



**TAIEX Expert Mission on European experience in control over procurement**  
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# Transparency in public procurement

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## The principle of transparency

Transparency is one of the most principles applied to all procurement selection procedures and awarding contract.



## Why is transparency in public procurement important?

**Facilitates  
appropriate  
competition**

**Develops  
markets**

**Helps in the  
battle against  
corruption**



## Advertising

- Ensuring an adequate degree of transparency of the public procurement system in all stages of the procurement cycle.

## Right to know

- Ensuring full access to information and open data, along with active and timely responses to request for information



# When do you need to advertise?





## Before the start

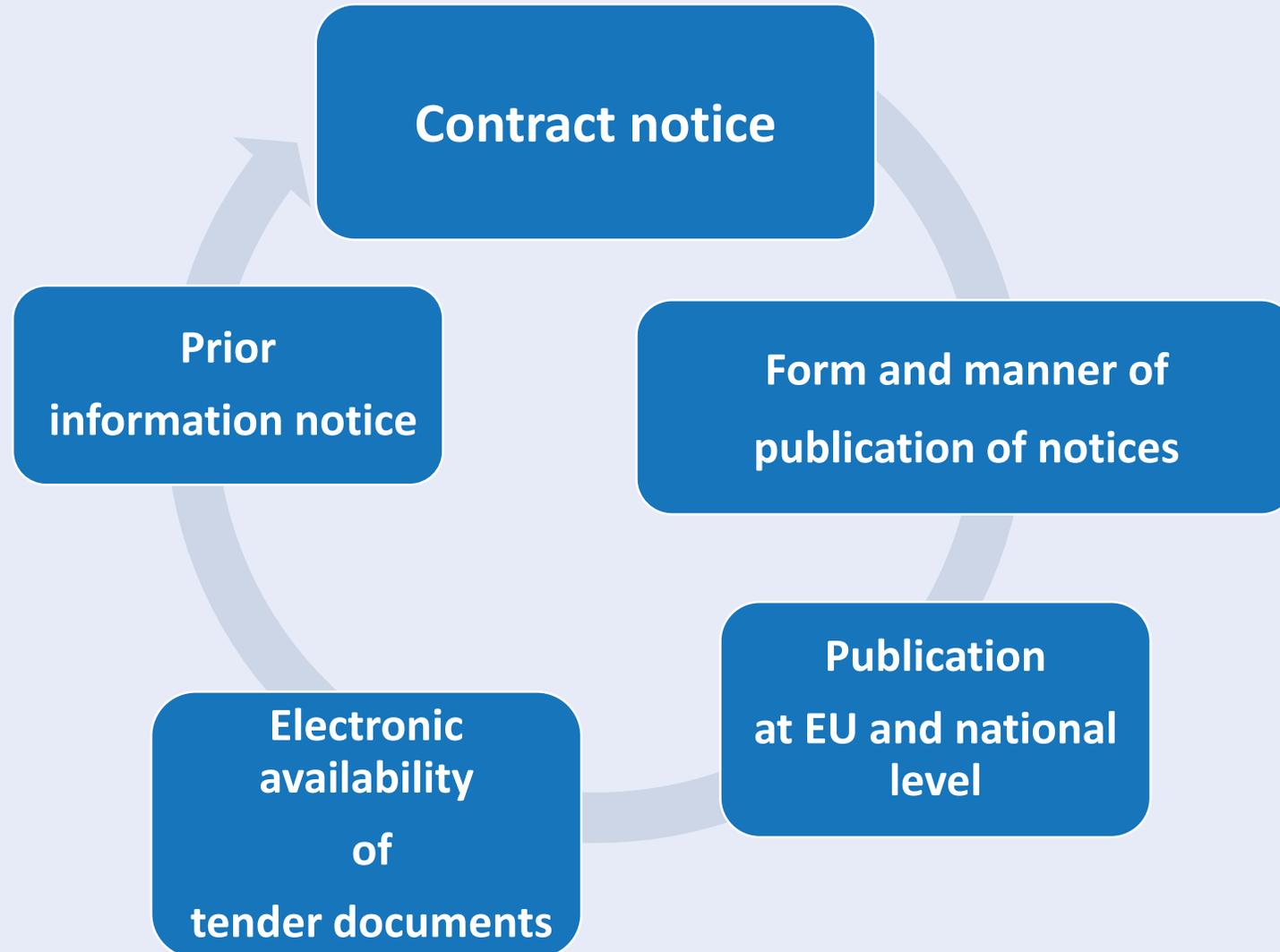
- **Before the start of the formal procurement process** - an optional advertisement, to pre-warn the marketplace of potential future opportunities, using a **Prior Information Notice**;

