The Routledge Handbook of Global Public Policy and Administration

Thomas R. Klassen, Denita Cepiku, T. J. Lah

The Road Ahead for Public Procurement in Europe

Publication details
Giulia Di Pierro, Gustavo Piga
Published online on: 21 Oct 2016


PLEASE SCROLL DOWN FOR DOCUMENT
32
THE ROAD AHEAD FOR PUBLIC PROCUREMENT IN EUROPE

Is there life after the directives?

Giulia Di Pierro and Gustavo Piga

Introduction

Public procurement consists in the purchase of goods, services and works by governments, public authorities and the public sector. Public procurement represents a significant fraction of the total economy of a country, ranging in size between 15–20 per cent of the Gross Domestic Product (GDP). An efficient and effective public procurement process is therefore a key priority for policy makers worldwide, whose main objective is to deliver the greatest value for taxpayers’ money and make a real contribution to sustainable development. This can be achieved not only focusing on short-term objectives, often convenient for political purposes, but also, on long-term objectives. By purchasing a very large volume of goods and services, public authorities have the bargaining power to encourage the achievement of broader government objectives, i.e. increasing employment, SME and regional development, social inclusion and cohesion, innovation and sustainability.

These goals assume even more importance during periods of economic downturn and recessions, when there is a general increase of unemployment, a decrease of investment, a deadlock of private sector activity, and rising poverty and social inequality. The recent financial crisis led a vast majority of countries around the world into severe budgetary constraints and economic difficulties. In that scenario, the optimal management of public procurement is a matter of primary importance for governments and represents a powerful, market-based instrument for the socio-economic growth of both developed and developing countries. As Sykes (2003) stated, “increasingly governments around the world see public procurement as a vehicle for changing behavior and leveraging policy outcomes”.

A study conducted by the United Nations demonstrated that a reform in public procurement could potentially yield up to 5–10 per cent efficiency benefits. Recently, numerous public procurement legislative acts, regulatory frameworks and regulations were revised to better adapt to new evolving market dynamics and to act as a lever for economic recovery and social development. Outcomes include an updated UNCITRAL Model Law on Public Procurement by the United Nations (2011), a revised Agreement on Government Procurement by the World Trade Organization (entered into force in April 2014) and three new Directives by the European Union (published in March 2014 and entered into force in April 2016).
This case study focuses on the innovative aspects of new European Directives on public procurement, highlighting some of the main provisions that could significantly influence European development in the medium- and long-term. Key topics discussed include: SME involvement, simplification of procedures and how to cut “red tape”, green public procurement, social inclusion, corruption and other anti-competitive behaviors, and innovation. For each topic, the authors point out if and how the new Directives succeeded in achieving the main objectives communicated by the European Commission in its Impact Assessment (Table 32.1).

The main aim of the chapter is to demonstrate how critical public procurement is to achieving government objectives, especially in times of economic downturn, and how much the new EU Directives reflect this. The authors provide a critical analysis of the new provisions, outlining emerging trade-offs, major future challenges and opportunities for further improvement.

Table 32.1 Objectives of the European Directives

<table>
<thead>
<tr>
<th>General objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promote EU-wide and cross-border competition for contracts</td>
</tr>
<tr>
<td>Deliver best value for money whilst achieving the best possible procurement outcomes for society</td>
</tr>
<tr>
<td>Aid the fight against corruption</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specific objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improve the cost-efficiency of EU public procurement rules and procedures</td>
</tr>
<tr>
<td>Take full advantage of all opportunities to deliver the best possible outcomes for society</td>
</tr>
<tr>
<td>Create European rather than national markets for procurement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operational objectives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure that the rules capture the appropriate actors and subject-matter of procurement</td>
</tr>
<tr>
<td>Provide clarity and legal certainty with respect to said scope and coverage</td>
</tr>
<tr>
<td>Streamline and simplify procurement procedures to (1) reduce operational costs (2) ensure proportionality and (3) provide for more legal certainty</td>
</tr>
<tr>
<td>Improve the flexibility of procedures to better respond to purchasing needs of authorities</td>
</tr>
<tr>
<td>Help public procurers to use public procurement to support other policy objectives (e.g. environmental, social, initiatives related to the innovative economy) in a legally compliant and fair manner</td>
</tr>
<tr>
<td>Simplify the rules and introduce instruments to increase the transparency of EU public procurement rules and open-up the markets to greater cross-border competition</td>
</tr>
<tr>
<td>Ensure that the rules facilitate participation by MSMEs</td>
</tr>
<tr>
<td>Ensure consistent application, controls and monitoring of public procurement policy and outcomes across Member States</td>
</tr>
<tr>
<td>Reduce errors and problems with compliance with EU public procurement rules</td>
</tr>
</tbody>
</table>

