

Procurement Monitoring Report of the Netherlands

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Management summary

This report, which gives an account of the Netherlands' fulfilment of its monitoring obligations under articles 83 and 85 of Procurement Directive 2014/24/EU, discusses a broad range of subjects relating to public procurement. Since the implementation of the new directives in the Dutch Public Procurement Act 2012 (*Aanbestedingswet 2012*), a lot of effort has been put into reviewing and improving public procurement practices. Among other things, research has been performed on SME participation and administrative burdens. The outcomes of these evaluations gave rise to a project called *Beter Aanbesteden* (Better Public Procurement). This project resulted in an 'Agenda of Actions', which was recently presented, in which contracting authorities together with businesses and other stakeholders have formulated concrete actions to improve procurement practices.

The selection of topics addressed in this report is based on the template provided by the European Commission. Public procurement is sometimes used to achieve certain strategic policy objectives, such as environmental goals, social responsibility and innovation. In this report we discuss the state of development of these policy objectives as they relate to public procurement, while keeping in mind that these subjects do not necessarily play a role in all procurement procedures.

Some of the findings in brief:

- In 2015 an independent research firm was asked to calculate the estimated total value of all procurement procedures both above and below the EU thresholds within the Netherlands. It turns out that the total value of Dutch public procurement is about €73 billion per year. Of this amount, 64% concerns procedures below the EU thresholds. In addition, the distribution of procedures in terms of contract values was analysed for the year 2017 with reference to a different dataset. The analysis shows no unusual bunching of contracts below the threshold values.
- In the Netherlands, there are several procedures and legal provisions to avoid fraud and corruption in public procurement. Besides specific provisions in the Dutch Public Procurement Act, there are rules on the integrity of civil servants. In addition, the bribery or attempted bribery of civil servants is punishable by law. Quantitative indicators show that certain procurement procedures only received one bid or there was no prior publication of a call for competition. This does not mean that fraud was committed or corruption took place in these cases. In general, there are many possible legitimate reasons why only one bid may have been received or no prior call for competition was published. To ensure that legitimate reasons are not adduced in cases where they do not apply, proper control mechanisms must be in place both within the organisation of the contracting authority itself and independently of it.
- This report also contains a chapter on the most commonly asked questions about public procurement and its application. This chapter is based on an assessment of the questions received by the Dutch Public Procurement Expertise Centre (PIANOo) and on non-structured interviews with its legal experts. For example, the ESPD, the 'light regime' for health services, and the relationship between procurement and grants are topics about which questions were asked in 2017.
- The direct and indirect participation of small- and medium-sized enterprises (SMEs) in public procurement has received a lot of attention from the Dutch government in the last few years. In 2015, extensive independent research was done on SME participation. This research showed that about 69% of tenders received after calls for competition for procedures above the EU thresholds came from SMEs. SME participation will be regularly monitored in the future and will continue to be a major point of interest on the policy agenda.

The continuous improvement of procurement practices remains a priority for the Dutch government as a whole and the central government in particular. As this report shows, a lot has already been achieved in this regard, especially in the last few years. Although new challenges will always arise and will have to be addressed, this does not diminish the improvements already made.

1. Introduction

1.1 About this report

This report gives an account of the implementation by the Netherlands of the monitoring obligations laid down in articles 83 and 85 of the Procurement Directive.¹ In this report, you will find information on the total value of procurement in the Netherlands, the level of participation by small- and medium-sized enterprises (hereafter: SMEs), the adoption of socially responsible procurement practices and other strategic procurement policy goals.

In recent years a lot of research has been done on public procurement in the Netherlands. Issues such as SME participation, administrative burdens and the clustering of contracts have been extensively studied over the last few years. In addition, the regular monitoring of subjects like clustering and SME participation is envisaged in the future.

Whenever possible, existing quantitative data based on independent research was used in the preparation of this report. Where such research was not available, data was collected from TenderNed. TenderNed is the Dutch central government's online tendering system, maintained by the Dutch Public Procurement Expertise Centre PIANOo (hereafter: PIANOo). All contracting authorities are obliged – as a minimum – to publish their contract notices and contract award notices on TenderNed if the value of the contract is equal to or exceeds the EU threshold values. Contracting authorities can publish documents related to contracts below the thresholds on a voluntary basis. TenderNed is therefore the most complete database on public procurement in the Netherlands.

The qualitative data used in this report is based on an analysis of questions received by PIANOo, mainly from contracting authorities, as well as an overview of case law from 2017. This analysis was supplemented with non-structured interviews with legal experts at PIANOo and policy specialists at several ministries. The most interesting trends to emerge from these analyses were identified and are presented in this report.

1.2 About the authors of this report

This report was written by policy advisers of the Ministry of Economic Affairs and Climate Policy of the Netherlands. In order to obtain the required information, we sought contributions from a number of colleagues at other ministries and governmental organisations, for which we are very grateful. We used the template provided by the European Commission as a guide for the information to be collected. This report represents the final product of our combined efforts.

¹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, OJ L 94/65 ('the directive').

2. Data

2.1 About the quantitative data used

Most data in this report was extracted from the TenderNed database.² TenderNed is the Dutch government's online tendering system and is maintained by PIANOo. PIANOo is part of the Dutch Ministry of Economic affairs and Climate Policy. All contracting authorities are obliged to publish their contract notices and contract award notices on TenderNed if the value of the contract is equal to or exceeds the EU threshold values. The publication of documents relating to contracts below the EU thresholds is voluntary.

