potentially attracting a higher number of bidders and enhancing overall procurement efficiency.

**Figure 4.9. Predicted share of single bidding by average decision period per buyer-year-number of bids, Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

#### *Leveraging centralized and joint purchasing and framework agreements*

Centralised purchasing and collaborative procurement tools such as framework agreements or dynamic purchasing systems, DPS can be effective tools to drive value for money and competition. The principle of efficiency from the Recommendation of the OECD Council on Public Procurement recommends its Adherents to “[d]evelop and use tools to improve procurement procedures, reduce duplication and achieve greater value for money, including centralised purchasing, framework agreements, e-catalogues, dynamic purchasing, e-auctions, joint procurements and contracts with options. Application of such tools across sub-national levels of government, where appropriate and feasible, could further drive efficiency.” (OECD, 2015<sup>[16]</sup>) At the same time, the Recommendation of the OECD Council on Fighting Bid Rigging in Public Procurement recommends that adherents should, among others, encourage their relevant authorities to assess whether framework agreements, centralised purchasing, joint bids and subcontracts might pose collusion risks. (OECD, 2023<sup>[17]</sup>)

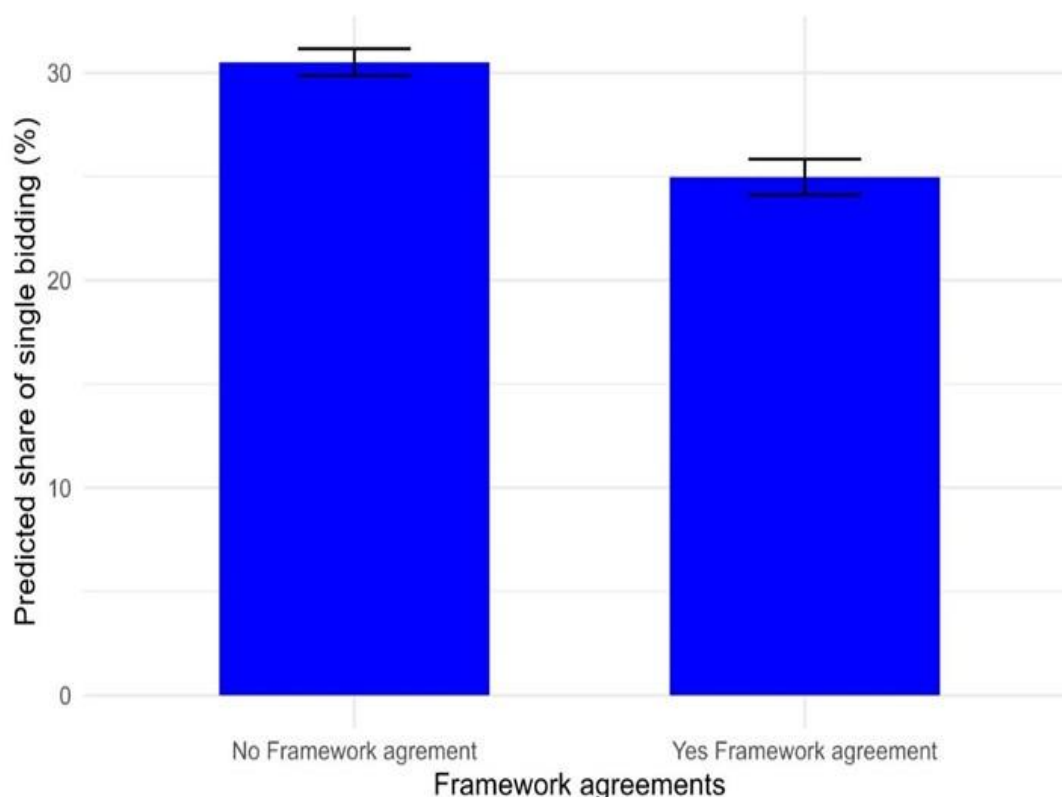
Centralized purchasing bodies (CPBs), when designing adequate tenders, can therefore offer significant procurement opportunities to economic operators and bring many benefits such as economies of scale or reduction in transaction costs. To do so, most CPBs conclude framework agreements or DPS, and procure the goods or services on behalf of contracting authorities through call-off contracts or mini-competition following the initial competition, with a limited pool of suppliers. On the contrary, centralized purchasing, if used in an inefficient manner, is not devoid of risks and can have a negative impact on competition.



Analysis of the procurement data from 2017-2022 shows that Framework agreements are associated with lower incidence of single bidding (see Figure 4.10). Predictions from the model indicate that less than 25% of contracts are expected to receive only one bid when they are structured as framework agreements. In contrast, when no framework agreement is in place, the model predicts that over 30% of contracts will attract single bids. Notably, framework agreements constitute only 34% of the contracts in the dataset.

The results suggest the notable influence that the presence or absence of framework agreements can have on the competitive dynamics of procurement processes. Consequently, the use of framework agreements may serve as an effective strategy to promote increased competition and reduce the incidence of single bidding.

**Figure 4.10. Predicted share of single bidding (Framework Agreements), Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

In Slovenia, centralised purchasing has been driven as a way to use economies of scale to drive down costs, but also to increase transparency and efficiency and alleviate bureaucratic burdens. The Public Procurement Directorate within the MPA plays the role of a centralized purchasing body as per the Decree on joint public procurement of the Government of the Republic of Slovenia (OG 27/16), and cover a variety of purchase categories such as computer hardware and software, IT services, telephone services, postal services, energy products etc. The use of centralized purchasing is compulsory for some central contracting authorities, listed by government decision. Other contracting authorities also have the option to use centralized purchasing if they want to. To perform centralized purchasing, the MPA collects the needs of authorities in Slovenia, and develop a proposal for the government for different purchase categories by end of January each year. (OECD, 2023<sup>[12]</sup>)

Nonetheless, the structural characteristics of the procurement market in Slovenia is such that there is still a large number of contracting authorities implementing similar public procurement procedures individually. Centralized and joint procurement is therefore not sufficiently leveraged, with smaller contracting authorities expressing scepticism on the efficiency of centralised procurement, due in part because the centralised procurements do not always meet their context-specific needs. (PWC, 2022<sup>[18]</sup>) Slovenia would therefore benefit from leveraging centralized and joint procurement through the monitoring of competition in centralized procurement, promoting the use of DPSs, encouraging price-monitoring practices, and taking advantage of experience-sharing networks for CPBs.

First, measuring competition within CPBs procurement processes is crucial, as the duration and length of framework agreements may pose a risk, especially regarding SMEs participation. Indeed, the duration of framework agreements, in the case of centralisation can have a significant impact on competition for a fixed period, as the goods and services can only be procured from a limited pool of suppliers. Framework agreement may also not have enough suppliers for a call-off/mini-competition, or on the contrary, too many suppliers to effectively choose between. This is particularly the case for SMEs, since it is challenging for them to access framework agreements (especially large ones) due to their lack of capacity to offer small prices like larger companies or to satisfy selection criteria, and the fact that they may not be able to offer goods or services for a sustained period of time. As such, framework agreements typically significantly narrow the procurement market for a certain number of years and may cause distortive, competition-restricting effects on the market. (OECD, 2011<sup>[19]</sup>)

As part of the performance measurement framework described in Chapter 2, Slovenia should also conduct an in-depth analysis of the performance of centralised purchasing and measure the impact of such practices on the levels of competition for framework agreements, DPSs, but also under call-off contracts or mini-competition. This analysis should include participation from SMEs, market concentration, length of framework agreements etc.

As an alternative to framework agreements, the use of DPS should also be encouraged in Slovenia. Indeed, the use of DPSs can bring many benefits such as the standardisation of processes, with automatic checks of the technical and financial offers and the simplification of administrative documents. They are proven to be effective in enlarging markets and increasing competition. Several instances of newly launched DPSs have shown to have been able to attract a significant and initially overwhelming level of interest in participation, including from new suppliers who had not previously bid for public sector contracts. They provide flexibility for suppliers to join or not compete the DPS at any time, and suppliers are not locked out of the market as they would in a framework agreement. DPSs are also associated with a reduced risk and costs of tendering traditionally associated with framework agreements. DPSs are also particularly SME-friendly, for instance, in Scotland, 75% of enterprises participating in the Scottish DPS arrangements are SMEs. (OECD, 2022<sup>[20]</sup>)

For DPS to be accepted and become standard practice however, DPS owners reported that a significant amount of market and stakeholder engagement should be undertaken prior to the creation of the DPS to make buyers and potential suppliers are aware of the benefits, practicalities and challenges of operating and participating in a DPS. Slovenia already developed click-instructions on how to use DPS for contracting authorities, as well as instructions for economic operators on how to prepare a bid in a DPS. However other tools may be developed to provide further guidance. As such, several countries have already taken the initiative to create tools to encourage the use of DPSs (see Box 4.5).

#### Box 4.5. Overview of the support provided to contracting authorities/economic operators regarding the use of DPS in different European countries

An important aspect of launching a DPS is ensuring support to both contracting authorities and suppliers that will be using it. As such, several organisations have invested in guidance, templates and similar support tools:

- For instance, BBG, the CPB in **Austria** supports contracting authorities as well as economic operators with training material, handbooks, click-instructions as well as with direct personal contact / consulting.
- In **Scotland**, each of the DPS has a buyer guide which contains practical advice and guidance on the operation of the DPS. Template Terms and Conditions of Contract are also made available to buying organisations.
- Similarly, SKI, the CPB in **Denmark**, has developed a digital platform to support the use of DPS. In addition, it provides guidance to suppliers on how to apply for the DPS.
- In **Italy**, CONSIP also provides ready-made documentation for contracting authorities, such as model documents and templates for technical specifications for a specific contract.

