

## HOW BEST TO INCORPORATE SOCIAL VALUES INTO PUBLIC PURCHASING?

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### 1. THE PROBLEM

Governments cannot address all important social needs by themselves. In most of EU countries a long history exists of achieving social outcomes by distributing grant funds or subsidies. (see annex A) However, the use of market instruments, especially in the public procurement environment, is relatively recent in the European Union, although not completely new.<sup>1</sup>

The leverage of public procurement, due to its considerable financial and economic importance, is a very attractive way to achieve social purposes.

Nevertheless, we believe that the capability to achieve high value social outcomes all through the public procurement process (see annex B) is closely linked to the level of procurement professionalism of the public administration involved, and more specifically, the capability of matching supply and demand.

This capability depends in the procurement environment on the ability:

- to translate strategic policy goals and needs into legally and professionally correct procurement solutions that lead to the desired value outcomes;
- to communicate with the market and detect latent demand for (social) needs (Foresight)
- to anticipate when latent demand for (social) needs is detected
- to collaborate cross functional
- to collaborate cross agency
- to execute the procurement processes efficiently and correctly
- to evaluate the outcomes of the process
- to learn from the experiences and to embed what was learned in the DNA of the public entity.

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<sup>1</sup> See for example *Valentina Caimi, Caritas Ambrosiana*, “The experience of the “Agenzia di cittadinanza” project in Italy”, workshop C

When we try to situate the different subjects of the workshops in the procurement process (see Annex B), workshop B, “Getting stakeholders on board” is mainly focussing on the strategic embedding part; the subject of Workshop A: “Measuring social impact in public procurement” is mainly part of the evaluation process, while “Procurement technique” the subject of workshop D, is situated in the purchasing part of the process. In the purchasing process, awarding and contracting is mostly an operational task and largely determined by established procedures. In this paper attention goes to the most significant part of the purchasing process in value creation: the tactical design and set-up phase.

## 2. TACTICAL DESIGN AND SET-UP

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In Europe many different jurisdictions lead to different ways of implementation of the European directives and under the EU thresholds, every member state is free to organize its public procurement procedures. But also the award of the contracts for works, supplies and services under the thresholds is subject to the respect of the principles of the Treaty and to the principles deriving therefrom, such as the principle of equal treatment, the principle of non-discrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency. Some countries have implemented almost completely the directives under the EU threshold, other countries at the other side of the spectrum, have left the organisation of the procurement process entirely to the discretionary power of the public entities.

However, the European legal framework helps us to streamline the analysis. So we use the three main action schemes present in the EU directives to incorporate social issues in public procurement contracts:

- **contract performance conditions**
- **reservation**
- **integration in the subject of the contract**

Each may be used separately or in combination with the other.

### 2.1. CONTRACT PERFORMANCE CONDITIONS

Contract performance conditions are compatible with the European Directive, provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents.

These conditions are especially suitable to favour social outcomes that can not be linked to the subject of the contract.

The application of these conditions is limited to the performance of the contract. Still this can be a powerful tool. A sustained requirement, especially if expressed by a substantial number of public entities, will force the suppliers to pay attention to the issues and to make the necessary efforts to accommodate their own procurement strategy and supply chain to these requirements.

#### **Example 1:**

The requirement to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions

Several projects illustrated that social clauses can be incorporated into a contract without inflicting additional costs or workload on contractors (e.g.: **Erridge**, 2007).

Divers and occasional use of conditions, especially when it is difficult for the public entity to control effectively if these conditions are respected, will lead most probably and especially when competition is harsh, to opportunistic behaviour of the suppliers.

The two following examples illustrate however that supply and demand, ambitions and market reality, have to be correctly matched.

**Example 2:** Circular of the Flemish government to the local and regional public authorities of the Flemish Region on employment performance contract conditions<sup>2</sup> (FI)

The circular recommends the use of an employment performance contract condition in the public procurement contracts.