2.2 Procedures above EU thresholds

The dataset used does not include all procurement procedures conducted in the Netherlands for the year 2017. Contracting authorities can choose between different platforms when conducting a procurement procedure. TenderNed is the platform provided by the central government, but there are also commercial alternatives (known as *T-senders*). If another platform is used, the contract notices and contract award notices must still be published on TenderNed. About 66% of all procurement procedures in the Netherlands are conducted on TenderNed. Consequently, in all other cases (about 34%) the procedure is conducted on another platform and only the contract notice and contract award are published on TenderNed. Only the data from procedures that are conducted in full on TenderNed has been used in compiling this report. The dataset covers about 66% of all procedures above the EU thresholds. There is chosen not to use data from procedures that have been performed on third-party platforms. For these procedures, only the contract notice and the contract award notice are imported into TenderNed, through an automatic link established between the platforms. However, underlying data on e.g. strategic or social considerations within these procedures is lacking. To prevent this missing data from skewing the results, these third-party procedures have been left out of the report.

2.3 Procedures below EU thresholds

In the Netherlands, there is no obligation to publish contract notices and contract award notices in a central database for procedures below the EU thresholds. However, contracting authorities are free to make use of TenderNed to publish the documents relating to such procedures, and often do so. Therefore, some data does exist within TenderNed on procedures below the thresholds which can be used as an indication of overall trends.

2.4 Data analysis

After the raw data had been selected as described above, the data was further filtered by experts from TenderNed using a Business Intelligence tool from SAS Visual Analytics. For some data, additional algorithms were built to search for specific CPC codes and search terms.

2.5 Data sources

Most data from TenderNed is publicly available.³ Some data is restricted as it contains sensitive information which cannot be made publicly available also because of privacy reasons. Both types of data have been used in preparing this report.

² For more information about TenderNed see: <https://www.tenderned.nl/cms/english>.

³ Available on: <https://www.tenderned.nl/cms/english>.

3. Information on monitoring and reporting bodies

3.1 General information about the Dutch legal system

The Netherlands is a decentralised unitary state, in which the decentralised government bodies (provinces, municipalities and regional water authorities) have extensive powers and autonomy to regulate their own internal affairs. There are 12 provinces, 380 municipalities (as of 1 January 2018⁴) and 21 regional water authorities.⁵ Additionally, there are six overseas entities, which have special legal status and enjoy varying degrees of autonomy within the Kingdom of the Netherlands. However, they are not part of EU territory and therefore not formally subject to EU rules.⁶

Key principles within the Dutch legal system are the principles of subsidiarity and autonomy. This means that decentralised government bodies enjoy a great deal of autonomy, including the power to adopt their own legislative acts and collect their own taxes within their respective territories. Furthermore, each tier of government has its own financial control, exercised by local representatives and auditing bodies. A substantial number of policy areas are organised at the local level so as to bring decision-making as close as possible to citizens.

The executive bodies of municipalities, provinces and water authorities are monitored by councils elected by local citizens. There are also financial auditing bodies, which check financial expenditure (including procurement decisions). Furthermore, all activities of municipalities, provinces and water authorities are subject to review by the courts, under either administrative or private law.

At the central level, the Netherlands has a bicameral system: the government is monitored by the House of Representatives and the Senate (together, these two houses are called the 'States General'). The House of Representatives is directly elected by Dutch citizens. The Senate is indirectly elected. Members of the two houses usually belong to political parties. Since no party ever commands a majority in either house, Dutch governments are always coalitions of multiple parties. It is laid down in the Dutch Constitution that the members of the States General represent the entire population of the Netherlands and that they are not obliged to vote according to their party line.

3.2 System for monitoring and control of public procurement

Procurement decisions are made by several bodies. Central government, municipalities, provinces, water boards and other bodies governed by public law (to the extent that, like public utility operators, they exercise public powers) are considered to be contracting authorities that must procure goods, works and services in accordance with the Public Procurement Act.

Government bodies, acting in their role as contracting authorities, are monitored by their respective representative bodies (e.g. local councils) and by internal or external auditing bodies. Other bodies governed by public law may not have a representative body of this kind that is directly elected by the population, but they always fall under the political responsibility of a body headed by elected officials. Also, they are audited, for example by private accountant firms. Therefore, each contracting authority is subject to political and financial control.

Furthermore, all procurement decisions are published.⁷ Thus, any concerned party can take note of the decisions and take action if necessary. All contracting authorities are required under the

⁴ <https://www.cbs.nl/nl-nl/onze-diensten/methoden/classificaties/overig/gemeentelijke-indelingen-per-jaar/indeling%20per%20jaar/gemeentelijke-indeling-op-1-januari-2018>

⁵ <https://dutchwaterauthorities.com/about-us/> At the time of writing, the website erroneously gives two different figures (21 and 22) for the total number of regional water authorities. However, the Dutch version of the website gives the correct number (21).

⁶ https://ec.europa.eu/europeaid/regions/octs_en

⁷ Except in relation to procurement procedures where the EU Procurement Directives permit the contracting body not to publish the decisions.

Procurement Directives to set up their own complaints office, which is the first port of call for concerned parties who wish to make a complaint either during the procurement procedure or after it has ended.

Public procurement in the Netherlands is a part of the pre-contractual system and therefore falls within the scope of private law. This means that any appeal against, for example, award decisions, must be brought before the civil court. If necessary, temporary injunction proceedings can be used as a way of halting the start of a contract. They are therefore frequently used in public procurement cases. Litigation can take place in three instances, not including the European court.

Besides the civil courts, there is a special adjudicating body which has been set up specifically to handle public procurement proceedings: the Commission of Public Procurement Experts (*Commissie van Aanbestedingsexperts*). This independent and impartial body mediates, on the basis of a complaint, between parties involved in a procurement conflict, and issues non-binding, authoritative advice. It comprises three leading legal experts, and whenever necessary they can seek advice from a number of practitioners. In the first four years of its existence, from 2013 onwards, the Commission of Public Procurement Experts has received a total of 346 complaints. In 199 of those cases, this resulted in its issuing a non-binding advisory opinion. Other possible outcomes include a complaint being deemed inadmissible or being withdrawn after initiation of the complaint procedure.⁸

Another important body in the Dutch procurement system is PIANOo. PIANOo provides guidance to contracting authorities on procurement related subjects, both on its own initiative and in response to questions from contracting authorities. For example, on its website (www.pianoo.nl) it offers a large number of guidance documents that contracting authorities can use to avoid infringing the law and to steer clear of bad practices. By sharing knowledge and highlighting best practices, PIANOo contributes to enhanced professionalism within Dutch public procurement.