Source: (OECD, 2022<sup>[20]</sup>)

The use of framework agreements for an extended period of time may also have an impact on the competitiveness of prices. For instance, economic operators may set higher prices when being awarded the framework agreements, with said prices becoming unrealistic compared to the prices on the market over time. (National Audit Office of the UK, 2023<sup>[11]</sup>) In addition, in a centralized purchasing body, the cost per product will likely decrease over the short term due to the size of the procurement through a single provider. However, this situation could drive the other providers out of business, resulting in higher prices the next time the product is needed, due to lack of competition.

Given the small market structure in Slovenia, it would be therefore beneficial for the MPA to develop systematic price monitoring tools in order to evaluate whether the prices under the framework agreements are competitive compared to those in the market, and to allow more flexibility to contracting authorities to perform their procurements separately if standalone procurement would be proven more competitive. Early systematic engagement with the market (such as market consultations, prior information notices etc.) can also be undertaken to evaluate whether framework agreements are indeed the appropriate tool, that competition is maximized, and that integrity is ensured during the bidding process. For example, to prevent risks of collusion during market analysis, ChileCompra, the Chilean central purchasing body, before launching the process for a framework agreement for goods and services, conducts a supplier consultation process online (see Box 4.6).

#### Box 4.6. Chile: Consultation with suppliers by ChileCompra, the Chilean central purchasing body

Prior to issuing a tender, ChileCompra carries out an open consultation process with suppliers, which it announces online at [www.mercadopublico.cl](http://www.mercadopublico.cl). The consultation aims to obtain information about prices, the characteristics of the required goods or services, the time that bidders need to prepare, and any other information that might contribute to a successful tendering process.

ChileCompra has, in addition, an on-line forum with questions and answers for each tender in advance of deadlines for submitting bids. The forum is particularly practical for providers who are geographically distant from the capital city, where ChileCompra's offices are located, and need remote access to questions and answers. The forum ensures transparency and supports equitable treatment and fair competition.

Source: (OECD, 2016<sup>[21]</sup>)

Raising awareness of the impact of the purchasing power of CPBs is also key to enhance competition. For instance, the MPA could exchange good practices with CPBs from other countries by actively participating to the Central Purchasing Bodies (CPB) Network. The CPB Network, established in 2012, comprises 21 CPBs from 20 countries across the EU member states and other countries in EEA. The objective of the network is to provide a platform to CPBs to discuss common issues encountered in public procurement and centralized purchasing and share experiences. In addition, the Network organizes meetings for its members twice a year, to discuss a wide array of topics, including competition, strategic procurement, management of framework agreements, energy procurement etc. These meetings facilitate information sharing and capacity building of the different member organizations. The Network has also created smaller working groups to facilitate collaboration among its members, and in the process of creating indicators on common activities to develop comparative studies. While the MPA – through the Public Procurement Directorate – is already a member of the Network, it would be beneficial to fully leverage the membership to the Network by participating actively in bi-yearly sessions.

#### *Optimising contract management to sustain competition*

Once the procurement process is completed and the contract is awarded, the contract management phase begins, where all formal and informal activities relating to the performance and monitoring of a contract are performed. As such, contracting authorities should strive to maintain a healthy business relationship with their suppliers in order to ensure participation in future procurement opportunities. Good oversight and governance arrangements, as well as clear responsibilities for contract implementation are key to ensure both parties benefit from the contract. In addition, a constant underlying factor across good practice is building consistent knowledge and understanding of the contract, requirements, supplier and costs and retaining this knowledge throughout the procurement cycle (that includes the contract management phase, too). (Cabinet Office of the United Kingdom, 2020<sup>[22]</sup>)

A survey targeted at economic operators reveals that contract performance is sometimes challenging with some contracting authorities in Slovenia. One economic operator mentioned that the attractiveness of public procurement in Slovenia would be improved if contracts offered more flexibility and more favourable conditions for economic operator, citing the example of public buyers not sticking to the initial quantities foreseen in the contract, while committing the tenderer with daily penalties for delays, short deadlines for acceptance etc. Therefore, building capacities of contracting authorities in contract management could help secure the confidence of economic operators to submit bids.

In addition, one particular aspect of contract management that is crucial for suppliers is the timeliness of payments. For instance, one indicator under the Methodology for Assessing Procurement Systems (MAPS) is whether invoices are examined, time limits for payments comply with good international practices, and payments are processed as stipulated in the contract. Delays in payments may impact the perception of economic operators regarding the practices of contracting authorities, and in turn, economic operators may be hesitant to participate in future procurement processes of the same (or even other) contracting authority, hence lowering competition. Timely payments may therefore ensure that economic operators have the incentive to remain in the public procurement market. However, timeliness of payments is sometimes out of the control of the contracting authorities due to administrative burdens, internal

controls, and approval chains. To mitigate this risk, Korea, for example, has developed an e-payment module on its e-procurement system. Launched in 2001, the module offers several functionalities as follows: (OECD, 2016<sup>[23]</sup>)

- Contract information review
- Request for upfront payment
- Request for inspection (for delivery of goods, completion of public works) and response
- Checking inspection result
- Submission of payment request
- Receipt of payment request and payment approval

Slovenia has already set deadlines for the payment of suppliers. Article 32 of the Act on Execution of the Budgets of the Republic of Slovenia for 2024 and 2025 states that, for direct and indirect users of the State and municipal budgets, the payment deadline for payment of all commitments shall be no more than 30 days. Additional policy measures and tools can also be put in place, especially for SMEs, to ensure that payment is made in a timely fashion (see Box 4.7).

#### Box 4.7. Examples of payment measures for SMEs under government contracts

##### **Korea: Allowing upfront payments for SMEs**

The Public Procurement Service (PPS) is the central procurement agency of Korea. PPS has extensive mandates, ranging from procurement of goods and services, operation of the e-procurement system, operation of stockpiling business, and capacity building of the procurement workforce. Among its functions, PPS also provides special financial support to SMEs involved in public contracting. SMEs are entitled to an upfront payment of up to 70% of the value of a government contract. For some contracts for goods, including orders against unit-price contracts, lump sum contracts for goods valued up to USD 423 800, or at the request of the end user for other goods contracts, the business is entitled to instant payment upon presentation of the invoice. In these cases, payment is made from the PPS special account and then reimbursed by the end user. Though central government entities are entitled to a payment period of up to five days, instant payment allows SMEs to receive payment within as little as four working hours.

##### **United Kingdom: Prompt Payment Policy**

The government of the United Kingdom enacted the prompt payment policy in 2015 to ensure timely payment to government suppliers. Through this policy, the government aims to pay 90% of undisputed and valid invoices from small and medium-sized enterprises (SMEs) within 5 days. In addition, 100% of all undisputed and valid invoices should be paid within 30 days. This policy is required to be incorporated in all public sector contracts, and that the payment term is passed down their supply chain.

Another requirement from this policy is for government departments to report their payment performance annually on GOV.UK in line with these two targets.

Source: (OECD, 2016<sup>[23]</sup>), (Cabinet Office of the United Kingdom, 2024<sup>[24]</sup>)

## ***Reinforcing contracting authorities' capacities to better understand the market and risks to competition***

Studies show that improving the capacities of public buyers has shown to be a critical marker in terms of lowering single-bid procedures. The administrative capacity in particular is important, as lack of experience and weaknesses in administrative capacity usually result in mistakes and inefficiencies in procurement processes. Administrative capacity can be measured through several factors, including use of best price-quality ratio as an awarding criterion, buyer's average decision period length per bid, buyer's average relative price, and buyer type. For example, increasing the average decision-making speed for contract award can send a positive signal to the market increasing bidder participation and lowering single bidding, as highlighted above.

The procurement workforce is the cornerstone of efficient and transparent procurement processes. The OECD Recommendation on Public Procurement states that adherents should ensure that procurement officials meet high professional standards for knowledge, practical implementation and integrity by providing a dedicated and regularly updated set of tools, for example, sufficient staff in terms of numbers and skills, recognition of public procurement as a specific profession, certification and regular trainings, integrity standards for public procurement officials and the existence of a unit or team analysing public procurement information and monitoring the performance of the public procurement system. (OECD, 2015<sup>[25]</sup>) Public procurement is increasingly recognised as a strategic function, a function that is becoming more and more complex and requires increased skills from procurement officials. As such, in addition to reinforcing the administrative capacity of public buyers, reinforcing their knowledge of topics such as market analysis, drafting sound evaluation criteria, project management, speeding up the evaluation process through training, showcasing good practices and experience sharing through collaborative approaches is key. (OECD, 2023<sup>[26]</sup>)

As such, supporting a learning culture in the civil service will ensure that skills are reinforced and regularly updated. It allows public officers to keep up with the fast-changing nature of work. This implies making investments in learning opportunities for civil servants including the public procurement workforce. Slovenia has put in place a robust system to increase the capacities of the procurement workforce, and could implement additional initiatives such as the provision of practical trainings and methodological assistance. (OECD, 2023<sup>[26]</sup>)

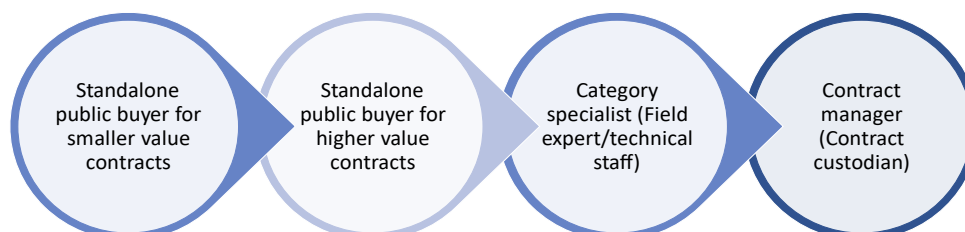
### *Leveraging training programmes for procurement officers*

Reinforcing the capability of the public procurement workforce requires an adequate training system. Several OECD countries, including Slovenia, have introduced mandatory training for procurement officers. These trainings should not only focus on compliance with the public procurement law. As such, many countries including France, Germany, and Portugal are providing training opportunities for more advanced topics. These countries recognise that traditionally public procurement training has focused on legal and procedural aspects rather than emerging and advanced topics such as the Most Economically Advantageous Tender (MEAT) criteria and strategic (sustainable) procurement (including the knowledge on the SDG agenda), in particular public procurement for innovation. (OECD, 2023<sup>[26]</sup>)

Slovenia introduced the Public Procurement Academy in 2022, with the support of the European Commission. The goal was to align efforts regarding the professionalisation of public procurement in Slovenia with the ProcurCompEU competences framework. In line with the latter, the MPA developed a Competence Assessment Guide for Public Procurement (the Competence Model Handbook), which focuses on the development of competences in individuals who carry out, participate in or make decisions in public procurement procedures with contracting authorities. The Academy directly fulfils milestone n. 179 of Slovenia's Recovery and Resilience Plan. (Ministry of Public Administration of Slovenia, 2024<sup>[27]</sup>)

The creation of the academy was based on this Competence Model Handbook, as the training programmes target different job profiles (see Figure 4.11).

