

EVALUATION OF SME ACCESS TO  
PUBLIC PROCUREMENT MARKETS IN THE EU

COORDINATED BY DG ENTERPRISE AND INDUSTRY  
OF THE EUROPEAN COMMISSION

ANNEX

to

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Contact person for this contract:

Máté Vincze, [mate.vincze@ghkint.com](mailto:mate.vincze@ghkint.com)

GHK, 25 rue de la Sablonnière

B-1000 Brussels

Tel: +32 (0)2 275 0100

Fax: +32 (0)2 275 0109

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# 1 METHODOLOGICAL NOTES

## 1.1 Introduction

This section contains a summary description of the input data, and the methods employed to estimate the amount of tenders above EU thresholds for which contract award notices have been published, to assess the extent of cross-border procurement, and to identify SMEs' share in winning public contracts above EU-thresholds.

The summary description is supplemented with a table presenting the structure and content of the original TED databases that were the point of departure for the statistical analyses.

## 1.2 Description of input data

Subject of the statistical analysis were invitations to tenders (ITT) and contract award notices (CAN) of tenders above the EU-thresholds that were extracted from notices publicised in the Supplement to the Official Journal (OJ) from 2002 to 2005. Key data from the notices have been extracted by DG Internal Market and Services into 4 databases in MS Access format. Altogether, the databases contained 877,052 records. Each year, 52-54% of notices were invitations to tender, while 30-33% of the notices were contract award notices. The remaining notices were mainly prior information notices, pre-qualification notices, public work concession notices, announcements of design contests, registry information of European economic interest groupings (EEIG), etc.

**Table 1.1: Trends in the number of ITT and CAN notices, 2002-2005**

Type of TED record	2002	2003	2004	2005	Total
Invitations to tender	107,020	114,069	115,247	128,290	464,626
Contract award notices <sup>1</sup>	59,987	70,145	70,718	79,909	280,759
Other notices	31,693	35,018	30,090	34,866	131,667
<b>Total</b>	<b>198,700</b>	<b>219,232</b>	<b>216,055</b>	<b>243,065</b>	<b>877,052</b>
Invitations to tender	54%	52%	53%	53%	53%
Contract award notices	30%	32%	33%	33%	32%
Other notices	16%	16%	14%	14%	15%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: TED databases 2002-2005

Both ITTs and CANs covered public procurement procedures launched by awarding authorities from the Member States, Candidate/Accession Countries, or EU institutions. Data for each notice include information on: the contracting authority; the goods/services to be procured; the procedure followed; the estimated value of the contract; and – for CANs – the actual price and the

<sup>1</sup> Including results of design contest, which were excluded later from the analysis of SMEs' participation

supplier chosen. Each of the four databases included between 63 and 73 categories or fields of data. The structure of the 2002 and 2003 databases are very similar, but both differ slightly from the 2004 and 2005 databases. However, the latter have identical structures. Table 1.7 at the end of this section indicates the structure of the databases and describes and elaborates the content of each category/field.

The data in the databases have been partially 'tidied up' and checked by DG Internal Market, to ensure that data are accurate and comparable. This process has involved, inter alia:

- § the correction of wrongly set decimal points,
- § the checking of whether the contract values are given in euro,
- § the checking of whether contract values include VAT or not,
- § the checking whether contract values refer to the whole duration of a contract or are a 'per annum' sum,
- § the replacement of text strings indicating values with numbers,
- § the calculation of contract values that are comparable with others for certain Italian procurements, where the values indicated were expressed in terms of discount on the initial estimated contract value.

A fifth database contained a list of companies that were awarded public contracts in 2001, and that Dun & Bradstreet was able to match with their company databases. For these companies, Dun & Bradstreet provided a range of information necessary to classify them as large enterprises or SMEs (employee number, annual turnover, balance sheet) and contact details.

### 1.3 Coverage of ITTs by published CANs

The analysis included a detailed review of the correspondence between ITT and CAN, as well as their evolution over time. An initial review of notices pointed to a ratio of CAN to ITT of around 60-65%. However, this estimate did not take account of the possibility of multiple contract awards (for different lots) or of procurements that have been cancelled.

To assess the extent to which Member States publish contract award notices, the method employed tried to link back individual CANs to the original invitations to tenders. This has been achieved through matching reference numbers (field "RN") given in the CAN with the reference number of a specific ITT (field "ND") for those contract award notices that indicated the number of the respective tender (ITT notice) the results of which they contained – which was the case for the majority of CANs (62% for the four years in average, ranging from 46% in 2002 to 71% in 2005).

**Table 1.2: Number of CANs with and without reference number**

Type of TED record	2002	2003	2004	2005	Total
CANs with reference number	27,367	42,517	46,848	56,380	173,112
CANs without reference number	32,620	27,628	23,870	23,529	107,647
<b>Total</b>	<b>59,987</b>	<b>70,145</b>	<b>70,718</b>	<b>79,909</b>	<b>280,759</b>
CANs with reference	46%	61%	66%	71%	62%

number					
CANs without reference number	54%	39%	34%	29%	38%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: TED databases 2002-2005

The study examined only those CANs in detail (including cross-country comparisons) that had a reference number, linking them unambiguously back to an ITT published in 2002 to 2005. To each CAN, based on the reference numbers, the ITTs have been searched and extracted from the original TED databases. Subsequently, duplications eliminated (several CANs may have been published to certain tenders, if those were broken down into lots). Finally, the number of ITTs in each year for which at least one CAN has been published until the end of 2005 have been counted, and, by dividing this with the total number of ITTs published in each year, the ITT-coverage ratio has been established. This method does not take account of cases where CANs have been published for one or more, but not all lots of a given tender.