Private vs public procurement

Both private and public procurement consist in the purchase of goods, services or works for a particular group of stakeholders with the goal of maximizing the value for money and the efficiency of the transaction. However, although sharing the main objective, public authorities and private companies follow different procurement procedures and are subject to different regulation.

Why do public authorities conduct their procurement activities differently from private organizations? There are many possible reasons.

Firstly, the source of funding of public procurement is different, as public procurement involves citizens’ money, thus public money. This implies additional scrutiny beyond that of a private company (McCue et al. 2007), in order to ensure not only that the money is spent in a responsible and optimal way, minimizing the waste of public resources, but also to guarantee the respect of the principles of transparency, competition, equal treatment and non-discrimination. For instance, it is of utmost importance that all the public procurement process is carried out under maximum level of transparency so that every supplier willing to participate to a public tender can have access to the same set of information and have equal opportunity to compete; or it is crucial that the selection and award criteria are chosen in a way that is not discriminatory for any potential supplier. To this end, public authorities must comply with a stricter set of regulations and organizational procedures than the private sector (Murray 1999).

A second major difference between public and private procurement regards the size of the demand for goods, services or works. In the public sector, the procurement demand is greater than in the private sector, considering that, as previously mentioned, public procurement generally accounts for 15–20 per cent of a country’s GDP. The demand is also much more heterogeneous in the public sector, as public authorities do not buy only for their own organization, but mainly for the citizens they are expected to serve. Many different stakeholders are indeed involved in public purchasing activity, whose interests may not always be in line with each other, creating challenging situations for public authorities that need to balance them.

A third reason consists in the role that public procurement has in society. Public entities are expected to show exemplary behavior in their procurement activities, efficiently using public funds and, at the same time, complying with ethical, social and environmental standards (Telgen et al. 2007).

Public procurement in Europe

The recent financial and economic crisis led the majority of European countries into situations of decreased GDP and tight budget constraints (Figure 32.1).

The optimal management of public resources is therefore a matter of primary importance for European public policy-makers, especially if we consider that public procurement accounts for around 15–17 per cent of the EU’s GDP. Currently, Europe has its public procurement budget managed by more than 250,000 Contracting Authorities (hereinafter CAs) that annually conduct around two million procedures for the award of public contracts. The result is a highly heterogeneous and complex system. For this reason, the main purpose of the EU public procurement legislation is to harmonize the various procurement regulations in order to ensure that all European companies can participate in cross-border tenders without any legal or administrative barriers. The general principles of public procurement regulations are equal treatment of all the economic operators, transparency, non-discrimination and open competition.
European public procurement is currently governed by secondary provisions, as Directives and Regulations, to which all the European CAs must adhere when awarding public contracts. In particular, the core provisions of EU public procurement are expressed in the following three Directives:


These Directives regulate only procurement procedures for high-value contracts, i.e. contracts whose value is above the thresholds set by the European Commission and updated every two years. All public contracts below these thresholds are outside the Directives’ scope. On January 1, 2016 the European Commission published the new thresholds for the procedures for the award of contracts valid until December 31, 2017.