**Figure 4.11. Job profiles targeted by the Public Procurement Academy in Slovenia**



Source: (Ministry of Public Administration of Slovenia, 2024<sup>[27]</sup>)

The difference between the first two categories of public buyers is explained by the different training needs of smaller contracting authorities which do not procure complex items and larger contracting authorities, which perform complex procurement processes and need a wider scale of knowledge and skillset. The programmes of trainings are conducted by specialists from different fields of knowledge, in the form of lectures, workshops and other relevant forms of training, including the use of interactive solutions or e-learning tools where appropriate. Category specialists represent field experts or technical staff and have a range of advanced knowledge of a particular category of supplies, services or works which usually result from specialisation and experience, working not in the field of public procurement, but in a technical field, connected with the subject-matter of the contract. A contract manager is the custodian of the contract and is the person who acts after the signature of the contract to ensure that it will be delivered as intended and that each step (including any wrong step) of delivery will be properly documented and addressed. Therefore, the Procurement Academy took a holistic view of the procurement function. (Ministry of Public Administration of Slovenia, 2024<sup>[27]</sup>)

The Public Procurement Academy is available to all stakeholders, involved in public procurement procedures. The programme includes knowledge on public procurement procedures in all phases: preparation of the procurement documentation together with market research, execution of the procurement procedures and taking care of the contract after its signature. The training includes knowledge on different aspects of procurement, including green/sustainable public procurement, innovation and social procurement, achieving high level of competition, etc. in line with international good practices. The MPA, however, decided to follow a gradual approach, meaning that the training provided through the Public Procurement Academy is currently on a voluntary basis. It is therefore recommended to leverage the Public Procurement Academy to include a mandatory certification scheme, at least for the first two target categories (public buyers), in order to increase the recognition of the profession. (Ministry of Public Administration of Slovenia, 2024<sup>[27]</sup>)

#### Box 4.8. Australia: Procurement advocacy & outreach by the Competition and Consumer Commission

Australia's national competition authority, the Australian Competition and Consumer Commission (ACCC), has developed an extensive education and advocacy programme for officials, at all levels of government, who are involved in public procurement.

Efforts to promote awareness of competition issues among procurement officials have included:

- Development of education material for procurement officials, which was provided to public sector procurement agencies, as well as private companies involved in procurement. The educational material was interactive and allowed procurement officials to access a variety of different levels of information, including information on how to identify cartel activity; the process for reporting suspected cartel or bid-rigging behaviour; the statutory provisions; and what a person should do if a cartel operation is suspected. The material also included a checklist for procurement officials to determine whether or not there is any suspected cartel activity;
- Presentations by ACCC staff, at all levels, to procurement officials from Commonwealth, state, and local governments; and
- Advocacy efforts directed toward high level government officials, aimed at seeking support for the ACCC's education and compliance programme at the top levels within central and regional governments, and also in order to request all governments to examine their procurement frameworks and introduce measures requiring officials to take into account competition laws when designing their procurement policies and guidelines.

Source: (OECD, 2011<sup>[28]</sup>)

In addition to the Public Procurement Academy, Slovenia should leverage collaboration with other public institutions, especially representatives of public interest. The Competition Protection Agency could provide data regarding mergers and acquisition, to help contracting authorities with market analysis, and provide training around competition and practices. For example, in Australia, the Competition Authority plays an important role regarding capacity-building and advocacy for procurement officials (see Box 4.8). (OECD, 2011<sup>[28]</sup>)

In addition to trainings on procurement processes themselves, procurement officials should be trained on the negative effects of collusion and corruption, as they are the frontline defenders of the integrity of public procurement processes. In order to avoid corruption, procurement officials should be made aware of the consequences for officials who themselves engage in corrupt practices. Equipping procurement with the skills and tools to identify, avoid and seek redress for collusion and corruption in public procurement is an indispensable element in the fight to protect the process from anticompetitive conduct. Professional training of public officials at all levels of government is important to strengthen procurement agencies' awareness of competition issues in public procurement. From the perspective of corruption prevention, education also serves as a warning of the likely consequences for officials who might otherwise be tempted to themselves engage in corrupt practices. (OECD, 2011<sup>[28]</sup>)

In Germany for instance, the Federal Procurement Agency has taken several measures to promote integrity among its personnel (see Box 4.9).



### Box 4.9. Germany: Integrity training

The Procurement Agency has taken several measures to promote integrity among its personnel, including support and advice by a corruption prevention officer (“Contact Person for the Prevention of Corruption”), the organisation of workshops and training on corruption and the rotation of its employees.

Since 2001, it is mandatory for new staff members to participate in a corruption prevention workshop. They learn about the risks of getting involved in bribery and the briber’s possible strategies. Another part of the training deals with how to behave when these situations occur; for example, by encouraging them to report it (“blow the whistle”). Workshops highlight the central role of employees whose ethical behaviour is an essential part of corruption prevention. About ten workshops took place with 190 persons who gave positive feedback concerning the content and the usefulness of this training. The involvement of the Agency’s “Contact Person for the Prevention of Corruption” and the Head of the Department for Central Services in the workshops demonstrated to participants that corruption prevention is one of the priorities for the agency. In 2005 the target group of the workshops was enlarged to include not only induction training but also on-going training for the entire personnel. Since then, 6-7 workshops are being held per year at regular intervals, training approximately 70 new and existing employees per year.

Source: (OECD, 2016<sup>[14]</sup>)

#### *Putting in place mechanisms for practical training*

Beyond theoretical trainings, public procurement is also a practical task which requires not only technical expertise and knowledge but also practical experience. The knowledge and skills acquired through training courses could be further reinforced with practical training systems such as on-the-job training and job swapping. Studies show that having a supervisor or co-worker with strong public service values was associated with higher levels of public service motivation. Slovenia could therefore leverage different forms of practical training depending on the target and the purpose of the training especially for smaller contracting authorities (see Table 4.2) (OECD, 2023<sup>[26]</sup>)

**Table 4.2. Summary of practical training sessions**

	On-the-job training	Mentoring	Job swapping (**)
Description	One-on-one training where an experienced staff transfers his skills and knowledge to a less experienced worker by working for the same project.	Mentors provide mentees with advice in their professional development and daily work.	Inter-exchange programme of the staff who work for different units inside the same entity and/or for different agencies for a certain period of time.
Main target	Newcomers (*)	Newcomers (*)	Every level of procurement staff
Purpose	An experienced staff transfers his skills and knowledge to a less experienced worker.	An experienced person (mentor) provides support and guidance to a less experienced person (mentee) in an effort to help him develop and reach his potential.	Provide procurement experts with the opportunity to share their experiences and learn at different working areas.
Remarks	Trainer and trainees work together for the same task at the same work place on a daily basis.	Mentor and mentee do not necessarily work for the same nor at the same workplace. This will be an alternative or supplemental option to on-the-job training, because the trainer of on-the-job training can act as a mentor.	Mentor and mentee do not necessarily work for among various entities such as the public procurement authority, control entities, contracting authorities (small and large) is an option as long as it is beneficial to the exchanged staff.

Note: \* Newcomers refer to not only the newcomers that entered the organisation but also anyone who assume new tasks. In addition, these practical training mechanisms should be available to all the staff throughout their careers. \*\* It can be also called as temporary mobility/secondments

Source: (OECD, 2023<sup>[26]</sup>)

These initiatives on practical training sessions could be taken at organisational and/or inter-organisational level. Some larger or experienced contracting authorities in Slovenia (such as ministries, large city municipalities, public companies), could therefore offer mentoring to procurement officers in smaller contracting authorities such as municipalities, schools etc. For example, New Zealand and Finland have implemented such mentoring programmes (see Box 4.10).

### Box 4.10. Mentoring Programmes in New Zealand and Finland

#### New Zealand

New Zealand Government Procurement officially launched a mentoring programme in 2015 after a pilot period in 2014. This programme aims at raising individual procurement capability across government, and providing a mechanism for procurement practitioners to enhance their work-related skills, procurement knowledge and professional networks.

Both mentors (public & private sectors) and learners (public sector) must be volunteers. The application form for the learner includes current experience, preference on the background of the mentor (specific agency, etc.), and goals of skill development. The mentor is required to describe his/her current experience, preference on the background of the learner, and strong competency area in which to assist the learner. New Zealand Government Procurement reviews applications to match learners with the best mentor who possesses the knowledge and skills matching the learner's needs. The mentor needs to attend a mentoring workshop before being assigned a learner. The mentor and the learner sign the mentoring agreement which specifies how often they meet, how they contact each other, and focus topics for the initial meeting. The mentoring relationship lasts 12 months with the possibility of extension.

