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# HOW TO APPRAISE AND JUSTIFY PUBLIC PROCUREMENT NEEDS - GUIDELINES FOR THE PROCURING ENTITIES

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### Information about the Project

This paper has been prepared within a framework of the project “Support for Further Improvement of Public Procurement System in Serbia” which is funded by the European Union and implemented by a consortium led by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

The main purpose of the project is to support the strengthening and developing of a stable, transparent and competitive public procurement system in the Republic of Serbia in accordance with EU standards, including improved implementation of the public procurement strategic and policy framework for an effective and accountable public procurement system.

The results required from the project include:

- strengthened and further developed the strategic, legal and institutional framework for public procurement aligned with the EU legislation,
- improved implementation of regulations in area of public procurement in practice
- E-procurement platform developed and established and
- strengthened capacities and professional skills of the Serbian Public Procurement Office and other relevant target groups.





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## Introduction

The public administration depends on the range of goods and services to deliver its core services. These can range from rudimentary, 'run - off – the – mill', and low value items such as pens and paper to new construction works or high value and complex equipment, ICT services or technical advice. Since the public administration usually does not provide those goods or services and only in some cases may rely on its own resources<sup>1</sup> it needs to go to the market in order to obtain necessary goods, works and services. This process of acquisition is referred to as the public procurement. The public procurement can be explained as *"the whole process of acquisition from third parties (including logistical aspects) and covers goods, services and construction projects. This process spans the whole life cycle from initial concept and definition of business needs through to the end of the useful life of an asset or the end of a services contract"*<sup>2</sup>.

The public procurement process should be perceived as goal-oriented process with predetermined objectives, time limits, resource inputs, results and users of its results. All steps of the process should be consistent with the needs to be addressed and the results to be achieved. Having a clear goal may improve the value for money (see below the definition of this term) and may ensure a link between the purchase on the one hand and the achievement of administration policy and business objectives on the other hand.

Planning of public procurement involves actions taken by the public administration (henceforth 'procuring entities') in order to prepare public procurement process and subsequent conclusion and implementation of public contracts. Proper planning is crucial for successful conduct of the procedure and the implementation of a contract.

Planning of public procurement include:

- Determining the needs for public procurement,
- Anticipating the needed funds by endorsing the budget or financial plan, and
- Endorsing the public procurement plan that covers the dynamics for conducting procurement, a type of the procurement procedure to be applied, the estimated value of public procurement and other relevant elements.

Thus, carefully prepared procurement should aim to achieve:

- that users' needs are met, but are not exceeded (unnecessary exceeding those needs will result in higher costs for the public administration which will pay for something it does not really need),
- the best manner of purchase is chosen, considering the type of goods or service needed,
- the procurement project can be evaluated.

Unfortunately, a practice in the Republic of Serbia, like in many other countries, shows that little attention is dedicated to the very first element of the planning: appraisal and justification of the procurement

<sup>1</sup> For example, when the public administration has its own internal services for transport, catering, printing, copying and other services.

<sup>2</sup> 'Review of Civil Procurement in Central Government', Peter Gershon, 1999.





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needs. This stage of the procurement process is rarely, if at all, covered by national procurement legislations<sup>3</sup>.

Undoubtedly, this issue is looked at the by the auditors (see below for more details) who check whether the public institution has duly justified the procurement in terms of the quantity and specifications of works, goods and services needed and whether it has considered and properly compared the alternatives.

The purpose of these guidelines is to help procuring entities in better appraising and justifying their needs so they are in better position to demonstrate the purposefulness of public procurement when it is assessed by audit institutions (see below).

### Value for money in the public procurement

Public procurement is usually financed, in part or fully, with public funds, although use of those funds is not necessarily an element of the definition of public procurement<sup>4</sup>. The goal of economic operators (referred to also as 'suppliers') as providers of goods and services is to maximise their profit by selling their products and services for the highest price possible. In difference to suppliers, who usually operate on the open market and are subject to economic risks related to functioning of the market, the responsible persons on the side of the public administration do not spend in the public procurement their own, private funds, but the public funds ('taxpayers' money'). Thus, they do not suffer economic consequences of their decisions. Cannot go bankrupt in particular. Because of that they may be less motivated than economic operators to achieve the goals of public procurement.