Primary responsibility for the Procurement Act, and the regulations directly related to it, rests with the Dutch Ministry of Economic Affairs and Climate Policy. It is therefore this ministry which incorporates the Procurement Directives into national law and fulfils reporting obligations under these directives. However, responsibility for public procurement in general, especially in so far as it is used as a means to achieve secondary policy goals, is shared among many ministries and decentralised bodies. These bodies or their representatives were consulted in the drafting of this report.

⁸ The latest statistics are published (in Dutch) by the Commission of Public Procurement Experts at <https://www.commissievanaanbestedingsexperts.nl/over-ons/rapportages-en-evaluaties>.

4. Estimated aggregated total value of procurement below thresholds

4.1 Total value of Dutch public procurement

As stated before, there is no obligation in the Netherlands to publish contract notices and contract award notices in a central database for procedures below the EU thresholds. For this reason, the total value of public procurement below the EU thresholds can only be estimated. In 2016, an extensive study to produce estimates for 2015 was conducted by independent researchers. Their findings are publicly available.⁹

The researchers' results concerning the distribution of procedures above and below the EU thresholds are presented in table 1 below.

In addition, TenderNed holds data on the value of procedures below the EU thresholds. Because publication on TenderNed of the documents relating to these procedures is voluntary, this data is not complete. The data presented below is therefore based solely on the study conducted in 2015, since it gives a more complete picture of procedures conducted below the EU thresholds.

Table 1: Estimated total value of Dutch public procurement (source: Significant)

	Below EU thresholds	Above EU thresholds
Amount (in billions)	€46.9	€26.4
Percentage	64%	36%

4.2 Distribution of the values of procedures below and above the EU thresholds

The annex includes histograms showing the values of the procedures for works, goods and services separately. Social and other specific services are presented separately from other types of services, as they can be procured through the use of a special 'light regime'. Unlike in the case of table 1, TenderNed data was used to prepare the histograms covering the procedures below EU thresholds. It is therefore important to note that this data only covers information published on TenderNed on a voluntary basis and can therefore only give an indication of the distribution of procedures across different values of contracts.

These histograms show that the procurement procedures below the EU thresholds reported by contracting authorities on TenderNed are not concentrated at just below those thresholds. In this context, particular attention should be paid to the Proportionality Guide (*Gids proportionaliteit*), which contains guidelines on procurement below the EU thresholds as well as guidance on selecting the most suitable procurement procedure for contracts falling within specific values. A gradual change in the procedures followed across different values is therefore to be expected.

⁹ <https://www.rijksoverheid.nl/documenten/rapporten/2016/09/08/het-inkoopvolume-van-de-nederlandse-overheid> (in Dutch).

5. Commonly asked questions and legal uncertainties

5.1 General information

This chapter is based on an analysis of questions received by PIANOo, both from contracting authorities and to a lesser extent from businesses, as well as non-structured interviews with experts from PIANOo and case law from 2017. We selected a number of interesting topics to emerge from this analysis, which we discuss below.

5.2 Topics

ESPD

Ever since its introduction in the new Procurement Directives, the European Single Procurement Document (ESPD) has been a source of confusion to contracting authorities in the Netherlands. This confusion tends to centre on the differences between the new document and the old national form it replaced, and how it should be used in procedures. Confusion of this kind can have serious consequences, especially for SMEs. Mistakes made when filling in the form can result in exclusion from the procurement procedure.

The 'light regime' for healthcare services

Since 2015, the procurement of home care services and youth care falls within the remit of municipalities. If the value of the contract for these services exceeds €750,000, the special regime for social and specific services may be used in their procurement. Because this special procedure is a new addition to the Procurement Act, its scope and manner of application, as well as the scope it still provides for interpretation, have up to now prompted questions among some contracting authorities.

Strategic procurement

In the Netherlands, public procurement is considered to be an important tool in fostering progress towards a greener, more sustainable, circular economy. This raises the question for contracting authorities as to how they can incorporate either requirements or criteria concerning strategic procurement in their procedures. For more information on this issue, please refer to the sections in this report on strategic public procurement.

Substantial modifications

Another question which is a source of legal uncertainty is whether a change to a contract constitutes a substantial modification which requires a new procurement procedure. This issue mainly arises in legal proceedings where it is used by economic operators as grounds for claiming that a contracting authority was wrong not to start a new procurement procedure for a modified contract.

Choice of procedure

Among contracting authorities which may not be especially familiar with the Procurement Act, a common source of confusion is what type of procedure they should use. This confusion arises in respect of contracts both with a value above and below the EU thresholds. The Proportionality Guide contains guidelines on the selection of procedures with reference to contract values.

6. Fraud, collusion and conflicts of interest

6.1 Legal provisions

The Procurement Act implements the Procurement Directives, including the provisions on fraud, corruption and conflicts of interest. Section 1.10b of the Procurement Act, which is in the general part of the Act that applies to all procurement procedures regardless of the value of the contract, reads as follows (unofficial translation):

Section 1.10b

- 1. A contracting authority or a public utility operator must take appropriate measures to effectively prevent, identify and remedy fraud, favourable treatment, corruption and conflicts of interest during a procurement procedure, to avoid any distortion of competition, ensure the transparency of the procedure and guarantee the equal treatment of all economic operators.*
- 2. The concept of conflicts of interest as referred to in subsection 1 applies at least to any situation where personnel of the contracting authority, the public utility operator or a procurement service provider acting on behalf of the contracting authority or the public utility operator that is offering a supplementary procurement activity on the market, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure, have a direct or indirect financial, economic or other personal interest which might be perceived as compromising their impartiality and independence in the context of the procurement procedure.*

The Procurement Act also contains other provisions which are relevant in this context. For example, section 2.51 regulates the involvement of economic operators in the preparation of the procurement procedure. Besides the Procurement Act, there are rules governing integrity, for example the general rules on integrity for civil servants (as laid down for example in the Municipalities Act (*Gemeentewet*) and the Central and Local Government Personnel Act (*Ambtenarenwet*)). Also, bribery or attempted bribery of civil servants is a criminal offence. If provisions on integrity are infringed, concerned parties can take legal action against the infringing contracting authority.