They are contacted at the 3 month and 12 month point to gain feedback on how the relationship is going.

### **Finland**

Finland launched its first Mentoring Programme for Public Procurement Professionals in October 2022 to promote skills and competence in public procurement. This idea was proposed by the thematic working group to develop procurement competence in Finland. It will be implemented for six months (October 2022 – April 2023). Each mentor will have two or three mentees at maximum. To match mentors and mentees, various elements were considered such as their background, professional experiences and objectives. A kick-off meeting was held in Helsinki in November 2022. It is recommended that the (face-to-face or virtual) individual meetings be held every month from December 2022 to April 2023. In addition, the mentoring process includes an interim online meeting of the entire group in January 2023. The final meeting was held in Helsinki in April 2023. This first mentoring programme in Finland organisations attracted participants from both public and private sectors.

Source: (OECD, 2023<sup>[26]</sup>)

### *Ensuring the practicality of methodological assistance*

Methodological assistance constitutes a key pillar to strengthen the capacity-building systems of the public procurement workforce. It is a useful tool to support public procurement officials to undertake their daily tasks effectively, and complements training courses. Many countries have developed tools such as manuals and guidelines, standardised templates, and help desks. Recently, more direct support and advice is also provided to help contracting authorities to carry out actual complex procurement procedures. (OECD, 2023<sup>[26]</sup>)

Slovenia has already developed several tools to assist contracting authorities in their tasks. In 2023 the MPA updated several informational documents (Guidelines on construction services, new forms on when to execute negotiated procedures without prior publication, new sample clauses for procurement documentation and contracts, further instructions on how to use e-JN information system and its modules, especially ESPD form and renewed e-Dossier module for verification) and developed a list of frequent mistakes/dilemmas. Slovenia also developed standard tender documents in order to simplify the implementation of public procurement procedure

Another tool particularly helpful according to international good practices is the creation of help desks, which are contact point centres to assist contracting authorities and/or economic operators in clarifying their inquiries related to their daily tasks of public procurement. It is an efficient tool to provide quick and tailor-made information. The MPA in Slovenia is currently in the process of setting up a help-centre for comprehensive consultation assistance on public procurement to all stakeholders. (Ministry of Public Administration of Slovenia, 2024<sup>[27]</sup>)

In addition, Slovenia started telephone consultations three times a week which proved to be user-friendly, and could leverage this role for direct support and advice on implementing the actual complex procurement procedure. For example, the Region of Puglia in Italy provides direct support to pre-commercial procurement procedure throughout the entire process, under an EC-financed pilot project with the support of the OECD (see Box 4.11).

### Box 4.11. Collaboration and institutional learning on innovation procurement in the Region of Puglia in Italy

Over 2015-2019, the Region of Puglia conducted two Pre-Commercial Procurement (PCP) procedures in the field of water management in its capacity as contracting authority. The two PCP cover the “Reduction of sludge in urban wastewater” and the “Detection of water leaks in water distribution networks”. The end user of PCPs is Acquedotto Pugliese S.p.A., i.e. the regional network operator.

While some experience with PCP was already available in the Region, it is not a routine operation. Acquedotto Pugliese, the end-user, was also new to this kind of procedure. As such, the Region requested the technical assistance to the in-house company InnovaPuglia, which has a double mandate as the innovation agency and the regional CPB.

InnovaPuglia provided its support to the PCP procedures throughout the entire process, from the preparation and market consultation stages, to the phases of feasibility study, technical design and prototype development. In particular during the early phases of the PCP, i.e. the market consultation phase, it provided critical input on the analysis of technological readiness of different technology options. It continued advising the Region and Acquedotto Pugliese until the conclusion of the procedure, including through supporting the analysis of the results achieved.

The experience of collaboration among the three institutions active in the PCP, i.e. the Region of Puglia, InnovaPuglia and Acquedotto Pugliese, allowed for institutional learning from the more experienced peers, with the long-term goal to have innovation procurement firmly established in the toolbox of several public entities.

Source: (OECD, 2023<sup>[26]</sup>)

## Improving competition by ensuring attractiveness of the procurement market to the bidders

### *Encouraging capacity-building of economic operators*

An increased capacity of contracting authorities should be accompanied by an increased capacity of economic operators. Indeed, the way the private sector acts on different markets and their will to submit a bid will vary depending on their knowledge of the procurement regulatory and institutional frameworks. As such, organizing training for the private sector is generally seen as a good practice. For example, in Hungary, the Government’s action plan to increase competition in public procurement from 2023-2026 already contains a measure for training of SMEs. The training system is foreseen to be free of charge and will include self-paced e-learning and online training, with occasional face-to-face training.

Representants from the private sector itself have highlighted the need for trainings during interviews conducted by the OECD. (OECD, 2023<sup>[12]</sup>) It is therefore recommended that that Slovenia devises a training program targeted at all economic operators, and that the training exercise is held regularly in order to help new entrants to the market. The trainings should also consider the regional factor, as single bidding is high in all regions in Slovenia, and particularly high in regions further away from Ljubljana. The procurement capacity is usually higher in capital regions since capital regions’ higher procurement spending tends to be accompanied by more mature supplier markets. (Fazekas, 2022<sup>[29]</sup>)

This regional factor was taken into account in Italy, where about 200 Supplier Training Desks (STDs) were set up throughout the country in order to assist SMEs with the use of electronic tools in procurement (see Box 4.12)

#### Box 4.12. Italy: Supplier Training Desks (STDs)

Italy has strengthened its co-operation with suppliers by setting up Supplier Training Desks (STDs) (“Sportelli in Rete” in Italian) within the offices of suppliers’ associations. STDs provide training and assistance to local enterprises and in particular micro, small and medium enterprises (MSMEs) on the use of electronic procurement tools. The project consists of a network of dedicated training desks over the country where the central purchasing agency, Consip experts train workforce from the associations that will subsequently train local MSMEs on the use of electronic procurement tools. In Italy, MSMEs (Micro Enterprises) tend to participate to lower value public procurement tenders. Their participation to tenders from 100,000 to 300,000 euros corresponds to 65%, whereas to tenders from 1 to 5 million euros their participation decreases up to 51% and to 30% for tenders with a value higher than 5 million euros.

The project addresses point 5 of the European Small Business Act (SBA): “Adapt public policy tools to SME needs: facilitate SMEs’ participation in public procurement and better use State Aid possibilities for SMEs”, it has also been quoted as a good practice, at a European level, in the “European Code of Best practices facilitating access by SME’s to public procurement contracts” and has been winner of the European eGovernment Awards in the category “empowering business”. This project has been well received and attended by MSMEs. Since the beginning of the project, more than 2,250 MSMEs were supported by the Supplier Training Desks and obtained the qualification to the public e-marketplace implemented by Consip for low value purchases through e-catalogues (MePA).

Around 1000 of these enterprises were qualified in 2013, which corresponds to 44% of the total. 11 National Enterprises Associations are involved in the project. Their role is fundamental since they are recognized, by the enterprises, as the local reference institution. As a result, in 2013, more than 21,000 SMEs represented 98% of online enterprises (online at least once between 1st of January and 31st of December) and 14,000 SMEs represented 98% of active enterprises (active means having been awarded at least once between 1st of January and 31st of December).

Furthermore, in 2013 97% of the number of transactions (337,682) was handled by SMEs and 93% of the value (EUR 907 million) was gained by SMEs.

Today, more than 200 training desks are active and scattered around the country, providing continuous free training and assistance. The MePA has allowed thousands of SMEs to make business during the last five years making it a very suitable procurement tool for SMEs who are the highest percentage of enterprises using it. Consip’s active role in setting up an efficient e-procurement platform and commitment in establishing a very collaborative partnership with the Enterprises Associations has changed the perception of Consip: it is no longer seen as a threat, but as a business opportunity in a transparent and competitive environment.

Source: (OECD, 2014<sup>[30]</sup>)

In addition to an adequate training system for economic operators, methodological assistance constitutes a key pillar to strengthen their capacity. As mentioned above, the MPA has published a number of guidance documents on different aspects of public procurement. Overall, a wide range of information and guidance is available to potential suppliers free of charge. However, interviews with the private sector in Slovenia indicated that further practical guidance is needed regarding specific areas as follows: (OECD, 2023<sup>[12]</sup>)

- Legislation as a whole in order to increase the predictability procurement processes, with clear definitions of deadlines for submission of tenders, for clarifications etc.
- Changes in the contract as unsuspected changes can affect the increase of cost of the service. Increasing the understanding of economic operators regarding these potential changes is needed.
- e-Procurement system, as market players require increased capacity for using it due to its complexity.

As such, the operationalization of the help-desk, in addition to the telephone consultations provided by MPA could further enhance the capacity of economic operators. In Lithuania for example, the Public Procurement Office (PPO) set up a help desk not only to contracting authorities, but also to economic operators. Currently, the help desk receives questions only through email to ensure consistency and accuracy on the quality of answers. Regardless of the high volume of questions received through e-mail (2 000 requests / month on average), PPO maintains the speed of answer: 33% of the requests are answered within 1 hour, 17% in 1-8 hours, 11% (8-24 hours), and the rest 39% in more than 24 hours. (OECD, 2023<sup>[4]</sup>)

### ***Encouraging pro-competitive joint bidding and sub-contracting***

Fostering collaboration among economic operators themselves can help increase their capacities to respond to procurement opportunities. Indeed, as certain bidders do not have the financial or technical capacity to bid for procurement processes, giving the opportunity to bidders to find consortium members, or to offer to be a sub-contractor can mitigate this lack of capacity. Such an approach was undertaken for example in Sweden (see Box 4.13).

#### **Box 4.13. Sweden: Web-based interactive guide for cooperation in procurements**

The Swedish Competition Authority (SCA) is responsible for the enforcement and surveillance of both competition and public procurement rules. In addition to this task, the SCA is also in charge of providing guidance and support to the public in procurement matters.