However, due to the fact that public administration's activities are financed from taxpayers' money it is crucial that public funds are spent in responsible and purposeful way. The purpose of public administration, which in the case of public procurement is a buyer of goods or services and will be referred from here as 'the procuring entity', should be minimisation of costs of purchase by obtaining what is needed for the lowest possible price while ensuring that predetermined needs are duly taken care of.

Procuring entities need to buy goods and services of the right quality, at the most cost-effective price, in the most economic quantities, and ensure that they are available when needed. It is because a failure to meet any of these requirements can seriously affect procuring entity's ability to meet its objectives and outputs and ultimately to deliver services to citizens.

All public procurement of goods and services, including works, must be based on the principle of obtaining value for money.

'Value for money' means using resources effectively, economically, and without waste, with due regard for the total costs and benefits of an arrangement, and its contribution to the outcomes the entity is trying to achieve. **It should be underlined, though, that the principle of value for money does not necessarily mean selecting the lowest price but rather the best possible outcome for the total cost of ownership**

<sup>3</sup> The Public Procurement Law of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 124 of 29 December 2012, No. 14 of 4 February 2015 and No. 68 of 4 August 2015), henceforth the PPL deals, in accordance with its Article 1, among other issues also with the planning of public procurement.

<sup>4</sup> The PPL defines the public procurement public procurement is as procurement of goods, services or works by contracting authority, in the manner and under the conditions prescribed by the Public Procurement Law (Article 3 (1)).





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**(or whole-of-life cost)**<sup>5</sup>. In particular, the value for money is not about merely achieving the lowest initial price. On the contrary, it is defined as the optimum combination of whole life costs and quality.

Value for money is achieved by selecting the most appropriate procurement method considering the risk and value of the procurement.

Better value for money from procurement can be achieved in many ways, for example by:

- getting an increased level or quality of service at the same cost,
- avoiding unnecessary purchases,
- ensuring that user needs are met but not exceeded,
- specifying the purchasing requirement in output terms so that suppliers can recommend cost-effective and innovative solutions to meet that need,
- optimising the total cost of services, works or goods, by including the full life of the contract rather than just the initial price,
- introducing incentives into the contract to ensure continuous cost and quality improvements throughout its duration,
- aggregating transactions to obtain volume discounts, reducing the level of stocks held.

## Definition of needs

The public procurement cycle describes the entirety of the process through which procuring entities identify, prepare and execute the acquisition. There are several possible ways of representing this cycle. Their common characteristic is, though, that they start with the **definition of needs** and close with the evaluation of results of public procurement.

The first stage of the public procurement planning is the **substantiation of the procurement, in other words, the explanation why the relevant goods, services or works are needed by the public institution in the first place.**

The stage of substantiation of the procurement includes:

- the understanding and definition of needs,
- the budgeting and the planning of the whole procurement process.

This stage is concluded with the description of the requirements to the procurement, in terms of amounts of the resources employed, the implementation period, anticipated qualitative and quantitative characteristics and indicators of the planned procurement process as well as its interaction with other ongoing and planned procurement processes.

All procurement processes begin with the perception of a need by the public institution. **The definition of needs is usually based on the identification of one or several gaps in the ability of the procuring entity to fulfil its tasks as regards delivering servicing or improving its performance.** For example, the need to

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<sup>5</sup> For further details, see another paper prepared by the Project: 'Guidelines for calculation of total lifecycle costs', at <http://eupodraska.ujn.gov.rs/guidelines-for-calculation-of-total-life-cycle-costs/?lang=en>.





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cross water such as a river could create a requirement to build a bridge, a tunnel, a ferry, or other transportation systems such as for instance cable car.

At this stage of the planning process it is necessary to clearly **define the needs**. In the above-mentioned case of crossing the river the definition of needs may be done by way of a study. The study should determine first, the best mode to cross the river: either by a bridge, a tunnel, a ferry or using other transportation system. Various solutions available should be then compared from the perspective of the present situation and forecasted future needs, for example in terms of a number of people who need and would need in future to cross that river. If a comparative cost/benefit analysis to determine the best solution from various available leads to a conclusion that construction of a bridge is preferred option the study should consequently deal with the issue of **a type of bridge** to be constructed. The study should then discuss whether the need to build a bridge can be satisfied by use of internal resources (capacities): “in-house” or should be contracted out. Finally, it should deal with quantification of the initial budgetary estimate, and an idea of the duration of procurement process and execution of works. Because of varied expertise needed to perform this task the composition of a team responsible for the study should be multidisciplinary, in order to address the different questions to be answered and to facilitate a comprehensive understanding of the need so as to clearly define the actual requirement. There are also needs for goods and services, and those should also undergo an analysis to clearly define requirements. Obviously, the perceived need is not always as complex as in the example above and most often than not, the justification of need would not require such a deep study.