## At the start

- **At the start of a contract-specific procurement process** - to invite economic operators to participate in the procurement process, using a **Contract Notice**;

## At the end

- **At the end of a contract-specific procurement process** - to notify economic operators and others that the procurement process has been concluded, using a **Contract Award Notice**.



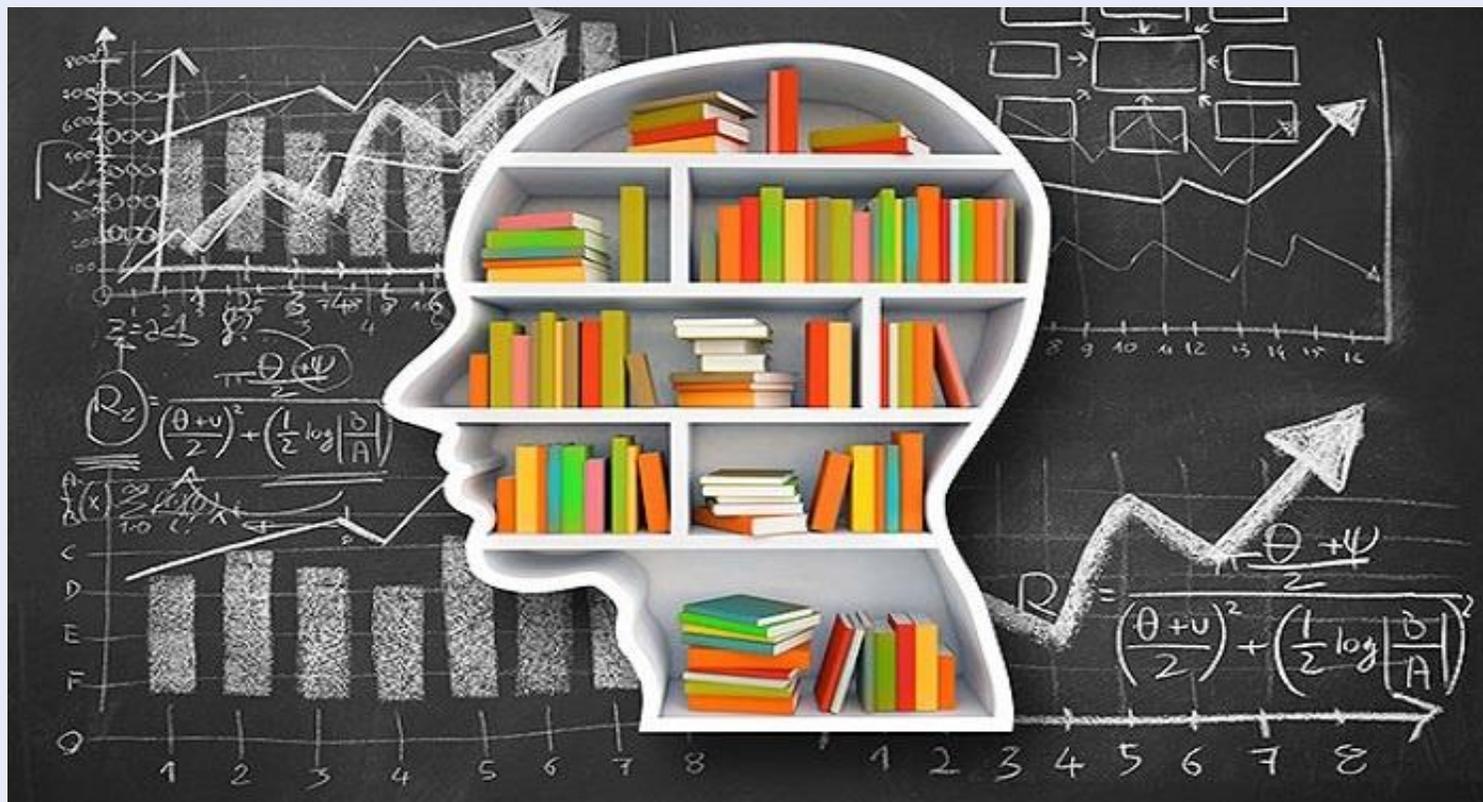


It is satisfied by

- ✓ a) fully **reporting all the stages** of tender procedure and the contract commitments and modifications;
- ✓ b) **publishing on the web site** of the contracting authority **any relevant notice** regarding the selection procedure and the contract awarded not covered by secret (commercial/defense reason/national priorities/etc.) or by not disclosure data ( personal data/technical reserved data/etc.);
- ✓ c) **free access to information** on public procurement procedures.



# What we talk about when we talk about right of access?





## Access is the rule

- **All information held by public bodies is public in principle.**