For contracts with a value between:

- 125.000 and 1.000.000 euro: 1 FTE job seeker;
- 1.000.000 and 2.000.000 euro: 2 FTE job seeker;
- 2.000.000 and 3.000.000 euro: 3 FTE job seeker.

etc...

The contractor has a free choice between a great number (more than 13) of employment types: - employment contracts, individual vocational training, industrial apprenticeship, workplace learning projects,.....

In the other Belgian regions, similar initiatives<sup>3</sup> were taken.

While there was little criticism on the principle itself to pursue an employment policy in public procurement contracts, the “employment paragraph” was far from a success<sup>4</sup>.

The main problems cited were:

- regional differences in attitude of the construction sector, as the clauses were most applied in public works contracts, for example the construction sector in Eastern Flanders was opposed to the use of the clauses, while for the construction sector in Limburg it was no issue;
- small enterprises use more polyvalent workers<sup>5</sup>, big contractors have more routine jobs and therefore also more possibilities to integrate low skilled workers;

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<sup>2</sup> Circular BA-98/10 of 24 November 1998.

<sup>3</sup> e.g. Decision of the Government of the Brussels- Capital Region of 2 April 1998.

<sup>4</sup> See for example the answer of the Flemish Minister of Public Works Steve Stevaert, on the parliamentary question nr. 171 of 4 September 2000 of Carl Decaluwe, Bulletin of Questions and Answers nr. 4, 1 December 2000, 457.

<sup>5</sup> In Belgian construction sector, 87 % of the enterprises have less than 10 employees. (Hermes studie, Fonds voor vakopleiding in de bouwnijverheid, najaar 2006)

-if the social clause only leads to short term employment, the result is too meagre related to the efforts and costs;

- it is important to emphasize work floor experience and training to warrant a possibility of long term employment; A successful practice consists of an alternation between practical work floor experience, evaluation, feed back completed by training to remediate the weak points;

- barriers perceived were :

    timing and teamwork;

    it is useless to employ a worker without previous training;

    the preparatory training by employment agencies and the work floor experience must closely follow one another;

    it is extremely difficult for the contractor and the employment agencies to find interested candidates;

    the consultation processes with all involved parties are too labour-intensive;

    too little motivation of the target group;

    .....

Conclusion: Considerable efforts led to only a limited number of successful projects, with only very limited lasting employment.

**Example 3:** Unemployment pilot project Ireland (Erridge e.a., 2007)

The contract performance condition involved a condition being included in selected contracts for works (construction, road improvement, harbour improvement), and services (cleaning, catering, security,...) requiring project contractors to submit a social policy statement and employment plan. The social condition was used as a decisive criterion in case of a tie between contractors.

The definition of a tied competition was:

- in the case of the award criterion "lowest price": within 1% of the lowest satisfactory tender

- in the case of EMAT: within two points in the overall score, scored out of 100.

The proposals on the Public Procurement Policy, included the pilot project, were issued for public consultation. The issues highlighted during the consultation were very similar to those experienced in the Flemish example, apart from some specific issues, for example concerning indirect discrimination against women and Protestants.

A two year monitoring process was part of the implementation. In all, 83 firms tendered for 15 contracts. The total value of contracts amounted to 58 million Euro.

Not only the ambitions, but also several conclusions were very different from the Flemish case:

- achieving employment through public procurement was possible;
- the financial costs have been lower than other similar job creation schemes;
- transactions costs (administration associated with employment plans and employee registration) were not excessive;
- a good retention rate was achieved, 46 of the 51 employees were still in employment at the end of the project.

The overall conclusion was:

*“The unemployment Pilot Project has demonstrated that, even at a time of virtually full employment in Northern Island, a commitment by government and contractors to invest in such a labour market programme on the grounds of equity, social cohesion and efficiency can be successful in achieving sustainable employment.”* (Erridge, 2007)

**Example 4:** BPA- W (FI), vocational training on site, see further

## 2.2. RESERVATION

The social economy undertakings seem to offer good value at competitive prices<sup>6</sup> in competition with the regular economy.