At the end of the definition stage, the procuring entity should develop a clear set of tender documentation, including technical specifications, estimates of the budget, and time frame of the procurement process. This requirement of definition analysis is essential not only for new procurement requirements, project initiation and concept development, but also for requirements needed for maintaining existing operations.

## Description of needs

The description of needs of the procuring entity (the performance description) lies at the heart of the procurement procedure as it is here that the public authority defines its needs and the requirements the tenders must meet. Unjustified or inaccurate description of needs may lead to purchase of unnecessary goods or services. Performance should be described unambiguously and comprehensively, so that all bidders have a clear understanding of what is required, so as to ensure that the details in the tenders received are comparable and in order to avoid that suppliers deliver less than expected. In particular, the performance description must comply with the principles of equal treatment and transparency and may not discriminate in favour of any product or service. This means that the procuring entity is not entitled to require specified products unless justified by the subject matter of the contract. The issue of technical specifications is particularly sensitive because, by means of unjustified technical requirements, obstacles to competition and favouritism towards certain suppliers may take place within an apparently open competition. In addition, from the moment the procurement notices are published, the description of the object of procurement has to remain unchanged during the procedure and should form the centre of the resulting contract. In some procedures, like the negotiated ones, it is admissible that some items of the tenders may be adapted, provided that the character of the requirements remains unaltered and requirements and specifications are respected. In the case of particularly complex contracts a dialogue with tenderers may be used to identify and define the means best suited to satisfy the requirements. For this case a competitive dialogue procedure may be adopted, through which the contracting authority





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identifies the solution(s) capable of meeting its needs, following procedures that shall ensure equality of treatment among all tenderers.

It is also necessary to take account of sustainability. The concept of sustainability is about meeting the needs of today, without adversely affecting the needs of tomorrow. In a business sense, the key messages of sustainability tie in with what are considered sound business practices, such as building efficiency, minimising waste, and maximising resources. National provisions on public procurement (see in Annex 2 for examples) may require that procuring entities take into account sustainability of goods, services or works being the object of public procurement.

### Justification of procurement from the audit perspective

State Audit Institution (SAI) is the highest authority for auditing of public funds in the Republic of Serbia. According to the Constitution of the Republic of Serbia<sup>6</sup> SAI is accountable to the National Assembly of the Republic of Serbia for the conduct of activities stemming from its competence. According to SAI law<sup>7</sup>, SAI is the supreme state body for the audit of public funds in Serbia. The audit mandate of SAI is exhaustive<sup>8</sup>, and SAI is empowered to undertake financial, compliance and performance audits, in accordance with national and international auditing standards.

The audit of public processes is generally designed to examine whether:

- the process for determining the need for the particular process is valid,
- the procurement procedure under which goods or services are obtained is legal and public resources are being spent in line with applicable criteria.

The concrete aims of the audit, and in consequence, the scope of the audit may vary. In some cases, the purpose of the audit may be to find out whether the procuring entity has properly justified the spending of public money for a particular procurement. In such a case, in order to assess the justification of the procuring entity the auditors may want to look for supporting documents in the procurement files of the procuring entity that:

- explain the scope and features of the procurement,
- consider, in the case of the public procurement of high complexity, political risk or other risk and high value alternatives to the solution envisaged,
- compare the economic aspects of these alternatives from a value for money perspective, if such assessment is an objective of the audit.

The procuring entity should be able to deliver and document motivations and calculations in order to make it possible to assess whether the procurement was justified and successful.

The auditors usually look for answers to the following questions:

- has the procuring entity justified the procurement in terms of economy and effectiveness?

<sup>6</sup> The Constitution of the Republic of Serbia, Article 96 (Official Gazette No. 98/2006).

<sup>7</sup> Law on the State Audit Institution (henceforth 'SAI Law'), November 2005 (Official Gazette No. 101/05); Amending Law, May 2010 (Official Gazette No. 36/10).

<sup>8</sup> SAI Law, Articles 9 to 11.







