

## Increasing efficiency in public procurement in Slovakia: Report on good practices in social procurement

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# 1 Introduction

While public procurement has been considered an administrative function, when used strategically it can contribute to building a more resource-efficient economy, stimulating innovation, supporting small and medium-sized enterprises (SMEs) and promoting a range of social outcomes. By taking a strategic approach, countries can use public spending on goods, services and works to advance their social policy goals without compromising value for money. As large buyers, governments can also set standards that shift markets towards more responsible business conduct and a holistic consideration of the impact of purchasing decisions (OECD, 2021<sup>[1]</sup>).

This report provides an analysis and summary of good practices for the use of public procurement to support these broader social policy goals. Focusing on five areas where governments are leveraging public procurement to achieve social objectives, the report highlights good practices in policies, programmes, and procedures throughout the procurement cycle. For each phase of the procurement cycle, the report provides selected good practices from national, regional and local governments and identifies elements such as objectives, results and lessons learned. Along with demonstrating the tangible results of a social approach, the case studies can also provide insights into challenges and areas for improvement.

Five areas (Employment, Skills, and Training; SMEs, Micro-Enterprises, and Sole Traders; the Accessibility of Goods, Services and Works; Sustainable Development and Ethical Purchasing; Working Conditions) were selected to provide a diverse set of approaches and examples and to illustrate the broad scope of issues falling under the social procurement umbrella. These social policy objectives are often inter-connected and specific procurement strategies can address multiple objectives at the same time. The good practices highlighted in this report are therefore organised around the procurement cycle rather than thematic social areas; however, each good practice is mapped against a specific social area. At the same time, while the case studies are organised by specific procurement stages, they represent multidimensional approaches to social procurement that in many cases comprehensively address the full procurement cycle.

The report first provides a brief overview of the concept and use of social public procurement, followed by a summary of the opportunities to use procurement to address the five selected areas. The report then provides a brief review of the status of social public procurement in the Slovak Republic, including the legal and regulatory framework and key policy measures. The following sections provide case studies for each of the main phases of the procurement process (pre-tender, tendering, post-tender). Providing concrete examples of how governments at the national, regional, and municipal level are applying social procurement, the case studies are drawn primarily from European Union member states to ensure their relevancy to the Slovakian context.

## **Social considerations are being increasingly integrated into public procurement**

Governments are increasingly using their buying power to achieve a diverse set of policy goals. Public procurement has also been included in the Sustainable Development Goals, as part of Goal 12, responsible consumption and production. By buying responsible products and services and using public spending strategically, governments can promote the inclusion of disabled and disadvantaged people in the working place, reduce barriers for SMEs, and support accessible goods and services as further defined below. Buying responsibly can also create incentives for the private sector to engage in more responsible

and sustainable management of the production process and the employment of workers. This makes public procurement a strategic tool to effectively advance governments' social policy goals (European Commission, 2020<sup>[2]</sup>). *The OECD Recommendation on Public Procurement* includes principles to assist governments in implementing strategic procurement while also delivering goods and services in a timely, economical and efficient manner (see Box 1.1).

### Box 1.1. OECD Recommendation of the Council on Public Procurement

The OECD Recommendation on public procurement calls on countries to recognise that any use of the public procurement system to pursue secondary policy objectives should be balanced against the primary procurement objective. To this end, countries should:

- i) Evaluate the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities, balancing the potential benefits against the need to achieve value for money. Both the capacity of the procurement workforce to support secondary policy objectives and the burden associated with monitoring progress in promoting such objectives should be considered.
- ii) Develop an appropriate strategy for the integration of secondary policy objectives in public procurement systems. For secondary policy objectives that will be supported by public procurement, appropriate planning, baseline analysis, risk assessment and target outcomes should be established as the basis for the development of action plans or guidelines for implementation.
- iii) Employ appropriate impact assessment methodology to measure the effectiveness of procurement in achieving secondary policy objectives. The results of any use of the public procurement system to support secondary policy objectives should be measured according to appropriate milestones to provide policy makers with necessary information regarding the benefits and costs of such use. Effectiveness should be measured both at the level of individual procurements, and against policy objective target outcomes. Additionally, the aggregate effect of pursuing secondary policy objectives on the public procurement system should be periodically assessed to address potential objective overload.

Source: (OECD, 2015<sup>[3]</sup>)

The findings of the 2018 survey on the implementation of the *Recommendation* demonstrate its relevance in providing an approach for the holistic use of public procurement and confirm that governments are using procurement as a key tool to address societal challenges. For example, 27 out of 29 respondent countries reported that at least some procuring entities have developed an internal strategy or policy on supporting SMEs, while in 20 out of 29 countries at least some procuring entities have developed a strategy or policy on responsible business conduct (OECD, 2019<sup>[4]</sup>).

Nevertheless, governments face many challenges in implementing social public procurement: risk aversion, establishing new forms of co-ordination and collaboration, improving skills and capacity, encouraging dialogue with suppliers, and the need to enhance data collection and monitor results (OECD, 2019<sup>[4]</sup>). For example, market readiness is a common challenge, which can be addressed by understanding suppliers' business models and supply chains. Market analysis and engagement can help public buyers understand where the specific social and ethical risks or opportunities lie, and how best to develop procurements which achieve real benefit while still being attractive to the market (European Commission, 2020<sup>[2]</sup>).

## Focusing on key areas where governments are using social procurement

Social procurement can be used to address a range of policy goals, including reducing long-term unemployment, preventing the use of child labour, encouraging good employment practices, reducing social exclusion, promoting training opportunities, and encouraging access to work for people with disabilities (SIGMA, 2016<sup>[5]</sup>). This report focuses on five areas where governments are using public procurement to advance their social policy objectives:

### 1. *Employment, Skills and Training*

Public procurement can be leveraged to advance labour market objectives, such as increased employment for long-term jobseekers or people with disabilities, or to incentivize or require tenderers to provide training and skills development, such as through apprenticeships. For example, contract performance clauses can require specific actions during the delivery of a contract, such as requiring suppliers to provide training to their employees or to employ people who experience difficulty accessing the labour market (European Commission, 2020<sup>[2]</sup>).

### 2. *SMEs, Micro-Enterprises and Sole Traders*

SMEs, micro-enterprises and sole traders can be encouraged and helped to participate in public procurement through measures such as increased engagement and access to public contracts or simplification of procedures that pose a particular barrier to small bidders. Procurement procedures can also be structured to reduce barriers for SMEs and micro-enterprises, such as through the division of contracts into lots (SIGMA, 2016<sup>[6]</sup>).

### 3. *Accessibility of Goods, Services and Works*

By enforcing standards in their own procurements, such as through using technical specifications to make accessibility requirements mandatory, governments can reduce barriers to accessibility. Governments can also support accessibility by using their buying power to increase the size of the market for accessible goods and services (European Commission, 2020<sup>[7]</sup>).

### 4. *Sustainable Development and Ethical Purchasing*

Through procurement, governments can advance their sustainable development objectives and promote ethical purchasing. Through measures including market engagement, the selection of assessment criteria and ongoing monitoring, government can ensure their supply chains are not involved in practices such as corruption, human trafficking, and child labour. For example, qualification criteria can be used to ensure compliance when procuring high risk categories, such as products containing minerals from conflict-affected areas (OECD, 2020<sup>[8]</sup>).

### 5. *Working Conditions*

Public procurement can be a tool to improve labour standards and conditions for workers. By including clauses that require adherence to specific standards or by including the treatment of workers in assessment criteria, governments can directly support decent and fair working conditions and help set

labour market standards. For example, award criteria can be used to provide an advantage to suppliers who can demonstrate that they address specific labour objectives (OECD, 2020<sup>[8]</sup>).

## The Slovak Republic has established legal and policy frameworks to support the use of social public procurement

### ***The legal framework in the Slovak Republic supports, and in some cases requires, the use of social public procurement by public buyers***

The Slovak Public Procurement Act (PPA) distinguishes three categories of public entities with different social procurement obligations: contracting authorities, contracting entities, and entities subject to section 8 of the PPA. Contracting authorities (subject to section 7 of the PPA) include ministries and government offices under those ministries, municipalities, regional governments, and legal entities that are controlled and financed by other contracting authorities (e.g. hospitals, universities). Contracting entities (subject to section 9 of the PPA) are partially owned or controlled by a contracting authority and are generally active in the energy, water, transport, postal services, and aviation industries. Finally, entities subject to section 8 of the PPA are private bodies which receive public funding from contracting authorities.

The PPA defines social considerations broadly to include aspects of the contract which can lead to a positive social impact, especially:

- Creation of job opportunities and decent, fair, and satisfactory working conditions
- Inclusion of disadvantaged, vulnerable and excluded persons and groups and the facilitation of their access to the labour market
- Increased accessibility and usability of goods, services and works for people with disabilities
- Ethical and fair trade
- The promotion of a knowledge and innovation economy
- Resource sustainability and social and territorial cohesion
- Increased responsibility of suppliers
- Mitigating the consequences of economic and social regional underdevelopment

Contracting authorities and contracting entities may also reserve the right to participate in a public procurement to sheltered workshops and sheltered employment programmes where at least 30% of the employees are disabled or otherwise disadvantaged persons.

Contracting authorities and contracting entities are obliged to apply social or environmental considerations within the description of the subject of the contract as a special performance condition or within evaluation criteria in at least 6% of public procurements (in a calendar year in which at least ten public contracts were started or implemented, excluding low value contracts). Furthermore, ministries and government offices under ministries are required to apply environmental considerations in at least 6% of public procurements and social considerations in at least 6% of public procurements<sup>1</sup>. If the procurement process crosses calendar years, a procurement can only be counted once. These obligations do not apply to the third group of entities which are foreseen in the PPA, private bodies which receive public funding.

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<sup>1</sup> Note that splitting a contract into lots is not considered to be a form of social procurement and does not count towards the 6% requirement (Public Procurement Office, n.d.<sup>[52]</sup>).

***The Slovakian Public Procurement Office has put in place supports to assist public buyers use social procurement***

The Public Procurement Office (PPO) is the central state administration body for public procurement in Slovakia. The PPO has taken a number of measures to support the use of social procurement by the Slovakian public sector. In 2021, the PPO issued the *Strategy for Social Considerations in Public Procurement in Slovakia 2021-2025*. The *Strategy* is a long-term plan that identifies the main barriers to the use of social procurement and the tools and measures to address them, together with a timetable for their implementation.