But they might not be able to obtain contracts under normal conditions of competition, therefore it was considered appropriate in the European directive to provide that Member States may reserve the right to participate in award procedures for public contracts to certain types of social economy undertakings or reserve performance of contracts to the context of sheltered employment programmes.

By reserving the access to a public procurement contract, for a certain category of social enterprises, public entities seek, efficient or effective ways to address public goals through contracts for pecuniary interest for works, supplies and services.

Under EU regulations, a public authority may reserve the right to participate in public contract award procedures to sheltered workshops, defined as organisations or initiatives where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions. Under the EU thresholds some countries, e.g. Belgium<sup>7</sup>, have extended the types of categories possible beneficiary of a reservation.

As opposed to a private company in the regular economy, where the final goal is to make profit, the goal of a social enterprise, and also the main reason for its existence, is to achieve one or more social goals. Achieving the final goal is impossible for the social enterprise on its own, so it needs the other social enterprises, to be successful and societal relevant.

What is particular interesting is that when a contract is reserved to a certain type of social enterprises, the social enterprises become competitors. Not only are they not used to compete against each other, but

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<sup>6</sup> On the 14 July 2007, the Belgian Ministry of Defence published a contract award notice of metal boxes and lockers for the years 2006- 2010. The economic operator to whom the contract has been awarded is a sheltered workshop: Les Ateliers de Blicquy, Blicquy, Belgium. Total final value of the contract: 448.920,00 EUR (excl V.A.T). The only award criterion was the lowest price. Official Journal of the European Union of 14 July 2007, 2006/S 132-141357.

<sup>7</sup> Under the EU publication thresholds, a Belgian public entity may also reserve a contract to social insertion undertakings that satisfy the conditions of article 59 of the law of 26 March 1999, Belgian employment Action Plan 1998 or similar conditions in the country of origin of the candidate or tenderer.

The initiatives concerned are those where the social objective is the social professional integration of people, extremely difficult to give employment to, by deploying an activity of production of goods and services and fulfil the following conditions:

- after the start up, at least 50% of the total occupation of the target group has to be at work or in training;
- at least 10% of the supervisory staff of the target group has to be composed of personnel that is able to develop and to lead social education and support programs;
- have the legal form of a non profit association, a cooperative society, a society with social objective or another legal form, provided that:
  - o the objectives and finalities are social and collective;
  - o no majority of members of the governing bodies belongs to the public sector
  - o the initiative is recognised by the competent public authority.

fierce competition could also enhance problems of “mission drift”, that emerged in the past in the United States, where a longer tradition of market competition exists between social enterprises.

This conflict, in essence between short term goals, like being beneficiary of the award of the public procurement contract<sup>8</sup>, and the long term goal, the achievement of the desired final social outcome, has to be carefully managed.

For example, in line with the insertion philosophy, the best workers in a social insertion undertaking should be encouraged to move towards regular economy. This provides the individual new opportunities in his career. For the social enterprise, however, this means a continuous weakening of the average workforce’s capabilities, which has an impact on the ability to adapt to new circumstances and to compete. (De Leeuw en Baeyens, 2007).

On the other hand, the size and content of public procurement contracts can be a factor that forces collaboration between the social enterprises, sharing knowledge, experience, material production factors (equipment, capital) and human resources and will maybe foster further social enterprise development in many forms.

Reservation of a particular contract requires careful matching of supply<sup>9</sup> and demand, taking into account the present and future capacity and capability of the social undertakings. But it seems that there are no reasons to believe that once a social undertaking has entered a market, it doesn’t deliver because of the particular constraints or limitations of its target groups, on the contrary.

**Example 5:**

A pilot survey executed during the annual meeting of the professional purchasers association (VIB, Flanders) showed no indications of an eventual existing negative or positive attitude versus social economy actors. On the contrary; information of purchasing managers on previous experiences illustrated that even in very demanding and competitive environments, social economy could deliver.

An international purchase manager of an international producer of cables and cabling systems (more than 80 production sites worldwide) explained its absolutely positive judgment by adding comments on the high flexibility he experienced of the social economy organisation and its professional approach.