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- was the amount of purchased goods or services or the scope of procurement necessary or, on the contrary, ordering fewer or less would be also sufficient?
- were the technical specifications indispensable or would a lower level of requirements also suffice?
- did the procuring entity consider all reasonable alternatives?
- did the procuring entity compare these alternatives, while applying accurate figures and including all relevant aspects as well as agreed standards, and arrive at reasonable results?

### Purposeful public procurement

It seems to be a right place to introduce now the concept of ‘purposeful procurement’ which is understood as the procurement in which the procuring entity acquires exactly what it needs, on time when it is needed and by paying as little as possible<sup>9</sup>. The audit of procurement processes by audit institutions in most cases involves both compliance audit and audit of purposefulness. As regard compliance criteria, those are the criteria against which the process is assessed from the legal point of view. Those criteria are based on the relevant legal provisions concerning public procurement. As regards purposefulness, in turn, auditors assess whether the procedure and the decisions adopted by the procuring entity meets three “E” criteria: **economy**, **efficiency** and **effectiveness**. The evaluation of purposefulness of public procurement is important from the perspective of public finance discipline, good practice and rational spending of public funds.

The Public Procurement Law of Serbia explicitly recognizes the principles of **efficiency** and **cost – effectiveness**<sup>10</sup>. Accordingly, contracting authorities should ensure that goods, services or works procured in public procurement are of appropriate quality relevant to the purpose, intended use and value of public procurement<sup>11</sup>.

Contracting authority should also ensure that public procurement procedure is conducted and awarding of contracts is made within time limits and as prescribed by the PPL, with minimum costs spent in conducting public procurement<sup>12</sup>.

**Economy** focuses on paying the lowest price for similar goods and services. From the perspective of economy, purchase of goods, services or works which does not qualify as purposeful is the procurement which quality and/or quantity is either above or below the actual needs of the procuring entity.

There may be different reasons for wrong description of required quality and quantity: lack of expertise of procurement officers responsible for preparation of technical specifications, wrong estimation of costs which takes into account only one-off costs without looking at the costs in the long-term perspective<sup>13</sup>, wrong evaluation of needs, insufficient market research, administrative errors, but also corruptive

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<sup>9</sup> Vladimir Erceg “Svirshodnost javnih nabavki – zanačaj i definisanje”, Program Evropske Unije “Podrška civilnom društvu 2013”.

<sup>10</sup> Article 9 of the PPL.

<sup>11</sup> Article 9 (1) of the PPL.

<sup>12</sup> Article 9 (2) of the PPL.

<sup>13</sup> When buying an equipment of a lower quality which is cheaper at the moment of purchase but more expensive in exploitation.





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practices. The procurement which is conducted in accordance with public procurement rules is obviously legally compliant but still may be harmful for the contracting authority by costing it more than it should. Public procurement which is not purposeful results in a harm to public finances: public funds are spent without obtaining a correct result.

**Efficiency**, in turn, is about getting the maximum output of goods and services for a given input of public administration resources (expressed not only in money terms) or minimising the input of such public resources for a given output of goods or services of the procurement process.

From the point of view of efficiency, public procurement which is not purposeful is the procurement which leads to additional costs of the contracting authority in the course of the public procurement procedure and during the implementation of public contract.

There may be different reasons and consequences of inefficient public procurement:

Reasons of inefficient procurement	Consequences of inefficient procurement
Late launching of public procurement process because of bad planning or late adoption of the public procurement plan by the procuring entity	The procuring entity is not able to perform its activities or it is able, but only after incurring additional costs
Exceeding the allowed time period for award or conclusion of a public contract	May lead to cancellation of public procurement process or complaints of economic operators, and in consequence to the situation that without additional costs the procuring entity is not able to properly discharge its functions
Exclusive use of traditional, paper-based form of communication between the procuring entity and the economic operators	Leads to unnecessary spending of time and resources of both the procuring entity and economic operators and unnecessary prolongation of public procurement procedures
Unreasonably high requirements concerning demonstration of qualifications of economic operators	Leads to less competition in public procurement, as some economic operators resign from participation in public procurement and in consequence to higher prices and unnecessary spending of resources of the procuring entity
Selection of inadequate type of public procurement procedure	Leads to lower competition and higher costs of the procuring entity which obtains less advantageous proposals and spends on public procurement more funds than in the optimal procedure
Imprecise tender documentation	Results in changes or additions to the tender documentation which lead to prolongation of public procurement procedure
Inadequate contract award criteria	The procuring entity does not select the tender which offers the best value for money and pays more than it would if more appropriate criteria are applied