The combination of enforcement, policy, and support tasks within the fields of competition and public procurement produces valuable synergy effects and gives the SCA a unique position and advantage in the work for intensifying competition in public procurement.

The SCA has developed a web-based interactive guide for cooperation in procurements. The purpose is to offer guidance to companies on when and in what form they can cooperate and submit joint bids in procurements. Through its surveillance activities, the SCA has noticed that companies find it difficult to draw the line between competitive and anticompetitive/illegal cooperation. In this context, the SCA saw an opportunity to couple the enforcement work with more preventive outreaching measures and assist companies in this matter at an earlier stage.

The guide, which can be used by both procurers and companies, is built up around frequently asked questions. The questions range from more specific questions “Can we cooperate in this particular tender” to more general questions “What forms of cooperation are permitted” or “When am I allowed to use a competitor as subcontractor”. The user is also informed of what the consequences of illegal cooperation might be. Throughout the guide “pop-ups” appear where the user can get more detailed information about specific questions or examples based on real cases. Eventually, the user gets an

indicative answer on whether the situation in question is likely to be permitted or not. The guide underlines, however, that in case of any uncertainty the user should seek legal advice.

Source: (OECD, 2014<sup>[30]</sup>)

However, joint bidding may also pose a threat to competition if used with malicious intent. Among the practices at odds with a competitive market listed by the OECD Recommendation of the Council on Fighting Bid Rigging in Public Procurement, are cases when “two or more businesses submit a joint bid even though at least one of them could have bid on its own” and states that “joint bids can be a way to split profits among bid riggers”. As such, to detect a pro-competitive joint bidding arrangement among bidders, contracting authorities can use several criteria (see Table 4.3).

**Table 4.3. Criteria for determining whether a joint bid is pro- or anti-competitive**

Pro-competitive	Anticompetitive
Suppliers are active in different (product) markets.	Each firm has the economic, financial, and technical capabilities to fulfil the contract on its own.
Co-operators provide a single integrated service that none could supply independently.	Joint bidders are the strongest competitors in the relevant market.
Two or more providers active in different geographical areas submit a single bid for the whole of the contract area, producing efficiencies.	A joint bid does not produce any efficiencies, or the efficiencies are not passed on to the buyer in terms of lower price, higher quality or better delivery.
Two or more providers combine their capacities to fulfil a contract too large for either individually.	A consortium allows its members to exchange sensitive information that might harm competition in future tenders

Source: (OECD, 2021<sup>[31]</sup>)

The Danish Competition and Consumer Authority (DCCA) also developed guidelines and criteria to detect competitive or anti-competitive joint bidding. Competitive joint bidding is when companies are not direct competitors for the contract and can carry out together the tendered contract for the contracting authority significantly better and/or cheaper than they could individually, provided that the companies do not exchange more information than necessary to fulfil it. On the contrary, anti-competitive joint bidding is when companies can each bid for the contract individually and are therefore direct competitors, when collaboration is not beneficial for the contracting authority, and when there are more parties in the consortium than necessary to carry out the contract. The DCCA can provide informal guidance to companies upon request regarding joint bidding. (OECD, 2021<sup>[31]</sup>) Similarly, the Slovenian Competition Protection Authority could also devise such criteria for competitive or anticompetitive joint bidding and provide guidance to both contracting authorities and companies in this regard.

In addition to joint bidding, another option to foster competition would be fostering pro-competitive subcontracting. Indeed, for large or complex contracts, some companies, and especially SMEs may not be in a position to even tender jointly with other economic operators because of its small size, specialisation or limited resources. Subcontracting may therefore provide good opportunities for SMEs to perform some of the services or works included in a project. In this way, subcontracting can facilitate the access of SMEs to the public procurement market. (OECD, 2018<sup>[32]</sup>)

However, like in the case of joint-bidding, sub-contracting may also negatively impact competition in public procurement if used incorrectly, and economic operators should compete against each other if they have the capacity to fulfil the contract as a sole contractor. As such, the OECD Recommendation lists subcontracting as one of the practices that might indicate bid rigging, particularly in cases where a “winning bidder repeatedly subcontracts work to unsuccessful bidders” or “does not accept the contract and is later found to be a subcontractor”. (OECD, 2021<sup>[31]</sup>)

### ***Developing measures to increase the access of SMEs to procurement opportunities***

Small and medium enterprises represent a significant share of the total number of enterprises in Slovenia (nearly 99%) and the highest share of contract award with 82% of contracts that were awarded to SMEs in 2021. (European Commission, 2021<sup>[33]</sup>) Increasing SMEs' access to procurement opportunities should therefore be a cornerstone of the Government's strategy to curb single-bidding.

Adopting measures to support SMEs is quite important in a procurement ecosystem. For an SME, participation in public procurement represents a consumption of resources that is proportionally higher than for larger businesses. In addition, the report *Corruption Prevention to Foster Small and Medium Sized Enterprises Development* from UNIDO & UNODC, 2007, states that SMEs are more susceptible to bureaucratic corruption than larger companies. This is due to: their structure (e.g. there is often a greater degree of informality and fewer accountability mechanisms); short-term vision and perspective (as opposed to larger companies, small and medium size enterprises may be less concerned about reputation and other long-term negative impacts of corruption); limited financial or technical resources; and their inability to wield influence over officials and institutions, as they lack bargaining power to oppose requests for illegal payments from public officials. (OECD, 2014<sup>[30]</sup>)

Countries across the world have made use of a variety of measures to encourage SMEs' participation in public procurement in countries. Measures in favour of SMEs include specific legislative provision or policy (e.g. set-aside) to encourage participation from SMEs in procurement; specific unit dedicated to SMEs is placed at the central government level; training and workshops for SMEs; documentation or guidance focused on SMEs available online; SMEs benefitting from preferential financial treatment, e.g. waiving fees etc. (OECD, 2013<sup>[34]</sup>)

In Hungary, for example, the government created a grant scheme to incentivize SMEs in participating in procurement processes. In Denmark, the Competition and Consumer Authority has published a step-by-step guide including information on rules, procedures and key issues related to how to establish SMEs consortia. In New Zealand, although there is not a specific policy of preference for SMEs, support is given by way of measures to reduce compliance costs for suppliers (e.g., through procedural simplification, development of online guides and templates, and training and workshops for both suppliers and procurement practitioners). In the United Kingdom, there is a programme of work with departments to drive up spending with SMEs where they can provide best value to the taxpayer. In Korea, PPS, Korea's Central Government Procurement Agency, provides special financial support to SMEs involved in public contracting, and SMEs are entitled to an upfront payment of up to 70% of the value of a government contract. In Canada, the Office of Small and Medium Enterprises works with the government to address SME's constraints in Procurement (see Box 4.14<sup>Box 4.14</sup>). (OECD, 2013<sup>[34]</sup>)

#### **Box 4.14. Canada: Addressing SMEs' challenges and constraints through the Office of Small and Medium Enterprises**

The Office of Small and Medium Enterprises (OSME) in Public Works and Government Services Canada assists the government in bridging the gap between supply and demand by bringing to light the concerns and challenges of SMEs in the federal procurement process. OSME works with SMEs to address their key challenges and constraints by:

- understanding and reducing the barriers that prevent SMEs from participating in federal procurement
- advising government buyers and policy makers on SME concerns



- recommending improvements to procurement tools and processes to encourage SME participation in federal procurement. PSPC provides additional information available to SMEs on their webpage under “Help for SMEs”
- a portal that provides access to federal procurement information and open data including bid opportunities (tenders), standing offers and supply arrangements, and contract history
- free seminars, webinars and one-on-one sessions to assist suppliers in understanding federal procurement
- telephone information line for suppliers who have questions about the procurement process and related tools. The Office of Small and Medium Enterprises also manages the Build in Canada Innovation Programme, which assists Canadian businesses in testing their innovative goods and services before they are commercialised.

Source: (OECD, 2018<sup>[32]</sup>)

Removing administrative burdens is also a good way to encourage SME participation. For example, in Spain, the creation of a self-declaration regarding legal, social and fiscal status of the firm for smaller contracts has removed administrative barriers and has been beneficial for both contracting authorities and economic operators, and especially SMEs (see Box 4.15).

#### **Box 4.15. Spain: Simplification of Public Procurement Procedure – Self-Declaration**

Spain, through the Act 14/2013, of support and internationalization of entrepreneurs which modified the Royal Legislative Decree 3/2011, of Contracts of the Public Sectors has introduced measures intended to support and facilitate participation of SME's in public procurement.

In addition to several changes in the legal regime of classification in order to increase the thresholds requiring pre-classification, Act 14/2013 added a new paragraph to article 146 of Royal Legislative Decree 3/2011, of Contracts of the Public Sectors in which allows contracting entities to receive from potential suppliers a self-declaration instead of several documents certifying legal, social and fiscal situation of the SME willing to participate in public procurement procedures. This self-declaration will always be enough in contracts of works under 1.000.000 euro and in provision and services contracts under 90.000 euro.

The tenderer to which it has been decided to award the contract should, however, be required to provide the relevant evidence and contracting authorities should not conclude contracts with tenderers unable to do so. Contracting authorities should also be entitled to request all or part of the supporting documents at any moment where they consider this to be necessary in view of the proper conduct of the procedure.