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<sup>8</sup> There are often encounters between social economy enterprises in biddings. When combined with failing pricing policies or high pressure on prices, imminent for low-skilled labour, the resulting downward spiral of prices can cause significant damage. (De Leeuw and Baeyens, 2007)

<sup>9</sup> For example, in Belgium, social insertion undertakings may obtain a recognition as public works contractor, as a result of article 60 of the Belgian Employment Action Plan 1998 (Wet Belgisch Actieplan Werkgelegenheid 1998), meant to stimulate employment in Belgium in various fields. Until now, only a very limited number of social undertakings obtained a recognition. But a recognition as contractor for public works is an essential requirement for public works above thresholds determined by the King.

A manager of customer hardware care of one of the biggest Belgian telecommunication operators confirmed that assembly and packaging were very good and added that according to his experience, the social economy organisation could handle the pressure and growth very well.

Still we believe that reservation is particularly sensitive to public scrutiny by the regular economy, and therefore special care has to be taken to support this option with thorough market research.

If allowed under national legislation<sup>10</sup>, a negotiated procedure seems the most appropriate procedure. As opposed to the very formal open and restricted procedures, negotiated procedures facilitate the participation of the social economy, very often unaware of formal legal obligations and create better opportunities for the actors to match their conditions and requirements and obtain a better value.

**Example 6:** Recommendation in “The experience of the “Agenzia di cittadinanza” project”, workshop C.

### 2.3. RESERVATION REVISITED

A public entity may also provide for a contract to be performed in the context of sheltered employment programmes where most of the employees concerned are handicapped persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

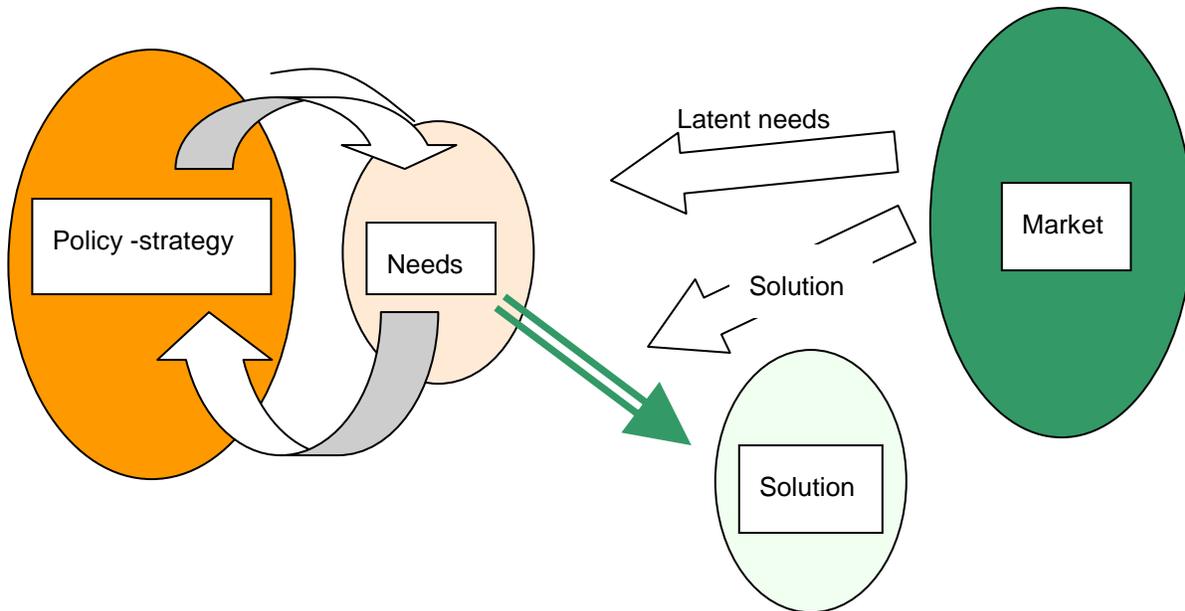
In this option, market access is not necessarily limited to a certain type of social enterprise. The contractor eventually out of the regular economy, has to entrust the performance of (a part of) the contract to persons from the target group. A pragmatic solution could be that a social undertaking acts as a subcontractor, and thus, an undertaking which was in the past a competitor, may become a strategic partner to an undertaking of the regular economy in a field that maybe previously was inaccessible to the social economy enterprise.

