

2 Public procurement in perspective

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Introduction

Focus on public procurement has never been at a higher level. Yet public procurement still lags far behind private sector procurement in scientific analysis and accumulated knowledge. Papers about public procurement are usually either documentary from (explaining the situation in a certain country, e.g. the international section in the *Journal of Public Procurement*) or limited to a specific aspect (legal, e.g. *Public Procurement Law Review* or administrative, e.g. *Journal of Public Budgeting, Accounting and Financial Management*).

This book is intended as a contribution towards filling some of that gap. In this chapter we set the scene for the following chapters by analysing public procurement as an area of expertise. We do so by first considering the differences between public procurement and private sector procurement. It will become clear that demands put on public procurement from various sources determine the characteristics of public procurement. As these demands are additional demands to those on private sector procurement they define public procurement's complexity.

Another viewpoint on this complexity and on the nature of public procurement is provided by the various interests that have to be administered in public procurement. In a second section we analyse these interests and conclude that process interests tend to overwhelm other interests in public procurement.

The closing section describes and analyses key developments and the various stages of development that may be observed in public procurement. The main conclusion on these developments is that public procurement can play a substantial role in delivering government objectives and the reform of public procurement can be a lever for socio-economic development both in developed and developing countries.

Public procurement: marked differences from private procurement

In both public and private sector procurement goods and services have to be acquired, and in both there are good reasons to strive for the best deal in obtaining the required goods and services. However, despite these similarities, it is well accepted that public procurement is quite different from procurement in the private sector (Erridge, 1996; Thai, 2001; Thai *et al.*, 2004).

The approach to analysing these differences itself differs across various publications. A number of papers consider how the execution of procurement is influenced differently in the public and private sector. Covington (2006) addresses the differences in

attitudes of the players in public and private sector procurement. Wang and Bunn (2004) focus on the buyer–seller relationships that differ through the rules and procedures enforced upon the public sector.

Other papers analyse the reasons behind the differences between public and private sector procurement. On the first pages of the ITC (International Trade Center) public procurement training manual the ‘Value in public procurement’ is listed as being different from private sector procurement in terms of accountability, responsiveness, professionalism, transparency, competition and appeal rights. Gordon Murray (1999) analyses local government procurement, and lists a number differences with regard to both objectives and more operational issues.

When comparing public and private sector procurement it appears that the demands on public procurement are greater and more highly varied than those on private sector procurement (Neill and Batchelor, 1999). PIA (the Dutch government procurement organization) estimates that 80 per cent of public procurement is largely similar to that in the private sector (Leyenaar, 2004); consequently approximately 20 per cent of public procurement is different because of different demands (see also Murray, 1999). What are these different demands that exist in public procurement and are absent in private sector procurement?

Combining the existing literature (see e.g. Arrowsmith and Trybus, 2003; Burt *et al.*, 2003; Davis, 2005; Leenders *et al.*, 1997; McIlroy, 1998; Murray, 1999; Telgen and Lenselink, 1998; Thai *et al.*, 2004) and grouping them for clarity and oversight we come to the following listing of additional demands:

1 External demands:

- (a) *Transparency* refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed. It implies equal opportunities for all bidders and a clear process.
- (b) The public sector is expected to act with *integrity*, to do what they promised to do, to avoid improper, wasteful or corrupt and fraudulent practices.
- (c) *Accountability*: procuring public entities and their officers must be accountable for the effectiveness, efficiency, legal and ethical manner in which they conduct procurements. They can be asked and should be able to explain at all times their way of operating.
- (d) *Exemplary behaviour*: government is expected to set an example, not only in terms of ethical standards but also in terms of efficiency and effectiveness of their own operations.