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Finally, **effectiveness** assesses whether the performance obtained, as an output of the goods or services procured, meets the objectives that were set in advance. In other words, effective procurement is the one in which purposes of public procurement envisaged in advance were achieved. Effectiveness of public procurement is measured on the basis of the plans of procuring entities and achieved results of conducted public procurement procedure. Traditionally, plans of procuring entities are the weakest element of procurement processes. Because of that, effectiveness is the most problematic element of purposefulness of public procurement. Insufficient connecting of strategic goals of procuring entity with the activities of the procuring entity affects public procurement planning. Procuring entities tend to plan public procurement in isolation from its strategic goals, copying often the public procurement adopted in previous periods without proper analysis of actual needs. Another example of ineffective public procurement is the one where the technical specifications on which it was based do not correspond to the planned object of public procurement. Public procurement is not effective in such a case as it is not able to satisfy the actual needs of the procuring entity.

There are various reasons for which public procurement is not effective because of bad planning:

Reasons	Example
Given goods, services or works are included in the public procurement plan although there is no actual need to purchase goods or services concerned	The procuring entity purchases spare parts or materials which it already has in big quantities
Needs indicated in the procurement plan are in fact not justified	The procuring entity buys equipment which it will not use
The technical specifications of the object of public procurement do not correspond to the identified needs	The procuring entity purchases goods (for example uniforms) which because of lower quality will have to be replaced earlier than intended
Public procurement need does not correspond to the public policy	The procuring entity procures construction works of low quality which result in the work more harmful for the environment.

On the other hand, purposeful procurement may be obtained if it is correctly planned. For example, it may help, if the procuring entity takes into account the following requirements (elements):

	Requirement	Explanation
1.	Object of public procurement is covered by the statutory activity of the procuring entity	Goods, services or works which are not related to the statutory activities of the procuring entity or are not instrumental in achieving the planned goals, should not be included in the procurement plan
2.	Technical specifications and quantities requested conform with the actual needs of the contracting authority	The better explanation of the needs of the procuring entity the bigger chance that there will be no discrepancy between technical





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		specifications and the actual needs of the procuring entity
3.	Estimated value of concrete public procurement, taking into account technical specifications and requested quantities, is commensurate with the purpose of the procurement	When preparing the description of needs, the procuring entity should conduct a proper market research <sup>14</sup> in order to estimate properly the value of procurement. If the estimated value is too big it may be difficult to obtain approval for spending while too low may result in the needs to cancel the procedure, for example if the prices of received tenders exceed financial resources secured for a given purpose
4.	The procuring entity takes into account all potential costs related to public procurement	In the process of planning the procuring entity should take into account all potential costs the purchase may result in, for example need to purchase update of software, training of the staff how to use it, spare parts for copying machines and printers etc. If it is not the case, the procuring entity may not be able to use the object of procurement properly or will have to cover additional costs
5.	The procuring entity considers all possible solutions concerning satisfying its needs	The procuring entity may, because of lack of knowledge, or due to simple administrative inertia lose from the view the existence of other solutions, which could appear in the meantime, which could better satisfy requirements of the procuring entity while being also more economical
6.	The procuring entity takes duly stock of its provisions and monitors their spending	The review of actual use of specific goods and services may help services responsible for planning of public procurement

<sup>14</sup> For details see another paper prepared by the Project: 'Market research as an instrument for encouraging competition', available at: <http://eupodrska.ujn.gov.rs/market-research-as-an-instrument-for-encouraging-competition/?lang=en>.