Notices without a reference number could not be matched with their respective tender. However, these were taken into consideration when estimating the overall coverage of ITTs by CANs – assuming that the statistical patterns of CANs without were similar to those with reference numbers. I.e., the analysis assumed that an equal share of ITTs the CANs referred to has been published in the same year, preceding year, etc. than for CANs that could be unambiguously linked back to ITTs, and that the ratio of duplications was also equal.

#### 1.4 Cross-border procurement

The method used to estimate the magnitude of cross-border public procurement was based on extracting the postcodes (or country names) of companies being awarded the public contract, and identifying the country of origin of the company using this information – in line with the methodology of the 2004 study. If the company was located in a country different to the country of the awarding authority, the contract was seen as a cross-border deal.

For this purpose, only CANs were used that contained price data, and sufficient information on the location of one or more companies being awarded the contract (i.e. postcodes). Such CANs (122,920 altogether) made up around 61% of the total number of contract award notices published from 2002 to 2004<sup>2</sup>. The coverage was 77% for 2004 notices, and was somewhat smaller (52 to 53%) for the years 2002 and 2003.

**Table 1.3: Input data for cross-border procurement, 2002 to 2004**

§	§ 2002	§ 2003	§ 2004	§ Total
§ Total number of contract award notices	§ 59,987	§ 70,145	§ 70,718	§ <b>200,850</b>
§ Price information available ('EUPX' field)	§ 42,039	§ 48,563	§ 61,573	§ <b>152,175</b>

<sup>2</sup> CANs from the year 2005 had not been analysed

not blank or zero)				
§ Company information available ('CO' field not blank) <sup>3</sup>	§ 41,797	§ 46,088	§ 58,888	§ <b>146,773</b>
§ Number of contract award notices analysed (country of company seat resolved, based on postcodes)	§ 31,858	§ 36,560	§ 54,502	§ <b>122,920</b>
§ Ratio	§ 53%	§ 52%	§ 77%	§ <b>61%</b>

Source: TED databases 2002-2004

The difference is explained partly by a larger proportion of contracts with sufficient price information in 2004 (87%, versus only 69-70% in 2003 and 2003), but also by a better contact information (only about 4,300 records did not contain retrievable postcodes, against about 9-10,000 in the years 2002-2003).

From this subset of CANs, a search for text strings in field 'CO' that appeared to be postcodes was undertaken. This entailed a search for the usual country codes of the Member States in question, followed by a hyphen (the most common sources of error, like 'e-mail' or 'e-post' had been eliminated in advance). Additionally, name strings of Member States (in English and original language) were searched for. In cases when the country that issued the CAN did not match with the country of origin of the company or companies that have been awarded the contract, the results were reviewed for potential errors (like company names with a hyphen).

Subsequently, the number and value of contracts was aggregated, separately for tenders with and without cross-border involvement. If the CAN contained companies from both the country that published the notice, and one or more foreign countries, the contract was considered to be both cross-border, and not cross border, half-by-half (0.5 contract, and half of the value was added to both subgroups).

**Table 1.4: Results of the analysis of cross-border procurement, 2002 to 2004**

§	§ 2002	§ 2003	§ 2004	§ Total
§ Number of contract award notices analysed (country of company seat resolved, based on postcodes)	§ 31,858	§ 36,560	§ 54,502	§ <b>122,920</b>
§ Winner(s)' address in home country	§ 31,376	§ 36,022	§ 53,448	§ <b>120,846</b>
§ At least one winner's address in foreign country	§ 482	§ 538	§ 1,054	§ <b>2,074</b>

Source: calculations based on TED database

However, a number of actual cross-border deals may not appear in the TED records as such. Because for example, the successful contractor may be an indigenous subsidiary or a distributor of a foreign-based (perhaps large multinational) company, the services of which account for a large part of the value of the contract. Foreign-based companies may also be subcontractors to the successful tenderer, providing much of the supply/service procured. These cases would be

<sup>3</sup> Some of the records did not contain postcodes. The country of origin of the companies in these records could not be resolved.

regarded as cross-border deals, but no information is so far available on their frequency or magnitude.

## 1.5 SMEs' share in winning public contracts above EU-thresholds

To analyse the companies that have been awarded contracts, filtered databases were derived from the original TED records. After filtering, only contract notices (not including results of design contests) of Member State authorities with sufficient price and company data remained in the databases, 186,911 altogether.

To achieve this, contract award notices issued by EC institutions were first excluded. These are records where the awarding authority was categorised as EC institution (in the field 'AA'), or where the "European Commission" was given as awarding authority (in the field 'AU'). Second, CANs that did not contain any indication on the value of the contract (i.e. no or zero values in the 'EUPX' field) were eliminated from the database. Third, the remainder of the notices were screened whether they contained information on the companies that were awarded the contract. CANs with an empty 'CO' field, or with no indication of a company name were thus deleted.

Finally, all contract notices from Member States that joined the EU in May 2004 were eliminated, as their number was too small for statistical analysis for most of these countries, and also considered atypical (i.e. only the results of shorter procedures, that were launched after May and finished before the end of the year were included).

