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Towards Efficient Public Procurement in Romania: A Practical Risk Management Approach

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Abstract: Ever since 2007, when Romania became a full member of the European Union, public regulations and internal procedures are being continually changed to transpose the EU Directives effectively. However, employee resistance to change and limited resources are a few of the challenges always hard to face. Public procurement is a permanent topic of discussion, mainly due to significant adverse reports on managing the federal funds, several cases of public procurement fraud, or suspicions of corruption. Both strategic and operational risks can be identified and adequately mitigated, therefore developing a risk management model for public tenders may become one step forward in achieving value for money.
Keywords: Public procurement, risk management, value for money, open tendering, procurement timetable, contract management, purchasing strategy

I. INTRODUCTION

Equal treatment, non-discrimination, and transparency are fundamental principles of public procurement, which allow EU countries to improve the efficiency and effectiveness of federal spending. European Commission Single Market Scoreboard –Public Procurement performance per policy area (Reporting period: 01/2019 – 12/2019) indicates that public procurement accounts for over 14% of EU GDP (approximately €2 trillion every year). Even so, there are countries whose performance indicators highlight significant difficulties in choosing the best award criteria, assuring access for SME (small and medium-sized enterprises) contractors or dividing procedures into lots. The proportion of contracts awarded where there is just a single bidder is an essential indicator of the procurement performance of a country. More than 30% should pose questions about whether there are gaps or integrity issues in the country's procurement system. The direct award is another common practice used by most purchasers, so the excessive use of non-competitive procurement methods may be a barrier to obtaining public spending efficiency.
According to Bauld and McGuiness (2008) and Edquist et al. (2015), public customers pay more than private customers. The reason is related to the different approaches of risk management practices in the public/private spheres. The price formula is:

Price to the customer = Supplier's cost of supply + Risk assumed by the supplier + Profit (1)

Defining price in terms of risks means that the higher the risk public procurers assign to the supplier, the higher the price. Therefore, a common mitigation strategy could be a fair solution to procurement risk management while ensuring the best value for money.
In Europe, public entities use EU Directives on public procurement as references - 2014/24/EU regarding public procurement, 2014/23/EU regarding the award of concession contracts and 2014/25/EU regarding procurement by entities operating in the water, energy, transport, and postal services sectors, which come into force after being transposed into national procurement laws. Researchers and practitioners have criticized the Directives for increasing tenders' rigidity (Coviello, Guglielmo & Spagnolo, 2018).
A sustainable European Future is the main objective of 2030 Agenda for Sustainable Development, adopted by all the European Union Member States, which are responsible for effective use of all means of implementation, including policies and financial instruments to promote regional development, competitiveness in the global market, investment and mobility while contributing to fostering peace and stability.

II. OBJECTIVES

The main objectives of this study are:

A. To identify the deficiencies in the field of public procurement in Romania, based on ANAP Report – 2019
B. To determine the main risks in public procurement and to illustrate the way bribery works
C. To present a draft for risk assessment in public procurement, based on ISO 31000:2018 Risk management — Guidelines

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III.IMPORTANCE OF PUBLIC PROCUREMENT PERFORMANCE

While private sector businesses operate with a primary goal to make a profit by trying to identify the best strategy to reduce supply expenses, contracting authorities are willing to sacrifice efficiency for the sake of regulatory compliance. Furthermore, private-sector purchasers continuously improve their management abilities, technical knowledge, and organizational skills, without the constraints of time and highly standardized rules. As stated by (Tadelis, 2012), public procurement officials should learn to use the best practices from the private sector to increase the simplicity, flexibility, and freedom of choice and improve the outcomes of their tenders.