Besides statutory provisions, there is also soft law which contains guidance on the prevention of integrity violations. A good example is the *Modelaanpak basisnormen integriteit*¹⁰ (2006), which mandates that every government body must implement and carry out an integrity policy which at least conforms to the minimum standards set out in that document, including on public procurement. By implementing and actively carrying out an integrity policy which includes procurement provisions, the main sources of fraud, corruption and conflicts of interest within a contracting authority can be eliminated.

6.2 Guidance

Several agencies have been set up specifically to give guidance to decentralised authorities, including on the implementation of the provisions on integrity by contracting authorities and public utility operators. These include, for example, the Association of Dutch Municipalities (*Vereniging Nederlandse Gemeenten*) and *Europa Decentraal* (a knowledge centre for local and regional authorities for queries concerning European law). In addition, the central government website contains detailed information on preventing fraud and corruption within government in general and in procurement procedures in particular. The most detailed treatment of the provisions on preventing fraud and corruption within procurement can be found on the PIANOo website.¹¹ PIANOo collects and presents information on the prevention of integrity violations on its website, gives advice and answers questions on this matter.

¹⁰ <https://www.rijksoverheid.nl/onderwerpen/kwaliteit-en-integriteit-overheidsinstanties/documenten/brochures/2005/09/26/modelaanpak-basisnormen-integriteit>.

¹¹ <https://www.pianoo.nl/themas/integriteit/integriteit-toegelicht> and the other pages linked from there (in Dutch).

6.3 Quantitative indicators

It is difficult to quantify the risk of fraud, collusion, corruption and conflicts of interests. It depends on a lot of factors, one of which is the type of procedure. Performing a risk assessment looking at certain types of procedures is one way to analyse the risk of fraud and corruption.¹² Procedures in which only one bid was received could indicate a higher risk, but this is not necessarily the case. It should be noted that there are good reasons why procedures might receive only one bid, for example because there are very few business that could provide the specific good, work or service.

Table 2 provides more insight into the cases in which a call for competition resulted in only one bid. It also shows how often this has happened per contracting authority (in percentage terms).

Table 2: Cases in which a call for competition resulted in only one bid in 2017 (Source: TenderNed)¹³

Percentage %	Contracting authorities	Total number of awards	Number of awards which received only one bid
0-10	62	336	9
10-20	16	134	20
20-30	19	207	45
30-40	33	246	82
40-50	5	68	14
50-60	2	45	10
60-70	5	38	22
70-80	2	77	48
80-90	1	8	7
90-100	2	7	7
Total:	147	1166	264

The table shows for example that there were 16 contracting authorities that in 10% to 20% of all procedures received only one bid. These contracting authorities conducted a total of 134 procedures in 2017, of which 20 received one bid. It can be concluded from table 2 that there are relatively few contracting authorities that regularly receive one bid. For the majority of contracting authorities this happens only in a maximum of 20% of all their procedures. No research has been done on individual cases, so specific conclusions on fraud and corruption cannot be drawn.

Table 3 shows the number and distribution of buyers that conducted a procedure without publication of a call for competition as well as the number and distribution of those procedures.¹⁴ It also shows, as in table 2, the percentage of cases in which this type of procedure was used per contracting authority. It should be noted that, for technical reasons, a procedure is sometimes recorded as having been conducted 'without a call for competition' while in reality there was a call for competition. For example, if an award is published within a dynamic purchasing system, this is done without prior publication of a call for competition. However, a call for competition was made at the time the dynamic purchasing system was set up.

¹² See: An Objective Corruption Risk Index Using Public Procurement Data <https://link.springer.com/article/10.1007%2Fs10610-016-9308-z>.

¹³ Only contracting authorities with three or more procedures (above the EU thresholds) in the reporting year (2017) are included in the dataset used for table 2.

¹⁴ Only procedures (above the EU threshold) that resulted in at least one contract award and buyers who conducted at least three procurement procedures over the year 2017 are included in the dataset.

Table 3: Negotiated procedures without publication of a prior call for competition in 2017 - distribution of the buyers and procedures (Source: TenderNed)

Percentage	Contracting authorities	Number of procedures without a call for competition
0-10	179	19
10-20	19	37
20-30	11	48
30-40	12	39
40-50	6	24
50-60	2	10
60-70	5	49
70-80	1	4
80-90	2	13
90-100	3	11
Total:	240	254

Table 3 shows for example that there were 19 contracting authorities that, in 10% to 20% of all procedures they conducted, used a negotiated procedure without prior publication of a call for competition.

7. Participation of small and medium-sized enterprises

7.1 General information

As will be shown with reference to the relevant data later in this chapter, the participation of SMEs is already quite high in the Netherlands. Nevertheless, SME participation continues to be an important policy objective. A distinction can be drawn between the *direct* participation of SMEs in procurement procedures as bidders, and *indirect* participation, for example through subcontracting. The information presented below focuses on the direct participation of SMEs.

The main perceived constraint on SMEs' direct participation in procurement procedures is the high burden in terms of cost, time and effort. The burden for SMEs can be considerable, especially when compared with that for large enterprises.¹⁵ For this reason, contracting authorities are encouraged to make their procurement procedures as accessible as possible to SMEs.