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## Annex 1 Questions auditors ask when verify the purposefulness of public procurement

Below is the indicative list of questions auditors ask when they evaluate public procurement processes from the perspective of their purposefulness:

- Was there reasonable justification for the need of the purchase, especially in cases when it was made towards the end of the financial year?
- Did the procuring entity consider and evaluate alternatives, like bundling needs with other departments or grouping supplies in separate lots with different characteristics?
- Was the procuring entity specific enough about the nature and scope of the procurement before launching the procurement process?
- Was the description of the subject matter of public procurement clear, unambiguous and comprehensive, giving precise definition of the characteristics of what was to be supplied, so that all concerned had an equal understanding of requirements and that amendments were not necessary?
- Could the bidders assess the economic risks the successful bidder would be responsible for, thus limiting the inclusion of extra charges for risk?
- Were set technical requirements strict enough to guarantee the desired performance without being unnecessarily tight to exclude favourable bids that do not comply with all requirements?
- Did technical specifications (required characteristics of a material, product, supply or service) afford equal access for tenderers, containing no feature that directly or indirectly discriminate in favour, or against, any bidder, product, process or source?
- Were technical specifications formulated by reference to performance or functional requirements admitted by the relevant public procurement provisions?
- Did technical specifications exclude any reference to a specific make or source, to a particular process, to trade marks, patents, types or to a specific origin or production, thus preventing favouring or eliminating certain undertakings or products?
- When such references were made, was a precise description of the performance not otherwise possible and were those references accompanied by the words "or equivalent"?
- Did the description of the object of procurement remain unchanged once the procurement notice had been published?
- If the procuring entity has changed the performance description unilaterally: was the scope of change relevant and admissible?
- Have the participants of the procurement procedure been informed in an equal manner? Was it conceivable that, under the assumption that the amended requirements had been the basis for the original competition, more bidders might have applied or submitted an offer? In that case, was the competition reopened?





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- If negotiations or fine-tunings of the tenders have taken place, were these such that they were in accordance with the type of procedure used and there were no substantial changes to the description of public procurement in procurement documents?



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## Annex 2 Examples of national provisions concerning appraisal and justification of public procurement needs

A number of EU countries provide for more specific rules concerning appraisal and justification of needs of contracting authorities in public procurement.

### FRANCE

The French public procurement provisions require that the nature and scope of needs to be satisfied are to be precisely determined in advance, before the public procurement procedure is launched, taking into consideration the objectives of sustainable development<sup>15</sup>. **Contracts or framework agreements to be concluded by the contracting authorities should have as a purpose only the fulfilment of those needs.**

The provisions require also that the contracting authority should determine the level at which those needs are assessed. The choices made by the contracting authority concerning the way how those needs would be satisfied should not aim at exemption from the public procurement rules of contracts that are normally covered by the public procurement provisions.

### SPAIN

Similarly, the Spanish provisions on public procurement state that contracting authorities may only conclude contracts which are necessary for the fulfillment and execution of their statutory tasks<sup>16</sup>.

For this purpose, the nature and extent of the needs that are intended to be covered by the envisaged contract, as well as the suitability of their purpose and content to satisfy them, when awarded by an open, restricted or negotiated procedure without advertising, must be determined with precision, stating this in the preparatory documentation, before initiating the public procurement procedure.

The entities from the public sector are obliged to ensure the efficiency and maintenance of the agreed terms in the execution of public procurement processes, favour the streamlining of procedures, include social, environmental and innovation considerations as positive aspects in the public procurement procedures and promote the participation of small and medium enterprises and free of charge cost to information about public procurement.

### PORTUGAL

In Portugal, public procurement procedures concerning any contract require previous adoption of a decision to procure, which should be justified and should be endorsed by a body which is competent for authorization of expenditure concerned<sup>17</sup>.

In the event the value of the public procurement reaches the threshold of 5 million euros, justification referred to in above mentioned provisions should be based on the costs/benefits analysis and should contain, wherever it is applicable, the following elements:

<sup>15</sup> Article 30 of *Ordonnance n° 2015-899 du 23 juillet 2015 relative aux marchés publics*.

<sup>16</sup> Article 28, *Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014*.

<sup>17</sup> Article 36, *Código dos contratos públicos, Decreto-LEI N.º 18/2008, de 29 de janeiro, alterado e republicado pelo decreto-lei N.º 111-B/2017, de 31 de Agosto*.





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- a) identification of the type of beneficiaries of the contract in question;
- b) envisaged level of utilization of infrastructure, services or goods;
- c) analysis of rentability;
- d) costs of maintenance;
- e) assessment of potential risks and methods of mitigating them;
- f) potential impact of the procurement for the improvement of the contracting authority;
- g) potential impact on the development or reconversion of the country or the region covered by the investment.

In the case the procedure to award the contract envisaged by the contracting authority is the innovation partnership the threshold referred to in above is lowered to the level of 2.5 million euros.