The Single Market Scoreboard on Public Procurement for January-December 2019 shows how different EU countries perform on critical aspects of public procurement. Overall performance is a sum of scores for 12 individual indicators (with higher ponders for Single bidder, No calls for bids and Publication rate) to measure whether purchasers obtain good value for money (Figure 1). Indicators reflect several aspects of procurement, including competition, transparency, bureaucracy, or the access and openness of public procurement markets. As Naushad Khan stated in [2], there is permanent dissension between economy ("value for money") and transparency/integrity (compliance, transparency, governance), the key to a favorable balance between them consists in capacity building.

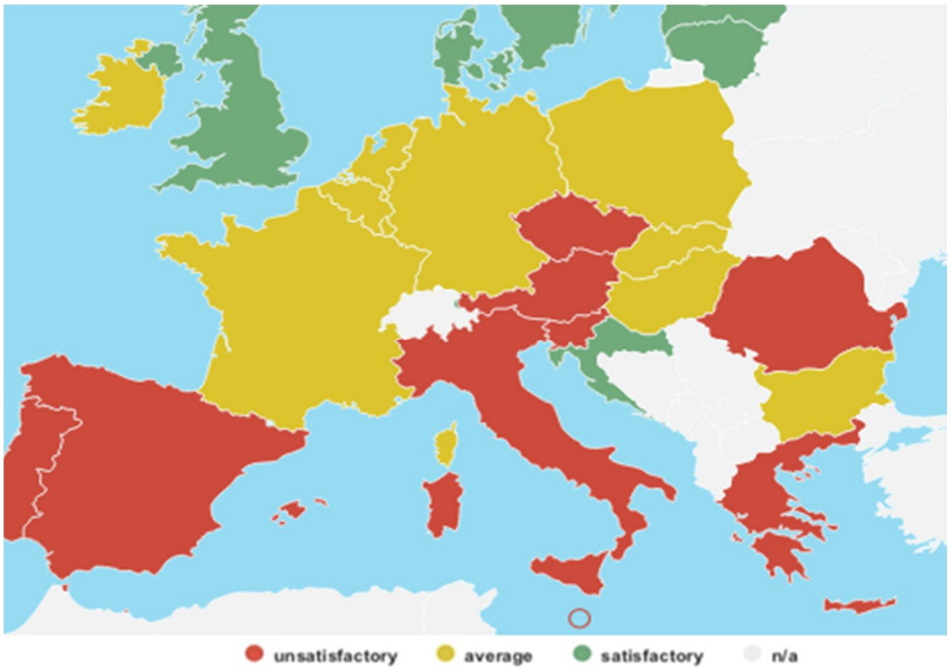


Fig. 1 Overall performance (all 12 indicators combined) of EU countries [18]

Like Italy, Spain, or Portugal, the overall performance of the Romanian public procurement system is unsatisfactory. Therefore a set of measures to improve the purchasing process is mandatory. According to [13], various reports in the field of public procurement in Romania indicate several significant deficiencies, such as follows: procedural deficiencies, legal skills shortage, lack of training, and career management of public procurement practitioners, along with nonelectronic purchases. A study conducted by OLAF (2013) highlights several key issues that may have a bearing on improving the administrative capacity of the Romanian public procurement system, such as experienced and trained human resources (personnel responsible for defining the requirements and the selection criteria, preparing and publishing tender documents, evaluating offers, implementing and monitoring of the contract), competent structures (such as the National Agency for Public Procurement or the National Court of Accounts - which have the authority to supervise the implementation of the public procurement policy), training courses for federal practitioners, use of standardized tender documents, functional e-procurement system, effective control of fraud, corruption and conflicts of interests.

The 'Public Procurement Guidance for Practitioners', published by the European Commission (2018), emphasizes the risk-averse preferences in public procurement. Its important topic "on avoiding the most common errors in projects funded by the European Structural and Investment Funds" draws attention that the public procurement system is more likely oriented on legal and processual recommendations while ignoring any performance-oriented measures.

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IV. THE ROMANIAN LEGISLATIVE PACKAGE ON PUBLIC PROCUREMENT

In Romania, the national system of public procurement is governed by the same set of rules as the European public procurement system. Table I presents the Romanian public procurement laws (along with implementation norms related to these laws).