An important measure to facilitate SME participation in procurement procedures is the prohibition in the Public Procurement Act on the unnecessary clustering of contracts (section 1.5). Under this provision, contracting authorities are obliged to consider the structure of the relevant market and the effect of clustering on SMEs' ability to submit a bid. If a contracting authority decides to cluster contracts, it has to give an adequate explanation for its decision. This does not of course relieve contracting authorities in any way of the obligation to take the sum of the values of similar contracts into account when deciding whether EU threshold values are being exceeded. Besides this, the mandatory Proportionality Guide strengthens the position of SMEs by giving detailed explanations of the proportionality principle.

Moreover, PIANOo provides contracting authorities with examples of measures they can take to improve SME participation in a tender procedure, e.g.:

- Organise frequent local meetings with SME representatives.
- Provide SMEs with specific information about the procurement process (while respecting the principle of transparency).
- Make SMEs aware of the possibility of forming a group with other enterprises (e.g. a consortium) to participate in procurement procedures.
- Explain ways of paying subcontractors directly.

Furthermore, the project *Beter Aanbesteden* (Better Public Procurement), which was started in 2016 by the Dutch government, encourages SMEs to work with contracting authorities to identify constraints and develop concrete actions to improve public procurement practices. The constraints and concrete actions have also been discussed at national level, including with various SME industry organisations. This process was largely completed in 2017 and the resulting Agenda of Actions was presented in February 2018. One of the actions in this Agenda focuses on the possibilities open to contracting authorities to communicate with businesses in general and SMEs in particular.

7.2 Sources

The most up-to-date information concerning measures taken in support of SME participation can be found on the PIANOo website: <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/opportunities-for-smes>. This includes, but is not limited to, the measures described in the section above.

More information is available from other sources such as the industry organisation for SMEs, MKB Nederland,¹⁶ but this is not primarily aimed at contracting authorities.

¹⁵ For more information about SME participation see: <https://www.rijksoverheid.nl/documenten/rapporten/2015/07/08/effecten-van-de-aanbestedingswet-2012> (in Dutch).

¹⁶ <https://www.mkb.nl/over-mkb-nederland/english>

7.3 Quantitative indicators

There has been extensive research into SME participation in the Netherlands. It was carried out as part of an evaluation of the Procurement Act, before the implementation of the new Procurement Directives.¹⁷ This evaluation showed that in the Netherlands, in 2014, 63% of all contracts above the EU thresholds were awarded to SMEs. Furthermore, 69% of bids that were received after calls for competition above EU thresholds came from SMEs. For national procedures below the EU thresholds, the numbers were comparable: 67% of the contract awards were won by SMEs and the percentage of bids received from SMEs was 75%.

¹⁷ See note 15.

8. Strategic procurement

8.1 General information

Strategic procurement is the use of procurement procedures to achieve certain policy goals that are secondary to the goals of procurement itself (i.e. the best quality for the best price). Within this category of policy goals, three subgroups can be distinguished: Socially Responsible Public Procurement, Procurement of Innovation and Green Public Procurement. In the following chapters these separate policy goals will be discussed in more detail. In the Netherlands however they are often grouped together and known as *Maatschappelijk Verantwoord Inkopen* (hereafter: MVI).

A general description of the Dutch government's approach to strategic procurement over the last few years as well as its strategy for the years leading up to 2020 can be found in the Action Plan for Responsible and Sustainable Procurement by Governments.¹⁸ The information given in the following paragraphs can also be found in this document.

On Thursday 5 February 2015, a meeting on sustainability took place between the permanent parliamentary committee on infrastructure and the environment and the Minister for Infrastructure and the Environment. Both before and during the meeting the subject of sustainable procurement received considerable attention. The Minister for Infrastructure and the Environment made a commitment to draw up a sustainable procurement action plan with the Minister for Housing and the Central Government Sector and the Minister of Economic Affairs¹⁹ and to send it to the House of Representatives before the summer of 2015. This was to include detailed responses to the questions on sustainable procurement posed during the meeting. These questions concerned issues such as the organisation and promotion of sustainable procurement by local authorities and the establishment of a new monitoring system for sustainable procurement.

On 11 September 2015 the procurement action plan was submitted to the House of Representatives. This plan gives contracting authorities clear criteria and instruments for sustainable procurement. It is in line with the government's sustainability objectives, as set out in the Energy Agreement for Sustainable Growth, the Local Climate Agenda and the 'From Refuse to Raw Material' programme.

Another important initiative is the *Manifest MVI* (MVI Manifesto), which all contracting authorities may sign up to.²⁰ Each signatory commits to creating and implementing an Action Plan detailing their policy objectives and commitments with regard to the strategic use of public procurement to achieve certain sustainability goals.

¹⁸ <https://www.pianoo.nl/document/11858/action-plan-for-responsible-and-sustainable-procurement-by-governments-2015-2020>.

¹⁹ Recently the names of the ministries have been changed

²⁰ An up-to-date list of participants can be found at: <https://www.pianoo.nl/ondertekenaars-manifest-maatschappelijk-verantwoord-inkopen> (in Dutch).

8.2 Quantitative indicators for strategic procurement

TenderNed has built a special algorithm to obtain a better quantitative view of strategic procurement. The algorithm searches for specific terms in procurement documentation, in combination with CPC codes associated with strategic procurement.

Table 4 shows the results the data search.

Table 4: Number of strategic procedures in 2017 (source: TenderNed)

Total procedures	Strategic procedures	% strategic procedures	Total value of procedures (in millions)	Value of strategic procedures (in millions)	% value of strategic procedures
National procedures (below the EU thresholds)					
959	39	4.07%	€1,349.09	€97.86	6.95%
European procedures (above the EU thresholds)					
2538	225	8.87%	€9,593.11	€424.81	4.43%

It should be noted that the numbers presented in table 4 are only indicative. Because there is no obligation to document the fact that a procedure is a strategic procedure, the numbers given are estimates. The real number of strategic procurement procedures is likely to be somewhat higher. It should also be borne in mind that many procedures are not suitable for strategic procurement, especially in the case of services.