The final filtered databases that serve as the only information source for the subsequent statistical analyses contain around 68% of all CANs for the years 2002-2005. The annual breakdown, together with the original number of CANs and the number of records eliminated under the filtering steps, are given in the following table:

**Table 1.5: Input data for company size-class analysis, 2002 to 2005**

	2002	2003	2004	2005	Total
<b>Total number of contract notices<sup>4</sup></b>	<b>59,987</b>	<b>70,056</b>	<b>70,718</b>	<b>79,919</b>	<b>280,680</b>
CANs awarded by EC institutions	1,560	2,080	2,194	1,683	7,517
- categorised as EC institution	538	649	2,173	1,674	5,034
- categorised otherwise	1,022	1,431	21	9	2,483
CANs with no price data	16,392	32,110	12,679	18,393	79,574
CANs with no company data	240	385	750	668	2,043
<b>Number of CANs after filtering</b>	<b>41,795</b>	<b>35,481</b>	<b>55,095</b>	<b>59,175</b>	<b>191,546</b>
- as % of the original total number	69.7%	50.6%	77.9%	74.4%	68.2%
Notices from New Member States	-	-	4,635	-	4,635
<b>Final number of CANs used for sampling</b>	<b>41,795</b>	<b>35,481</b>	<b>50,460</b>	<b>59,175</b>	<b>186,911</b>

Source: calculations based on TED database

From the final filtered databases, non-proportionate stratified samples of CANs were taken, around 5,000 for the years 2002 to 2004, and 25,000 for the year 2005. A sample of this scale

<sup>4</sup> Results of design contests excluded

was considered to be adequate for valid comparisons between countries, types of procurement and sectors. The stratification was based on the country of the awarding authority, and the nature of contract (i.e. public works, supply, service, or combined contract). The sample was stratified in order to ensure that the sample contained a sufficient number of records from all countries of origin of the CANs and all different types of procurement, thus allowing for a comprehensive statistical analysis of data. Non-EU-15 countries were omitted from the samples for the years 2002 to 2004, because the number of CANs from these countries was too small to draw statistical conclusions, and assumed to be atypical. The sample for 2005 included also the Member States that joined the EU in 2004.

The completeness and reliability of the records' company data in the sample have been reviewed by checking whether they included a full company name, a postcode, town and address line in the 'CO' field of the CAN. Next, the necessary company information (the company's name, its address, its postcode and the corresponding locality) have been extracted in separate data fields. For contracts with more companies as winners, the successful company mentioned in first place (i.e. for the first lot within the contract award notice in question) was assessed.

The company information extracted was searched for companies that have been already identified by the 2004 study as large-scale enterprises. The remainder was sent to Dun & Bradstreet, who tried to match them with the records held in their company database. Where a successful match has been made, information on the employee number (or, if not available, the annual turnover) of the company has been added to the sample records – to be used to assess the size-class of the company in question. Dun & Bradstreet was selected because of their sufficient coverage of companies from the new Member States that joined the EU in 2004. Dun & Bradstreet was already supplying company information for the 2004 study.

Based on the information obtained from Dun & Bradstreet, or based on the match with the list of large-scale enterprises, the companies have been assigned to size-classes (applying the new SME definition). The EU-level definition of SME's was given in a Commission recommendation<sup>5</sup> from 2003, which took effect on 1 January 2005. Ultimately, 20,601 companies could be classified from the total sample of 37,873.

**Table 1.6: Size of the sample and number of companies identified, 2002 to 2005**

	2002	2003	2004	2005	Total
Number of companies sampled for analysis	5,805	4,898	5,957	21,213	37,873
Number of companies identified by D&B	3,885	3,079	4,189	13,054	24,207
<b>Number of companies classified (into size-classes), total</b>	<b>2,829</b>	<b>2,490</b>	<b>3,652</b>	<b>11,630</b>	<b>20,601</b>
- by D&B	2,411	2,110	3,455	10,642	18,618
- via list of large-scale enterprises	418	380	197	988	1,983

Source: calculations based on TED database

<sup>5</sup> Commission Recommendation 2003/361/EC as published in the Official Journal of the European Union L 124, p. 36 of 20 May 2003



The distribution of companies according to different size-classes were then used to establish the distribution of the number and aggregated value of contracts in each of the strata. The results for the strata were then re-weighted, using the original distribution of the database (number and value of public procurement by countries and nature of contract), to arrive to annual EU headline figures, and to final country results. The weights were derived from the records that have price ('EUPX') information, but excluding all EC institutions purchases. The 2004 working database excluded all new Member States as well.

## 1.6 Structure and content of the input databases

**Table 1.7: Description of the structure and content of the TED databases**

Field code	Field description	Explanation
TI	Title of Document	The first heading line of the notice as appearing on TED, which follows a fixed scheme: country code for the Awarding Authority (the traditional postal code except for Austria) + town of Awarding Authority ("TW") + a description of what is being procured (usually equal to "PN")
ND	Document Number - unique	A specific number uniquely identifying each notice, generated for the database, made up of the original serial number of notice ("NDNum": starts with 1 each year and may go up to 250,000) + the year of its publication ("YR"). This is the primary key of the database.
PD	Publication date in Official Journal	The date when the notice was published in OJ
OJ	Number of Official Journal	The number of the OJ where the notice has been published, following the scheme: serial number + year
PG	Page of Official Journal	<i>(left blank, but this should contain the page number where the notice can be found in the according issue of OJ)</i>
CY	Country Code for Awarding Authority	Two-letter country codes in ISO 3166-1 standard
TW	Town of Awarding Authority	The town where the Awarding Authority is located, extracted from "TI"
AU	Name of Awarding Authority	The name of the Awarding Authority in the national language, transcribed into English alphabet (usually a short version of the official name)
AACode*	Numeric code for type of Awarding Authority	The numeric code for the category of Awarding Authorities: 1-Central government, 3-Local authorities, 4-Utilities, 5-EC institutions, 6-Body governed by public law, 8-Other (these are public or private organisations that were mostly obliged to publish procurement notice on TED because they received grants from public funds), 9-Not applicable (European economic interest groupings mostly), N-National or federal Agency/Office, R-Regional or local Agency/Office (2-Armed forces omitted since 2003)
AA	Description of type of	The name of category of Awarding Authorities (see