TABLE I: Romanian legislative package on public procurement

The European Directives on public procurement are transposed into Romanian legislation by four different laws*, as follows:			
Law no. 98/2016 on Public Procurement (*'Public Procurement Law'*) along with Government Decision no. 395/2016 (*'Methodological norms'*)	Law no. 99/2016 on Sectorial Procurement (*'Sectorial Law'*) along with Government Decision no. 394/2016 (*'Methodological norms'*)	Law no. 100/2016 on Works and Services Concessions (*'Concessions Law'*) along with Government Decision no. 867/2016 (*'Methodological norms'*)	Law no. 100/2016 on Remedies and Appeals concerning the award of public procurement contracts, sectorial contracts and of works concession contracts and service concession contracts, and for the organization and functioning of the National Council for Solving Complaints
** published in the Official Gazette of Romania on 23 May 2016*			

The legislative package implements the new EU Directives and repeals Government Emergency Ordinance no. 34/2006 on the award of the public procurement contracts, works concession contracts and service concession contracts. The primary procurement body is the National Agency for Public Procurement ("*ANAP*") - former ANRMAP, who provides guidelines and instructions and who also has executive and oversight functions, including ex-ante controls of tender documents before their publication on the e-procurement portal, namely SICAP.

Contracting authorities can use several types of public procurement procedures for the award of the public procurement contracts, Buzescu (2018) stated their main particularities, as presented in Table II.

The contracting authority may procure goods (or works) directly, without an awarding procedure, if the value of the acquisition does not exceed the Lei 132,519, i.e., the equivalent of EUR 27,370, exclusive of VAT (Lei 441,730, i.e., the equivalent of EUR 91,232, exclusive of VAT - for works), for each acquisition. However, public procurement is based on a Grounding Note.

According to [14], in 2019, approximately 27,000 public procedures were carried out by Romanian contracting authorities, with a value of Lei 88 billion, i.e., the equivalent of EUR 18 billion.

Table III: Main Particularities Of Public Procurement Procedures And Anap Report – 2019

Type	Characteristics of procurement procedure	ANAP Report - 2019	
		No. of procedures	% of total
Open Public Tender	Takes place in one stage, and any interested bidder can submit a bid	9,632	27.59
Limited Public Tender	Takes place in two stages and only the selected bidders are invited to submit final bids	45	0.13
Competitive Negotiation	Takes place in two stages and only the shortlisted bidders are invited to submit bids, which are negotiated for improvement	115	0.33
Competitive Dialogue	Anyone can submit a bid, but only the accepted candidates are invited to the dialogue; only the selected bidders can make a final offer	1	0
Tender for a Solution Project	The best plan or project is selected by a jury on a competitive basis, especially in the territorial planning, urban, and zoning sectors	-	-
Innovation partnership	A structured partnership between the purchaser and a bidder which results in the development of an innovative product, service, or work	-	-
Simplified procedure	Can be used only for contracts below the Directive thresholds (according to art. 7 (1) of Law no. 98/2016)	25,065	71.79
Request for proposal	Enables the purchaser to gather information about large-scale-services (such as construction, maintenance) from potential contractors	57	0.16

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More than 99 % of enterprises used e-procurement to access tender documents. According to ANAP (2020) Annual Report, more than 30% of the procurement procedures initiated in 2019 were canceled by the end of the year. In 2015 the Government adopted the first National Strategy on Public Procurement, a framework document whose purpose is related to improving the public procurement system in Romania, by identifying the changes given by the transposition of the new European directives in the national legislation, reforming the institutional framework and ensuring the functionality of the system. The implementation of the measures proposed in the Strategy aims to achieve efficiency, effectiveness, economy ('*value for money*'), in conditions of integrity and responsibility.