9. Socially responsible public procurement

9.1 General information

Socially Responsible Public Procurement (hereafter: SRPP) is an important part of procurement policy in the Netherlands. Government bodies take seriously their responsibility to create inclusive and healthy environments for citizens to live and work in. Incorporating social criteria into their procurement procedures enables them to work towards achieving this aim. So in a public procurement context they demand more from potential suppliers than compliance with labour law and social security obligations, going far beyond this bare minimum standard with a strong political and administrative focus on creating positive growth.

For example, procurement procedures may incorporate criteria related to Social Return on Investment (hereafter: SROI). This either obliges or encourages contractors to employ disadvantaged persons within the scope of the contract, enabling the latter to gain work experience and enter the workplace.²¹ It is up to the individual contracting authority to determine whether and, if so, how SROI will be incorporated into a procurement procedure, taking into account the individual circumstances. As indicated, SROI criteria are very often included in contracts, especially for services and works.

The 'Social Responsibility Standards' or 'Social Conditions' (*Internationale Sociale Voorwaarden*; ISV) are another form of SRPP.²² These standards, based on those of the ILO, the SDGs and the OECD Guidelines, promote international human rights and fair labour conditions through supply chain responsibility. They are mandatory for all central government contracts falling within certain predefined high-risk sectors and voluntary for all other contracting authorities.²³ The voluntary use of ISV among contracting authorities is increasing, and they are also being given more prominence in procurement procedures. The minimal way of using them is as contractual obligations, but there is an increasing interest in pilots²⁴ in which ISV are used as award criteria to distinguish businesses that are actively promoting human rights. The Dutch central government is supportive of these experiments and supports the sharing of experiences and best practices through PIANOo, conferences and seminars.

Finally, there is the possibility of reserving the right to participate in a procedure for sheltered workshops and other economic operators with the aim of integrating disadvantaged persons, as provided for in the Procurement Directives and implemented in the Dutch Procurement Act. Although this provision only applies to contracts with a value equal to or above the EU thresholds, its application to contracts below the thresholds is also possible as long as the relevant legislation and procurement principles are respected. As will be seen in the tables below, this procedure is not often used. One significant limiting factor is the scope of application of the term 'worker' in this context. Central government is therefore working with stakeholders to investigate any potential issues concerning the application of the procedure as well as the possibilities for setting up pilot projects.

One of the main factors in overcoming any remaining limiting factors is knowledge. This knowledge can be provided by both central government, for example through PIANOo or other similar

²¹ <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/social-return-on-investment-sroi>

²² <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/social-conditions-in-global-supply-chains>

²³ For ways to incorporate these conditions into the procurement process, see: <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/social-conditions-in-global-supply-chains-0>. See also the 'CSR Risk Check', which allows undertakings with an international supply chain to check the risk factors involved but also forms a useful tool for contracting authorities seeking an indication of applicable risk factors: <http://www.mvorisicochecker.nl/en>.

²⁴ See for example <https://www.pianoo.nl/inkoopsturing-op-mensenrechten-krijgt-stap-voor-stap-vorm> (in Dutch).

institutions, as well as through guidance by the Commission. However, such remaining limiting factors are very minor. As set out in this chapter, SRPP plays a very prominent role in procurement procedures in the Netherlands.

9.2 Quantitative indicators

Data on SRPP is fairly limited, as it is generally an aspect of procurement procedures rather than a procedure in itself. For example, many contracting authorities will incorporate social criteria into their procedures, but this will not show up in data. We do have the following information on contracts reserved for sheltered employment and sheltered workshops in 2017:

Table 5: SRPP within procurement above EU thresholds in 2017 (source: TenderNed)

Contracts valued above EU thresholds	
Type of procedure	Number of procedures
Total procedures	2538
Of which:	
Sheltered employment	0
Sheltered workshops	14

Table 6: SRPP within procurement below EU thresholds in 2017 (source: TenderNed)

Contracts valued below EU thresholds	
Type of procedure	Number of procedures
Total procedures	958
Of which:	
Sheltered employment	0
Sheltered workshops	1

9.3 Sources

The most relevant and up-to-date information on SRPP and the latest initiatives can be found on PIANOo's website. See for example: <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/social-return-on-investment-sroi> and <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/social-conditions-in-global-supply-chains>.

10. Innovation

10.1 General information

Innovative industries are an important part of the Dutch economy and its contributions to the global market. A major focus of the Dutch government is therefore on implementing policies which create a business environment that enables innovative businesses to thrive. One of the ways in which this can be achieved is through the strategic use of public procurement. The government can stimulate the production of innovative goods, works and services in certain sectors since it is one of the main buyers in the market. To do so, it must ensure that contracting authorities are properly equipped and capable of using public procurement to help achieve certain 'innovation goals'.

One of the main ways in which contracting authorities can help each other be properly equipped to achieve their innovation goals is through the sharing of information and experiences. By sharing their knowledge, procurement officials and their contracting authorities are better able to exploit the full potential of procurement to achieve their goals. A good example of ways in which contracting authorities help each other is the 'communities of practice' set up between them, which may cover a wide range of subjects.²⁵

If they are informed about the practicalities of procurement of innovation, contracting authorities can take steps to start sharing costs and risks between themselves as well as with the market. Not only will this allow the further development of knowledge and insight into the proper way of procuring innovation and, thus, of achieving innovation goals, it will also reduce the risk of coordination difficulties and thereby of 'first mover' risks.

The experts interviewed during the preparation of this report perceive that some of the focus within procurement policy and its practical application has shifted towards greater inclusion of qualitative criteria. This focus fosters the procurement of more efficient and effective innovative solutions. There has also been a move towards functional specification, which is also favourable for the procurement of innovation. The adoption of internal policies, design guidelines and norms and standards which allow for the use of these criteria is therefore quite important for the achievement of innovation goals.