Field code	Field description	Explanation
	Awarding Authority	above)
DS	Date Sent	The date when the notice was sent to OJ/TED
DR	Date Received	The date when OJ/TED received the notice
DT	Deletion Date (Date of Tender)	The date when the notice was rendered obsolete and deleted from the TED database
OL	Original Language	Two-letter code for the language in which the original notice has been published, in ISO 639-1 standard
HD	Heading	An alphanumeric code from a complex classification system of notices that may include reference to the rules to be applied, the type of the awarding authority, to the nature of contract, the type of document
NCCode	Numeric code for Nature of Contract	The numeric code for the nature of the public contract: 1-Public works contract (or Works), 2-Supply contract, 3-Combined contract, 4-Service contract
NC	Description of Nature of Contract	The name of the nature of contract (see above)
PRCode	Numeric code for Type of Procedure	The numeric code for the type of procedure applied, or reference to the purpose of the notice: 0-Prior information or periodic information notice, 1-Open procedure, 2-Restricted procedure, 3-Accelerated restricted procedure, 4-Negotiated procedure, 6-Accelerated negotiated procedure, 7-Contract awards, 8-General information, 9-Not applicable (e.g. completion of liquidation of a European economic interest grouping), C-Competitive dialogue, D-Design contest, I-Call for expressions of interest, N-Not specified, Q-Qualification system (concerns mostly utilities), R-Results of design contests
PR	Description of Type of Procedure	The name of the type of procedure applied, or reference to the purpose of the notice (see above)
TDCode	Numeric code for Type of Document	The numeric code for the type of the document: 0-Prior information procedure, 1-Corrigenda, 2-Additional information, 3-Invitation to tender, 4-Prequalification notices, 5-Request for proposals, 6-General information, 7-Contract award, 8-Other, 9-Not applicable, B-Buyer profile (close to prior information notice), C-Public works concession, D-Design contest, E-Works contracts awarded by the concessionaire, G-European economic interest grouping (EEIG) registry information, I-Call for expressions of interest, M-Prior information (or indicative) notice (PIN) with call for competition, O-Qualification system with call for competition, P-Prior information (or indicative) notice (PIN) without call for competition, Q-Qualification system without call for competition, R-Results of design contests, S-European company (registration notices)
TD	Description of Type of Document	The name of the type of the document (see above)
RPCode	Numeric code for Regulations of Procurement	The numeric code for the regulations of procurement to be applied (if procurement): 0-TACIS and countries of Central and Eastern Europe, 1-External aid and European Development Fund, 3-Community institutions, 4-European Communities, 5-Communities, with participation by GATT countries, 6-European Economic Area (EEA), 8-Other

Field code	Field description	Explanation
		(mostly registration information on European economic interest groupings)
RP	Description of Regulations of Procurement	The name of the regulations of procurement to be applied (see above)
TYCode	Numeric code for Type of Bid	The numeric code for the type of bid: 1-Global tender, 2-Partial tender, 3-Global or partial tender, 8-Not defined (mostly PIN's and contract awards), 9-Not applicable (mostly PIN's, design contests, qualification systems)
TY	Description of Type of Bid	The name of the type of bid (see above)
ACCode	Numeric Code for Award Criteria	The numeric code for award criteria applied: 1-Lowest price, 2-The most economic tender, 8-Not defined, 9-Not applicable (covers to a large amount PIN's and qualification systems)
AC	Description of Award Criteria	The name of the award criteria applied (see above)
PC	Product Code	The 8-digit CPV code of the goods/service procured (or the relevant groups, classes and categories, if more CPV codes apply), without the ninth control digit, according to the CPV regulation in force at the date of publication (the current regulation is Regulation (EC) No. 2195/2002, in effect since 16 December 2003). The CPV codes have been provided by the Awarding Authority or added later (as they are not mandatory), based on the CPA, CPC or NACE codes of the supplies, services or works procured.
PN*	Description of what is being bought	The description of the goods/service procured, extracted from "TI" field, and according to the CPV code of field "PC" (not included in the 2003 database)
AB*	Abstract	Reference text to specific CPV codes of goods/services procured (left blank in the 2003-2005 databases)
ABCode1	Abstract1	First CPV code contained in the original "AB" field
ABCode2	Abstract2	Second CPV code contained in the original "AB" field
ABCode3	Abstract3	Third CPV code contained in the original "AB" field
ABCode4	Abstract4	Fourth CPV code contained in the original "AB" field
ABCode5	Abstract5	Fifth CPV code contained in the original "AB" field
TX*	Text	Extracted – in several cases incomplete – information on contact details the Awarding Authority (e-mail, URL, telephone numbers, fax numbers), some other information fragments (mostly postal address) (left blank in 2002-2003)
OT	Original Text	<i>(left blank)</i>
CC*		<i>(left blank) (omitted in 2004-2005)</i>
CCCode1*		<i>(left blank) (omitted in 2004-2005)</i>
CCCode2*		<i>(left blank) (omitted in 2004-2005)</i>
CCCode3*		<i>(left blank) (omitted in 2004-2005)</i>
CCCode4*		<i>(left blank) (omitted in 2004-2005)</i>
CCCode5*		<i>(left blank) (omitted in 2004-2005)</i>
OX*		Field repeating the number of the Official Journal where the notice was published several times in 2002. Field containing various numbers, extracted from the notices in