2 Internal demands:

- (a) Public organizations have to serve *many goals at the same time* (Murray, 1999). Not only may the organization itself have various internal goals (economic, e.g. cost efficiency, and managerial, e.g. delivery of services) at the same time, but on the same issue the general public which the organization is supposed to serve may have different goals (good sewage system, no road-works) as well and all of them may very well be conflicting on top of that (Callender and Matthews, 2002; Schapper *et al.*, 2006).
- (b) *Political goals* have to be taken into account. Officials may be elected on those goals and so they should be incorporated. But political goals tend to be very

broad and not well defined: reducing disturbances by youth may be done by building playgrounds, but the playgrounds may become meeting places for youth gangs. So a political goal may have many possible explanations and it is not clear which to use, and subsequently what to measure against (Premchand, 1993).

- (c) In public procurement there are *many stakeholders*: obviously these many stakeholders (e.g. citizens, taxpayers, electorate, elected officials, management, procurement officers) may have different objectives (Murray, 1999). But even if they share an objective their interests with that objective may conflict. Locating an obnoxious facility is an obvious example: everybody wants sewage water being treated, but please not in my living area ('not in my backyard'). In addition, because of this issue it is not quite clear how commonly used terms can be translated to the public domain. Total cost of ownership (TCO) requires the knowledge of 'who is the owner'. Depending on ownership, costs may or may not be involved in operationalizing TCO: in public safety costs for potential victims will be different from costs to the general public.

3 Demands originating from the context:

- (a) Public procurement is *budget driven*: it is the budget that (at least partly) determines what is procured. The organization can only spend what is in the budget; it is not easy to spend more than the budget; changing the budget requires a major organizational upheaval. And at the same time in many public organizations the budget for the following year is determined by the spend this year; thus underspending in one year may lead to a reduced budget the following year.
- (b) *Budgets are open*: the general public and the suppliers usually have access to departmental budgets: this changes the relations between buyers and suppliers considerably (Covington, 2006).
- (c) In the public sector there are usually many departments or layers of government that operate in *mutually dependent budget situations* (e.g. to keep somebody in hospital – paid from a national budget – or to provide extra care at home – paid from a local budget). But similar situations may arise out of two adjoining local departments being involved in the same case. Then it may be that sub-optimization is a consequence of these funding arrangements.
- (d) Public organizations have a specific *cultural setting*: many employees are somehow concerned with public interests, and that causes risk adversity and tedious decision-making processes (Johnson *et al.*, 2003).

4 Demands on the process:

- (a) Public procurement is bound to be executed within *strict limits imposed by legal rules and organizational procedures* at various levels, whether it is EU rules or local political choices (Murray, 1999). Sometimes even the rules and regulations are cumulative (international, national, local) or mutually contradictory or elusive. And some of these rules and regulations are quite extensive: the US Federal Acquisition Regulations contain some 1900 pages. It is not without reason that this area is sometimes referred to as 'a lawyer's paradise'. As we will see in the next section these legal demands frequently dominate the image and the activities in public procurement, even to the point where some

authors see this process difference as the determining characteristic of public procurement.

- (b) Establishing and engaging in *long-term relationships* with suppliers in public procurement is difficult because of these rules and regulations (Covington, 2006). This is cause for some concern, as the public sector by nature deals with some very important long-term investments (e.g. in infrastructure or industrial development).
- (c) In public procurement there is virtually no restriction from a competition point of view on *cooperating with other public entities*. As long as anti-trust laws are respected there are neither legal nor commercial reasons against cooperation. In fact there are very good reasons to cooperate both from the commercial point of view and to minimize process costs (Schotanus *et al.*, 2004; Schotanus and Telgen, 2005).

5 Multiple roles for the public organization itself:

- (a) Public entities are usually *large buyers* by themselves. They buy goods, services and works for their own organization but predominantly directly for the citizens they are expected to serve. The share of the national economy (as reflected in GDP) involved in public procurement may range from 10 per cent up to 80 per cent for some developing countries (Ssennoga, 2006).
- (b) By definition, public organizations are also governing bodies, so they buy the goods and services from suppliers that are citizens/taxpayers/electorate as well. That way the suppliers have a different and additional role to play towards these public buying organizations. And the buying organizations have to take these additional demands into account. In fact this situation is very similar to the well-known concept of *reciprocity* in purchasing: buying from a supplier that is buying from you. It is well known that this complicated relationship structure poses additional demands on the buyer–supplier interaction at both the policy and the operational level.
- (c) Finally, by its very nature the public sector itself at least to some extent *determines the rules and regulations* according to which it has to operate (e.g. access of foreign suppliers to markets in developing countries). In addition, part of the public sector controls and audits the application of these rules and regulations. As such the public sector is both a player and decision maker on the rules of the game, and is also a referee.