V. RISKS IN PUBLIC PROCUREMENT

There are significant constraints related to achieving value for money, and corruption is by far the biggest issue that affects the integrity and the efficiency of the public procurement system. Since many federal funds are managed directly by the purchasing department staff members, the workplace's integrity is one of the essential qualities that the managers seek in the employees they hire. Exposure to bribery and corruption arise from sellers' purpose of either 'killing' their competitors or making extraordinary profits, resulting in a lower value for money perceived by taxpayers. There are several studies on corruption in public procurement, Ferwerda et al. (2016) provide a useful review and an accurate analysis of the way red flags used to predict the occurrence of corruption in public procurements as well as to minimize risk exposure. How does bribery works? Figure 2 illustrates the answer.

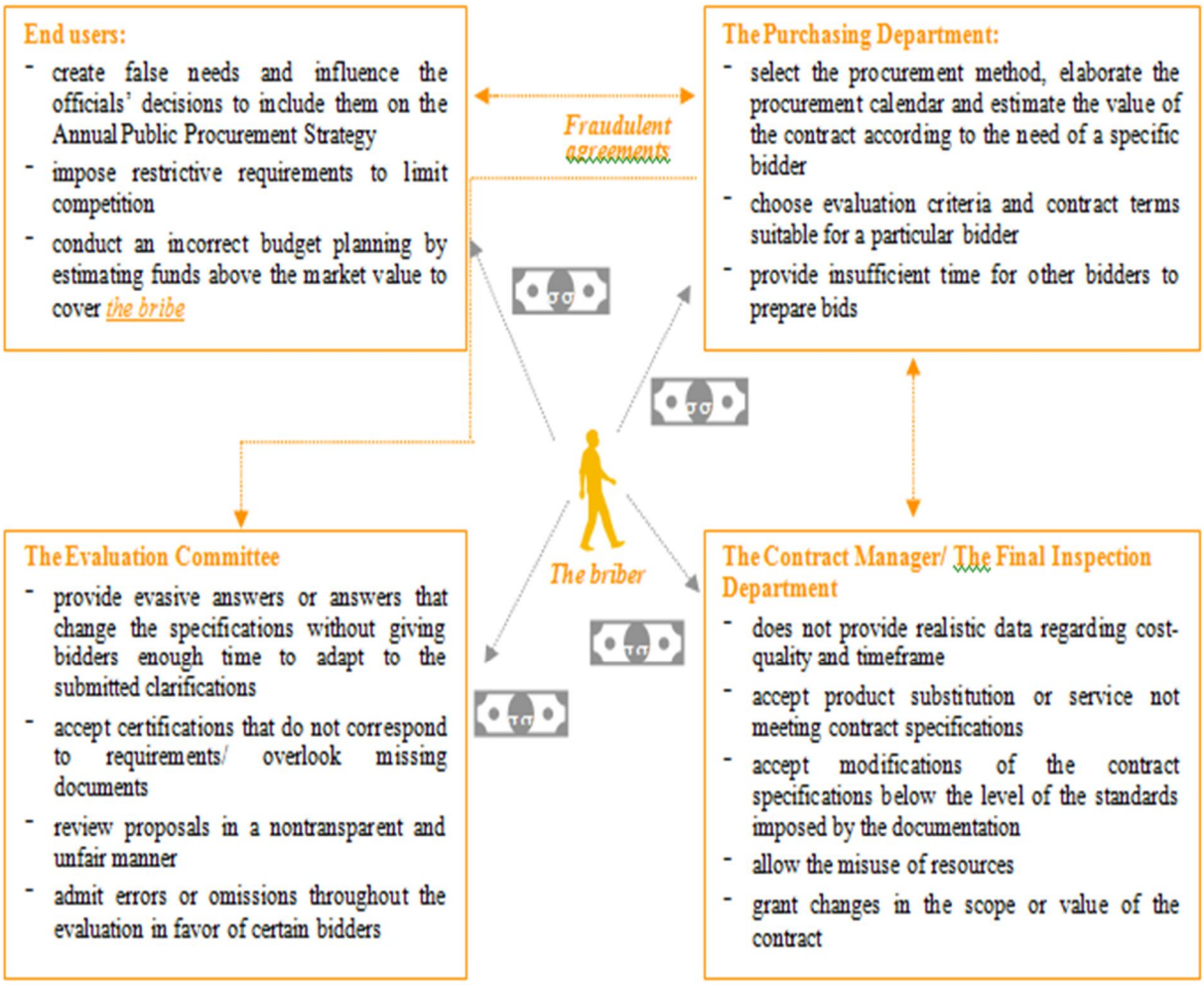


Fig. 2 Bribery in public procurement

Public procurement represents a significant part of Romania's economy. Since none of the open tendering process stages is risk-free, it is appropriate to know the main risks involved in the public tendering process and the potentially severe consequences, as detailed in Table III.

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Table IIIII: Main Risks In Public Procurement

Stage	Procurement activity	Risk	Likely consequences
Procurement planning	Identifying user needs and establishing requirements	• Lack of adequate needs assessment • Restrictive requirements to limit competition	• Failure to achieve objectives • Claims of unfair dealings
	Assigning responsibilities	• Staff incompetence/lack of adequate training • Persons that aim to fulfill certain interests	• Additional costs • Complaints from bidders
	Identifying counterparts	• Influence of external actors on officials' decisions	• Claims of unethical or unfair behaviour
	Verifying correspondence with the Annual Public Procurement Strategy	• Non-compliance with the overall investment decision-making process	• Failure to achieve objectives • Higher total cost of acquisition
	Selecting the procurement method and calendar elaboration	• Faulty planning of the procurement process • Insufficient time allotment for the appropriate development of each stage	• Failure to comply with procurement calendar
	Funds estimation	• Bids exceed the approved budget	• Need to call for tenders again