A survey carried out by the PPO showed that 75% of respondents stated that they did not have practical experience in applying social procurement (Public Procurement Office, 2020<sup>[9]</sup>). The main barriers to the use of social public procurement were insufficient knowledge of the topic and opportunities of where and how to apply it, fear of possible increases in costs, lack of capacity, and fear of non-compliance with procurement legislation. As noted above, these challenges are generally aligned with those across OECD countries (OECD, 2019<sup>[4]</sup>). To address these barriers, the PPO has undertaken a variety of trainings and workshops and produced educational and training materials. These included a 'frequently asked questions' on social public procurement, and specific guidance on using procurement to promote employment, training and apprenticeships, SMEs, the fair treatment of sub-contractors, accessibility, and working conditions.

## 2 Social procurement case studies in the pre-tender phase

The pre-tender phase is particularly helpful in social procurement as it helps contracting authority match policy goals and specific needs. The OECD 2015 Recommendation on public procurement includes the principle of balance, which recommends the use of public procurement as one method of pursuing secondary policy objectives in accordance with clear national priorities. (OECD, 2015<sup>[3]</sup>) As such, socially responsible public procurement aims to address the impact on society of the goods, works, and services procured by the contracting authorities, by ensuring that what is being procured, or the procurement process itself achieves social benefits. Examples of benefits include providing opportunities for social enterprises, promoting decent work conditions and fair employment, ensuring compliance with labour rights, addressing ethical trade issues, and improve accessibility to all. (European Commission, 2021<sup>[10]</sup>)

The pre-tender phase is critical to ensure that the procurement process will bring value for money while achieving these social goals, hence why public buyers are encouraged to think strategically prior to launching a tender. This strategic thinking may be found in three areas. First, in the needs assessment and planning phase, the public buyer needs to identify which goal needs to be achieved, and whether the demand for the goods, services or works exists. The definition of the needs should be made on the basis of social outcomes, rather than in terms of price, which can allow for more flexible solutions and potential cost savings. Integrating social considerations during needs assessment can also come through the assessment of risks, particularly in sectors where supply-chains present a high risk of infringement of labour laws and human rights. (European Commission, 2021<sup>[10]</sup>)

Second, it is vital for the public buyers to draft adequate specifications and requirements, as these will affect the state of competition under the procurement procedure and ultimately shape the social outcomes of the contract. These specifications should be expressed in terms of performance or outcomes rather than narrow technical or descriptive requirements. The public buyer has a wide array of choices for requirements depending on the social goals to be achieved, such as the compliance with specific social standards (Human Rights Declaration, ILO Declarations, Responsible Business Conduct), accessibility considerations for persons with disabilities, employment requirements within the supplier's organisation etc. (European Commission, 2021<sup>[10]</sup>)

Third, the public buyer needs to choose the appropriate procurement procedure, and information from the first two steps can greatly help inform this choice. The public buyer needs to choose the procedure based on social factors identified in the needs, and ensure that the market has the capacity to deliver solutions according to these factors. For instance, the open procedure may not be suitable for all processes as some solutions are not yet available on the market, and therefore, procedures with more interactions with the bidders are more suitable. The public buyer also needs to ensure that the size of the contract is not an obstacle to participation by organisations that can offer social value, and especially SMEs. For this

purpose, the public buyer may use several tools that allow for more flexibility in the award of the contract such as dividing the procedure into lots, or using tools for the award of multiple contracts such as framework agreements or dynamic purchasing systems. (European Commission, 2021<sup>[10]</sup>)

## Needs assessment and planning

### **The Norwegian High-Risk List**

The Norwegian Agency for Public and Financial Management (Direktoratet for forvaltning og økonomistyring, DFØ) developed a risk analysis for procurement processes in order to identify high-risk sectors regarding human rights such as construction, transport, or furniture, among others. (Norwegian Agency for Public and Financial Management, 2022<sup>[11]</sup>)

*Background: buyer, good or service, and objective*

The Norwegian Agency for Public and Financial Management (hereinafter DFO) helps ensure sound financial management in Norway's Government Institutions and help the government reach its goal through good governance and decision-making support. Among others, it is tasked to provide advice and guidance on governance, socio-economic analysis, administration and management, employment issues and public procurement. As such, paragraph 5 of the Norwegian public procurement law states that public organisations shall promote human rights when procuring products with high risk of human rights violations in the supply chain. (Norwegian Agency for Public and Financial Management, 2022<sup>[11]</sup>)

DFO has therefore developed a guide to help public organizations integrate and mainstream socially responsible public procurement criteria in the procurement process, throughout the procurement cycle. The guide explained several considerations for public buyers regarding the use of socially responsible public procurement criteria:

- International and national guidelines emphasize the need to promote workers' and human rights;
- Procurement can be used as a significant tool to stimulate responsible business practices;
- Without socially responsible procurement, public buyers may buy products that have been produced under illegal circumstances;
- Awarding suppliers who are able to demonstrate efficient and functioning socially responsible supply chain management may contribute to the reduction of poverty in the production country while ensuring a better transparency in the supply chain. (Norwegian Agency for Public and Financial Management, 2014<sup>[12]</sup>)

#### *Process*

Taking these objectives and the procurement law into account, DFO decided to develop a risk analysis system for a list of high-risk products. The list provides an overview of product categories where the documented risk of workers' rights and human rights violations is high and systematic throughout the supply chain, *i.e.*, from raw material extraction to component production until finishing assembling. The development of the list was based on reports, such as ILO studies, but also report from civil society and union organizations, articles, films, and academic research. In addition, suppliers, and some industry organisations/initiatives have been requested to provide input in order to better understand the functioning of the supply chains. DFO used trading data to map supply chains, as transparency and traceability are often limited. (Norwegian Agency for Public and Financial Management, 2022<sup>[11]</sup>)

The risk analysis matrixes were developed for the following categories on products in the high-risk list: vehicles, play and sports equipment, textiles, workwear, and footwear, medical supplies, office supplies, furniture, electronics and ICT, construction, and landscaping materials (stone, wood, and metal), and food and beverages. The risks for each product under the high-risk list are mapped among assembly, component, and raw material phases (see table 2.1 for an example for vehicles). (Norwegian Agency for Public and Financial Management, 2022<sup>[11]</sup>)

**Table 2.1. Risk matrix for human and labour rights for the procurement of vehicles**

Product	Assembly	Component	Raw material
<b>Cars and vehicles</b>	● Low risk	● Medium high risk	● High risk
<b>Batteries</b>	● Medium high risk	● High risk	● High risk
<b>Tires</b>	● Low risk	● Medium high risk	● High risk

Source: (Norwegian Agency for Public and Financial Management, 2022<sup>[13]</sup>)

These risk matrixes can help inform the entire procurement process, and particularly procurement planning as it serves as a guidance tool for addressing the principle of proportionality during the definition of the needs. As such, the public buyer can learn which product groups and specific product categories to choose when using socially responsible public procurement instruments. (European Commission, 2021<sup>[10]</sup>)

### *Results and lessons*

The high-list risk can be seen as a very useful tool since gaining access to supply chain is often difficult for public buyers due to a lack of transparency and a complex ecosystem of suppliers in the whole supply chain. Some supply chains are quite opaque, from raw materials to production, to delivery for both domestic and non-domestic suppliers. The risk matrix therefore helps inform the public buyer when making decisions concerning which products to choose as part of socially responsible public procurement, and using the list can decrease the risk of human rights violations in the supply chain of high-risk products. (European Commission, 2021<sup>[10]</sup>)

However, the high-risk list of products only concerns nine categories of products. Therefore, there may be additional categories of products which can also be considered high risk but that are not on the list. For those products, public buyers are encouraged to perform additional due diligence when defining their needs regarding the human rights risk associated with those products and services. (European Commission, 2021<sup>[10]</sup>)

### ***Due diligence support for regional authorities in Sweden***

SKL Kommentus, a Swedish Central Purchasing Body, developed human rights due diligence support for its members, by mapping supply chains and identifying adverse impacts in the supply chain related to human rights, labour rights, environment, and integrity. (OECD, 2020<sup>[8]</sup>)

#### *Background: buyer, good or service, and objective*

SKL Kommentus is a Central Purchasing Body for the Local Sector in Sweden. It is owned by the Swedish Association of Local Authorities and Regions (SALAR), and offers services for more than 1,100 customers, 21 regions, and 290 municipalities. It provides procurement services for 19 categories, has more than 100 framework agreements, and represents approximately EUR 850 million in contractual turnover.

Sustainability is at the heart of SKL's ambitions, and one of the targets is to support its members to fulfil their sustainability objectives. As such, SKL started offering human rights due diligence support for its members. (OECD, 2020<sup>[8]</sup>)

### *Process*

The due diligence support includes social audits of suppliers, and these audits are free of cost for SKL members. SKL performs such audits in 9 risk areas, including construction materials, vehicles, food, furniture, medical supplies, clothes etc. SKL monitors the application of several labour and human-right related conventions such as the UN Universal Declaration on Human Rights, the UN Convention on the Rights of the Child, the eight core conventions of the ILO etc. (Nohrstedt, 2019<sup>[14]</sup>)

For example, the SKL checks whether employees are eligible for time-off, whether the supplier supports the payment of living wages to employees, and does not support the payment of less than the national minimum wage. It also checks whether or not the supplier makes use of child labour. The audit methodology is based on desktop research, office audit, and on-site audit, where the SKL can review documentation such as payrolls and policies, and can interview the labour force and management. (Nohrstedt, 2019<sup>[14]</sup>)

The results of the audit and the identified risks are contained in a comprehensive report, and is shared in a database for all buyers to consult. SKL also cooperate with other parties with a mutual interest such as the National Agency for Public Procurement. The risks are then prioritised according to their severity, which helps inform procurement planning, and steer the development of award criteria and contract clauses for the central purchasing agreements. (OECD, 2020<sup>[8]</sup>)

### *Results and lessons*

The due diligence mechanism gathered positive reactions from the members of SKL. The system proved efficient as the results of each audit can be shared with all users, saving time and costs for both suppliers and contracting authorities. It also provides incentives to suppliers to improve the labour conditions. Improvement is therefore done directly in the value chain, and reduces the risk of socially unsustainable production. One example is a factory of surgical instruments in Pakistan, which supplied Swedish hospitals. Following the audit report, the factory implemented several measures, which led to wages to be raised to statutory levels, overtime being regulated, child labour actively discouraged, and an improvement of the working environment. (Haraldsson Molin, 2015<sup>[15]</sup>)

However, some challenges were also identified, including quality insurance regarding follow-up measures identified for each supplier, and the time-consuming and resource-intensive aspects of the auditing process. As of 2016, about 63% of audited firms followed up with the recommended measures. The audit is also performed only for certain high-risk sectors. (Nohrstedt, 2019<sup>[14]</sup>)

## Definition of specifications and requirements

### **Canada: Removing barriers to accessibility**



The Accessible Canada Act and the Treasury Board Contracting Policy have put in place requirements to identify, remove, and prevent barriers to accessibility in procurement, including through the inclusion of accessibility criteria. (OECD, 2020<sup>[8]</sup>)