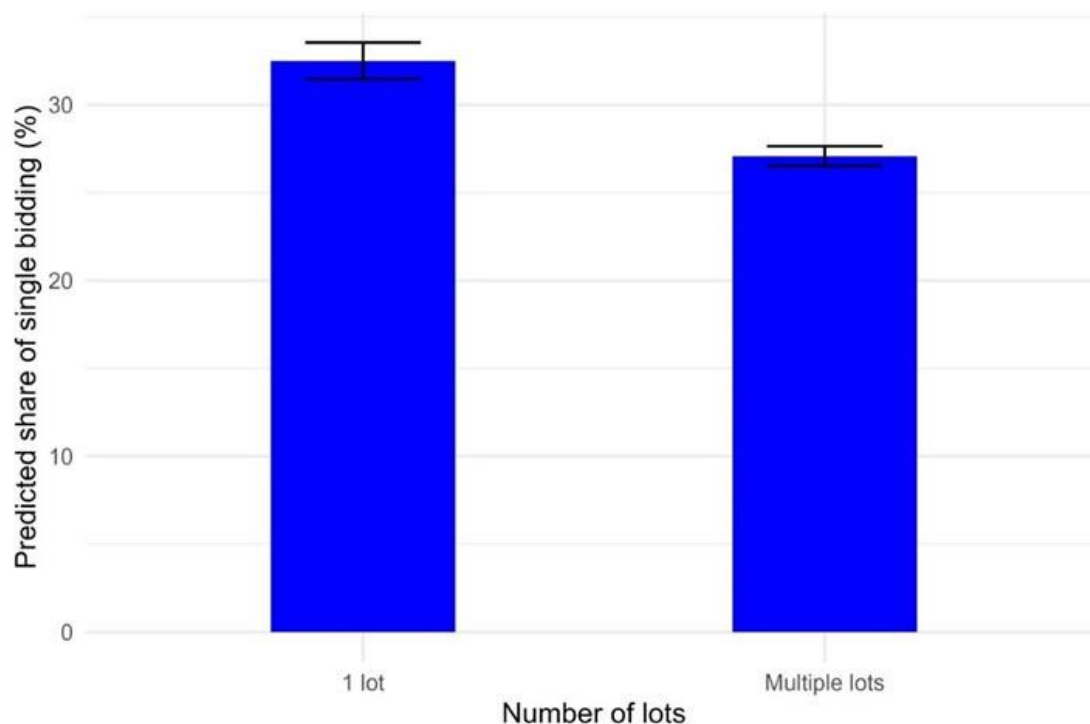
Although these measures embody targets from National authorities in Spain and they comply with the recent new Directives on Public Procurement from the European Union: “Many economic operators, and not least SMEs, find that a major obstacle to their participation in public procurement consists in administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example through use of a European Single Procurement Document (ESPD) consisting of an updated self-declaration, could result in considerable simplification for the benefit of both contracting authorities and economic operators.”

Source: (OECD, 2014<sup>[30]</sup>)

### ***Encouraging the division of procedures into lots to increase competition***

In addition to measures directly targeted at building the capacity of economic operators, and by extension SMEs, dividing contracts into lots can also help foster access to procurement opportunities, and especially to SMEs. Indeed, as shown by data analysis in Slovenia, dividing the tender into lots seems to lower the incidence of single bidding (see Figure 4.12). One-lot tenders represent slightly more than one-quarter (27.7%) of the dataset, and such tenders are predicted to receive only a single bid for at least 32.5%. This share drops to 27% in cases when the tender is split into multiple lots. These results are both significant and substantial.

**Figure 4.12. Predicted share of single bidding (number of lots), Slovenia 2017-2022**



Source: e-Narocanje and e-JN systems

The OECD Recommendation on Fighting Bid Rigging in Public Procurement highlights that contracting authorities should, whenever possible, allow bids on certain lots or objects within the contract, or on combinations thereof, rather than bids on the whole contract only. However, when dividing the contract into lots, the principle of proportionality should be applied, taking into account the market analysis undertaken by the contracting authority (see Box 4.16).

#### **Box 4.16. Elements to take into account in order to split a procurement process into lots**

Dividing public procurement contracts into lots can be used for pursuing several aims, such as promoting competition in the tender, promoting competition in the market, or for other strategic goals such as increasing SMEs' participation in public procurement. However, this approach is not "one size fits all", and the contracting authorities should take into account the following elements:

- **The trade-off between potential competition gains and efficiency losses:** Efficiency losses can emerge if there are complementarities (e.g., economies of scale and scope) between different parts (lots) of the contract. If these complementarities are strong, firms will face uncertainty driven by the fact that they do not know which other lots they will win when placing their bid on a given lot.
- **The relevance of the number of firms in the market for choosing the number of lots:** The ratio between the number of potential bidders and the number of lots has been shown to be another crucial consideration when deciding on the configuration of contract division, and having more lots than expected tender participants may deliver more competition for the lots and reduce the risk of collusive agreements.
- **The role of new entrants for the tender outcome:** Promoting tender participation by new entrants (i.e., firms that have not participated in a procurement before) is one of the keys in procurement planning. New entrants to the tender can introduce competition for the lots and weaken the conditions for collusion.
- **The relative size of lots and the risk of collusion:** Heterogeneity on the size of lots may play a role in reducing the scope for market sharing arrangements. For a discussion on the relevance for collusion of the relative size of lots as well as the auction format in the tender procedure, see Albano et al (2006).

Source: (OECD, 2015<sub>[35]</sub>)

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# **5 Recommendations to improve competition in public procurement in Slovenia**

Category	Recommended action	Timeframe (short, medium, long term)
Horizontal	<p data-bbox="344 272 1102 300"><b>Improving public procurement data governance, data availability</b></p> <p data-bbox="344 321 1187 385">The Government of Slovenia should take actions to further improve public procurement data governance:</p> <ul data-bbox="389 406 1187 804" style="list-style-type: none"> <li data-bbox="389 406 1187 506">• By merging the different platforms for publication of procurement opportunities, for submitting bids, and for legal protection in order to create a single-entry platform for all steps of the procurement process.</li> <li data-bbox="389 519 1187 583">• By revising the PPA and the e-Procurement System(s) to review rules on mandatory preparation and publication of procurement plans.</li> <li data-bbox="389 595 1187 732">• By monitoring the impact of the implementation of eForms on data quality, but also competition in public procurement and whether it removed some administrative burdens on both contracting authorities and economic operators.</li> <li data-bbox="389 744 1187 804">• By exploring the possible use of artificial intelligence for data collection and analysis.</li> </ul>	Medium/Long
	<p data-bbox="344 842 1174 870"><b>Improving the monitoring and control mechanisms of the procurement system</b></p> <p data-bbox="344 891 1187 991">The Government of Slovenia should take actions to further improve the monitoring and control mechanisms of the public procurement system, by implementing the following actions:</p> <ul data-bbox="389 1012 1187 1847" style="list-style-type: none"> <li data-bbox="389 1012 1187 1144">• The MPA should monitor the efficiency of the new ex-ante transparency mechanism for negotiated procedures without prior publication to measure its effectiveness on the rate of use of negotiated procedure without prior publication.</li> <li data-bbox="389 1157 1187 1293">• DKOM should leverage the new ex-ante transparency mechanism when receiving review requests from safeguards of interest regarding the use of negotiated procedures without prior publication, and pay closer attention to complaints in single-bidding procedures.</li> <li data-bbox="389 1306 1187 1476">• Collaboration among entities responsible for monitoring public procurement (DKOM, Court of Audit, Competition Protection Agency, Commission for the Prevention of Corruption) should be further strengthened, particularly through the development of a shared portal to better coordinate data collection and sharing information for certain cases.</li> <li data-bbox="389 1489 1187 1553">• Each institution responsible for monitoring public procurement should gear monitoring activities further around competition in public procurement.</li> <li data-bbox="389 1566 1187 1774">• MPA should develop an action plan to tackle issues in competition in public procurement, with concrete short/medium/long term measures. These measures could include actions recommended by this Report, such as the improvement of the e-Procurement system, promoting better coordination among key actors, enhancing the capacities of contracting authorities and economic operators, raising awareness on corruption risks etc.</li> <li data-bbox="389 1787 1187 1847">• MPA could consider developing a performance measurement framework for public procurement and report regularly on its results.</li> </ul>	Medium



<p>Promoting better access to business opportunities for business sector</p>	<p><b>Promoting good procurement practices for contracting authorities that make procurement opportunities more attractive for the business sector</b></p> <p>The MPA should promote procurement practices to ensure that contracting authorities are preparing, planning and conducting their procurement procedures in a way that makes the public procurement opportunities more attractive for the business sector, including the following:</p> <ul style="list-style-type: none"> <li>• <b>Strategic procurement planning for seasonal trends:</b> Contracting authorities should develop procurement plans more strategically in order to take into account the impact of seasonality on procurement processes.</li> <li>• <b>Improving the role of procurement plan as a market engagement tool</b> in providing information about future procurement opportunities to the market players. Although the preparation and publication of procurement plan is currently not mandatory, such a practice should be promoted for contracting authorities to publish their plans on their website.</li> <li>• <b>Encouraging the use of open procedure whenever possible:</b> Contracting authorities should use open and transparent procedures as much as possible and use other types of procedures on a justified exceptional basis.</li> <li>• <b>Leveraging the use of ESPD:</b> The Government of Slovenia should ensure that contracting authorities understand that the European Single Procurement Document should be fully digital to avoid undue administrative burden on economic operators by raising awareness on this matter.</li> <li>• <b>Favoring MEAT instead of lowest-price as an evaluation method:</b> Contracting authorities should be encouraged to use meaningful MEAT criteria as much as possible and use the lowest-price criterion for standardized goods or well-defined goods and services. MPA should provide training to contracting authorities regarding the use of MEAT criteria, present the benefits and the drawbacks of different approaches and the need to introduce non-price criteria into procurement procedures.</li> <li>• <b>Extending bid preparation timeframes:</b> Contracting authorities should allow potential bidders longer and more reasonable time to prepare comprehensive and elaborate bids.</li> <li>• <b>Enhancing responsiveness to bidder queries:</b> Contracting authorities should be responsive to potential issues flagged by interested bidders in order to modify unclear or mis-specified tender information.</li> <li>• <b>More extended use of lots to promote SME participation:</b> Contracting authorities should try to split tenders into multiple lots with lower estimated contract values in order to better tap into SME bidding potential and encourage SME participation.</li> </ul>	<p>Short/Medium</p>
	<p><b>Engaging with the business sector during procurement reform processes</b></p> <p>The Government of Slovenia should strengthen the engagement with the private sector during reform processes regarding the public procurement system and build their capacity regarding changes in the system to ensure legal certainty.</p>	<p>Long</p>
	<p><b>Facilitating consortium and subcontracting opportunities</b></p>	<p>Medium</p>