The development of these three new Directives on public procurement was a result of a long and complex process of consultations and debates among interested parties, started in January 2011 and completed in March 2014. This new package does not entail a change of the paradigm in force since 2004, but it introduces major changes (Meideros 2014). At this moment, the main challenge faced by each Member State is to accomplish a balanced and effective application of these Directives through the timely implementation in national legislation and the change of the existing institutional and organizational systems as well as of the most relevant public procurement policies (Tavares 2014). Although a timely implementation is desirable, policy makers must avoid the dangerous phenomenon of “gold plating”, intended as a direct adoption of the new Directives’ provisions in the national legislation without harmonizing them to the specific situation of the country. What follows is an overview of the most innovative aspects of these EU Directives.
Sustainable public procurement

One key objective of every public procurement policy is to make a real contribution to sustainable development. There are several definitions of the concept of sustainable development and the most commonly used is “a development that meets the need of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development 1987). Sustainability involves three specific interlinked dimensions that every organization should consider in its operations: economic efficiency, social performance and environmental performance. As Norman and MacDonald (2003) suggested in their triple bottom line approach, an organization can be successful in the long term only if it considers the interests of all the stakeholders and measures its success not only “by the traditional financial bottom line, but also by its social, ethical and environmental performance”.

Whenever governments or public authorities carry out their purchasing activities, taking into account these three main pillars of sustainability, they are engaged in the so-called “sustainable public procurement”. As of now, there is a common tendency of public administrations to focus mostly on the economic dimension, trying to maximize the efficiency and effectiveness of the procurement, while reducing costs and minimizing the waste of public resources. Although the latter is extremely important, an appropriate balance of all the three aspects (economic, social and environmental) is crucial in order to achieve sustainable public procurement in the long term.

During the last decade, the European Union has paid increasing attention to the role played by governments in promoting sustainable public procurement both through the regulatory framework and through a system of incentives given to public authorities. Coherent with this aim, in 2010 the EU published the strategy “Europe 2020”, whose main priorities are:

- **Smart growth**: developing an economy based on knowledge and innovation.
- **Sustainable growth**: promoting a low-carbon, resource-efficient and competitive economy.
- **Inclusive growth**: fostering a high employment economy, equal opportunities (particularly for small and medium enterprises) and social cohesion.

The 2014 European Directives on public procurement show a clear trend toward the instrumental use of public contracts to achieve the broader government objectives mentioned above (Medeiros 2014).

**Micro, small and medium enterprises**

Representing 99.8 per cent of all enterprises, micro, small and medium enterprises (hereinafter MSMEs) are considered the backbone of the European economy as well as key drivers for European growth, competitiveness and social integration. MSMEs employ approximately 67.4 per cent of Europeans (Eurostat 2012), and contribute to innovation (Anschoff et al. 2009), entrepreneurship (Reed et al. 2004) and job creation (Morand 2003). Due to their importance, European policy makers commit themselves to fostering a favorable business environment for MSMEs by removing major factors that hamper their participation in public procurement.

Many barriers discourage or prevent MSMEs from being awarded public contracts, including:

- large size of contracts;
- difficulties in obtaining information about tender opportunities and lack of clarity in tender requirements;
Giulia Di Pierro and Gustavo Piga

- cost of participation and preparation of proposals (tender securities, onerous pre-qualification documentation, registration fees, large number of documents and certificates required);
- insufficient time to prepare and submit an offer;
- high administrative burden, including disproportionate financial requirements, long-term payments or delays in payment to suppliers.

The new Directives introduced important provisions to help MSMEs to reach a level playing field and to deal with some of these barriers.

The large size of public contracts is one of the major obstacles faced by MSMEs, due to their capacity constraints and due to the broad technical capabilities and financial resources required by CAs in the selection phase. To this end, the new Directives introduced a provision that gives Member States the potential to require public authorities to divide a public contract into lots, providing a detailed justification if that is not possible. The provision allows potential suppliers to submit an offer for one, several or all the lots, encouraging the participation of large firms that could lack adequate incentives to compete if the contract was too small. On the other hand, it allows CAs to award contracts combining several or all lots, whenever more than one lot can be awarded to the same tender. This practice, commonly known as combinatorial auction, is a very flexible and powerful tool that allows SMEs to be competitive in a market while still exploiting relevant economies of scale (Spagnolo 2014).