Based on their own observations, contracting authorities that are successful in the procurement of innovation often have the following characteristics:

- sufficient support for bottom-up initiatives that require innovation (policy support, knowledge, finance);
- innovation and its ownership are at the core of the public organisation, not confined to a separate department;
- those responsible for policy development and implementation cooperate closely and extensively share insights on markets and (future) public needs, and learn from experiences to enhance their own practices.

10.2 Sources

The most recent developments within public procurement of innovation are set out on PIANOo's website at <https://www.pianoo.nl/en/public-procurement-in-the-netherlands/sustainable-public-procurement-spp>

²⁵ See for example: <https://www.amsterdameconomicboard.com/projecten/learning-community-circulair-inkopen> and <https://www.amsterdameconomicboard.com/projecten/community-practice-circulair-inkopen> (both in Dutch).

11. Green public procurement

11.1 General information

Green Public Procurement (or GPP) involves preventing or minimising any negative impact on and/or making a positive contribution to the environment. The Dutch government considers GPP to be of great value as a way of transitioning the economy towards a more sustainable model. In the past few years the government has therefore placed increasing emphasis on GPP. More and more contracting authorities are using their procurement procedures as a means to advance their green agendas. Central government has supported this development by providing guidance, information and support, as will be explained in this chapter. However, it should be noted that this enumeration of measures or developments relating to GPP is by no means exhaustive.

One of the main ways in which central government has provided guidance to contracting authorities wishing to make use of GPP is by means of very detailed environmental criteria documents.²⁶ These documents contain both minimum requirements and award criteria for a number of product groups that have a significant environmental impact. Application of the minimum requirements contained in the environmental criteria documents is mandatory for all procurement procedures conducted by contracting authorities connected to central government. Application by other contracting authorities is on a voluntary basis.

Systematic cooperation between contracting authorities enables them to share knowledge and experience with GPP as well as their insights into the latest product and market developments. However, only sharing information between contracting authorities is not sufficient: ongoing open and transparent communication with the market is key to facilitating the free flow of information. One way in which this can be done is by means of regular market meetings. Structural cooperation between contracting authorities can be an essential aspect of their green agenda, lessening the financial and administrative burden of their endeavours in this area.

Another way to encourage contracting authorities to adopt green procurement is by organising communities of practice (based on real pilots) for buyers to share best practices and discuss their experiences.²⁷ Such communities of practice are often organised through what are known as Green Deals²⁸ or in working groups. Central government usually takes an active role in promoting the sharing of information and best practices. By working together to find and share solutions to common issues, contracting authorities are encouraged to implement GPP in their procurement procedures.

As this chapter shows, there have been many developments in the field of GPP in the last few years. Building on this momentum, the focus of central government currently lies on the further development of experience with GPP by means of pilot projects. The government recognises that businesses need an incentive to switch to more sustainable alternatives. The government's buying power generates such an incentive. By exploring all the aspects involved through pilot projects, the needs of sustainable development on the one hand and public procurement and competition on the other hand can be properly balanced.

11.2 Sources

For further information, see: <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp/spp-themes/green-public-procurement-gpp>.

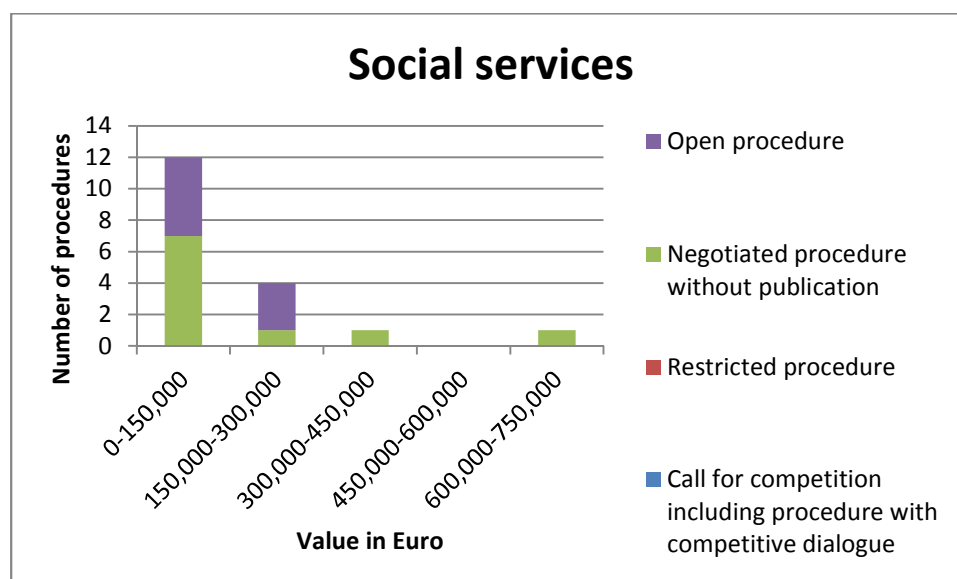
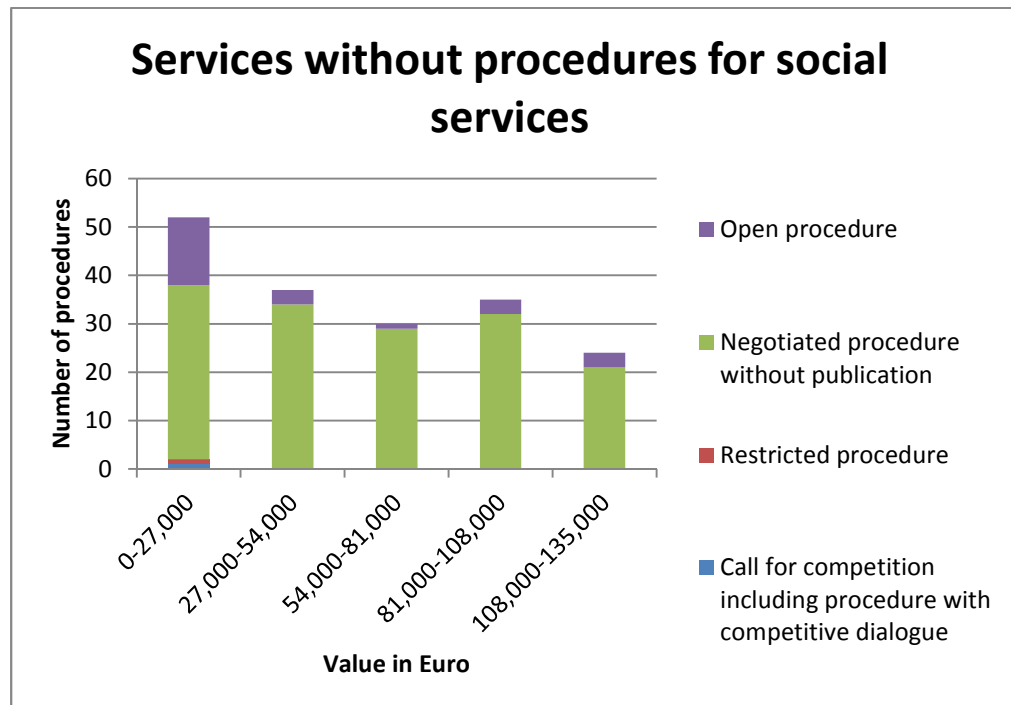
²⁶ <https://www.pianoo.nl/en/sustainable-public-procurement/environmental-criteria-sustainable-public-procurement>, based on the European GPP criteria and regularly updated.