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<sup>10</sup> With regard to the procedures, the current Belgium procurement law limits the possibilities to use negotiated procedures with prior publication in classical sector completely to the circumstances defined in the previous European directives, while now in the new law, reserved contracts under the EU thresholds may be awarded by a negotiated procedure with prior publication.

## 2.4. INTEGRATION IN THE SUBJECT OF THE CONTRACT

### FROM NEEDS TO SOLUTIONS



The **subject of the contract** has to be designed **in response to the needs** of the public administration, of the users of the works supplies or services or even the needs of the particularly disadvantaged groups of people to which those receiving/using the works, supplies or services which are the object of the contract belong.

It is very often possible:

- to design a solution that on itself creates social value;
- or to add a component<sup>11</sup>, a work, supply or service that combined with the pure economic need creates a synergy and a leverage for social outcome.

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<sup>11</sup> The EU directive requires that the decision to combine different subjects into one contract, has to be based on economic or qualitative criteria.

**Example 7:**

**BPWA-W**

The subject of the contract is composed of:

- the construction of the works
- the vocational training on the construction site of specific target groups

**Example 8:**

**BEST (UK) see presentation**

The subject of the contract: cycle courier services across the city for the city council.

Deciding how far the design has to be elaborated on beforehand, to be assured of the desired output and outcome, and how much initiative has to be given to the suppliers to propose suitable solutions during the tender procedure is one of the most difficult issues in procurement. But the solution design will largely determine the value of the outcomes. In many circumstances it is feasible to achieve economic, environmental and social objectives concurrently but, if the priorities between the multiple objectives and policy goals are not clear, or the strong will and commitment to support them with the necessary investments, absent, important opportunities will be lost.

Procurement in general and the solution design in particular is not a single event but a repeating process, that offers the opportunity to be improved with every experience. To wait for an ideal solution is an equivalent for waiting forever.

To determine the solution design contracting entities may seek or accept advice from social enterprises which may be used in the preparation of the specifications provided, however, that such advice does not have the effect of precluding (hampering) competition.

Instead of trying to enforce by means of a “waterproof contract” the desired social output or social outcome, for example employment, it seems to be much more effective to adjust or to create the environment and the conditions such as the outcome will be realised as a logic consequence of a good match between supply and demand.

It is very important that at the end of the solution design process, there is a reasonable certainty that supply and demand will be successfully matched during the sourcing procedure, taking into account the production capacity and capability of the market. The more innovative the approach, the more it will probably be necessary to assist one of the sides or even both sides in a matching process, by developing capacity and capability at the demand or/and the supply side. Solutions that are maybe highly effective in one country may be experienced inappropriate in another.

**Example 9:** developing capacity or capability at the supply side

**Best Project (UK), see presentation**

*“targeted support to help develop appropriate business models”...win and sustain contracts.  
....*

**Connect (FI)**

*In 2006 the Connect project started an action plan on the subject ‘social economy and public procurement’ in partnership with the association of Flemish municipalities and cities (VVSG) and the Association of Purchasing and Business Logistics (VIB). It was decided to start from scratch with a two side approach, described in these goals:*

- inform and activate the public sector on social economy, focussing on products and services;*
- inform and activate social economy organisations and enterprises on opportunities within public procurement;*
- map out and mediate the existing barriers of the latter to subscribe to tenders;*
- formulate recommendations on the subject towards relevant governmental bodies.*

*The knowledge of social economy organisations and enterprises on the subject is mostly partial. Some already deal with local governments on a contract base, but are only familiar with relative small tenders and relatively simple procedures, such as negotiated procedures.*

*Public buyers on the other hand have some questions on the legal base of reserving contracts.*

*On a broad event targeting social economy managers on 15 June 2006, a short ‘tendering for dummies’ workshop was attended by about 25 people.*