This new provision achieves two of the objectives of the EU Directives, as listed in Table 32.1:

- to promote EU-wide and cross-border competition for contracts, as the division of contracts into lots has the positive effect of increasing competition, especially when the number of expected bidders is high;
- to ensure that the rules facilitate participation by MSMEs.

Considering that in 2012 single-contract tenders accounted for 71 per cent of all Contract Award Notices published in the EU, the introduction of an obligation to divide into lots could be an important step forward. However, some potential concerns need to be pointed out. First, there is the risk that by splitting a contract into several lots, the possibility of anti-competitive behaviors or collusive agreements among participants is greater, due to the temptation to “share the pie”. A useful rule to prevent this situation could be to offer a number of lots that is lower than the expected number of bidders, and to create asymmetric lots when the potential bidders have symmetric technical capabilities (Grimm et al. 2006). Another consideration regards the obligation for public authorities to always divide a contract into several lots and to provide a justification whenever this is not possible. The main problem is that there is no reference to past practices and no benchmark for the size of the lots (Spagnolo 2014). This means, for instance, that a public administration that used to split a contract in five lots every year and now aggregates the demand, awarding a contract for two bigger lots every two years, does not need to justify this choice because it divides the contract into lots, even though this lowers competition and SME participation. Moreover, it is not clear to what extent this justification can be appealed and how detailed it should be; i.e. if it is sufficient to state that unbundling the contract is not economically convenient or if specific documentation should be submitted to support the justification. Potential future improvements of this provision could be the possibility of reserving the award of some contracts or lots exclusively to MSMEs, much like US “set-asides”. Nowadays, this practice is considered a violation of the principles of equal treatment, fair competition or non-discrimination and, therefore, not permitted in the EU, even though
discrimination occurs when similar situations are treated differently, which is not the case with MSMEs.

MSMEs often face difficulties bidding on public contracts due to the lack of time to prepare bids, excessive bureaucracy, onerous documentation and certificates required. The new Directives simplify the application phase through several provisions. On the one hand, CAs are allowed to verify the existence of ground for exclusions and the respect of selection criteria only after evaluating bids, thus giving more time for enterprises to gather all the documentation and certificates required. On the other hand, the administrative burden is reduced thanks to the adoption of the European Single Procurement Document (ESPD), an updated self-declaration of the bidder used as preliminary evidence in lieu of certificates issued by public authorities or third parties. The ESPD was officially adopted by the European Commission in January 2016. Through the ESPD, economic operators can self-declare that they meet the necessary requirements, and then only the winning firm will need to submit the supporting documentation.

The short time given for proposal preparation is a critical barrier for MSMEs, due to their limited organizational and technical capabilities. Contrary to large firms, MSMEs often do not have tender-writing specialists or personnel dedicated full-time to the preparation of the offer. In addition to the everyday workload, employees must write a proposal and prepare all the required documentation, and therefore the time needed is much greater for MSMEs than for large firms. Unfortunately, the new Directives seem to move in the opposite direction from the objective to “ensure that the rules facilitate participation by MSMEs”, as they reduce the time given both to present a participation request (from 37 to 30 days) and to submit a bid (from 40 to 30 days) in a particular procurement procedure.

Another relevant barrier to MSMEs’ participation is disproportionate financial requirements in the selection phase. The new Directives try to address this issue by lowering the volume of required yearly turnover to participate in a public tender. The latter cannot exceed two times the estimated contract value, except for duly justified cases.