Field code	Field description	Explanation
		2003 (left blank in 2004-2005)
EstPX*	Estimated Price of Contract	Price information extractable from the "EstPXLine" field (not included in the 2002-2003 databases)
EstPX Currency*	Currency of Contract for Estimated Price	A three-letter code for the currency, in which the price above is expressed, using the common ISO 4217 currency code list (not included in the 2002-2003 databases)
EstEUPX*	Estimated price converted to EUROS	The value from the "EstPX" field, converted to euros (if expressed in a national currency other than the euro), using a yearly average exchange rate (not included in the 2002-2003 databases)
EstPXLine*	Price line from original document containing Estimated price	The original text describing the estimated price in the notice (incomplete in some records) (not included in the 2002-2003 databases)
EstLowPX*	If there is a range of prices in the Estimated price line, this is the LOW one	The lower margin of the estimated price range (total, unit, per annum), extractable from the "EstPXLine" field. May refer to the price range of any lot, if several lots are covered by the notice (not included in the 2002-2003 databases)
EstHiPX*	If there is a range of prices in the Estimated price line, this is the HIGH one	The upper margin of the estimated price range (total, unit, per annum), extractable from the "EstPXLine" field. May refer to the price range of any lot, if several lots are covered by the notice (not included in the 2002-2003 databases)
SW_Est ANDAct Found*	Equals 1 if there are estimated and actual prices	A switch with the value 1, if information was extractable on both estimated price and actual (bid) price (not included in the 2002-2003 databases)
ActPX*	Actual Price of Contract	Price information extractable from the "ActPXLine" field (PX in 2002-2003, includes also estimated prices for ITT's)
ActPX Currency*	Currency of Contract for Actual price	A three-letter code for the currency, in which the price above is expressed, using the common ISO 4217 currency code list (PXCurrency in 2002-2003, includes also estimated prices for ITT's)
ActEUPX*	Actual Price converted to EUROS	The value from the "ActPX" field, converted to euros (if expressed in a national currency other than the euro), using a yearly average exchange rate (EUPX in 2002-2003, includes also estimated prices for ITT's)
ActPXLine*	Price Line from original document containing ACTUAL price	Original text giving information on the actual (bid) price (incomplete in some records) for the 2005 database, mostly irrelevant text fragments in 2002 (PXLine in 2002-2003, includes also estimated prices for ITT's)
LowPX*	If there is a range of prices in the Actual price line, this is the LOW one	The lower margin of the actual price range (total, unit, per annum), extractable from the "ActPXLine" field (not included in the 2002-2003 databases)
HiPX*	If there is a range of prices in the Actual price line, this is the HIGH one	The upper margin of the actual price range (total, unit, per annum), extractable from the "ActPXLine" field (not included in the 2002-2003 databases)
MS*	Member State offering contract	A repetition of the content of the "CY" field (left blank in 2004-2005)
EUPX*	Price converted to EUROS	The (ultimate, or final estimate of the) actual price in euro, as given in the "ActEUPX" field or indicated elsewhere in

Field code	Field description	Explanation
		the contract award notice (corresponding to ActEUPX in 2002-2003)
NDNum	Notice Number	The original serial number of the notice
YR	Year of Journal entry	The year of the publication of notice
RN	Reference Number	The unique reference number of a preceding notice (corresponding to field "ND"), which the notice is related to. The numbers refer usually to PIN's in case of tender notices (other cases include e.g. corrigenda, additional information), and to tender notices in case of contract award notices
FileOrigin	Location of original file on SP's computer	The location of the file at the service provider
StartingLineOrigin*		The number of the starting line in the archive (left blank in 2004-2005)
SW_TPX	Switch showing if there is a range of prices	(zero values)
SW_Lot	Switch showing if there are lots	A switch with the value 1, if the tender was broken down to different lots
SW_Range*		A switch with the value 1, if the (estimated) price indicated in the notice referred to a price range (zero values in 2004-2005)
SW_Loan	Switch showing if it is a financial transaction	A switch with the value 1, if the subject of the procurement were financial services. For financial services, the price appearing in the contract award notices may be of a different nature: percentage, fee, etc.
Class*	Size of Price	Classification of the price indication, with a coding from 1 to 9 (zero values in 2004-2005)
CO	Successful Contractor	Information on the contractor, extracted from the notice. Includes name, postal address, telephone and fax numbers in most cases. May also include e-mail and URL addresses
COCY*	Country of successful contractor	Two-letter country codes in ISO 3166-1 standard (zero values in 2004-2005)
SW_XB*	Switch showing if it is cross border	A switch with the value 1, if the address of successful contractor is in another country than the Awarding Authority (2 if not known or not applicable) (zero values in 2004-2005)
TX_HTML	Link to original notice on TED	A HTML link to the original notice on TED
SW_ITT_CAN	Switch showing if ITT or CAN?	(zero values, but should indicate whether the record is an invitation to tender or contract award notice)
SW_Bids*	Switch showing if text implying bids is present	A switch with the value of 1, if information on the number of bids received was contained in the notice (which is not mandatory information) (not included in the 2002-2003 databases)
NumBids*	Number of bids received	The number of bids received (assumedly the total number of bids for all lots, if several lots were publicised) (not included in the 2002-2003 databases)
SW_Tranche*	1 if the word tranche is found in the price line	(zero values) (not included in the 2002-2003 databases)
SW_Percent*	Text nearest to % sign if	A query used to correct bid prices for Italian

Field code	Field description	Explanation
	found in wpxline or estpxline	procurements, if the price was expressed in discount ("sconto") to the estimated price. Irrelevant in other cases: % can refer to prices, VAT, etc. (not included in the 2002-2003 databases)
CountLots*	Attempt to count the number of lots in a CAN	The number of lots in contract award notices (CAN's) and results of design contests. (not included in the 2002-2003 databases)

\* categories where the databases differ from year to year.

