



Policy response to the “Open public procurement by default” report

1. Background

The policy response by the outgoing State Secretary of the Dutch Ministry of the Interior and Kingdom Relations (BZK), called “*Op weg naar een open platform inkoopinformatie Rijksinkoop*”, which translates as ‘On the Way to an Open Public Procurement Data Platform’, (December 2021), to the Open State Foundation report “*Hoe ontsluiten wij inkoopdata*”, which translates as ‘How do we Disclose Procurement Data?’, (May 2021) states that, wherever possible, the Dutch central government is committed to actively publishing all its procurement data.

The Chief Procurement Officer of the Dutch central government (CPO Rijk) has requested Prof. dr. ir. Fredo Schotanus, who holds the endowed chair of Public Procurement at Utrecht University, to conduct an independent study on the possibilities for publishing various public procurement data types. On 7 April 2022, Fredo Schotanus issued his report, called “*Open public Procurement by default*”. This policy response to Fredo Schotanus’s report outlines what possibilities the Dutch central government sees to publish its procurement data to the greatest extent possible.

2. Perspective

The perspective for the Platform Open Rijksinkoop, , which translates as ‘Open Public Procurement Platform’, (POR) is what may eventually be published once all practical challenges have been met. This is to take place within the boundaries of applicable laws and regulations, taking into account the effects on market forces and the administrative burden for the central government. The will to solve problems ensues from the Dutch central government’s commitment to publishing all its public procurement data, wherever possible. The ultimate aim of this, by means of being more transparent about public spending, is enhancing trust and interest in government procurement, in order to reduce collusion and corruption, improve competition, encourage research and simplify sharing best practices.

3. Result

Fredo Schotanus distinguishes eighteen data field types relevant to procurement, thirteen of which can be made publicly available by default (“Open data by default”) and five of which cannot (“Closed data by default”). He has coordinated the identified benefits and risks with the experts at Public Procurement and provides appraisals for each data field type. The Dutch central government has concurred on the appraisals for sixteen out of the eighteen data field types but has made different appraisals on the remaining two.



4. Public, following advice (12 data field types)

For the following data field types, the Dutch central government concurs on Fredo Schotanus's appraisal to publish this type of information about tenders (including tenders below EU public procurement thresholds but over a minimum threshold) and contracts:

- Overview of planned tenders
- Market consultation documentation and report of the main outcomes
- All data fields for announcing tenders by TenderNed, TED, MVIZET (tender phase) and commercial platforms (if used by procurer)
- All tender documents, Information Memoranda and contracts, including those for the tender phase of non-public procedures
- Names and quality scores for all suppliers, contract value, non-applicability of exclusion grounds
- Relative benefits of the winning supplier
- Enterprise structure, sub-contractors (at least tier 1 and tier 2)
- Beneficial owners of contracted suppliers
- Owner countries list and SBI codes of contracted suppliers
- Qualitative and financial data on utilising contracts
- Contract amendments and short motivations
- Contract extensions and short motivations

Laws and regulations apply to all data field types. For example, privacy-sensitive data, data that is important to (national) security, or commercially sensitive data is not disclosed. This may apply to an annex to the tender documentation that is used in a non-public procedure, or – in exceptional situations – to the contract value of the winning bid.



5. Non-public, following advice (4 data field types)

With regard to four data field types, the Dutch central government shares Fredo Schotanus's conclusion not to publish this type of procurement data. Below, the reason for not disclosing this data is provided for each data field type:

➤ *All data on tenders and winning bids, including unit prices and full assessments*

The risks are too great and hard to control. These cases often concern commercially sensitive information (included in the exemptions in the Dutch Open Government Act (WOO)). Disclosing this type of data further reduces the opportunities for businesses to take part in tenders, while increasing administrative costs. Moreover, no other EU member states publish unit prices, except Greece for part of its procurements.

➤ *Mini competition outcomes and further agreements*

The administrative costs involved in this information are such that this burden does not measure up to the relatively modest benefit of supplying detailed information on framework contracts.

➤ *Data on contract realisation for internal use, such as specific KPI scores*

The risks are too great and hard to control. The willingness of businesses to participate is expected to decrease and partly as a result of that, government will face higher costs. Moreover, this type of information is open to interpretation, as a result of which the administrative burden will obviously increase, while it remains uncertain that the differences of interpretation can be bridged.

➤ *The sourcing strategy of a specific tender*

If a general obligation applied before, the ensuing high administrative burden does not measure up to the modest gain in transparency. In specific cases, however, a category manager, for instance, may choose to be open about their sourcing strategy for a specific tender. This information then complements the general sourcing strategy as set down in the category plan in question.



6. Non-public, not following advice (2 data field types)

With regard to the two data field types below, the Dutch central government does not adopt Fredo Schotanus's appraisal:

- *Early contract terminations motivated by underperformance or (eventual) non-applicability of exclusion grounds*

Currently, the Dutch central government uses a Past Performance Monitor. This is an in-house tool that enables correct compliance with the past performance provisions of the public procurement act. The Dutch Association for Procurement Law (NVvA) is in the process of drawing up an advice on how to deal with the relevant provisions of the public procurement act. Pending this advice, no further steps are currently being taken.

- *All MVIZET data fields (contract phase)*

Disclosing information within the scope of this data field type may result in issues relating to the quality and the completeness of this data. And thus, partly in view of the extent of this data type, to an excessive administrative burden for the Dutch central government. A better way to spend the taxpayers' money is to be open about realising the goals in the central government's procurement plans relating to sustainability, circularity and other subjects of procurement with impact. For instance, in the Annual Report Operational Management in Central Government (JBR).

7. Follow-up

Executing the policy response for publishing the data field types mentioned above does not happen overnight. It involves a vast amount of information. In 2021, public procurement amounted to about € 16 billion per annum (JBR 2021).

On 1 December 2022, a first version of the POR will go live. As indicated in the above-mentioned policy response by the State Secretary of BZK, this version will mainly provide information on the generic public procurement through category management (circa 25% of public procurement). It will take several years for the platform to have reached maturity. The best approach is to design the platform with the desired perspective in mind. And for the internal and external stakeholders to further develop the POR together.

Contributing to optimisation of the platform and creating a culture of open exchange of information, can make the Netherlands a forerunner within Europe in this field. And this creates leverage for more procurement with impact by local government and for exchanging knowledge and expertise with other EU member states.