	Establishing the contract clauses and the award criteria	• Use of inappropriate evaluation criteria and inappropriate contract terms	• Not achieving best value • Claims of unethical dealings
	Checking for potential conflict of interest	• Familiarity with bidders over time • Personal interests such as gifts/certain benefits	• Additional costs • Claims of unethical dealings
	Authentication of tender documents with a digital signature	• Non-compliance with legal requirements • Failure to publish the award documentation	• Non-compliance with time limits • Additional costs
Solicitation, evaluation and award	Uploading tender documentation in SICAP	• Inappropriate verification, which generates contradictory information	• Contradictory requirements • Inappropriate contract terms
	Ex-ante checks performed by ANAP	• Rejection of the award documentation	• Need to upload tender documentation again
	Call for competition	• Insufficient time for potential bidders to prepare bids	• Insufficient bids • Not achieving best value
	Submission and receipt of tender documents	• Evasive answers or answers that change the specifications without giving bidders enough time to adapt to the submitted clarifications	• Contradictory requirements • Claims of unethical dealings
	DUAE inspection and candidature acceptance	• Bidders are considered qualified by accepting certifications that do not correspond to requirements/ the absence of certifications	• Non-compliance with regulatory requirements
	Tender evaluation and supplier selection/ negotiations	• Lack of transparency and/or equal treatment • Errors or omissions throughout the evaluation in favor of certain bidders	• Not achieving best value • Claims of unfair dealings
	Contract award notice	• The result notification is lapidary without mentioning the advantages of the winning bid	• Claims of unethical dealings
Contract management	Contract management plan	• Absence of a real monitoring system regarding the cost-quality and time perspectives for a contract	• Failure to achieve objectives • Substantial modifications in the contract conditions
	Delivery and receipt of goods	• Product substitution or sub-standard work or service not meeting contract specifications	• Possible variations in cost • Delivery delays
	Contract management performance	• Accepted modifications of the contract specifications below the level of the standards	• Failure to achieve objectives • Inefficiency and misuse of