### *Background: buyer, good or service, and objective*

Public Services and Procurement Canada (PSPC) is the key provider of services for federal departments and agencies in Canada. Its mandate includes acting as a central purchaser for the Government of Canada, injecting more than \$16 billion annually through government procurement. It also supports government buyers by providing technical guidance and best practices to incorporate environmental and social considerations into procurement decision-making, particularly when it comes to accessibility. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

As such, one of its main goals is to contribute to the government's social and economic objectives by ensuring the goods and services purchased are accessible by design, where possible, so that Canadians with disabilities can use them without adaptation. According to the Canadian Survey on Disability conducted by Statistics Canada, an estimated one in five Canadians, or approximately 6.2 million people, aged 15 years and over reported having at least one disability. The PSPC is therefore developing guidelines to ensure that procurement opportunities have accessibility criteria incorporated. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

### *Process*

Two important instruments were recently put in place which require organisations under federal jurisdiction to identify, remove and prevent barriers to accessibility. First the Accessible Canada Act, enacted in 2019, which mandates the removal or prevention of barriers in several areas, including the procurement of goods, works, and services. The Act takes a proactive and systemic approach to identifying, removing, and preventing barriers to accessibility. It is enforced by an Accessibility Commissioner with the power to investigate complaints and impose penalties for violations of the Act (Accessible Canada Act, SC, c 10, 2019<sup>[19]</sup>). The Accessibility Commissioner also offers self-assessment tools to support compliance, including the development of accessibility plans which address barriers to accessibility in procurement (Canadian Human Rights Commission, n.d.<sup>[20]</sup>). Under the Act, the PSPC must, as the largest public buyer of goods and services in the country, always consider accessibility requirements for all procurements. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

In addition, the Treasury Board Contracting Policy requires departments have to include accessibility criteria when specifying requirements for good and services and ensure that deliverables incorporate accessibility features. The goal is to ensure adaptability and flexibility in goods and services procured to support an accessible workplace, and accessible programs and services. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

When drafting specifications and requirements, the contracting authorities are encouraged to leverage market consultations, and to take into account the principles of universal design, which include the following: (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

- Equitable use
- Flexibility in use
- Simple and intuitive use
- Perceptible information
- Tolerance for error
- Low physical effort
- Size and space for approach and use

The governing principle regarding the mandatory accessibility criteria is proportionality, as the Policy also states that if a contracting authority determines that is not appropriate to include accessibility criteria as part of commodity specifications, or if it is unable to obtain goods or services that comply, it must ensure

that clear justification is on file. The rationale behind exceptions is that accessibility might not be applicable for all goods or services to be procured such as the procurement of fuel. In other cases, accessible goods or services may not be available on the market. Public buyers are therefore required to draft a written rationale outlining the reason why accessibility is not considered. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

### *Results and lessons*

The Canadian government offered information sessions, tools, guidance, and online videos for the procurement community in order to help implement the legislation on accessibility. The PSPC has also taken several initiatives to offer practical guidance, such as the establishment of the Accessible Procurement Resource Centre, which provides a list of commodities across government for which accessibility considerations are relevant, and advises federal organizations on accessible procurement. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

The PSPC also organized an Ideation Day in 2020, with procurement officers, policy analysts, advocates, and persons with disabilities to discuss the barriers and challenges the Government of Canada faces when including accessibility in the procurement process. The next objectives include identifying key goods and services that can include accessibility considerations, and developing key performance indicator for accessibility in public procurement. (Public Services and Procurement Canada, 2021<sup>[18]</sup>)

### ***Including social clauses in public contracts in the Brussels region***



The government of the Brussels-Capital region in Belgium requires all regional public entities to include social clauses in public contracts. The social clauses aim to offer training to young people, as well as job opportunities, particularly for long-term jobseekers and unemployed people who are difficult to place. (European Commission, 2020<sup>[21]</sup>)

#### *Background: buyer, good or service, and objective*

Actiris is the Brussels Regional Employment Office, and is the main provider of employment solutions in the Brussels-Capital Region. On July 19<sup>th</sup>, 2018, the Government adopted a Circular which imposed the insertion of social clauses in public procurement intended to meet the objectives of training and integration of target groups of the employment policy led by the Region. (Actiris, n.d.<sup>[22]</sup>)

The Circular created several mandates for Actiris' division for social clauses, including, among others, informing all public bodies of the existence of the Circular on social clauses in public contracts and promote the use of such clauses in public procurement processes; helping contracting authorities select the most appropriate social clause for the concerned procurement process; inform companies about the terms and purpose of social clauses; liaise between companies and training providers in the case of a training clause; and monitor tenders containing social clauses and support contracting authorities so that the clauses are applied effectively. (Actiris, n.d.<sup>[22]</sup>)

#### *Process*

The 2018 Circular was replaced by the Circular of November 26<sup>th</sup>, 2020, which imposes social clauses for the following contracts whose execution period is greater than 60 working days: (Actiris, 2021<sup>[23]</sup>)

- Works contracts whose estimated amount is greater than or equal to EUR 750,000 (VAT free);
- Service contracts above the EU threshold for advertisement.

The social clauses can also be used in public procurement processes below these thresholds, or for procurement of goods, on a voluntary basis. The primary objectives of social clauses are to promote access to employment and training for low-skilled jobseekers, trainees or apprentices, people with disabilities, or disadvantaged people, and to facilitate the access of social economy enterprises to public procurement. (Actiris, 2021<sup>[23]</sup>)

When defining specifications and requirements, the contracting authority may use five different types of social clauses: (Actiris, 2021<sup>[23]</sup>)

- **The integration clause** requires the contractor to hire a job seeker via a standard employment contract.
- **The training clause** requires the contractor to train one or more interns on the basis of training formulae available in the Brussels-Capital Region.
- **The subcontracting clause to a social integration enterprise** requires that part of the contract (certain items or a percentage of the contract amount) is reserved for a social integration enterprise.
- **The contract reservation clause for the social integration economy** restricts access to procurement, as it states that only duly approved and mandated social integration enterprises are able to submit an offer under the procurement process, and implement the contract.
- **The flexible clause** which gives the successful bidder the choice between the first 3 clauses mentioned above or a combination of these.

The implementation of these clauses shall be closely monitored during the procurement process and during the implementation of the contract. At the end of the execution of the social clause, an evaluation shall be carried out by the contracting authority and by the contractor, with the help of Actiris. A certificate of execution of the social clause will be issued by the contracting authority in the event of total compliance. In the event of non-compliance, total or partial, with the social clause, sanctions may be imposed by the contracting authority. (Actiris, 2021<sup>[23]</sup>)

### *Results and lessons*

The implementation of social clauses has proven successful. Since the adoption of the Government Circulars, an average of 110 employment offers linked to social clauses were made, 80% of which resulted in employment contracts. In addition, 99% of the persons employed are from Brussels, and in most cases are low-skilled and in long-term unemployment. In addition, Actiris collaborates closely with SAW-B, the umbrella federation of social economy enterprises in Brussels and Wallonia, which has a deep knowledge of the sector and of social economy enterprises operating in the region, and this partnership has become a key success factor in the implementation of social clauses. (European Commission, 2020<sup>[21]</sup>)

## Choice of procurement procedure

### ***The use of a DPS for event catering in the Czech Republic***

The Czech Ministry of Labour and Social Affairs (MoLSA) introduced a dynamic purchasing system (DPS) to handle individual tenders for catering at its events. The use of a DPS allows SMEs and social economy enterprises to take part in individual small tenders. (European Commission, 2020<sup>[21]</sup>)

#### *Background: buyer, good or service, and objective*

The Ministry of Labour and Social Affairs (MoLSA) of the Czech Republic was established in 1990 and is responsible for social policy, social security, employment, labour legislation, occupational safety and health, equal opportunities of women and men, migration, and integration of foreigners. MoLSA has been

promoting responsible public procurement since 2014, and adopted an internal Strategy for Responsible Public Procurement in 2015, with the goal of integrating social, environmental, and employment aspects into procurement processes. MoLSA has also adopted a Methodology for Socially Responsible Public Procurement, where procurement officers may find practical guidelines, sample texts and examples of how to reflect sustainable procurement aspects in the tender documents. (MoLSA, n.d.<sup>[24]</sup>)

As part of its responsibilities, MoLSA organises several events every year, such as conferences, seminars, and workshops. Catering is an integral part of these events, and generates a considerable amount of waste. MoLSA has therefore decided to set up a dynamic purchasing system to handle individual tenders for its many events. The objective was to require contractors to minimise waste and provide fresh, ethically-sourced food and drink, by using labels and contract performance conditions. (European Commission, 2020<sup>[21]</sup>)

### *Process*

The Dynamic Purchasing System (DPS) has been launched in 2018, and is used for each individual event. MoLSA has set several requirements for catering contractors, including providing fresh, ethically-sourced food and drinks, and minimising waste, through the use of non-bottled water, no single-use plastics, using dishes that are durable, washable, and non-disposable. In particular, the following requirements were set: (MoLSA, n.d.<sup>[25]</sup>)

- All coffee and tea products must be produced in accordance with the parameters of the European Parliament's Resolution on Fair Trade and Development, which can be covered by fair trade labels.
- Refreshments will be prepared from fresh food, including bakery, dairy, and meat products.
- Food must come from organic farming as per EC regulation no. 834/2007, which concerns all fruit and vegetable juices, all fruit, and vegetables, unprocessed and processed, all meat, meat products and all eggs.
- Other environmental requirements, such as serving beverages in pitchers, minimising waste during catering, and waste being consistently segregated for recycling at least for paper/plastics/glass.