Source: TED databases 2002-2005

## 2 NATIONAL CASE STUDIES

### 2.1 France

#### 2.1.1 *Public procurement regulation in France*

The key legal document for the French Public Procurement system is the **Public Procurement Code** (*Code des marchés publics*). This Code was established by the government's Decree n° 2006-975 of 1 August 2006 and came into force on September 1, 2006. Additionally, the **Circular of 3 August 2006** sets out the guidelines for the application of the Code (*Circulaire du 3 août 2006 portant manuel d'application du code des marchés publics*).

The first 'modern' French public procurement code was adopted in 1966. The most important reform of this document was pursued in March 2001, with the adoption of a considerably simplified decree (136 articles instead of 399). The new Code followed four objectives: clarification of rules, simplification of procedures, modernisation of public procurement, better access of SMEs to public procurement. A second reform was carried out in January 2004.

The 2006 Public Procurement Code was established with the objective to ensure full conformity with the latest European Directives on public procurement (Directives 2004/17/EC and 2004/18/EC). The fundamental principles of the EC Treaty are also echoed in the Code: freedom of access to public procurement; equal treatment of candidates; transparency of procedure. Respect of these principles ensures the efficiency of public procurement and the sound use of public funds.

The Public Procurement Code is binding for all public organizations, other than those of an industrial and commercial nature<sup>6</sup>. It identifies two types of awarding authorities:

#### Contracting authorities

- § Central Government bodies
- § Regional and local authorities
- § Public institutions under the supervision of the State and the local authorities
- § Public institutions other than industrial and commercial organisations (e.g. universities, high schools, certain museums, etc.)

#### Contracting bodies:

- § Procuring authorities operating in fields such as the production, transport and distribution of electricity, gas and water, the provision of services in the field of transport, etc.

The Code concerns all public procurement contracts. It sets up detailed provisions covering, in particular, minimum deadlines for the submission of tenders, publication of contract award

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<sup>6</sup> However, certain public industrial and commercial establishments have chosen to statutorily abide by the Public Procurement Code principles and rules.

notices, procurement procedures. Provisions very much depend on the type of public body involved (contracting authority or contracting body, State or local authority), the nature of contract awarded (public works, supplies or services), as well as the value of contract.

In compliance with EU directives, supply and service contracts of a value below €135,000 (for the State) or €210,000 (local authorities), as well as public works tenders of a value below €210,000 may be awarded pursuant to a so-called 'adapted' procedure. Under this procedure, the terms of procurement are decided by the contracting authority, according for example to the nature of the work and the number and the location of economic operators who are likely to apply. However, awarding authorities must respect the rules related to the publication of tender notices, and cannot request the candidates for more documents than those required in the case of formalized procedures. For contracting bodies, public works, supply and services contracts are awarded on the basis of an adapted procedure below the €420,000 threshold.

The tables below show the requirements set up by the Public Procurement Code regarding tender procedures, for both contracting authorities and contracting bodies. Thresholds are expressed net of VAT.

**Table 2.1 Contracting authorities – Procurement procedures for public works contracts**

Thresholds		4,000 €	210,000 €	5,270,000 €
Procurement procedures	State and local authorities	Adapted procedure		<p>The contracting authority can choose between:</p> <ul style="list-style-type: none"> <li>• Open or restricted call for tenders</li> <li>• Negotiated procedure</li> <li>• Competitive dialogue</li> <li>• Contest</li> <li>• Dynamic purchase procedure</li> </ul>
				<p>Open or restricted call for tenders:</p> <p>Negotiated procedure, competitive dialogue, procedure specific to design and construction contracts, or contest</p>

Source: MINEFI

**Table 2.2 Contracting authorities – Procurement procedures for public supply contracts and public service contracts**

Thresholds		4,000 €	135,000 €	210,000 €
Procurement procedures	State	Adapted procedure		<ul style="list-style-type: none"> <li>• Open or restricted call for tenders</li> <li>• Negotiated procedure in the cases envisaged in Art.35</li> <li>• Competitive dialogue in the cases envisaged in Art.36</li> <li>• Contest in the cases envisaged in Art.38</li> <li>• Dynamic purchase procedure in the cases envisaged in Art.78</li> </ul>
	Local authorities			
	State and local authorities	Adapted procedure for services covered by Art.30 of the Public Procurement Code		

Source: MINEFI



**Table 2.3 Contracting bodies – Procurement procedures for public works, supply and service contracts**

Thresholds		4,000 €	420,000 €
Procurement procedures	State and local authorities	Adapted procedure	<ul style="list-style-type: none"> <li>Negotiated procedures with prior publication to enable the submission of competing offers</li> <li>Open or restricted call for tenders</li> <li>Contest in the cases envisaged in Art.38</li> <li>Dynamic purchase procedure in the cases envisaged in Art.78</li> <li>Negotiated procedure without prior publication (if conditions defined by Art, 144 II are fulfilled)</li> </ul>
		Adapted procedure for services covered by Art.148 of the Public Procurement Code	

Source: MINEFI

Requirements to publish tender notices vary under different value ranges. For tenders of a value below €90,000, the contracting authority may choose any media they see appropriate (this could be e.g. their own website, printed media, etc.) according to the characteristics of the contract<sup>7</sup>. For supply and service contracts of an estimated value between €90,000 and €135,000 (government bodies) or €210,000 (local authorities), and public works contracts ranging from €90,000 to €5,270,000, the contracting authority publishes a notice either in the 'Official bulletin of public contract declarations' or in any journal authorised to publish public notices (amongst several). That means that there is no single source of information on tender opportunities below the EU-thresholds. Tenders above the EU-thresholds however have to be publicised in the Official Journal of the European Union (OJ) and in the Official bulletin of contract declarations.