Finally, evidence shows that the majority of firms’ bankruptcies (96 per cent) are due to a string of late payments. MSMEs are usually more vulnerable than large companies to this problem, especially considering that they are often subcontractors and this could increase the dilemma of late payments even more. The new Directives introduce the possibility for subcontractors choosing to be paid directly by the contracting authority, but it is not yet clear whether this provision will help to reduce the risk of delayed or no payments, or will simply create additional delays.

Social inclusion

The new Directives strengthen the protection of people with disabilities or disadvantages in order to promote social and professional integration. The major intervention has been the increase in the range of people allowed to participate in so-called “reserved contracts”. This practice consists in allowing CAs to restrict the participation in bidding on public contracts only to certain economic actors in order to foster their social inclusion.

The 2014 Directives allow the reservation of public contracts not only to sheltered workshops or sheltered employment programs, as per the previous Directive, but also to social businesses working for the inclusion of “disadvantaged people”, i.e. the unemployed, members of disadvantaged minorities or otherwise socially marginalized groups. Moreover, it requires a lower share of disabled or disadvantaged people in a company in order to benefit from these reserved procurement procedures: from 50 per cent to 30 per cent of the workforce. The opportunity to reserve public contracts to unemployed people reinforces the role of public
procurement as a tool for addressing unemployment (McCrudden 2004), which is a major
dilemma today. In fact, according to a report published by Eurostat in June 2014, unemployed
people in the EU amount to approximately 25.005 million, of whom 5.129 million are young
people under 25 years old. The youth unemployment rate is generally higher than unemployment
rates for all ages, but the recent economic crisis made the situation much worse, as the
unemployment rate reached a peak of 23.6 per cent in 2013 compared to 15.1 per cent in 2008
(Figure 32.2). As a result, fostering a high-employment economy is a crucial goal for Europe
and public procurement plays an important role in achieving that.

This modernization represents an important step forward for the protection of economic
agents who might not be able to secure a public contract under normal conditions of competition.
However, a further consideration is needed with regard to the above mentioned reduction in
the percentage of disadvantaged employees required under the new Directive in order to be
qualified for the reserved contract. In fact, although this has been a positive change for social
inclusion, as it enlarges the pool of companies allowed to participate, this reduction has one
relevant risk: the creation of fake workshops or social enterprises whose real aim is not to
protect disadvantaged people, but only to take advantage of these reserved contracts. If that
happened, the purpose of reserved procurement procedures would be totally changed. This
could be prevented through the establishment of specific tools that help CAs verify the share of
employees, such as the introduction in the reserved contract of the requirement to register
social businesses in dedicated lists at the regional, national or international level.

This new provision fully achieves the following two objectives of the EU Directives:

- to take full advantage of all opportunities to deliver the best possible outcomes for society,
as reserving contracts for disabled or disadvantaged people helps to fulfill broader social
outcome for the society;

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure32.2}
\caption{Unemployment rates, seasonally adjusted, June 2014}
\label{fig:32.2}
\end{figure}

\textit{Source: Eurostat (2014)}
to help public procurers support other policy objectives (e.g. environmental, social, initiatives related to the innovative economy) in a legally compliant and fair manner.

**Green public procurement**

Green Public Procurement (hereinafter GPP) consists in the purchase by public administrations of goods, services and works with a reduced environmental impact toward a more sustainable development and the economic growth of the country. Indeed, the latter can be achieved not only through fiscal reforms or macro-economic policies that may yield more immediate and tangible benefits, but also through the continuous improvement of environmental performances and better management of the available natural resources that are increasingly scarce.

Nowadays, GPP is a voluntary instrument and has not been widely adopted among EU countries (Figure 32.3).

This may be due to the many potential barriers arising when implementing GPP not addressed at the national and/or international level yet. These include:

- low awareness of the potential benefits that adopting GPP could yield in the long term;
- the common perception among economic operators that buying green is more expensive;
- lack of (or few) obligations in the national and international regulatory framework;
- lack of the necessary political support or incentives for the implementation of GPP;
- lack of training for public administration or CAs on how to implement GPP.