MoLSA also includes clauses in each tender, which allows for the control of the abovementioned requirements at any time during contract performance. MoLSA may also impose penalties in the event of non-compliance with the requirements. (MoLSA, n.d.<sup>[25]</sup>) Social procurement considerations are also seen in the evaluation criteria, which are divided among the lowest price for 70%, employment of social economy enterprises in catering for 15%, and employment of social economy enterprises in other areas (for instance: audio-visual) for 15%. (European Commission, 2020<sup>[21]</sup>)

### *Results and lessons*

MoLSA's events produce less catering waste, thanks to the environment-friendly requirements of the DPS. In addition, the choice of DPS allows the SMEs and social economy enterprises to take part in individual small tenders, and helps them learn to use electronic procurement. To maximize competition and ease of access, MoLSA also organised an open seminar regarding the electronic tool within the DPS, which was especially important for SMEs and social economy enterprises that often lack the experience and capacity to participate in public tenders. (European Commission, 2020<sup>[21]</sup>)

A recommendation in order to further maximize the positive social outcome of the DPS is to include contract performance conditions and award criteria to include social economy enterprises, such as small enterprises providing catering services as sub-contractors. (European Commission, 2020<sup>[21]</sup>)

## **Riga: The use of a Framework Agreement to deliver social care services**

The Department of Social Welfare of Riga's City Council is using framework agreements to create a network of social services providers and ensure the physical accessibility of high-quality home services to persons who cannot provide personal care or domestic work for themselves. (European Commission, 2020<sub>[7]</sub>)

### *Background: buyer, good or service, and objective*

The Department of Social Welfare of Riga's City Council (the Department) is responsible for the implementation of social, healthcare and health promotion policies and planning and improving the quality of healthcare and social services. In 2021, to the Department's budget totalled EUR 90.6 million (Riga City Council, 2022<sub>[26]</sub>). The provision of social services is usually outsourced through procurement, and the procurement processes gave rise to a complaint by the Samaritan Association of Latvia, one of the largest NGOs in Latvia. Indeed, the Department traditionally used the open procedure by default, which led to a *de facto* monopoly as most procedures were awarded to a single operator with very limited capacity in terms of territorial coverage in the execution of services. (European Commission, 2020<sub>[7]</sub>)

The practice was therefore challenged by the Samaritan Association of Latvia through an appeal before the State Public Procurement Office, with the argument that the procurement of social services represented a monopoly. The State Public Procurement Office upheld the appeal, agreeing with the Samaritan Association, and ordering the Department to use more transparent and competitive procedures to procure social services in order to increase territorial coverage and target persons who either live alone, persons where the members of the family living with the person cannot provide the necessary care, because of their age, health or employment situation, and minors with disabilities. To achieve these social goals, the Department decided to use framework agreements in order to maximize competition. (European Commission, 2020<sub>[7]</sub>)

### *Process*

The Latvian Public Procurement Law describes the procurement procedures for Social Care services as referred to in Annex 2, which transpose the light regime for social and other specific services as per articles 74 to 77 of the 2014 EU Directive. The Department decided to launch a framework agreement, in order to ensure the physical accessibility of the services, the high quality of the services, and the availability of the services, since only a contract with multiple providers could fulfil these objectives. (E-Procurement System of Latvia, 2019<sub>[27]</sub>)

The framework agreement has an estimated value of approximately EUR 12,8 million excluding VAT. The bidders had to fulfil the following criteria for technical and professional capacity: 1) Employing social carers with at least a first level of tertiary education in social care, or at least a vocational secondary education in the field of social care; and 2) Ensuring the regular development of professional competence, in compliance with Cabinet Regulation No. 338 of 13 June 2017 on "Requirements for social service providers." (E-Procurement System of Latvia, 2019<sub>[27]</sub>) The procurement documentation required the bidders to provide several information such as the number of caregivers and hours of home care services provided, the duration of the services, the content of the service for adults and minors, the organisation of the working time of caregivers, and the arrangements for the provision of services. In addition, bidders also had to provide a certificate confirming that the bidder meets the specific requirement relating to professional development. If selected, the bidders had an obligation to perform a self-assessment of service quality at least once a year, and to submit yearly reports and invoices to the Department. (E-Procurement System of Latvia, 2019<sub>[27]</sub>) The Department, and particularly its social service specialists, examined the information provided by bidders in their technical bids in the light of the requirements contained in the abovementioned Cabinet Regulation. A total of six bids were received by the Department – including the abovementioned

Samaritan Association of Latvia, and all six were awarded the Framework Agreement. (E-Procurement System of Latvia, 2019<sup>[27]</sup>)

### *Results and lessons*

The framework agreement was signed in 2020, and it enabled the creation of a true network of social services providers in Riga. It increased the availability of the provision of home care services, as no single organisation was capable of delivering on all the social services needed in the territory, and the multiplicity of providers significantly extended the territorial coverage. This, in turn, enhanced the quality of life of the persons receiving social care, as the Agreement allowed different suppliers to collaborate closely. (European Commission, 2020<sup>[7]</sup>) One of the lessons learned concerned the duration of the framework agreement, which mandated the Department to strike a balance between stability of social services with a longer duration of the Agreement, and defining a reasonable time limit to allow new service providers to enter the market. The duration of the framework agreement ended up being one year with a possibility of renewal each consecutive year up to a maximum of four years. (European Commission, 2020<sup>[7]</sup>) The framework agreement eased the access of social enterprises to public procurement, as it erased the previous monopoly in place. Competition was significantly enhanced, as the best service provider is not selected based only on the lowest price, but by the most appropriate offer for the user. Multiple providers are therefore successively selected to provide social services under the Agreement, depending on different criteria each time, based on specific needs. (European Commission, 2020<sup>[7]</sup>)

### ***The use of competitive dialogue for day-care of adults in Scotland***

The Scottish Borders Council used competitive dialogue to find providers that could provide offers for a new type of flexible contract for day-care services for adults with complex needs, following the failure of a previous open procedure. (European Commission, 2021<sup>[10]</sup>)

#### *Background: buyer, good or service, and objective*

The Scottish Borders Council was set up in April 1996 at Local Government reorganisation in Scotland. It is tasked with several responsibilities, including planning and building, schools and learning, jobs, and social and healthcare. The Council seeks to ensure that the goods, services and works it purchases, and the arrangements put in place to buy them, fully support its priorities. As part of its approach to procurement, the Council considers how it can improve social, economic, and environmental wellbeing, including reducing inequalities, facilitating the involvement of SMEs and promoting innovation. By embedding a sustainable approach, it aims to positively impact procurement outcomes while supporting the Council's strategic ambitions (Scottish Borders Council, 2018<sup>[27]</sup>).

The Council wanted to modernize its day-care services for adults with complex needs, however consultations with users revealed that there was not a significant pool of potential providers for the personalisation and flexibility of care services that the Council wanted in order to match individual needs. The Council launched a first procurement process, as an open procedure, but no bids met the requirements for flexible delivery of appropriate services. (European Commission, 2021<sup>[10]</sup>)

#### *Process*

Following the failed first procedure, the Council developed an approach that included dialogue sessions with several providers. The goal was to attract a wide range of providers which could include social enterprises. A briefing pack was developed by the Council's procurement team, which explained in detail the procurement process and the requirements, and provided a basis for multiple dialogue sessions with the providers. The dialogue sessions were held over a month, which included the possibility for providers

to present their solutions to end-users, i.e., beneficiaries of social care as well as the persons in charge of providing care. The dialogue sessions helped better shape the final specifications, and allowed for a better understanding of the requirements on the side of the providers. The final solution was agreed upon all stakeholders and was used for the last part of the procurement process, i.e., the submission of final offers. The final offers were evaluated, and the contract was awarded. (European Commission, 2021<sub>[10]</sub>)

### *Results and lessons*

The use of competitive dialogue for socially-responsible public procurement can help achieve wider social policy goals, by tailoring the solutions to the needs, especially if these solutions are not currently available in the market. For the Council, this procedure resulted in more and higher quality bids, with a better response than initially expected, and the collaboration among providers, beneficiaries and the Council created positive benefits which have exceeded expectations. Indeed, the tender has resulted in increased accessibility to social care services, through the reduction in the number of people travelling out of their area to access care services. It was estimated that the use of competitive dialogue and the solution enabled an efficiency gain of £200,000 over five years. The contract that resulted from the procurement process also contained clauses that required the provider to take into account all end-users while providing care services and to ensure that both the Council's and individual needs are met. (European Commission, 2021<sub>[10]</sub>)

# 3 Social procurement case studies in the tender phase

Social considerations may be included in various ways during the tender phase. Building upon the findings of the pre-tender phase, public buyers may use the invitation to tender and qualification requirements to either maximize competition by easing the access to SMEs or social enterprises, or, on the opposite, restricting access to economic operators whose main aim is the social and professional integration of persons with disabilities or disadvantaged persons, through the use of reserved contracts. The contracting authority can also exclude economic operators that have been convicted of using child labour, or that have infringed labour standards, while crafting qualification criteria that will demonstrate specific experience and capacity of the economic operator regarding social issues and labour monitoring. (European Commission, 2021<sub>[10]</sub>)

Similar to other strategic procurements, the evaluation and award based under social procurement is traditionally based on the most economically advantageous tender (MEAT), and non-price criteria are used alongside price criteria. There is a wide range of social award criteria that contracting authorities can use, including the number of employees with disabilities to be hired by the supplier, measures to ensure gender equality, accessibility requirements, ethical sourcing of products etc. Contracting authorities need to carefully evaluate the responses from the bidders to these criteria to ensure they are realistic. In addition, the bid prices also need close examination to avoid abnormally low bids or unrealistic pricing compared to the social requirements. (European Commission, 2021<sub>[10]</sub>)

## Invitation to tender and qualification requirements

### **South Korea: increasing the participation of social enterprises**



The City of Seoul needed services for the maintenance and management of public rental housing, as well as of community services. As such, the City offered the opportunity to bidders to co-design the procurement process by widening qualification requirements to SMEs and social enterprises and using a reserved contract for social economy. (European Commission, 2020<sub>[21]</sub>)

*Background: buyer, good or service, and objective*

The Central Government of South Korea has put the preferential treatment of social enterprises as a priority over the past years. The Act on Facilitation of the Purchase of SME-Manufactured Products and Support for Development of Their Markets requests public buyers to prioritize the purchases of products and services from SMEs and social enterprises. In addition, the Government enacted a plan for promoting the social economy in 2017, which proposes the increase of channels of distributions for social enterprises. As a result, the total value of public procurement from social enterprises increased from approximately USD 191 million in 2012, to approximately USD 1 billion in 2018. (Yoon and Lee, 2020<sub>[28]</sub>)

The City of Seoul is considered a pioneer in promoting social economy, as it enacted a municipal ordinance on public purchase and marketing support of social enterprises as early as 2014, which spearheaded the creation of a policy system favouring SEEs as partners of public procurement. (Yoon and Lee, 2020<sup>[28]</sup>)

As such a procurement initiative was launched by the Seoul Housing and Communities Corporation (hereinafter SH) and the Seoul Social Economy Centre (hereinafter SSEC), for the provision of maintenance and management services of public rental housing, but also to provide community services, including employment advice for residents, care for the elderly and children etc. The objective of the initiative was to ensure a good living environment for the resident of public rental housing, but also to open the market for social enterprises for large-scale apartment complexes. As such, the SH designed the procurement in a way to maximize the participation of social enterprises. (European Commission, 2020<sup>[21]</sup>)

### *Process*

The procedure was launched in 2015, and the invitation to tender contained two major elements: 1) the social economy sector was invited to co-design the contracting process through the use of a reserved contract for social enterprises and through lowering of qualification criteria to allow new social enterprises to participate; and 2) the SH would facilitate the acquisition of certification for social enterprises for the management of collective housing. (European Commission, 2020<sup>[21]</sup>)