- Information can be withheld only for a narrow set of **legitimate reasons**: national security, citizens' privacy, international relationships , etc.

## The right applies to all public bodies

- The public has the right to receive information in the possession of **any institution funded by the public and private bodies performing public functions**

## Making requests

- The only requirements are to supply a name, address and **description of the information sought.**
- The **cost** is represented by the reproduction of documents.



## Refusals must be justified

- The public institution has to provide **strong and valid reasons** for refusing to disclose information

## The right to appeal an adverse decision

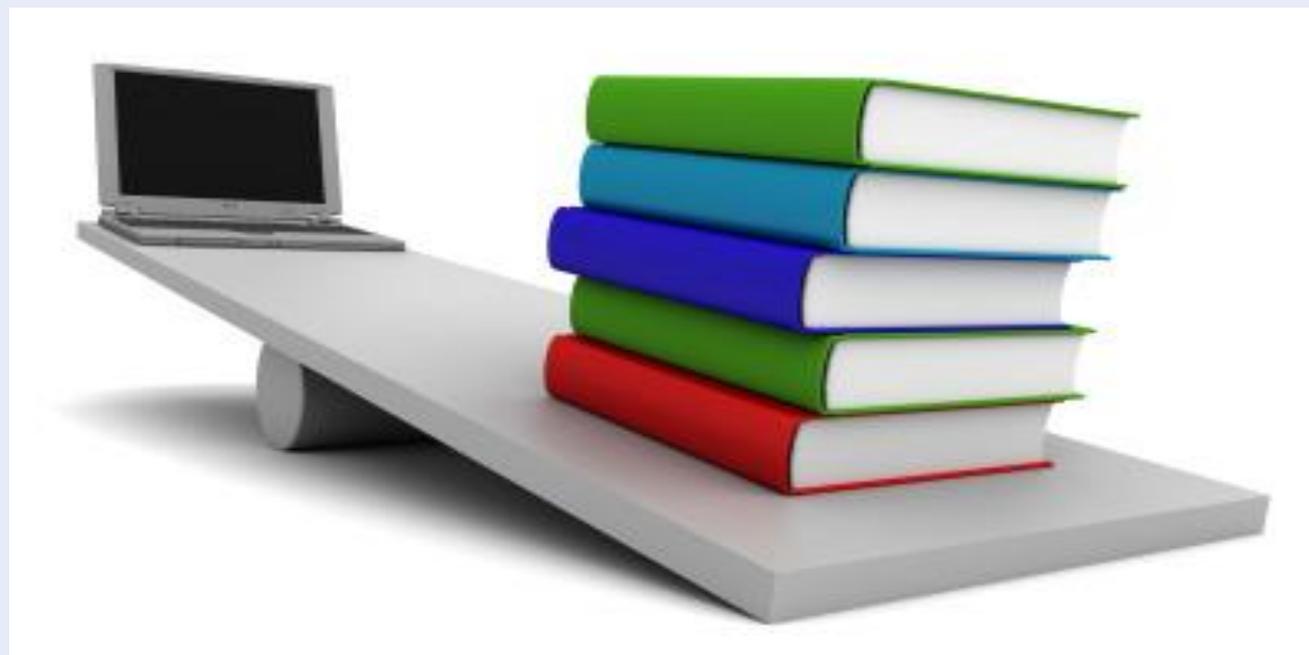
- All requestors have **the right to a prompt and effective judicial review** of a public body's refusal or failure to disclose information

## Proactive disclosure

- Every public body has to make readily available **information about its functions** and responsibilities.