In summary it seems justified to state that public sector procurement is more complex than private sector procurement (Ahlstrom and Brege, 1999): all of the demands mentioned above are faced by public procurement practitioners in addition to those imposed on private sector procurement.

Public procurement is a challenging subject to work on and it should be developed further to deal adequately with these complexities (Telgen, 2002; Vadiya *et al.*, 2004).

Stakeholders and conflicting interests in public procurement

Basically public procurement is required to balance a number of different interests.¹ First, of course, it is in the interest of the public organization to acquire the materials or services needed. But at the same time the suppliers have the interest of continuity of

their organization or the interest of profit making for their shareholders. These interests are called *primary interests*. They exist both in the public and the private sector alike.

Secondary interests are those interests that go beyond the contract at hand. They exist for both the public body and the supplier. Examples for the supplier include the possibility to gain experience through the job, building a reference list, increasing market share and so on. For the public organization as the buying party the secondary interests may involve issues such as innovation and job creation. In these secondary interests there is a difference between public sector procurement and private sector procurement: in private sector procurement the secondary interests of the buying organization are obviously quite different and generally not related to any public interest. In the public sector, procurement may be used as a lever of broader government policy implementation – examples might include using health spending to improve local health economies, or using education spending to deliver educational community endeavours.

Then there are two more interests that are related to the process in public procurement. The first is a joint interest of buyer and supplier and that is the interest to keep the transaction costs of the process at a minimum: *process interest*. Again this is the same in private and public sector procurement.

Finally there is the *competition interest*: it is in the interest of the public organization and the suppliers as well (to some extent at least) to have competition and to make sure the competition is fair. This interest is related to issues such as transparency and non-discrimination. This competition interest is not quite the same in the public and private sectors. Apart from being a participant in this competition, the public sector is also one of the key determinants of how this competition is organized and executed.

We have already stated that these different interests should be balanced. Decisions to further one of these interests may hamper pursuance of another. The distinction between these different interests may serve to recognize that in many countries and jurisdictions in both the developed and the developing world there is strong focus on competition interests (Jansen, 2006). Many rules and regulations (e.g. EU tendering rules, GPA) are focused on ensuring open and fair competition, and place less emphasis on either an efficient procurement process or a good result in terms of primary and secondary interests.

Developments in public procurement

Public procurement internationally exhibits major differences in the way it is organized, the way it operates and in terms of stage of development. From limited initial research, the authors observed some fundamental differences between countries in the way they organize their public services; these differences impact on purchasing and supply undertaken to support these services. For example, it was noted that there is a substantial impact on purchasing and supply arising from factors such as different organizational structures for public sector services, different regulatory, legislative and funding arrangements, and different cultures.

Whereas the situation in public procurement differs across countries and jurisdictions, any situation is just a snapshot in the development of the public procurement function over time. The path this development follows is a result of internal (from the people involved, from within the organization) and external pressure (from the general public, the press or even the professional body) (Smith-Gillespie and Wittig, 1999). The development itself may be a continuous professionalization following a certain pattern

or the result of sudden changes possibly associated with changes in government, legislation or in the staffing of the public procurement function itself. These sudden changes are hard to classify or predict. The continuous development does not follow exactly the same path in all public bodies, but a general pattern is believed to be discernible. Many authors have suggested that very similar patterns occur as a sort of natural development. Here we provide a seven-stage framework that builds on those provided by Veeke (1992), Sykes (see Chapter 23) and Harland *et al.* (2006).