*In November 2006, shortly after the provincial and municipality elections were held, we organised a broad event targeting both groups: 77 higher local officials, public buyers and experts and 25 social economy managers or salesmen were present. Connect offered lectures on the Belgian implementation of the EU-directives, social economy as a supplier and partner and linked the technical aspects to the broader frame of CSR in public services. Supply and demand side were then introduced to each other by a speed business dating<sup>© 12</sup>. Though the overall feeling was positive, none of the contacts immediately led to contracts. On the same day, a practical guide was released in 1500 copies titled ‘Social economy: your supplier as well!’ (Sociale economie: ook uw leverancier!). This event was later repeated in other provinces and drew the attention of regional and federal government. (De Leeuw and Baeyens, 2007)*

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<sup>12</sup> In this concept, a chain of 5’ one-on-one business contacts is organised. The concept was developed under the Flemish division of the Junior Chamber International (JCI).

**Example 10:** developing capacity and capability at the demand side

**Best Project (UK), see presentation** *“Achieve an increase in the number and quality of public sector procurement strategies and practices, ....“Achieving economic, social and environmental objectives concurrently”.*

**Connect (FI):**

*As during public procurement sessions it became clear that almost no public procurement officers were aware of the broad scope of opportunities social economy actors are able to offer, a one day module “Sustainable Public Procurement” was integrated in the VIB professional public procurement training program. During the spring session 2007 about twenty five trainees were informed on the current business opportunities offered by social economy actors and current and future possibilities to reserve procurement contracts.(De Leeuw & Baeyens, 2007)*

**Province of Flemish Brabant (FI)**

This province and also some other provinces (Antwerp) published a guide with a detailed individual presentation of the social enterprises in the province and how they fit in the legislative Belgian procurement framework.

[http://mediatheek.vlaamsbrabant.be/upload/objects/werken\\_en\\_leren/economie/Gids\\_sociale\\_economie.pdf](http://mediatheek.vlaamsbrabant.be/upload/objects/werken_en_leren/economie/Gids_sociale_economie.pdf)

**Example 11:** matching supply and demand with the help of partners

**BPA-W (FI)**

In 2000 the City of Antwerp created a partnership, Bouwpool Antwerpen, with the Fund for vocational training in the construction sector in order to improve the consultation and collaboration between the construction sector and the local authority, by imbedding partially the job seeking function in the training fund.

Mid-2006 an European Social Fund project started (Bijzonder Plan van Aanleg naar Werk) with the following partners:

- The Local Construction sector: Confederatie Bouw Antwerpen, Bouwunie;
- The Fund for vocational training in the construction sector (Fonds voor Vakopleiding Bouw)
- Bouwpool Antwerpen,
- The trade unions: Algemene Centrale ABVV, ACV Bouw & Industrie en ACLVB.

Also involved in the steering group are the Flemish employment service (VDAB) and BAM<sup>13</sup>, Beheersmaatschappij Antwerpen Mobiel (Management Company Antwerp Mobile).

The objectives were the following:

- to promote the influx and support of target groups, especially young - persons, in big infrastructure projects;
- to link social objectives and criteria to public procurement contracts;
- to make the social return of the investments visible;
- to realise a practical manual for future public procurement contracts.

At the supply side there is a skilled workforce shortage in the construction sector. At the demand side, the city of Antwerp, is confronted with a very high unemployment rate and at the same time, the construction works to realise the Antwerp Mobility master plan will offer a tremendous opportunity to leverage employment in the region. But as explained, standard employment clauses did not achieve the desired outcome. So particular attention went to the following issues:

- it is not necessary to contractually obligate a contractor to employ skilled candidates he is in need of;
- the trainees of the target groups do not fit in the regular vocational training and need on site learning to accommodate to the real life work environment;
- unskilled workforce is of very little use to a contractor of public works;
- the training provided has to be adjusted to the specific needs of the contractor, timely and efficient, and preferably in line with the works executed during the training on the construction site.