## How to ensure full access to information?





## Right of access to documents

- The right of interested parties to inspect and take copies of **administrative documents**.
- It is a **reactive disclosure**: occurs when a request is made.

## Civic access

- **Provisions requiring public bodies** - and private bodies to the extent that they are covered by the law - to **make certain types of information available** by posting them on **websites**
- It is a **proactive disclosure**: occurs without the filing of the request

## Free access to information (FOIA)

- All information held by public bodies is **public in principle**.
- **Information can be withheld** only for a narrow set of **legitimate reasons**: national security, citizens' privacy, international relationships , etc.



Types of access	Access to administrative documents	Civic access	Free access to information (FOIA)
Legislation	Law No. 241/1990	Legislative Decree No. 33/2013	Legislative Decree No. 97/2016
What is the purpose?	<p>“<b>right of access</b>” shall mean the right of interested parties to inspect and take copies of administrative documents; “<b>interested parties</b>” shall mean all private parties (including those having interests that are public or diffuse) <b>who have a direct, concrete and currently existing interest corresponding to a legally protected situation that is linked to the document to which access is requested;</b></p>	<p>The <b>civic access</b> governed by the art. 5 of the above mentioned decree, provides <b>the obligation for the Public Administration of disclosing the documents, information or data (so called “Transparent Administration”), assigning at the same time the right to anyone to request them, in case they have not been published.</b></p>	<p>The above mentioned decree establishes the <b>presumption that all information possessed by public institutions should be available for the public.</b> The right to request information is guaranteed to everyone and <b>the requestor does not have to declare why he or she needs the information</b> but rather the public institution has to provide <b>strong and valid reasons for refusing to disclose information.</b></p>
who can submit the request?	INTERESTED PARTIES	ANY PERSON	ANY PERSON



## CIVIC ACCESS

- ✓ **General information**, including on structure, **functions**, documents concerning its policy, main principles and directions, **contact** information.
- ✓ Information on **human resources**.
- ✓ Information on **public procurement** and privatisation.
- ✓ Information on state financing and expenditures of the administrative body.
- ✓ Information on legislative acts adopted or related to the functions of the administrative body.
- ✓ Information on **public services** and fees, tariffs and rates established by administrative body.



**Approach No. 1**

**Governments need to strike a balance between:**

**1. Ensuring accountability and competition on the one hand,**

**And on the other hand:**

**2. Protecting trade secrets and respecting the confidentiality of information that can be used by interested suppliers to distort competition.**

**Approach No. 2**



## The right of access shall be delayed

- in **open procedures**, in relation to the list of subjects which have presented **tenders**, until the expiry of the term for their presentation;
- **restricted or negotiated procedures** and in **informal competitions**, in relation to the list of subjects which have required invitation or have manifested their interest, and in relation to the list of subjects that have been invited to present tenders, until the expiry of the term for their presentation;
- in relation to **tenders**, until the **award**;
- in relation to the procedure of verification of the **anomaly of the offer**, until the award.

## It is totally excluded the right to access

- Information which constitute, according to justified and proved declaration of the tenderer, **technical or commercial secrets**;
- **legal advice** for the **resolution of disputes**, either potential or actual, relating to public contracts;
- **relations reserved** to the **director of works**, the director of **execution** and to the **testing bodies** on the demands and reservations of the executor of the contract;
- **technical solutions** and to computer programmes used by the contracting authority or entity or by the computer system operator for electronic auctions, when **covered by intellectual property rights**.
- Concerning the above mentioned hypothesis, the **access is allowed for the bidder in order to defend its own interests** in relation to the contract award procedure.