**Table 2.4 Contracting authorities – Advertisement of notices for public works tenders**

Thresholds		4,000 €	90,000 €	210,000 €	5,270,000 €
Supports of publication	State and local authorities	Adapted advertisement	BOAMP <sup>8</sup> (national form)  or JAL <sup>9</sup> (national form)  + if necessary, specialized press (national form)	BOAMP (European form)  or JAL (national form)  + if necessary, specialized press (national form)	BOAMP (European form)  and OJEU <sup>10</sup> (European form)  + if necessary, additional advertisement (national form)

Source: MINEFI

<sup>7</sup> Public Procurement Code, Article 40

<sup>8</sup> Official bulletin of public contract declarations (*Bulletin officiel des annonces des marchés publics*)

<sup>9</sup> Any journal publishing public notices

<sup>10</sup> Official Journal of the European Union

**Table 2.5 Contracting authorities – Advertisement of notices for public supply tenders and public service tenders**

Thresholds		4,000 €	90,000 €	135,000 €	210,000 €
Supports of publication	State	Adapted advertisement	BOAMP (national form)	BOAMP (European form)	
	Local authorities		or JAL (national form)	and + if necessary, specialized press (national form)	OJEU (European form) + if necessary, additional advertisement (national form)
	State and local authorities	Adapted advertisement for services covered by Art.30 of the Public Procurement Code			

Source: MINEFI

**Table 2.6 Contracting bodies – Advertisement of notices for public works tenders**

Thresholds		4,000 €	90,000 €	420,000 €	5,270,000 €
Supports of publication	State and local authorities	Adapted advertisement	BOAMP (national form)	BOAMP (European form)	BOAMP (European form)
			or JAL (national form) + if necessary, specialized press (national form)	or JAL (national form) + if necessary, specialized press (national form)	and OJEU (European form) + if necessary, additional advertisement (national form)

Source: MINEFI

**Table 2.7 Contracting bodies – Advertisement of notices for public supply tenders and public service tenders**

Thresholds		4,000 €	90,000 €	420,000 €
Supports of publication	State	Adapted advertisement	BOAMP (national form)	BOAMP (European form)
	Local authorities		or JAL (national form) + if necessary, additional advertisement (national form)	and OJEU (European form) + if necessary, additional advertisement (national form)
	State and local authorities	Adapted advertisement for services covered by Art.148 of the Public Procurement Code		

Source: MINEFI

### 2.1.2 **The governance of public procurement in France**

Public procurement in France is organized under the supervision of the Ministry of Economy, Finance and Industry (*MINEFI*), which also executes its own procurement programme.

However, the general rule is to place the responsibility for awarding and performing a given contract on the echelon nearest to the need that this contract sets out to satisfy. As a result, the local and regional authorities award approximately two-thirds of all the contracts awarded in terms of value (see Table 2.8).

At the central level, Specialized Procurement Commissions, which were responsible for controlling and validating the most important public contracts, have been replaced by the National Procurement Commission (*Commission des marchés publics de l'État*, CMPE). This Commission provides advice to Ministers and certain national public institutions for the drafting and procurement of contracts. Its opinions and observations relate to the suitable expression of the need, the sound definition of the purpose of the contract, the choice of tender procedure and its implementation, the suitability of the economic clauses in the contract, etc. Observations are usually provided before the publication of procurement notices and are not binding for the awarding authority.

The Government can also obtain legal and other advice from the Public Procurement Department of the Legal Affairs Directorate (DAJ)<sup>11</sup>. At the local level, a specialized "information cell" located in Lyon advises public authorities on questions regarding public procurement. Any public officer in charge of drafting or awarding a public contract can thus easily obtain advice or information on public procurement.

### 2.1.3 **SMEs and public procurement policy in France**

Being aware of the importance of small and medium-sized enterprises for the French economy, the Government puts a strong focus on the issue of the access of SMEs to public procurement. The Code on Public Procurement of 2006 has integrated a series of provisions aiming at facilitating the access of SMEs to public procurement.

#### **Sub-division of contracts into lots**

- § The New Code introduced the obligation for public authorities to award contracts in separate lots, taking into account the technical specifications, the structure of the economic sector concerned and the specific rules applying to certain categories of works (Art. 10). In compliance with the EU Directives, account is taken of the total estimated value of all such lots when determining the rules to follow.
- § Public authorities can however decide to not sub-divide the contract into lots, if they consider that a division into lots would limit the competition between companies, create technical difficulties or increase the cost of the work undertaken, or if they are not able to ensure good

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<sup>11</sup> This office is part of the Ministry of Economy, Finance and Industry

coordination and monitoring of the various sub-contracts. In practice contracts allowing a sub-division into lots especially concern the construction sector.

**More flexible rules for economic operators to prove their technical ability**

- § The Code states that the absence of reference to similar contracts cannot constitute a reason for rejecting an application and that it does not exempt the awarding authority to examine the technical abilities and financial capacities of the candidate (Art. 52 I).

**Facilitated financial checks**

- § The bidders are allowed to may prove their financial capacities by presenting other documents than initially requested by the awarding authority, if the awarding authority considers these as equivalent (Art. 45 III).

**Prohibition of disproportionate requirements on financial and economic capacities and on technical abilities**

- § The Code defines that the eligibility and selection criteria, e.g. technical capacities required, have to be proportionate to the specifications of the contract (Art. 45 I).