	<p>A tool should be developed to help economic operators find consortium and subcontracting opportunities.</p> <p><b>Creating tailored mechanisms to improve SME participation in procurement</b></p> <p>The Government of Slovenia should pursue its efforts to further increase and maintain SME participation in procurement. Several measures can be implemented such as specific legislative provision or policy to encourage participation from SMEs in procurement; specific unit dedicated to SMEs is placed at the central government level; training and workshops for SMEs; documentation or guidance focused on SMEs available online; SMEs benefitting from preferential financial treatment etc.</p>	Short/Medium
<p><b>Improving procurement capabilities of the different stakeholders</b></p>	<p><b>Improving the capacities of CPB – Centralized Purchasing Bodies</b></p> <p>The Government of Slovenia should leverage centralize purchasing to improve competition in public procurement by:</p> <ul style="list-style-type: none"> <li>• Conducting an in-depth analysis of the performance of centralized purchasing and measure its impact on competition.</li> <li>• Encouraging the use of DPS to increase participation from SMEs.</li> <li>• Develop price monitoring tools for framework agreements operated by the main CPB.</li> <li>• Leverage Slovenia's participation in the CPB Network by participating actively to the activities of the network and gather good practices regarding competition.</li> </ul>	Short/Medium/Long
	<p><b>Enhancing the capability of contracting authorities and improving the support to contracting authorities</b></p> <ul style="list-style-type: none"> <li>• The Competition Protection Agency should regularly provide data regarding mergers and acquisition, to help contracting authorities with market analysis, and provide training around competition and practices.</li> <li>• MPA should examine the needs for the Public Procurement Academy to include a mandatory certification scheme, at least for the first two target categories of job profiles (public buyers), in order to increase the recognition of the profession.</li> <li>• Policies and capacity-building should be put in place to optimize contract management practices of contracting authorities. Current legal initiatives such as the 30-day payment policy could be strengthened with further government actions such as prompt payments policy for SMEs.</li> <li>• MPA and other relevant stakeholders should provide further guidance and capacity building activities to contracting authorities regarding market analysis, including better use of public procurement data for market and spend analysis.</li> <li>• MPA and other relevant stakeholders (potentially involving business and professional associations) could develop model contracts in order curb the practice of imbalanced contracts and build capacity of contracting authorities regarding sound contract conditions and risk allocation.</li> </ul>	Medium

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- MPA and other relevant stakeholders should train contracting authorities on key topics impacting competition such as collaborative approaches, collusion and corruption etc.
  - MPA and other relevant stakeholders should encourage practical training and collaboration among contracting authorities (on-the-job training, job-swapping, mentoring etc.), so that larger or more experienced contracting authorities could help build capacities of smaller contracting authorities.
  - MPA should further leverage its role as a helpdesk to assist both contracting authorities and economic operators during procurement procedures.
  - Collaborative approaches among contracting authorities (especially for small contracting authorities) in public procurement should be encouraged by policymaking authorities, through awareness-raising campaigns, trainings etc.
  - MPA should help improve the organizational decision-making speed of buyers that take more than 63 days per bid on average through capacity building or training
-

## Annex A. Data collection, processing, and quality

The data is entered by the contracting authority into a standardised reporting form through the government-run electronic procurement platforms – **eNarocanje** (<https://www.enarocanje.si/#/>). First, all publications describing a tendering process are scraped. Then, the original information from each publication is parsed into a uniformly structured data template, and cleaned, which includes the conversion of structured text into standard data types (numbers, dates, enumeration values).

One tender is described by multiple publications, such as a call for tender, contract award notice, or possibly modifications, cancellations, or notices about contract implementation. All relevant publications related to a single tender are grouped together based on publication cross references. After matching the publications describing the same tender together, the next step is mastering. Mastering refers to the process of creating a single record for each tender that stores a final value for each variable, that is the best representation of tendering process. The data cleaning, matching and mastering steps are developed originally by DIGIHWIST.

In the final analysed dataset, each contract is stored as a separate observation. Some tenders contain more than one lot. These tenders can have more than one contract award notice for one call for tender publications. Such a design complicates the linking of tendering details - such as connecting the estimated prices of individual lots to the individual contracts awarded is not always possible. Further complication are the framework agreements, considering that they are first 'pre-awarded', which is followed by the follow-up award or contract implementation notice.

Once completed, the dataset goes through several phases of filtering, selecting relevant observations for the analysis, tender years 2017-2022. Contracts that miss bidder name, buyer name, contracts that are cancelled or non-awarded parts of the framework agreement are filtered out. As a result of the filtering, the final contract-level dataset contains 96,559 observations. To visualise and track yearly and monthly distributions of variables, two additional variables 'year' and 'month' were created. The variable 'year' is created based on tender year. To create the variable 'month', the first call for a tender publication was used. For those observations that have missing value, an intermediate step was added. A month is imputed based on the median value difference between contract award date and first call for tender publication per 4-digit sector. The obtained value is subtracted from the contract award date to arrive at an imputed date. Finally, the month from this newly created date is extracted and added in cases of a missing value in the original month variable.

As a result of these processing steps, a final data table is created for the analysis that corresponds to an awarded contract.

# Annex B. Precise definitions of variables used in the analysis

## 1. Competition indicators

- **Single bidding.** A binary variable that focuses on the number of participants per contract. It is recoded into a binary to denote whether there was only one bidder (1) or more than one bidder (0). Having received only one bid in a competitive market indicates that there is restricted competition.
- **Number of bidders (quartiles).** The variable is defined based on the number of bids received, and is recoded to indicate 1, 2, 3, and 4 or more bids. The missing values are re-coded into a separate category.
- **(Share of new) Market entrants.** The indicator is operationalized based on the share of new companies being awarded a contract in a specific year, and not being awarded a contract in the preceding year (t-1), based on CPV-3 classification for markets. For instance, if a company is awarded a contract in 2018, but did not have a contract in 2017, then for 2018 it will be coded as 1, i.e., as a new market entrant.
- **Market concentration.** The indicator is operationalized by calculating the share of the supplier total market value per year. It aims to capture the size of the supplier relative to the market (at CPV level 4).
- **(Rate of) Non-local suppliers.** The rate of non-local suppliers indicator is operationalized based on the registered location of the buyer and awarded bidder. If the buyer and bidder are from the same settlement, it is assigned as local bidders. If the buyer and bidder location is not from the same settlement, it is assigned as non-local bidders.

## 2. Factor groups

### *Economic fundamentals*

- **Year.** Control variables that account for the year of the tender. It makes sure that all variation is observed within the same year to avoid potential confounding effects on yearly variation.
- **Month.** Categorical variable that overviews the number of tenders per month. The variable is measured by looking at the month of the first call for tender publication. With missing values from the call for tender publication, the month is imputed using the median difference between contract award date and first call for tender publication within sectors (using CPV level 4, as a more conservative imputation). End of the year spikes in procurement might occur due to unsuitable budget planning or inefficient organisation of tenders throughout the year and the association of between the increased rate of single bidding in the latter months of the year, or the last quarter (McCue, Prier and Lofaro, 2021<sup>[1]</sup>). Therefore, the possibility of budget surplus for public authorities could indicate the need to spend the allocated funds in the last few months of the year. This can trigger shorter and less adequate planning procedures, as well as shortened advertisement

periods. Academic literature finds spikes of the share of single bidding incidence in the last month of the year.

- **Sector.** To identify sectors, the Common Procurement Vocabulary (CPV) codes are used. Based on the CPV codes, more general sectors are identified, using 2 digits, or more specific sectors, using the 3- or 4-digit CPV notation. Considering that some CPV codes can entail a wide range of products and to estimate the average single bidding instances, differences within sectors are analysed.
- **Region.** Regional and economic differences are captured by a variable based on the buyer's location and contract implementation region, using the NUTS2 classification as a proxy. Theoretically, as competition improves, an increase in the number of distinct companies that have won a contract in a particular market can be noticed. Subsequently, an increase in the number of potential suppliers should be associated with lower rates of single bidding.
- **Market size.** The variable is calculated by grouping markets (CPV level 2 and 3) and calculating the total value of contracts within these groups. CPV level 2 markets are divided into quintiles (5 groups), while the 3-digit markets are divided into deciles (10 groups). Smaller markets, i.e., lowest quintiles and deciles groups, have larger share of single bidding incidence.
- **Number of potential suppliers on the market.** The variable is calculated by grouping markets (CPV level 4) and counting the distinct number of awarded suppliers. Markets, such as petroleum, coal and oil products, mining and basic metals, or clinical forensics equipment have the lowest number of unique suppliers. Finally, the variable is categorised by creating quintiles (5 groups) for the CPV level 4 markets.