The tender documentation should contain also information about all authorizations and licences required which might have impact on the public procurement procedure and the execution of a contract in question.

## BELGIUM

In Belgium, the public procurement provisions require from the federal procuring entities to take into account, when planning and conducting public procurement process, to take into account the concept of sustainability.

In order to facilitate fulfilment of this requirement the Belgian government adopted a rulebook providing for procuring entities instructions on how to award sustainable public contracts<sup>18</sup>.

The rulebook provides also some rules on how to appraise needs of procuring entities. In particular, procuring entities should, before launching of the procurement procedure, analyse their needs, taking into account priorities expressed in their programmes of activities, orientation plans, political notes etc.

In any case, procuring entities are expected to verify the actual need to award a contract, taking account of existing stocks, possible recycling of products within the procuring entity or cooperation with other entities. It is also necessary to analyse whether the identified needs cannot be satisfied by the existing procuring entities at the federal level or by their central purchasing bodies in order to avoid superfluous purchases. Taking into account, however, the maximum possible social or environmental considerations, should not lead to unreasonable prices<sup>19</sup>.

<sup>18</sup> Circulaire du 16 Mai 2014: *Intégration du développement durable, en ce compris les clauses sociales et les mesures favorisant les petites et moyennes entreprises, dans le cadre de marchés publics passés par les autorités adjudicatrices fédérales*

<sup>19</sup> Which does not mean award of contracts on the basis of the lowest price.







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## **Annex 3 Examples of cases where the procurement need has been found by auditors to be unjustified**

### **EXAMPLE 1**

The procuring entity procured 300 computers to replace the existing equipment that had not yet been amortised. This purchase was justified by the procuring entity to be necessary because new software was being implemented at the procuring entity that, apparently, required a higher hardware capacity than the existing computers offered. When auditing the purposefulness of the procurement the auditor came to the conclusion that contrary to what the procuring entity claimed the new software could have been used without any restriction on the available computers. Thus, the procurement need was, in the opinion of the auditor, not justified by the procuring entity.

### **EXAMPLE 2**

The regional offices of the procuring entity which is responsible for maintenance of roads provide the staff and equipment for the said maintenance. The procuring entity bought for one of its offices completely new machinery, including a roller for 50 000 EUR. The auditors who were auditing this procurement process were looking for the alternatives to this purchase by checking how many rollers were already being operated and charged to their full capacity. The auditors discovered that several rollers in other offices of the procuring entity had only a few hours of operation. They concluded that the procuring entity, instead of buying a new roller, could simply transfer already owned but underused equipment to a location where it would be of more use.

### **EXAMPLE 3**

The procuring entity envisaged in the tender documentation purchase of office IT equipment. The subject matter of public procurement was envisaged as a whole, without division into lots. The following items were requested: desktop computers (40 items), laptop computers (15 items), three tablets, two printers, five switches, one server, two scanners, one projector, two copying machines, one digital camera and one projection screen. Only two complete tenders, covering all the required equipment, were submitted in response to the invitation to submit tenders. The auditor concluded that by not dividing the procurement into smaller lots, covering similar products, the procuring entity limited the competition, which was reflected in the small number of submitted tenders. The auditor concluded that there were probably more suppliers who would be able to offer at least a part of the requested equipment but they did not take part in the procedure because they were not able to fully satisfy the requirements of the procuring entity. As a result, the procuring entity paid, due to limited competition, a higher price, than it could have to pay if there were more offers. This conclusion was also based on observation of practices in other procuring entities related to division of heterogeneous procurement into lots.

### **EXAMPLE 4**

The Ministry purchased a motor vehicle (a sedan) for transport of one of the ministry's officials. The procurement procedure used for that purpose was the negotiated procedure without publication. This procurement was not included in the public procurement plan of the procuring entity for the given year. Purchase of the car in this procedure, rather than open or restricted procedure, was justified by an urgent





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need. The auditors had doubt about the procedure used as well as description of the technical specifications, in particular that a car has a trunk with the storage capacity of minimum 560 l and CD/MP3 player installed with CD changer for minimum six CDs. The procuring entity had also very specific expectations concerning the colour of chassis of the car. It transpired also that due to this specific requirement the procuring entity had to wait six months for the delivery of a car so auditors concluded the purchase was not urgent to justify non-application of more competitive and transparent procedure.



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