![Figure 32.3](image_url)  
**Figure 32.3** Uptake of GPP in the EU 27 (Luxembourg and Malta excluded due to unavailability of data)  
Source: Analysis report of the European project “Buying Smart”
The EU regulatory framework regarding GPP has been widely developed in the 2014 Directives on public procurement, which turned out to be particularly environmentally intensive. There is now the possibility for CAs to include requirements concerning the environmental characteristics of a product or service in the technical specification. This can be done only in compliance with the mandatory national technical rules and in relation to the “subject matter” of the public contract to be awarded. CAs can also ask for specific labels to prove that the good, service or work procured corresponds to the required environmental characteristics. An additional provision of the new Directives allows CAs to require specific certificates to prove the compliance of the supplier with certain environmental management systems or standards such as the Eco-Management and Audit Scheme (EMAS). In all the situations mentioned, it is important that CAs assure the respect of the EU general principles of non-discrimination, transparency, open competition and equal treatment. To this end, they shall always accept any equivalent labels or environmental management standards or other means of proof or evidences that meet the environmental requirements set by the CAs (European Commission 2014).

One of the most innovative provisions on GPP of the new Directives is the so-called Life-Cycle Costing approach (LCC), where the lowest cost criterion supersedes the lowest price ones. The first one is a wider concept that includes the evaluation not only of the purchasing price of a product, but also many other costs involved during its life cycle. Some of these costs may be defined as internal cost, such as acquisition, production, transportation, use, maintenance, recycling and disposal costs. Others can be referred to as external costs and are mainly related to the environmental impact, as emissions of pollutants or greenhouse gases.

The new provisions on GPP fully achieve the following two objectives of the EU Directives:

- take full advantage of all opportunities to deliver the best possible outcomes for society;
- help public procurers to use public procurement to support other policy objectives (e.g. environmental, social, initiatives related to the innovative economy) in a legally compliant and fair manner.

Corruption and anti-competitive behavior

Considering the high cost to society, the fight against corruption and other anti-competitive behaviors (i.e. collusion or abuse of dominant position) is a key priority for EU governments. A corrupt environment causes not only significant losses in investment, the deadlock of private sector development and economic growth, but also increases infant mortality, poverty and inequality (Kauffmann et al. 2006).

The 2014 Directives gives particular attention to this issue by:

- enhancing the transparency of procedures through appropriate monitoring systems, advertisement policies, and specific reports of public procurement procedures;
- introducing a dedicated provision to identify, prevent and address conflicts of interest situations;
- strengthening the grounds for exclusion, including illicit conduct (corruption of public officials and collusive agreements with other economic operators aimed at distorting competition).

This new scenario significantly increases the discretion of CAs, as they need to verify the existence of these grounds for exclusion. This discretion can potentially lead to abuse of their position, altering the original objective of the provision. Therefore, each Member State must
intervene through appropriate regulation in order to avoid a similar situation and minimize the risk of abuse.

These new provisions allow the achievement of the following objectives of the EU Directives:

- to aid the fight against corruption;
- to simplify the rules and introduce instruments to increase the transparency of EU public procurement rules and open up markets to greater cross-border competition.

**Innovation**

Public procurement is a multi-objective policy and innovation is an important secondary goal. In fact, innovation in public procurement allows society to obtain better products to carry out government functions and to exploit government market power to foster innovation when market forces may not effectively stimulate it.

Innovation can be promoted in different ways according to the specific needs of a public authority:

- by allowing variants during the execution of the contract;
- through the functional description of technical specifications;
- through pre-commercial procurement;
- via innovation partnerships.

The focus of this analysis is on the last two options only: pre-commercial procurement and innovation partnerships. These procedures share the main goal: the provision of a good or service that does not already exist in the market and that private firms are reluctant to develop due to an uncertain or low economic return on the investment. However, they significantly differ in terms of structure, time perspective and regulatory coverage. Pre-commercial procurement (PCP) can be defined as

an approach to procuring Research and Development (R&D) services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority and that it does not constitute State aid.