### *Organisational capacities*

- **Buyer type.** Control variable that takes into account whether the buyer is a national or regional authority or a national or regional agency. The rationale behind the control is to consider the potential differences of organisational capabilities of different agencies or authorities. Such structural indicators are related to the buyer's capacity and resources, considering that national authorities or national agencies could have at their disposal larger personnel or more qualified employees.
- **Award criteria.** The type of evaluation method, whether it is price only or best price-quality ratio, allows buyers to consider quality aspects explicitly. It is a categorical variable that aims to control whether the lowest price, a MEAT, or another method has been used in awarding a tender contract.
- **Buyer's average decision period length per bid.** The indicator is the average time difference between the bid submission date and the announcement of the contract award per buyer and year. The indicator captures the capacity of agencies and availability of resources they have to process submitted bids. Theoretically, quicker periods for making decisions should be associated with more effectively organised agencies, and, consequently, can stimulate competition. Single bidding is lowest with the most efficient agencies whose buyer's average decision period length per bid is less than 22 days. Too long periods can signal inefficient agency or low capacities that can discourage potential suppliers from making bids.

### *Tender and contract design*

- **Procedure type.** Non-open procedures lead to uncompetitive tenders. It can create an environment of unfair competition by limiting the number of competing suppliers. Examples of such risky procedure types include negotiated procedures without prior announcement, or contracts directly awarded to suppliers. The variable is based on the procedure chosen by the contracting

authority during the tendering process. The wide range of original procedure types are then mapped into fewer, standardised categories. Procedure type is an important determinant bearing in mind that buyers can misuse the application of certain procedure types for the purpose of favouring specific bidders. Research has shown that specific firms can enjoy extra returns and more favourable conditions when negotiated or exceptional procedures are more frequently used. (Auriol, Straub and Flochel, 2016<sup>[2]</sup>) Additionally, discretion afforded to buyers to use negotiated procedures has a tendency to create favouritism. (Chong, Klien and Saussier, 2015<sup>[3]</sup>)

- **Tender description.** Length of procurement description (number of characters). To calculate measurable categories, first, the deviation from the mean based on 3-digit CPV codes is calculated. Second, it is split into categories. Tenders that have the fewest number of characters (largest deviation) until the 1 quarter are classified as category 4. Tenders between the mean and the 1 quarter are classified as category 3. Tenders between the mean and the 3 quarter are the classified as category 2. Last, tenders that have the longest description are classified as category 1.
- **Framework agreements.** A binary variable that indicates whether a contract is a framework agreement or not.
- **Tender size (deciles).** Categorical variable that denotes the value of the tender split into 10 deciles.
- **Number of lots.** The variable measures the number of lots for each tender. To calculate measurable categories, the variable was split into deciles that represent specific groups. For instance, the first decile represents one-lot tenders, the third group three-lot tenders, and so on. The last group is the most diverse as it entails tenders whose lot number ranges from 6 to 695.
- **Ex-post modifications of contracts.** Number of contract amendments.

### *Transparency*

- **(No) call for tender publication.** Call for tender publication measures whether the contracting authority has issued a notice for the tendering procedure. Lack of such an announcement in an official journal leads to limited competition as fewer potential suppliers are informed about the tender. Furthermore, such limitation can also indicate that the potential supplier is selected based on favouritism. These tenders are not conducive to the principles of open and fair competition.
- **Length of advertisement period.** The indicator measures the difference between first contract notice publication date and the deadline that suppliers have to submit their bids (in days). Theoretically, a short period between the two dates is associated with unfair competition as there is less time for adequate preparation. Similarly, too lengthy periods can also signal potential tender modifications that can cause favouritism towards some bidders.

## References

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## Annex C. Regression results

<i>Dependent variable:</i>		
	<u>Single bidding</u>	
	<u>(1)</u>	<u>(2)</u>
<u>Constant</u>	<u>-0.249***</u> <u>(0.078)</u>	<u>-3.201***</u> <u>(0.121)</u>
<u>procedureCompetitive dialogue</u>	<u>0.529***</u> <u>(0.170)</u>	
<u>procedureNA</u>	<u>1.741***</u> <u>(0.045)</u>	
<u>procedureNegotiated with publication</u>	<u>0.515***</u> <u>(0.065)</u>	
<u>procedureRestricted</u>	<u>-1.252***</u> <u>(0.220)</u>	
<u>procedureSmall value order</u>	<u>0.234***</u> <u>(0.017)</u>	
<u>aydecp_bn_52</u>		<u>1.701***</u> <u>(0.052)</u>
<u>aydecp_bn_53</u>		<u>3.062***</u> <u>(0.050)</u>
<u>aydecp_bn_54</u>		<u>4.420***</u> <u>(0.051)</u>
<u>aydecp_bn_55</u>		<u>6.028***</u>

	(0.055)
<u>aydecp_bn_5NA</u>	<u>5.265<sup>***</sup></u> <u>(0.069)</u>
<u>submp_52</u>	<u>-0.614<sup>***</sup></u> <u>(0.031)</u>
<u>submp_53</u>	<u>-0.925<sup>***</sup></u> <u>(0.035)</u>
<u>submp_54</u>	<u>-1.155<sup>***</sup></u> <u>(0.034)</u>
<u>submp_55</u>	<u>-1.925<sup>***</sup></u> <u>(0.036)</u>
<u>submp_5NA</u>	<u>-0.836<sup>***</sup></u> <u>(0.059)</u>
<u>tender_isframeworkagreemen t1</u>	<u>-0.277<sup>***</sup></u> <u>(0.030)</u>
<u>nocft1</u>	<u>1.182<sup>***</sup></u> <u>(0.081)</u>
<u>tender_corrections1</u>	<u>-0.475<sup>***</sup></u> <u>(0.023)</u>
<u>tender_description_length_m ed2</u>	<u>0.202<sup>***</sup></u> <u>(0.023)</u>
<u>tender_description_length_m ed3</u>	<u>-0.050<sup>**</sup></u> <u>(0.023)</u>
<u>month02</u>	<u>0.112<sup>**</sup></u> <u>(0.052)</u>
<u>month03</u>	<u>0.084<sup>*</sup></u> <u>(0.047)</u>

<u>month04</u>	<u>-0.001</u> <u>(0.046)</u>
<u>month05</u>	<u>0.107**</u> <u>(0.047)</u>
<u>month06</u>	<u>0.264***</u> <u>(0.048)</u>
<u>month07</u>	<u>0.388***</u> <u>(0.049)</u>
<u>month08</u>	<u>0.024</u> <u>(0.050)</u>
<u>month09</u>	<u>0.176***</u> <u>(0.049)</u>
<u>month10</u>	<u>0.203***</u> <u>(0.044)</u>
<u>month11</u>	<u>0.414***</u> <u>(0.048)</u>
<u>month12</u>	<u>0.299***</u> <u>(0.050)</u>
<u>monthNA</u>	<u>-1.174**</u> <u>(0.519)</u>
<u>number_suppliers2_52</u>	<u>-1.046***</u> <u>(0.232)</u>
<u>number_suppliers2_53</u>	<u>-1.122***</u> <u>(0.236)</u>
<u>number_suppliers2_54</u>	<u>-2.804***</u> <u>(0.260)</u>
<u>number_suppliers2_55</u>	<u>-3.472***</u> <u>(0.269)</u>
<u>multilot1</u>	<u>-0.260***</u>

		<u>(0.029)</u>
<u>ca_contract_value5a2</u>		<u>0.041</u> <u>(0.029)</u>
<u>ca_contract_value5a3</u>		<u>0.071**</u> <u>(0.031)</u>
<u>ca_contract_value5a4</u>		<u>0.090***</u> <u>(0.034)</u>
<u>ca_contract_value5a5</u>		<u>-0.079**</u> <u>(0.037)</u>
<u>ca_contract_value5aNA</u>		<u>0.046</u> <u>(0.037)</u>
<u>tender_year2018</u>	<u>-0.182***</u> <u>(0.025)</u>	<u>0.213***</u> <u>(0.035)</u>
<u>tender_year2019</u>	<u>-0.249***</u> <u>(0.026)</u>	<u>0.134***</u> <u>(0.036)</u>
<u>tender_year2020</u>	<u>-0.266***</u> <u>(0.026)</u>	<u>-0.045</u> <u>(0.035)</u>
<u>tender_year2021</u>	<u>-0.229***</u> <u>(0.026)</u>	<u>0.103***</u> <u>(0.036)</u>
<u>tender_year2022</u>	<u>0.026</u> <u>(0.026)</u>	<u>0.368***</u> <u>(0.036)</u>
<u>tender_selectionmethodMEA</u> <u>T</u>	<u>0.204***</u> <u>(0.022)</u>	<u>0.360***</u> <u>(0.028)</u>
<u>tender_selectionmethodNA</u>	<u>0.174***</u> <u>(0.042)</u>	<u>0.440***</u> <u>(0.055)</u>
<u>tender_supplytypeNA</u>	<u>-0.651***</u> <u>(0.175)</u>	<u>-0.276</u> <u>(0.231)</u>
<u>tender_supplytypeServices</u>	<u>0.264***</u> <u>(0.060)</u>	<u>0.434***</u> <u>(0.079)</u>

<u>tender_supplytypeWorks</u>	<u>-0.680<sup>***</sup></u> <u>(0.076)</u>	<u>-0.496<sup>***</sup></u> <u>(0.096)</u>
<u>Observations</u>	<u>96,559</u>	<u>96,559</u>
<u>Log Likelihood</u>	<u>-58,389.530</u>	<u>-38,687.500</u>
<u>Akaike Inf. Crit.</u>	<u>116,937.100</u>	<u>77,596.990</u>
<u>Note:</u>	<u>* p &lt; 0.1; ** p &lt; 0.05; *** p &lt; 0.01</u>	

# Maximising the Benefits of Effective Competition in Public Procurement in Slovenia

This report analyses competition in public procurement in Slovenia and the rationale behind the high prevalence of single-bidding and negotiated procedures without prior publication. It provides an empirical analysis of competition, using procurement data and several variables. It also provides recommendations for potential improvements to the institutional and regulatory frameworks to foster competition in Slovenia. Finally, it provides recommendations for improving the capacity of both contracting authorities and bidders regarding public procurement.



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