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		imposed by the documentation	resources
	Contract administration	• False or duplicate invoicing • Late payments of invoices	• Cost increases • Contract disputes
	End of contract	• Misuse of resources • Change in the scope or value of the contract	• Failure to achieve objectives
	Procurement process performance analysis	• Failure to evaluate procurement and management processes	• Failure to improve procurement and management processes

VI. RISK MANAGEMENT IN PUBLIC PROCUREMENT

Besides ANAP, there are specific national authorities, such as the National Council for Solving Complaints (CNSC), the National Agency for Integrity (ANI), or Courts of Appeal, whose primary mission is to ensure that goods and services are purchased fairly and transparently. Nevertheless, each contracting authority is responsible for identifying the procurement risks and developing the appropriate risk management plan. There are certain procurement phases where risk analysis is mandatory, as shown in Table IV.

TABLE IV: Risk analysis in public procurement process

Procurement planning	**Solicitation, evaluation and award**	**Contract management**
Identifying user needs and establishing requirements	Authentication of tender documents with a digital signature	Contract management plan
Assigning responsibilities	Uploading tender documentation in SICAP	Delivery and receipt of goods
Identifying counterparts	Ex-ante checks performed by ANAP	
Verifying correspondence with the Annual Public Procurement Strategy	Call for competition	Contract management performance
Selecting the procurement method and calendar	Submission and receipt of tender documents	
Funds estimation	DUAE inspection and candidature acceptance	Contract administration
Establishing the contract clauses and the award criteria	Tender evaluation and supplier selection/ negotiations	End of contract
Checking for potential conflict of interest	Contract award notice	Procurement process performance analysis

As outlined by [17], along with bribery and corruption, the causes of most common public procurement errors, pointed out by the European Court of Auditors (ECA) in their Special Report on 'Efforts to address problems with public procurement in EU cohesion expenditure should be intensified' are as follows: complexity and a high volume of legislation, incorrect transposition of the Directives into national law, inconsistent interpretation of the legislation, lack of administrative capacity, insufficient planning of projects and tendering procedure. In this context, risk assessment in public procurement seems to be a unique solution to problems as delicate as 'poor performance' along with the lack of efficiency of federal spending. Moreover, private and public companies should use a risk management approach to improve their productivity, workplace health and safety, internal control, financial reporting, and, eventually, profit efficiency.

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According to ISO 31000:2018 Risk management — Guidelines, the risk management process involves the systematic application of policies, procedures, and practices to communicating and consulting, establishing the context and assessing, treating, monitoring, reviewing, recording, and reporting risk (Figure 3).