In a first stage (*sourcing and delivering goods and services*) the main issue is to obtain what is demanded by users in the right quantity at the right time at the right place: availability is the objective. Here the public procurement function merely serves others in the organization. The public procurement function is reactive and its duty is operational in nature.

In a second stage (*compliance with legislation/regulation*) the main issue is to prevent fraud and corruption. In addition to serving members of the organization, the public procurement function is concerned with doing this in such a way that the funds are used for what they are intended for. It is still reactive, but now not only the result (availability), but also the process is important.

In the third stage (*efficient use of public funds*) the focus shifts to not spending more than required or getting the most for a fixed amount of money, in addition to goals of the previous stages. Now the public procurement function is concerned with getting ‘a bigger bang for the buck’. The commercial aspects enter the scene, even though the attitude is still reactive.

In the fourth stage (*accountability*) the public procurement function’s main issue shifts towards being able to explain (to the legislature, the general public, the press) that it is doing its job well: required items are there, there was no fraud and we did get a good price. In order to be able to do that the process has to be well designed and well executed. So in addition to the elements of previous stages, transparency of the process becomes important.

In the fifth stage (*value for money*) the scope is broader than before. It is not only cost (or cost vs. quality) that is important in public procurement, but also the value that the items and services procured contribute to the organization. The focus starts to change from reactive to proactive, but the main objectives are still internally oriented.

In a sixth stage (*supporter of broader government policy objectives*) the public procurement function is contributing to the goals of the public sector organization. As such it starts to have an external role as well. It is seen as a supporter of change/reform; it is aiding policy delivery. What that policy is may vary across public bodies and over time. Based on Martin Sykes’ analysis (see Chapter 23) we suggest that public procurement may contribute to the following policy areas:

- Job creation and employment (e.g. by setting up purchases in such a way that jobs are created or requiring suppliers to use previously unemployed people to supply their goods or services (Erridge, 2006)).
- Strengthening the industry (e.g. by offering long-term contracts).
- SME/regional involvement (e.g. by splitting up orders into smaller lots so that smaller companies can participate in competing for these smaller lots).
- Diversity: favouring various groups of suppliers (minorities, disabled, women, local firms). In this area also the question of opening up local markets for foreign competitors (Ssenoga, 2006) is very important.

- Stimulate innovation (e.g. by asking for innovative products or innovative processes).
- Sustainability and environment (e.g. by requiring or favouring sustainable and environmentally friendly products or production processes).
- Development aid: using public procurement to support developing countries by favouring suppliers or products from those countries.

The final stage (*deliverer of broader government objectives*) is the one where public procurement takes the lead in economic/social change, and has the full responsibility for delivering policy. Good examples of this include aspirational policy change, such as the black economic empowerment policy in South Africa favouring public spending with black-owned suppliers, and the US federal government spending with minority SMEs. It is feasible that procurement could be responsible for and deliver some of the policy areas listed in stage 6 such as:

- Strengthening the industry (e.g. by offering long-term contracts).
- SME/regional involvement (e.g. by splitting up orders into smaller lots so that smaller companies can participate in competing for these smaller lots).
- Diversity: favouring various groups of suppliers (minorities, disabled, women, local firms).
- Development aid: using public procurement to support developing countries by favouring suppliers or products from those countries.

Conclusion

This book reports the findings of an international research study on public procurement involving senior government practitioners and leading management academics meeting to examine and analyse case studies on reform of procurement from their countries. The main findings of the study were some marked differences in the degree of alignment of public procurement strategy and government policy present, with some territories exhibiting close alignment and proactive use of public procurement as a lever of reform (i.e. at stages 6 or 7), and others with public procurement in earlier stages. But all of the cases exhibited an unprecedented drive towards improving the public procurement function, first to provide cost efficiency, but foremost to deliver broader government objectives and support broader government objectives. This is a gigantic task for public procurement, but one that professionals involved in this area are proud to contribute to.

Note

1 This paragraph is based on Jansen (2006).

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