Since the procedure used was a reserved contract for social enterprises, only two types of economic operators could participate to the process, for housing managements services representing 85% of the total value of the contract, only housing management companies could participate, and for housing welfare services representing 15% of the total value of the contract, only welfare corporations or social enterprises could participate. As such, joints bids and consortia were encouraged to participate to the tender. (European Commission, 2020<sup>[21]</sup>)

The bids were evaluated based on the capacity of the enterprise for a weight of 80%, which included the financial status, previous experience, number of employees with required skills, risk management policies etc. The remaining criterion was the competitiveness of the price for a weight of 20%. Eventually, a consortium of social enterprises was selected, and the consortium included a social enterprise and a cooperative enterprise which could provide both the maintenance services and the social care services. The value of the contract was approximately EUR 300,000 for the maintenance services, and about EUR 1.1 million for the community care services. (European Commission, 2020<sup>[21]</sup>)

### *Results and lessons*

The contract was successfully implemented between 2015 and 2017 and offered a great example for further replication, as large apartment complexes are the most prevalent type of urban housing in Seoul. Several jobs were created by the consortium for the residents of the public housing, which targeted unemployed residents or home carer looking for part-time jobs. The invitation to tender and qualification criteria were targeted at social enterprises, which in turn recognized their value in technical and social terms. (European Commission, 2020<sup>[21]</sup>)

Among the lessons learned and challenges however, the various services that the public buyer requested required several providers, which necessarily required a consortium rather than a stand-alone enterprise. The provision of services by different providers could potentially hamper the coherence of the provision of services at implementation stage. In addition, flexibility should be provided regarding the possibility to form a consortium in those cases. (European Commission, 2020<sup>[21]</sup>)

## Australia: BuyAbility Procurement

BuyAbility Procurement is a contract management service that assists both the Australian Government and private business to procure products and services from disability enterprises for specific contracts and projects. This service is designed to increase employment opportunities for people with disabilities through the promotion, connection, and management of socially responsible procurement opportunities for Australian disability enterprises. (BuyAbility, n.d.<sup>[29]</sup>)

### *Background: buyer, good or service, and objective*

The Australian government's support to persons with disabilities dates back to the 1950s, when the first BuyAbility Social Enterprises were established, which were formed by people with disabilities and carers, who faced barriers in non-supported employment. However, synergies between this support and procurement started in 2011, when the National Disability Services launched the Social Enterprise Procurement Program (DEPP), which established a contract management model, aimed at addressing high rates of unemployment and under-employment of people with disabilities. These efforts were expanded in 2016, with the launch of the BuyAbility network, in order to highlight the social and economic benefits of supported employment. The Social Enterprise Procurement Program then became BuyAbility Procurement. (BuyAbility, n.d.<sup>[29]</sup>)

### *Process*

The National Disability Services (hereinafter NDS) operates BuyAbility, with the involvement of a team of social procurement specialists committed to understanding and fulfilling the procurement requirements of its clients. The purpose of BuyAbility Procurement is to secure contracts with both the Government and Private Enterprises in line with the capabilities of Disability Enterprises. BuyAbility offers procurement services through three main channels: (National Disability Services, 2018<sup>[30]</sup>)

- **Contract Management Service:** The NDS team of social procurement specialists will match public and private tender opportunities. The contract is then signed among the public or private buyer and NDS, and NDS subcontracts part or whole of the contract to disability enterprises. This system ensures, among others, that disability enterprises have access to invitation to tenders, that capacity and capability are guaranteed, and that multiple disability enterprises can be aggregated under a single contract.
- **Social Enterprise Marketplace:** This marketplace, under development would allow disability enterprises to quote directly with public and private buyers.
- **The Disability Enterprise Directory:** The BuyAbility website offers a directory of disability enterprises, including a search functionality which allows buyers to connect directly with disability enterprises across Australia.

BuyAbility highlights that all State, Territory, and Federal Governments in Australia have legislative or strategic policies in place to facilitate engagement with Disability Enterprises, and BuyAbility is regularly used by public buyers. For instance, in 2014, the NDS was contacted by the Roads and Maritime Service, a public buyer, to discuss whether a suitable Disability Enterprise could meet their requirements for the scanning of 1,500 returned mail toll notices on a daily basis. BuyAbility facilitated the contract by supporting the quotation of Flourish Australia, a disability enterprise, which was successfully awarded a 2-year contract following the completion of a trial period. (BuyAbility, n.d.<sup>[31]</sup>)

### *Results and lessons*

The BuyAbility tool has greatly improved accessibility of Disability Enterprises to public procurement. The NDS manages contracts with 64 social enterprises across Australia, and BuyAbility resulted in more than

AUD 40 million (about EUR 25.8 million) secured in contracts for social enterprises, and 1,725 people with disability being employed. The BuyAbility website regularly posts case studies and success stories from procurement processes and contract management. The NDS has also developed the BuyAbility impact tool, which measures the social and economic impact of social enterprises under the BuyAbility network. The tool also provides benchmarks regarding wage assessment, productivity, and employee satisfaction. In turn, NDS members can access the tool and measure their social and economic contribution to Australia, which can be helpful when communicating with potential public buyers. (BuyAbility, n.d.<sup>[32]</sup>)

## Evaluation

### **Finland: Implementing Accessibility Criteria in Web Design**



The Finnish National Agency for Education needed to renew three websites, and wished to do so in a way that supported the goals of a modern education agency and provided a good user experience, while guaranteeing accessibility to persons with disabilities. (European Commission, 2020<sup>[7]</sup>)

#### *Background: buyer, good or service, and objective*

The Finnish National Agency for Education is the national development agency responsible for early childhood education and care, pre-primary, basic, general, and vocational upper secondary education as well as for adult education and training. (European Commission, 2020<sup>[7]</sup>)

As a member of the European Union, Finland transposed the Web Accessibility Directive (Directive EU 2016/2102), which requires websites and apps of public sector bodies to be more accessible, which relies on four principles as follows: 1) perceivability which requires information to be presented to users in ways they can perceive; 2) understandability, which requires information to be easily understandable; 3) operability, requiring that user interface components and navigation to be operable; and 4) robustness, meaning that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies. (European Parliament, 2016<sup>[33]</sup>)

In addition, the European Union issued the standard No. EN 301 549 which provides minimum accessibility requirements suitable for public procurement of ICT products and services in Europe. As such, the Web Accessibility Directive requires the EN 301 549 standard to be implemented in new public websites as of September 23<sup>rd</sup>, 2019, and in existing public websites as of September 23<sup>rd</sup>, 2020. The Finnish National Agency for Education (hereinafter the Agency) needed to renew three websites for online services. Its objectives included complying with the Web Accessibility Directives, while providing a good user experience. (European Commission, 2020<sup>[7]</sup>)

#### *Process*

The process was launched in November 2017 as an open procedure following a failed attempt to use Finland's Central Purchasing Body for Public Administration, which did not lead to any tenders. The Agency did not want to procure a turnkey system, *i.e.*, a system customized for a particular client or application. Instead, the procurement focused on procuring resources for agile development, including requirements for the four key employees (a User Interface (UI) designer, two developers and a Service Designer) that needed experience in applying the Web Content Accessibility Guidelines (WCAG 2.0), a set of requirements to make web content more accessible to people with disabilities. (European Commission, 2020<sup>[7]</sup>)

The contract notice made direct reference to EN 301 549. Eventually, a total of five tenders were submitted. They were evaluated based on non-price criteria, including quality and accessibility for 60%, and a price criterion for 40%. The contract was awarded to an SME who had previous experience in designing

educational websites for the University of Turku, including the use of accessibility criteria. (Official Journal of the EU, 2016<sup>[34]</sup>) (European Commission, 2020<sup>[7]</sup>)

### *Results and lessons*

The new websites of the Agency ensured that users with disabilities could access public services and information. The use of the EN 301 549 standard guaranteed accessibility for disabled users, but also improved functionalities for other users who are less comfortable with using web applications or senior citizens. The use of open procedure was also a success with good competition, compared to the previous failed attempt with the central purchasing body. The use of quality criteria for evaluation was also very important, as it permitted to select the most qualified company with aligned competence development policies. (European Commission, 2020<sup>[7]</sup>)

### **New Zealand: Construction skills and training guidelines**

New Zealand is using public procurement to partner with the construction sector to boost capability and capacity. When procuring construction works, public agencies must include questions about the skills development and training practices of the supplier and their subcontractors and carefully consider the information suppliers provide in their tenders, including applying weighting if using a weighted evaluation model. (New Zealand Ministry of Business, 2019<sup>[35]</sup>)

#### *Background: buyer, good or service, and objective*

The construction sector is the fourth-largest industry in New Zealand, employing more than 250,000 people and a contribution to the gross domestic product of NZD 15 billion each year (approximately EUR 8.8 billion). However, there is a general shortage of capability and capacity in the construction sector, hence why strengthening of the capacity of the different actors became a priority for the Government of New Zealand. As such, the government and the industry formed the Construction Sector Accord in 2019, a partnership to work together to lift the performance of the construction sector, under several principles such as valuing the people and agility and flexibility (New Zealand Ministry of Business, 2019<sup>[35]</sup>). Increasing the size and skill of the construction workforce will benefit the construction industry (by equipping it to better meet demand) and the Government (by enabling the industry to deliver on priority government initiatives) (New Zealand Government Procurement, n.d.<sup>[36]</sup>).

- In addition to the Accord, the Government itself was behind several initiatives to boost the construction sector. One of these initiatives is the Construction Skills Action Plan, which included the goal to boost skills through procurement. This initiative resulted in the 2<sup>nd</sup> edition of the Construction Procurement Guidelines, and especially Rule 18, which requires public buyers who procure work above NZD 9 million (approximately EUR 5.3 million) the following (New Zealand Government Procurement, n.d.<sup>[36]</sup>): ask suppliers and their sub-contractors what they can do over the life of the contract to train new construction workers and develop the skills of existing ones
- consider the information suppliers provide about construction skills and training in their tenders, including applying weighting if using a weighted attribute evaluation model. where a weighted attribute evaluation model is not used, agencies must ensure that reasonable consideration is given to skills development and training
- monitor contracts to make sure suppliers and their sub-contractors deliver the training and skills development they agree to, and
- consider the health and safety practices of suppliers and the training they provide to workers to ensure their health and safety.

### Process

Among the requirements in Rule 18 of the Construction Procurement Guidelines, evaluating the information suppliers provide regarding construction skills and training is an important requirement as it incentivises suppliers to improve the skills of their workforces, such as the employment of more apprentices. This criterion should be systematically evaluated as a non-price criterion, with an appropriate weighting to counter low-cost tenders from those with no commitment to construction skills and training. In addition, the public buyer is advised to brief the evaluation panel regarding these requirements, and consider the longer-term effects of what the supplier proposes, compared to short-term compliance with the requirements (New Zealand Ministry of Business, 2019<sup>[35]</sup>). This approach to evaluation provides an incentive to suppliers to invest in their workforce by employing and training more apprentices while helping ensure that suppliers who do not invest in the workforce are not at an advantage when bidding for public contracts (New Zealand Government Procurement, n.d.<sup>[36]</sup>).