Several pilot projects and previous experiences with Bouwpool demonstrated that in this way supply and demand are better adjusted, leading to **spontaneous lasting employment** by the contractor or its subcontractors.

**Example 12:** matching new supply to latent demand

**HOT project : see presentation**

HOT promoted new services and new service-providers for the health sector through social enterprises It combined two development trends: ageing population with the need for more services and the ever-persistent unemployment with increasing need for workforce

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<sup>13</sup> In order to improve mobility, traffic safety and quality of life in and around Antwerp, the Flemish Government developed the Master plan Mobility Antwerp. It was approved by the Flemish Government on 15 December 2000. For the completion of the Master plan and the coordination of the various projects the Flemish Government set up the public limited company Beheersmaatschappij Antwerpen Mobiel (BAM). BAM was set up for an indefinite period and became operational on 15 September 2003.

## VALUE AND PARTNERSHIPS

Even if a public procurement approach delivers much value, it will maybe lack support from decision makers because of the way the created value is distributed. Who gets the benefit, and also who is perceived to have realised something for his electorate? Why should a local entity create value that is mainly going to other parts of the country?

So the distribution of the value is an important factor to get support from the stakeholders and the decision makers.

Distribution of value is also important for lasting partnerships. In practice, collaborative sourcing is much more difficult than it seems to be. And again, how the created value is distributed between the partners can jeopardize the future existence of a partnership that started with much enthusiasm. Recent academic research has focused on how value could be distributed between partners in collaborative horizontal purchasing and on mechanisms that correct the distribution of the value, in order to arrive to what is perceived as a just distribution by all partners. (Schotanus, 2007)

Less demanding levels of collaboration, like exchanging ideas and practices or voluntarily standardising procedures and requirements, are also very valuable. Especially, as in some countries, the way the execution of powers of public entities is legally organized, makes transfer of powers between partners difficult or impossible. This may be the cause of lengthy and cumbersome decision processes.

## AWARD CRITERIA AND VALUE: COMMON MISUNDERSTANDINGS

Only two award systems are allowed under the European directives:

- 'the lowest price'
- and
- 'the economically most advantageous tender (EMAT)'.

In the EU directive several criteria are proposed, and the recitals mention explicitly criteria aiming to meet social requirements, but ... in response to the needs, defined in the specifications of the contract.

So, using EMAT, the award criteria and subcriteria defined by the public entity have to be linked to the subject of the contract. Hence, it is not allowed, for example, to define an EMAT award criterion to evaluate the tender on a contract performance condition, that is not linked to the subject of the contract.

It is also a common misunderstanding that EMAT is linked to "high value for money" and implicitly "lowest price" not. This is simply not true. A solution design, which is well defined in the contract specifications, resulting in very high well distributed social value can still be awarded "on lowest price". The award systems are linked to the solution design. If the initiative in describing the solution is kept in the hands of the public entity, "lowest price" is the most suitable award mechanism. If however, the specifications allow the supplier to propose a solution that differentiates itself on several dimensions from the solutions offered by the competitors, EMAT is the most appropriate way to take into account the differences in the value proposition.

Using EMAT is therefore not a synonym of high value and good procurement.

## SELECTION CRITERIA

The evidence required in the tender documents or in the notice regarding the selection criteria is meant to demonstrate that the economic operator has the necessary financial standing and /or technical capability to perform the contract. What may be asked above the EU thresholds as evidence for technical capability is exhaustively determined in the directives.

### **Example 13:** Job placement service

A public entity wants to create a job placement service focused in particular on young adults from disadvantaged areas.

To verify the technical capability, the public entity may require that the service provider demonstrates its experience with similar services in its request to participate or tender.

### **Example 14:** BPA-W

In the BPA-W project, the contractor is required to provide for professional learning on the construction site for specific target groups.

But until today, only a handful of contractors have experience with this type of learning.

It seems of course very useful, maybe even necessary, that the contractor disposes of experience and eventually also demonstrates that he disposes of the right human resources with suitable professional qualifications for this task. But currently a selection criterion that requires previous experience or suitable human resources would lead to virtual monopolies. Moreover, other contractors will become opposed to the idea of creating value with on site learning, and still worse, the idea will never or much slower evolve to a more general best practice.