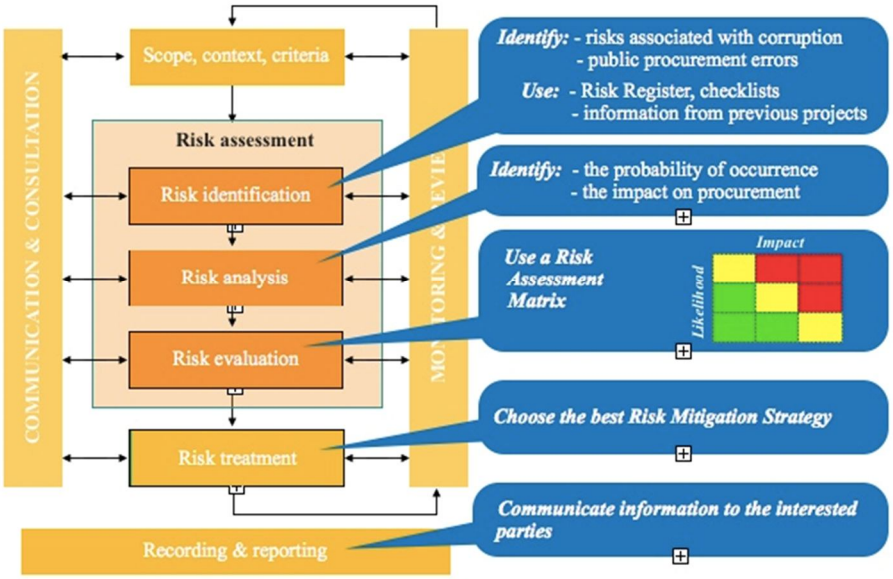


Fig. 3 Risk management in public procurement

Integrating risk-management strategies for identifying and mitigating risks in public procurement is vital for effective internal control, a viable model has been developed by ANAP (2019) [23]. Firstly, the contracting authority should communicate the risk assessment methodologies to all of the relevant interested parties. Risk identification consists in mapping all the risks associated with corruption as well as other public procurement errors. The purchasers can use checklists or information from the Risk Register. (Manaaser, 2013) stated that there are two main categories of risks: strategic risks (political, socio-economical, technological, legislative, competitive, customer, or public associated) or operational risks (professional, financial, regulatory, physical, contractual, technical, and environmental).

Risk identification is the first step, and the next one is to assess whether the risk is likely to occur and if it were to occur, the possible impact on procurement. The next step is to prioritize risks according to risk rating and identify specific treatments to mitigate and manage them. A risk analysis should be made on each procurement phase until project completion. The table below (Table V) presents the available risk treatment options.

Table V: Risk Treatment In Public Procurement

• Avoid	• Avoid the risk, deciding not to initiate the purchasing or by stopping the current activity
• Reduce	• *Reduce the likelihood* of the occurrence, e.g., procurement approach, contract terms and conditions, contract management activities, training • *Reduce the consequences, e.g.*, contingency plans, activity relocations
• Transfer	• Transfer the risk to the supplier or another party, e.g., contract terms regarding liability and indemnity, insurance
• Accept	• Accept the risk without mitigation because: - the risk rating is very low - there is no treatment available - the costs of treatment outweigh the benefits

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There is no formula for procurement success except perhaps a broad risk analysis in the phases of pre-tendering (needs assessment, procurement planning, funds estimation, the definition of requirements and choice of the award criteria), tendering, award and contract administration, and optimal allocation of risks between the contracting authority and the bidder. I highly consider that there are some key issues to effective implementation of risk management in procurement, such as: well-trained and experienced personnel, a code of ethics and conduct, a transparent and non-discriminating attitude towards bidders, and a good collaboration between the contracting authorities and the relevant interested parties (end users, the accounting compartment, legal adviser, logistics compartment and so on).

VII. CONCLUSIONS

Every year, contracting authorities in Romania spend around 14% of GDP on public procurement, especially in sectors such as energy, transport, defense, education, and health services. In this context, the efficiency and effectiveness of public procurement are crucial for ensuring federal budgets' financial stability and reinforcing citizens' trust in public authorities and democracy.

The budget granted for a contract and the rate of occurrence of an error are tightly connected. Due to its considerable amount of risk, the integrity of a public procurement system is dependent on advanced proactive rules, adapted to a dynamic reality, where citizen needs are meeting businesses' interests. The fight against corruption requires good collaboration between government and business organizations.

To prevent any losses or additional expenditure, contracting authorities execute a comprehensive risk assessment from the pre-procurement planning stage to identify the risks that could affect the efficiency, effectiveness, and transparency of public procurement. They take action to mitigate the likelihood of harmful threats and the severity of such risks.

During the last decade, Romania has made substantial progress, notably thanks to its most recent public procurement legal reform that included a package of good practices that proved successful in limiting public procurement errors as well as corruption. All procedures are conducted electronically, and the procurement organizations are paying more and more interest in incorporating adequate controls to promote competition and minimize the risks associated with fraud, waste, and the mismanagement of public funds.

Within this context, this paper has the purpose of setting examples for fighting corruption and promoting integrity in public procurement while implementing national standards and using them as a reference, along with the right practices and the lessons learned from Romania's approach to public procurement. Risk assessment in the procurement field is the best instrument for reducing the uncertainty in the purchase decisions and is the only solution to improving federal spending efficiency.