The Government provides a comprehensive methodology for evaluating bids including a scoring matrix which encourages public buyers to compare future plans offered by the bidder with its existing practices (see table 3.1). (New Zealand Ministry of Business, 2019<sup>[35]</sup>)

**Table 3.1. Example of scoring under the New Zealand Construction Procurement Guidelines**

		Future plans and delivery on objectives		
		Excellent	Good/Acceptable	Deficiencies/Unacceptable
Existing practices	Excellent	Excellent	Good	Acceptable
	Good/Acceptable	Good	Acceptable	Minor reservations
	Deficiencies/Unacceptable	Minor Reservations	Serious reservations	Unacceptable

Source: (New Zealand Ministry of Business, 2019<sup>[35]</sup>)

Public buyers are encouraged to evaluate these criteria relative to others, taking into account each supplier's capacity to deliver the objectives, as not all suppliers will have the same size, number of employees and capacities. Public buyers can therefore take a wide-array of factors into account when evaluating bids, such as the supplier's past performance, engagement with supply-chains and subcontractors, level of commitment, robustness of plans, and supplier's plans to engage with other actors such as government institutions and training organisations to achieve objectives. The engagement with supply chains is critical as a significant portion of works in public construction contracts is usually subcontracted. (New Zealand Ministry of Business, 2019<sup>[35]</sup>)

### Results and lessons

Once bids have been identified, the best evaluated bid needs to be translated into concrete commitments in the contract. The commitments may take various forms, such as 1) contractual clauses, which will describe the supplier's obligations in terms of skills and training; 2) skills and training charters, which are non-legally binding, but can describe shared priorities and goals for the project as well as responsibilities of each party; and 3) voluntary agreements, which help include skills and training requirements to existing, long-standing contracts. The supplier's commitments regarding skills and trainings will need to be closely monitored throughout contract implementation to ensure these commitments are delivered in compliance with the reporting framework issued by the New Zealand Ministry of Business, Innovation and Employment (New Zealand Ministry of Business, 2019<sup>[35]</sup>).

## Award

### **Berlin: Contract performance clauses to promote gender equality**

In Berlin, tenderers are required to carry out or launch measures to promote women and improve work-life balance. Tenderers must commit to which of the measures they will carry out or initiate during the contract, and failure to comply can result in sanctions such as cancellation of the contract. (OECD, 2021<sup>[37]</sup>)

*Background: buyer, good or service, and objective*

The Federal State of Berlin has been a pioneer in promoting gender equality through public policies. One of the first policies was enacted in 1999, through the Berlin State Equal Opportunities Act and the Ordinance for the Promotion of Women, which aimed at creating appropriate incentives to promote women and improve the compatibility of family and work. The Ordinance for the Promotion of Women requires bidders to implement or initiate a certain type of measures listed in the Ordinance to promote women and improve the compatibility of family and work, depending on the size of the company, at the time they submit their bid. If the bidders fail to comply with these obligations, sanctions can be imposed, such as the exclusion from procurement processes. (State of Berlin, n.d.<sup>[38]</sup>)

Furthermore, the amendment of both the Berlin Tendering and Awarding Act and the State Equal Opportunities Act in 2010 expanded the opportunities for promotion of gender equality. The amendments allowed measures to be implemented in procurement of lower value, the requirement for award of construction contracts to be linked to compliance with gender equality requirements, and the monitoring of compliance with the guidelines on gender equality to be strengthened. The amended State Equal Opportunities Act also contains a reporting obligation of contracting authorities on measures to promote women and improve the compatibility of family and work. These obligations were consolidated in the Women's Promotion Regulation, which came into force on July 29, 2011. (State of Berlin, n.d.<sup>[38]</sup>)

*Process*

The Women's Promotion Regulations applies in the following conditions: (State of Berlin, n.d.<sup>[38]</sup>)

- To public procurement procedures of the State of Berlin;
- To contract with an amount that exceeds EUR 25,000 euros for goods and services and EUR 200,000 in the case of works;
- To companies with more than 10 employees.

The Regulations list 21 measures that can be observed by companies to promote gender equality and work-life balance, including targets to increase the proportion of female employees in senior roles, verifying equal pay, offering internships in areas where women are underrepresented, providing childcare, offering alternating telecommuting, offering temporary part-time work, avoiding a disproportionate reduction in the share of women in the total number of employees in the event of staff reduction measures, providing preferential consideration of women for career advancement etc. (State of Berlin, n.d.<sup>[38]</sup>)

The Regulations state the number of measures to be selected by bidders, depending on the size of their workforce. A company with more than 500 employees on a regular basis must select three measures including one measures from the first 6 on the list; a company with more than 250 but not more than 500 employees must select three measures; a company with more than 20 but not more than 250 employees must select two measures; and a company with no more than 20 employees may select one measure. (State of Berlin, n.d.<sup>[38]</sup>)

At the time of the submission of the tender, the candidate needs to submit a statement as to which of the measures the company intends to carry out or initiate during the implementation of the contract. The

submission of the statement regarding these measures is essential for contract award, as bids that do not contain the statement or that contain an incomplete declaration will not be considered. Bidder may, however, provide a justification regarding the impossibility to fulfil the measure. Furthermore, non-compliance with the measures incur sanctions, and may affect future contract awards as the bidder shall be excluded from the award of contracts for a period of three years, including as a subcontractor. (State of Berlin, n.d.<sup>[38]</sup>)

### *Results and lessons*

Contract clauses that impose obligations for the supplier regarding gender-equality can be powerful tools, as they represent an additional incentive to be considered for contract award. However, the implementation of these clauses needs to be properly monitored and verified during contract implementation, as continuous monitoring is essential in order to strengthen the incentives for the business sector to develop socially responsible and gender-inclusive services, products, and business models. (OECD, 2021<sup>[37]</sup>)

As such, the Women's Promotion Regulations require all contracting authority to request the companies to provide evidence of their compliance with the obligations assumed under this Regulations. The contracting authorities must select a random sample of at least five percent of its annual contract awards covered by the Regulations. The contracting authorities are also required to collect information on procurement notices, contract award notices, results of the aforementioned examination of evidence, and information on sanctions imposed regarding non-compliance with the regulations. The report is then submitted to the Berlin Senate Department responsible for women's policy every two years (State of Berlin, n.d.<sup>[38]</sup>).

### **Lithuania: Supporting people with disabilities**

When carrying out simplified procurement procedures, contracting authorities are obliged to award a minimum of 2% of the total value of their contracts to social enterprises owned by people with disabilities and similar enterprises. (OECD, 2020<sup>[8]</sup>)

#### *Background: buyer, good or service, and objective*

The concept of sustainable procurement was outlined for the first time in the Lithuanian Public Procurement System Improvement and Development Strategy for 2009– 2013, issued by the Government of Lithuania, where sustainable public procurement was described as a procurement subject to the requirements relating to the environmental, economic, and social development. (Kanapinskas, Plytnikas and Tvaronavičienė, 2014<sup>[39]</sup>)

The Lithuanian Law on Public Procurement further states that contracting authorities must ensure that the performance of public contracts would be in conformity with the applicable environmental, social, and labour law obligations established by Union law, national law, collective agreements or by the international conventions. As such, the inclusion of social criteria for award is mostly voluntary. However, the Law on Public Procurement foresees two mechanisms specifically targeted at the award of contracts to social enterprises, one voluntary and one mandatory. (Public Procurement Service of Lithuania, 2021<sup>[40]</sup>)

#### *Process*

The Law on Public Procurement, in its article 23, states that a contracting authority may reserve certain contracts, by allowing in the procurement documents only certain suppliers to participate in the procurement process, as follows:

- a social enterprise
- a social enterprise for disabled persons

- an economic operator whose employees are convicted persons serving the sentence of arrest, a fixed-term custodial sentence or a life custodial sentence, if they account for more than 50 % of the annual average number of employees on the staff list of that economic operator
- an economic operator whose members are healthcare establishments employing occupational therapy patients, if they account for at least 50 % of the annual average number of employees on the staff list of that economic operator
- an economic operator whose employees participate in the active labour market policy measures specified by the Law of the Republic of Lithuania on Employment or a similar legal act of another state, if at least 50 % of the annual average number of employees on the staff list of that economic operator are persons who are additionally supported in the labour market. (Public Procurement Service of Lithuania, 2021<sub>[40]</sub>)

In addition to the above, which can be used on a voluntary basis, the contracting authority must, when conducting simplified procurement procedures, reserve at least 2 % of the total value of contracts awarded in simplified procurement procedures to the abovementioned economic operators. In either case, the procurement documents, including the contract notice, must make reference to the Law regarding reserved contracts, as well as the requirement to provide evidence of the economic operator's compliance with the requirements of the Law, i.e., proving their status as a social enterprise. Subcontractors must also belong to one of the above categories. (Public Procurement Service of Lithuania, 2021<sub>[40]</sub>)

### *Results and lessons*

Mandatory reserved procurement amounted to EUR 21 million in 2021 in Lithuania, as opposed to EUR 14 million in 2020, which represents 1.3% of the total value of contract awarded under simplified procurement procedures. As such, the legal target of 2% was not reached. (Public Procurement Service of Lithuania, 2021<sub>[40]</sub>) Reserved procurement can be an excellent way to boost the award of contracts to social enterprises, and increase the delivery of social value through procurement. However, market consultations should be undertaken beforehand to ensure that social enterprises have the capacity to participate to such reserved procurements. In addition, contracting authorities should have accountability mechanisms to make sure they reach the prescribed targets. (European Commission, 2021<sub>[10]</sub>)

### **Switzerland: equal pay compliance**

The Swiss government has developed a tool called Logib that works as a standard analysis tool to check that companies pay equally, regardless of gender. Suppliers with at least 100 employees must provide proof of compliance with equal pay based on Logib. (OECD, 2020<sub>[8]</sub>)

#### *Background: buyer, good or service, and objective*

The Swiss Federal Office for Gender Equality (hereinafter FOGE) is mandated, as per the article on equality in the Federal Constitution and the Gender Equality Act, with the removal of all forms of discrimination based on gender, and the promotion of gender equality in all areas of life. One of the key targets of FOGE is gender equality in the workplace, and equal pay in particular. The Federal Act on Public Procurement, in its article 12, requires contracting authorities to award public contracts to companies that ensure equality in the pay of men and women. Equal pay is therefore a mandatory qualification criterion. Those companies that are in violation of this principle are not eligible to bid on public tenders. (OECD, 2020<sub>[8]</sub>)