Hence, an innovative solution design may lead to the situation that only a limited number of suppliers or no suppliers have the required experience. In those cases, it is essential that the public entities mitigate the risks linked to experimental set-ups, for example by providing suitable assistance and guidance, involving other capable partners. Social enterprises dispose of substantial knowledge and experience that can be useful for public entities or contractors of the regular economy.

### **Example 15:** employment difficult to employ target groups

In a contract with an employment clause, focusing on difficult to employ target groups an ordinary contractor of public works has little experience with, the public entity or the contractor could get guidance or advice from a social insertion enterprise, with more experience with these target groups.

A common misunderstanding consists of presuming that the European directives require that all similar purchases of supplies or services be bundled in one global contract. The awarding authority might consider dividing the contract into different lots. This is very important, as minimal requirements in financial standing or technical capacity are related to the value of the lot the tenderer subscribes to and

not to the global estimated value of the contract. This allows smaller firms to compete for parts of a project. The directive provides also the opportunity that the public entity waives the application of the directive for lots under certain thresholds<sup>14</sup>.

### 3. CONCLUSION

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The paper is not an exhaustive presentation of procurement technique, but focuses on the three main action schemes for incorporating social value in public procurement the EU directives provide for and some of their important aspects. Attention is paid to the solution design phase and the importance of suitable partnerships and collaboration. The aim is not to give an exhaustive overview or analysis but to give some thoughts and ideas for debate. Some issues are proposed in the next paragraph.

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### ISSUES FOR DEBATE

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- What can be done at the demand side to reduce the risk on “mission drift”?
- How can we improve the quality of the exchange of ideas and best practices between public entities?
- How can we correct the distribution of social value in a collaborative sourcing partnership?
- When is a social value becoming “a need” for a public entity?
- What factors determine success and failure? How to set up an analytical framework?
- To what extent can we leave it up to the potential suppliers to propose innovative solutions?
- If the “negotiated procedure” is in many cases the best one to use, how in practical terms do we set about such a procedure? What do we fix and what do we negotiate? How close to a template or roadmap can we give people to follow?

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<sup>14</sup> The contracting authorities may waive the application of the EU directive 2004/18 in respect of lots the estimated value of which net of VAT is less than **EUR 80 000 for services** or **EUR 1 million for works**, provided that the aggregate value of those lots does not exceed 20 % of the aggregate value of the lots as a whole.

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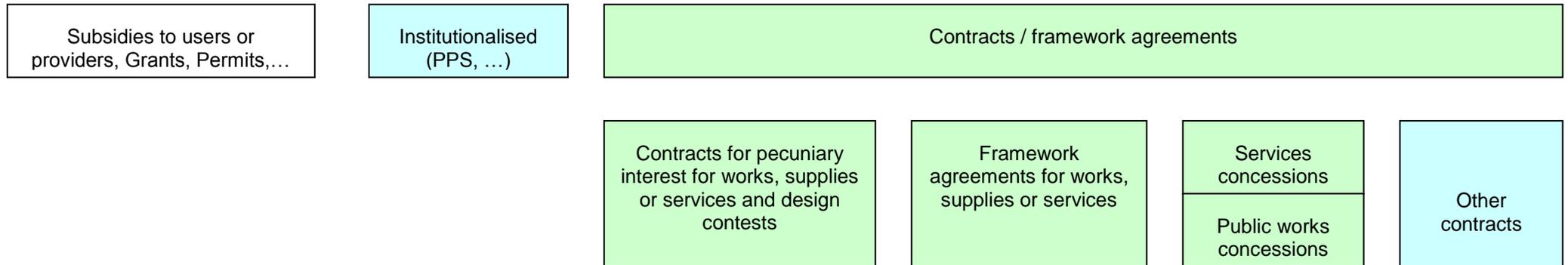
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Annex A: Overview of commissioning instruments



Annex B: Procurement Process