VIII. ACKNOWLEDGMENT

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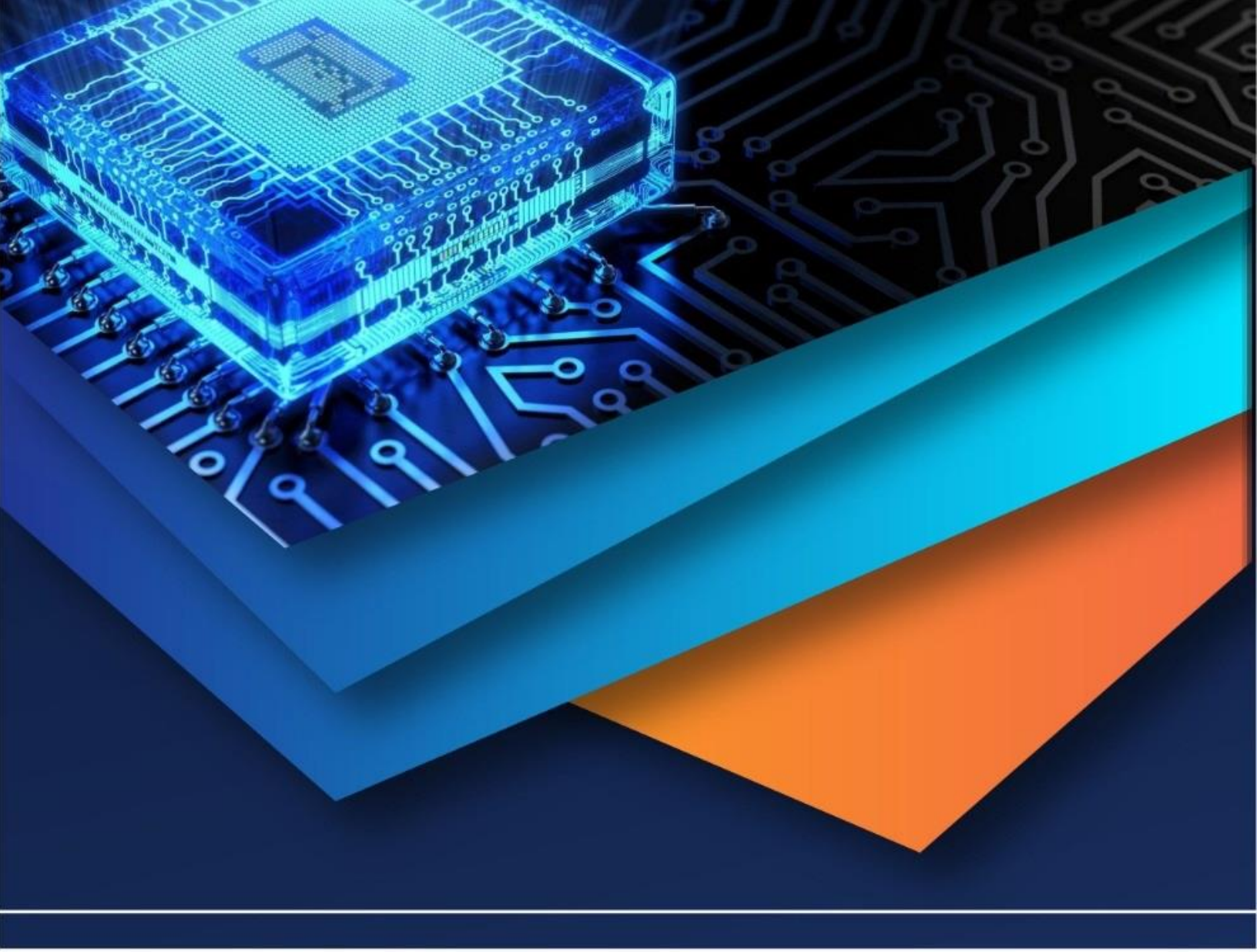
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