#### *Process*

At the Federal level, the fulfilment of the requirements from article 12 of the Federal Act on Public Procurement is done through a declaration of the bidder when submitting a bid. By signing this declaration,

the bidder formally confirms that it respects equal pay. Companies with more than 50 employees must indicate how they verify compliance with equal pay and provide proof of this compliance. (Federal Office for Gender Equality, n.d.<sup>[41]</sup>)

There are three ways to provide this proof:

- Self-monitoring by the company;
- Monitoring by third parties;
- State monitoring of equal pay by the Confederation, cantons, or municipalities. (Federal Office for Gender Equality, n.d.<sup>[41]</sup>)

In any case, the proof of compliance must be provided using the Confederation's standard analysis model. For this purpose, companies can use Logib, a tool developed by the Swiss government to support the implementation of these requirements. Logib shows whether there is a statistically significant gender effect on wage, and takes into account human capital-related factors such as level of education, years of service, potential working experience, and factors reflecting the performed function, like skill level and professional position. (Federal Office for Gender Equality, n.d.<sup>[41]</sup>)

As such, Logib can be used as a self-assessment tool, and the check must be carried out with salary data that is less than 36 months old. Logib is publicly available in various languages, anonymous, and free of charge. Originally launched in 2004, the Excel-based application of Logib has been replaced with a powerful, modern web tool in July 2020. This version meets the latest application and data privacy requirements. (OECD, 2020<sup>[8]</sup>)

Upon verification of the compliance, if a bidder is found to be discriminating in terms of pay, the competent procurement office can take the following measures, depending on the stage of the procurement process: 1) imposing a contractual penalty; 2) revocation of the award or exclusion of the bidder from the procedure; and 3) termination of the contract.

### *Results and lessons*

Since its launch, Logib has internationally recognized, *i.e.*, through the UN Public Service Award, and the EPIC Good Practice Label from the Equal Pay International Coalition (OECD, ILO, and UN Women). In addition to Logib, the Federal Office for Gender Equality provide companies with detailed information of how wage equality is measured as well as the necessary tools and instruments to verify their pay practices. FOGE also random checks of companies that were awarded public contracts from the Federation to ensure that this regulation is being observed. FOGE initiates an average of 30 checks every year, and in 2017, out of 63 controls, 10% of enterprises were deemed not to be in compliance with the equal pay requirements, and were required to take corrective measures. (Federal Office for Gender Equality, n.d.<sup>[41]</sup>)

# 4 Social procurement case studies in the post-tender phase

The post-tender phase is critical when including social considerations in public procurement, as it is during contract performance that social outcomes are implemented and verified. As such, when it comes to social procurement, most contracts are based on outcomes and performance rather than output. (European Commission, 2021<sup>[10]</sup>)

Contracts need to be carefully designed to include social clauses but these need to be followed by verification mechanisms, whether it is to verify the integrity of supply-chains, to ensure that employment clauses are respected, that minimum wages are paid, or that accessibility requirements are considered. The need for verification mechanisms for social clauses implies additional time and resources on the side of both the contracting authority and supplier, as well as a close collaboration between parties. Non-compliance with social clauses may incur sanctions, such as monetary fines, or contract suspension or termination. Suppliers are also expected to be transparent regarding subcontractors as all social obligations from the contracts need to trickle down subcontracts as well. (European Commission, 2021<sup>[10]</sup>)

In addition to contract management per se, payment clauses can also be used to leverage social considerations. Traditionally, payment is made against the delivery of activity, whether it is for works, goods, or services. However, under social procurement, contracting authorities are interested in the outcome of the activity, not the activity itself. One such example is reserving a portion of the contract amount for employment of vulnerable groups. Payment will therefore be made against the outcome of lowering unemployment rather than the output of the contract. Another mechanism is ensuring timely payment, especially to SMEs, for which interests may be imposed to contracting authorities in case of delays. (European Commission, 2021<sup>[10]</sup>)

## Contract management

### **Collaborative approaches to verify compliance – Swedish City Councils**

Following a report from the Danish NGO DanWatch regarding labour rights and safety violations in four electronic factories in China, the Swedish County Councils decided to undertake an in-depth review of due diligence and human rights of its IT contractor and subcontractor, which has helped increase both companies' capacity to manage their supply chain in a more responsible way. (Electronics Watch, 2016<sup>[42]</sup>)

*Background: buyer, good or service, and objective*

The Swedish County Councils are responsible, among others, for healthcare, dental care, and public transportation. Their average annual public procurement volume amounts to EUR 13 billion. The wide array of goods and services the Councils procure are made in factories all around the world, including in countries where the risk for infringement of labour rights and human rights is high. The 21 County Councils launched their collaboration on sustainable procurement in 2010, with a formalized structure and National Coordinator in place beginning in 2012 (O'Brien, Meulen and Mehra, 2016<sup>[43]</sup>). Therefore, the Councils

have since developed tools and processes to exercise social responsibility in public procurement, such as using a standardized code of labour standards, and including similar contract performance conditions in order to harmonize efforts regarding social standards (Electronics Watch, 2016<sup>[42]</sup>).

As such, the contract conditions include the obligations for suppliers to adhere to the UN Universal Declaration of Human Rights, the ILO core conventions, Article 32 of the UN Convention on the Rights of the Child, and local legislation regarding labour rights in the country of manufacturing. The suppliers also have an obligation to ensure due diligence regarding labour rights standards with a clear matrix of social responsibilities, to demonstrate compliance with the code of labour standards, and to ensure corrective action in case of breach of contract conditions (Electronics Watch, 2016<sup>[42]</sup>).

The Stockholm County Council, in particular, had a framework agreement with Atea and its subcontractor Dell to supply desktops and laptops for its employees, which ran from 2010 to 2014, and signed another agreement for a period of 4 years in 2014. However, in 2013, the Danish NGO DanWatch issued a report regarding infringement of labour rights and safety violations by four electronics factories in China. These factories supplied electronics to several brands, including Dell. Following this report, the Council decided to undertake an in-depth review of the contractual obligations of Dell, including due diligence regarding labour standards and human rights. (Electronics Watch, 2016<sup>[42]</sup>)

### *Process*

DanWatch's report was sent to Councils in January 2014, and included several findings regarding severe labour rights and safety violations, including excessive working hours, forced overtime, wages below the legal minimum, and inadequate safety conditions. Following the receipt of the report, the Social Responsibility in Public Procurement, a network of the 21 Swedish county councils alerted Dell of the findings in the report and reminded it of its contractual obligations to adhere to the code of conducts and to the different abovementioned international conventions, as well as the obligation to ensure due diligence. The network also requested immediate dialogue with Dell in order to address the infringements identified in the report. (Electronics Watch, 2016<sup>[42]</sup>)

The network and Dell engaged in several dialogue sessions over the course of two years. Initially, Dell's efforts to remedy the violations did not yield any results, despite repeated requests from the Social Responsibility in Public Procurement network. In December 2014, the network issued a memorandum stating that despite encouraging an open and transparent dialogue with Dell, the latter did not ensure compliance with its contractual obligations. (Electronics Watch, 2016<sup>[42]</sup>)

The lack of improvement on Dell's side prompted the Stockholm City Council to announce, in May 2015, its intention to cut ties with Dell and to instruct the main contractor, Atea, to find another subcontractor. However, a month later, Atea notified the Council that Dell had taken satisfactory measures to remedy the violations in its supply-chain. To ensure these measures were effectively put in place, the Stockholm County Council hired an audit firm to verify whether Dell now systematically identifies, addresses, and corrects violations in its supply chain, and to check the compliance of the factories in China with the Council's standards. (Electronics Watch, 2016<sup>[42]</sup>)

Eventually, the Council deemed that Dell improved its due diligence framework, and that Atea was allowed to supply Dell products, under the following conditions: 1) an improvement of the risk identification and mitigation measures; 2) an increase in supply chain transparency; 3) improved social audits; and 4) the development of a short and long-term compliance plan. (Electronics Watch, 2016<sup>[42]</sup>)

### *Results and lessons*

The Stockholm City Council and the network's monitoring of compliance with social standards set by the contract has been crucial to ensure that Dell was respecting its contractual obligations. Indeed, some social clauses may be challenging to implement, and through the inclusion of performance or output-based

clauses, the contracting authorities can hold contractors accountable for failure to provide adequate due diligence. (Electronics Watch, 2016<sup>[42]</sup>)

It also shows how important collaborative efforts are when implementing social clauses, not only between the public buyer and the supplier, but also among public buyers themselves, who can inform each other about potential infringements made by a firm, and create capacity for long-term engagement with specific contractors. The process did not only help the firms respect their contractual obligations, but it also increased both companies' capacity to manage their supply chains responsibly as a whole. (Electronics Watch, 2016<sup>[42]</sup>)

### **Actions taken against suppliers for RBC infringements in Canada**

For human and labour rights abuses in Canada, an ethical procurement certification is incorporated into the bid solicitation for apparel goods on its closing date and becomes a binding part of the contract. A breach of obligations under this certification could result in the contractor being barred from contracting with the Government of Canada for a defined period. (OECD, 2020<sup>[8]</sup>)

#### *Background: buyer, good or service, and objective*

In 2018, the Public Services and Procurement Canada (PSPC) issued a Policy on the Ethical Procurement of Apparel as an integral part of the government's commitment to improve social and economic benefits through purchasing. The Policy aimed setting forth clear measures to ensure that apparel is acquired from suppliers who operate in an ethically and socially responsible manner. The Policy introduced new contracting and certification requirements, namely requiring federal suppliers to self-certify that they, in addition to their suppliers, comply with human and labour rights standards. The Policy also introduces an "origin of work" clause, which requires that bidders provide the name of the manufacturers, suppliers and subcontractors who manufactured the apparel, as well as their location and country of origin. (Public Services and Procurement Canada, 2018<sup>[45]</sup>)

#### *Process*

The certification requirement applies only to public procurement of apparel items (e.g., jackets, gloves, outerwear, trousers etc.). The certification is submitted together with the bid, and the bidder must certify the following: (Public Services and Procurement Canada, 2018<sup>[45]</sup>)

- **Child labour:** The bidder and first-tier subcontractors shall not make use of work done by children who are younger than the legal minimum age for admission to employment.
- **Forced labour:** The bidder and first-tier subcontractors shall not use forced labour or compulsory labour in all its forms.
- **Abuse and harassment:** No employee of the bidder or first-tier subcontractor shall be subject to any physical, sexual, or verbal harassment.
- **Discrimination:** The bidder and first-tier subcontractors shall not discriminate against their employees based on factors such as race, national or ethnic origin, colour, religion, gender, sexual orientation, etc.
- **Freedom of association and collective bargaining:** The bidder and first-tier subcontractors shall recognize and respect the right of employees to freely associate, organize and bargain collectively with their employer.
- **Occupational safety and health:** The bidder and first-tier subcontractors shall provide workers with a safe and healthy work environment.