(EC-COM 799 2007)

Therefore, the main goal of PCP is to steer the development of solutions for concrete public sector needs, whilst comparing and validating alternative approaches from various vendors. This procedure has not been widely used by European CAs so far, mainly due to difficulties of implementing a separate procurement procedure for the purchase of innovative products or services, the reluctance of public authorities to engage in a similar practice, and issues related to conflict of interest and unfair competition.

The 2014 EU Directives introduced a new procedure that may help to overcome the problems related to PCP: the “innovation partnerships”. This procedure consists in establishing a long-term relationship with some qualified suppliers for the development and subsequent procurement of an innovative good or service that is not available in the market.

Every economic agent can participate in an innovation partnership, submitting all the information required for a preliminary qualitative selection. This procedure is divided into
Table 32.2 Possible formats of innovation partnership

<table>
<thead>
<tr>
<th></th>
<th>Partner A</th>
<th>Partner B</th>
<th>Partner C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase II prototyping.</td>
<td>Phase II prototyping.</td>
<td>Phase II prototyping.</td>
<td>Purchase of resulting supplies, services or works.</td>
</tr>
<tr>
<td>Intermediate target and payment for prototype.</td>
<td></td>
<td>Intermediate target and payment for prototype.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

several subsequent stages, starting from the qualification phase, when the CA chooses a minimum of three suppliers as a partner, to the development of an innovative product, to the final production and purchase on a large scale. The procedure used to select suppliers must include competitive negotiations.

During the partnership, intermediate targets are determined and partners are remunerated as soon as these objectives are achieved. The structure of partnership and, in particular, the duration and value of the various phases must reflect the degree of innovation of the proposed solution and the sequence of activities of research and innovation required for its development. The estimated value of the supplies or services must therefore be proportionate to the investment required for their development. Table 32.2 shows a possible format for innovative partnership, where three different suppliers are involved.

The innovation partnership represents a valuable opportunity for European public authorities to foster investment in R&D for complex and future products or services. Through a proper application of this procedure, the following objective can be fully achieved:

- to help public procurers support other policy objectives (e.g. environmental, social, initiatives related to the innovation economy) in a legally compliant and fair manner.

The main issue of this procedure is how to share intellectual property rights, especially after the end of the partnership. For this reason, contracts should be drawn up in full, including all the most relevant information regarding property rights, the duration of the partnership, financial remuneration of involved parties and early termination.

Conclusion

Public procurement is a powerful market-based instrument for the achievement of countries’ sustainable development. This chapter discussed how the European Union has recently modernized its public procurement legislation to leverage economic growth, social inclusion and improved environmental performances. In particular, the European case study shows how it is possible to foster SMEs’ participation in public tenders through a balanced division into lots of a public contract, timely payments and adequate financial requirements in the qualification phase; how it is possible to promote social inclusion by reserving contracts for disadvantaged people; how the environmental impact of public procurement can be significantly reduced.
through the adoption of specific practices or tools, as the life-cycle approach; how the general principle of fair competition and equal treatment can be respected and anti-competitive behaviors discouraged through an increased level of transparency, stronger grounds for exclusion at the selection stage; and, finally, how companies could be encouraged to engage in innovative activities through a set of incentives and specific procedures, as innovation partnerships.

The success of this modernization strictly depends on the timeliness of its implementation by EU countries in their national legislation and on the willingness of policy makers to invest in capacity-building activities in order to guarantee correct understanding and adoption of all the new provisions. Although the new Directives focus extensively on some major issues in public procurement, especially regarding its sustainability, many trade-offs and challenges have not yet been fully addressed. This creates opportunity for further improvements and developments, both in the short run, through the implementation process of each Member State, and in the long run, through a continuous modernization and update of the regulatory framework in response to the evolving market dynamics.

Note
1 The information and views set out in this chapter are those of the authors and do not reflect the official opinion of the European Bank for Reconstruction and Development.

References