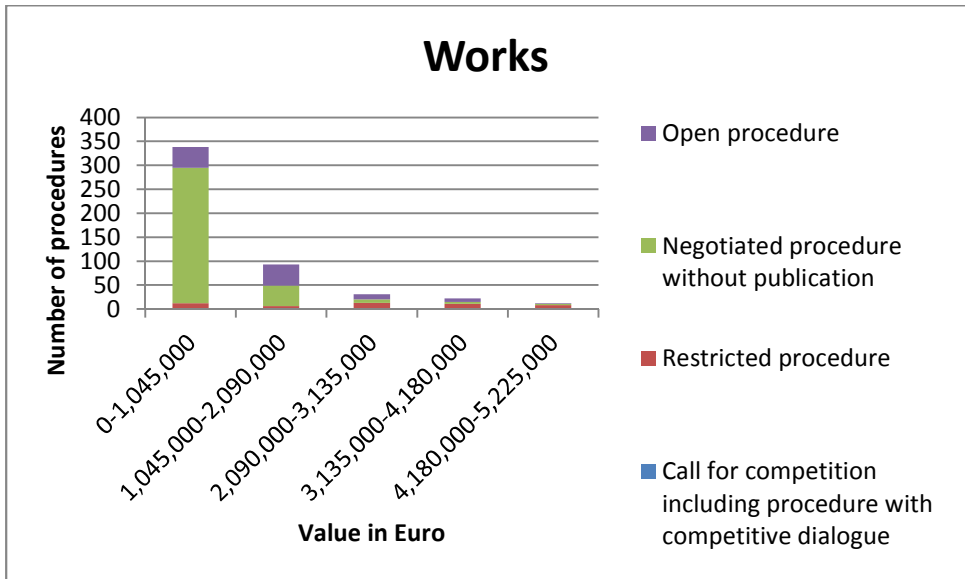
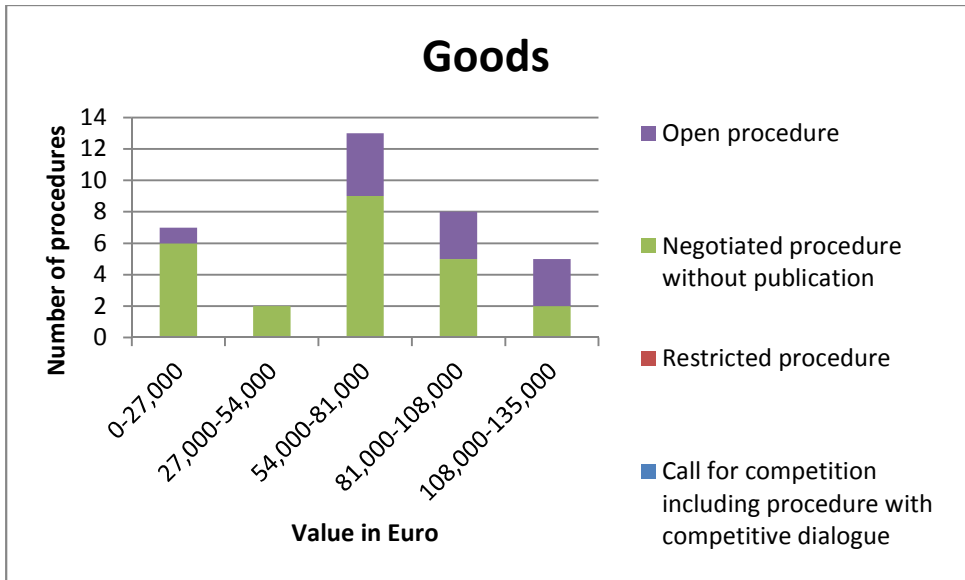
²⁷ See for example: <http://www.biobasedeconomy.nl/2017/03/07/community-of-practice-biobased-inkopen-aan-de-slag-met-biobased-inkopen/> (in Dutch).

²⁸ <http://www.greendeals.nl/english/>.

Annex 1

Distribution below threshold procurement in 2017 (source: TenderNed)





Distribution above threshold procurement in 2017 (source: TenderNed)