- **Fair wages:** The bidder and first-tier subcontractors shall provide wages and benefits which comply with all applicable laws and regulations.
- **Hours of work:** The bidder's and its first-tier subcontractors' employees shall not be required to work more than the lesser of (a) 48 hours per week and 12 hours overtime per week, or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture.

The certification and the origin of work shall be incorporated into all contracts for apparel and becomes legally binding. As such, the certification may be subject to verification by the contracting authority at any given time during the period of the contract. If the certification is found to be untrue, the contracting authority may declare a bid non-responsive or may declare a contractor in default, whether it be knowingly or unknowingly during the bid evaluation period or during the contract period. (Public Services and Procurement Canada, 2018<sup>[45]</sup>)

### *Results and lessons*

The contractor has an obligation of maintaining this certification requirement throughout the implementation of the contract. As such, if at any time during the performance of the contract, the contractor no longer meets the obligations of the contract, the main contractor can be found to be in default of their contracting obligations, which can result in them being barred from contracting with the Government of Canada for a defined period. As the Government of Canada spends an average of CAN 100 million every year. (OECD, 2020<sup>[8]</sup>)

This increased the accountability of both contractors and suppliers regarding labour and human rights. Since the adoption of the Policy, 51 Canadian government contracts worth a total of \$77.3 million publicly declared that neither they, nor their first-tier subcontractor, commit human rights abuses, including forced labour and child labour, in the production of apparel. However, in practice, the government has not proactively checked any of the 51 suppliers to verify their certification. In addition, the apparel industry relies on a multi-tier production line, so even if the supplier and its first-tier contractor are compliant with labour standards, other suppliers in the chain may not be fully compliant. As such, while the certification is helpful, there is a need to verify compliance, and to extend it further to other actors in the supply chain. (Toronto Star, 2021<sup>[45]</sup>)

## Order and payment

### **Australia: Supplier Pay On-Time or Pay Interest Policy**

The Australian Government enacted the Supplier Pay On-Time or Pay Interest Policy, which requires contracting entities to make all payments to a supplier under a certain threshold within the maximum payment terms. (Australian Department of Finance, 2022<sup>[46]</sup>)

#### *Background: buyer, good or service, and objective*

Timely payment to small businesses has been a long-standing objective for the Government of Australia. As such, the Department of the Treasury conducts a mandatory annual survey of payment times for non-corporate Commonwealth entities in order to measure the success of its payment policies. The yearly survey started in 2002, and has seen a significant improvement in payments times, which went from 82% of invoices paid on time in 2002, to more than 97% of surveys paid on time in 2015. The survey was previously voluntary, and some agencies did not provide data, but it recently became mandatory. (Australian Department of Treasury, 2017<sup>[47]</sup>) One of the policies that the survey assesses is the Supplier Pay On-Time or Pay Interest Policy, which defines maximum time limits for payments for contracting authorities up to a certain threshold, and if the contracting authority exceeds the time limits, interests are

paid to the suppliers. The objective of this policy is to facilitate timely payments to suppliers, and SMEs in particular, assist with their cash flow, and reduce the cost of supplying to government. The Policy was enacted in the early 2000s, and was amended several times, and applies to all 95 non-corporate Commonwealth entities. (Australian Department of Finance, 2022<sup>[46]</sup>)

### *Process*

Once the supplier has satisfactorily delivered goods or services, and sent a correctly rendered invoice, the maximum payment terms of the Policy apply from the next calendar day. The maximum payment terms are as follows: (Australian Department of Finance, 2022<sup>[46]</sup>)

- When the supplier and the contracting authority are using electronic invoicing through the Pan-European Public Procurement Online Framework, the maximum period for payment is 5 calendar days.
- When the supplier and the contracting authority are not using e-Invoicing, for all other invoices, the maximum period for payment is 20 calendar days.

If a contracting authority does not comply with these time limits, interests must be calculated and paid to the supplier in accordance the formula provided by the Australian Department of Treasury. The interest is paid only if the amount of interest accrued is more than AUD 100 (approximately EUR 64). However, exceptions to this Policy include procuring and consuming goods and services overseas; in cases where the nature of the goods or services being procured, or the structure of the procurement, would make it impractical for the policy to be applied; or if the payment arises from a non-procurement arrangement, such as a grant. (Australian Department of Finance, 2022<sup>[46]</sup>)

The Policy also applies to non-corporate Commonwealth entities only, which means that other contracting authorities are not required to apply the Policy. The Department of Treasury has issued standard clauses for contracting authorities to include in their contracts, however the Policy applies even if the contract does not contain such clauses. (Australian Department of Finance, 2022<sup>[46]</sup>)

In addition to the maximum period for payments, the Policy also requires the contracting authorities to pay via a payment card (credit, debit, or charge card), where the payment is estimated below AUD 10,000 (approximately EUR 6,400). Payment by card can only be executed if the supplier accepts and requests such a type of payment, and contracting authorities are required to make reasonable efforts to make them aware of the opportunity, i.e., prior to receiving goods or services. (Australian Department of Finance, 2022<sup>[46]</sup>)

### *Results and lessons*

The implementation of the Policy has proven successful. The mandatory survey for 2021 revealed that under the 20-day time limit, 93.2% of the invoices were paid on time, compared to 90.6% in 2020. The amount of interest paid decreased from AUD 1.15 million (approximately EUR 737,000) in 2020 to AUD 609.4 (approximately EUR 390,000) in 2021. There is still room for improvement regarding the 5-day limit for the payment of electronic invoices, as only 62% were paid on time in 2021, which is an improvement compared to 56.3% in 2020. These difficulties were attributed to challenges in implementation of the e-invoicing system and are expected to decrease in later years. (Australian Department of Treasury, 2021<sup>[48]</sup>)

The Policy was amended in July 2022, in order to apply to all contracts. Prior to the amendment, the Policy only applied to contracts below AUD 1 million (or EUR 640,000). In addition to the expansion of applicability of the Policy, the Contracting Authorities themselves have issued similar policies for timely payments, such as the Queensland Government, which adopted the On-Time Payment Policy in July 2020, which is specifically targeted at SMEs, i.e., businesses that employ less than 20 employees. Queensland Government's policy provides the same mechanisms of interest payment in case the contracting authority

does not comply with the 20-day time limit for payment. (Queensland Department of Employment, Small Business and Training, 2020<sup>[49]</sup>)

### **The Netherlands: The use of Social Return on Investment Policy (SROI) clauses**

Several cities in the Netherlands have included a Social Return on Investment Policy clause in their contracts, in order to require contractor to use a percentage of the contract price to employ registered unemployed persons or people far from labour markets. (European Commission, 2020<sup>[7]</sup>)

#### *Background: buyer, good or service, and objective*

The cities of Rotterdam, Wageningen, and Haarlem in the Netherlands have taken several initiatives in their public procurement procedures to encourage suppliers to create social value. One of these initiatives is the inclusion of a Social Return on Investment Policy clause (European Commission, 2020<sup>[7]</sup>). Social return involves creating employment opportunities for people who are disadvantaged in the labour market (e.g. the long-term unemployed, people with disabilities) by encouraging or requiring contractors to employ vulnerable groups when implementing the contract (Dutch Public Procurement Expertise Centre, n.d.<sup>[50]</sup>).

The City of Rotterdam, in particular, has enacted a protocol regarding social return on investment. As such, following the adoption of a new Youth Act in 2014, youth services were decentralised and put under the competence of the Common Rijnmond Youth Assistance scheme (hereinafter the GR-JR), a union of 15 municipalities chaired by the City of Rotterdam. For the procurement of youth services, the GR-JR decided to use a combination of Social Return on Investment Policy, and well as result-based payments. The objective was to use a result-oriented funding model, which focused on outcomes rather than outputs. (European Commission, 2020<sup>[7]</sup>)

#### *Process*

Social return can be incorporated in public procurement in a number of ways. Social return can be included as a minimum requirement (for example, as a percentage of the number of hours worked or the contract's total wage bill), as award criteria in a best price-quality ratio approach, or as contract performance conditions (Dutch Public Procurement Expertise Centre, n.d.<sup>[51]</sup>).

In the case of the GR-JR procurement of youth services, the procurement procedure was launched in 2018 as an open procedure for a framework agreement, and the award criteria included the staff knowledge, expertise, and experience, Implementation of result-oriented youth assistance, and the collaboration of the bidder with other actors to ensure holistic youth assistance. In addition, as the payment was foreseen to be based on results, bidders were requested to provide extensive information on how the organisation will make efficient use of the opportunities allowed by result-oriented funding, and details on time and resources are available to deliver the expected results, but also risk management strategies regarding the use of a result-oriented funding methodology. (European Commission, 2020<sup>[7]</sup>)

The verification of these results would be done through monitoring of the supplier's performance based on four indicators, including client satisfaction, goal realisation, failure and waiting time. The supplier and the GR-RJ would then meet four times a year to discuss results and follow-up actions. The payment is determined yearly, based on a financial statement submitted by the supplier regarding the total allocated scheme budget for the total of youths receiving assistance. (European Commission, 2020<sup>[7]</sup>)

In addition to the above, as per the Social Return on Investment clause, suppliers were required to use a portion of the contract amount to provide work-related opportunities to targeted groups on the labour market, including people receiving jobseekers benefits and young people in training programmes. The clause was based on Rotterdam's Social Return Protocol which helps identify target activities and their value. Non-fulfilment of this clause could result in a fine worth 125% of the sum not fulfilled. As a

verification, the bidders were requested to register social return activities into the GR-JR system, and prove that the employees fall under the specified target groups, in addition to providing payslips and contracts. (European Commission, 2020<sup>[7]</sup>)

### *Results and lessons*

The outcome-based payment mechanism under the contract focuses on the results that the service brings rather than focusing on the service itself. In addition to this, the Social Return on Investment clause ensured that at least 2% of the contract amount was directed toward jobs and internships to people far from the labour market. This Social Return on Investment clause has become mandatory for all public sector contract over EUR 50,000 in Rotterdam, under which a contract must allocate up to 50% of the contract value in providing employment opportunities, with an average of 5% per contract. (European Commission, 2020<sup>[7]</sup>)

As such, in 2018, these social return clauses resulted in 2,519 persons being hired by companies. Some lessons learned include the heavy administrative burden to monitor the outcome-based payments and social clauses, and the fact that social clauses cannot be implemented in all sectors, where positions are not able to be filled by people far from the labour market. (European Commission, 2020<sup>[7]</sup>)

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