**Prescriptions in relation to SMEs' access to public contracts**

- § Possibility for the awarding authority to define in their tenders quotas of small and medium enterprises amongst the bidders (this was however cancelled by the decision of the State Council of 9 July 2007)
- § Possibility to ask the candidates if they intend to contract out part of the work to other companies, more especially to SMEs (though answering is not obligatory for companies)
- § Obligation for purchasers to measure and report on the contracts awarded to SMEs.

However, it is generally thought that the Public Procurement Code has ultimately not brought a significant change in SMEs' access to public procurement contracts. Most of the new provisions set up by the Code are not binding: for example large companies are not legally obliged to indicate in their tender if they intend to contract out part of the work to SMEs, even when they are invited to do so. Similarly, they are exceptions to the obligation for public authorities to award contracts in separate lots.

More importantly, the State Council has cancelled on 9 July 2007 the provisions set up by articles 60, 65 and 67 of the Code and consequently the corresponding articles of the Circular of 3 August 2006. The State Council has considered that these provisions, by giving the possibility for awarding authority to establish a minimum number of small and medium-sized enterprises amongst candidates, were contrary to the EU Treaty.

As a result, the Public Procurement Code is perceived more as an incentive for public authorities to award more contracts to small and medium-sized enterprises than an instrument of positive discrimination in favour of SMEs as intended initially. However, French authorities have expressed their hopes that current negotiations between the EU and its trade partners within the World Trade Organisation (WTO) will allow for the exemption of European SMEs from the field of application of the WTO Agreement on Government Procurement (WTO-GPA). This would mean that Member States could adopt a preferential treatment of SMEs in public procurement, such as the establishment of quotas.

In addition, a former Minister, Mr Stoléru, has been entrusted by the French Government with the task of reflecting on the issue of SMEs and public procurement. The French authorities acknowledge that the provisions introduced by the Public Procurement Code are not sufficient and that some countries, such as the USA (which Small Business Act is considered as a reference), Japan, Korea and Canada, have adopted more effective measures in that area.

The French authorities have asked Mr Stoléru to:

- § analyse the situation in these four countries;
- § define more ambitious measures in order to facilitate the access of SMEs to public procurement;
- § imagine ways of implementing such measures.

Mr Stoléru is expected to deliver a report on that issue by 31 October 2007.

#### 2.1.4 **The evidence base on public procurement and SMEs**

The Economic Observatory for Public Procurement (*Observatoire économique de l'achat public*), set up in November 2005, was entrusted with the task of gathering data related to public procurement in France.

Due to the recent creation of the Observatory, comprehensive data is available only for the years 2004 and 2005. It should also be noted that only contracts of an estimated value of above 90,000 € (net of VAT) are taken into account in the figures provided. Previous attempts to gather data (e.g. by the MINEFI, the Specialized Procurement Commissions, the National Federation for Public Works) did not succeed in providing a clear picture of public procurement in France.

According to the Observatory, 195,230 contracts were awarded in 2005 (slightly more than in 2004<sup>12</sup>), while the total value of these contracts was around €52,741 million.

Figures show the predominance of regional and local authorities in awarding public contracts (Table 2.8). In 2005 only 11.3% of the number of public contracts was awarded by the central government bodies, which represents 32.3% of the total value of public contracts awarded that year (compared to 22.9% in 2004).

In 2005 supply contracts accounted for almost 38% of the total value of public contracts, public works contracts for about 35%, and service contracts for 27%. It is to be said however that the share of public works decreased between 2004 (45%) and 2005.

**Table 2.8: Public contracts awarded, by awarding authority and nature of contract, 2004-2005**

Awarding authority	Nature of contract	Number	Number	Value net of VAT (€'000)	Value net of VAT
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<sup>12</sup> The Economic Observatory for Public Procurement specifies in the report that one should not interpret this evolution as a rise in the number or the amount of public contracts, but rather as the result of improved data collection and processing.

		(€'000) <sup>13</sup>			
		2004	2005	2004	2005
Government bodies	Public works	9,595	8,733	2,581,195	2,600,146
	Supplies	7,274	7,346	3,462,519	9,291,828
	Services	5,374	5,922	3,694,124	5,138,401
<b>Total Government bodies</b>		<b>22,243 (11.5%)</b>	<b>22,001 (11.3%)</b>	<b>9,737,837 (22.9%)</b>	<b>17,030,376 (32.3%)</b>
Local authorities	Public works	92,679	89,226	16,719,678	16,085,272
	Supplies	51,856	54,394	9,411,573	10,607,797
	Services	27,226	29,609	6,665,559	9,017,480
<b>Total local authorities</b>		<b>171,761 (88.5%)</b>	<b>173,229 (88.7%)</b>	<b>32,796,810 (77.1%)</b>	<b>35,710,549 (67.7%)</b>
<b>Total</b>		<b>194,004 (100%)</b>	<b>195,230 (100%)</b>	<b>42,534,647 (100%)</b>	<b>52,740,925 (100%)</b>

Source: Economic Observatory for Public Procurement, processed by GHK/Technopolis Group

The examination of data related to the distribution of public contracts by type of company (Figure 1 and Figure 2) reveals that in 2005 small and medium-sized enterprises<sup>14</sup> secured more public contracts than large companies (64%). However, when considering the value of such contracts, the share of SMEs is dropping to 32%.

According to figures, the proportion of contracts awarded by local authorities to small and medium-sized enterprises is higher than those awarded by the State, both in terms of number and value (respectively 66% and 39% against 56% and 19% for the Central government).

Very small companies (less than 20 employees) secured the major part of public contracts awarded to SMEs (59%) while medium-sized companies (50 to 249 employees) had the highest share of such contracts in terms of value (45%).

**Table 2.9: Distribution of value and number of public contracts by size of companies (2005)**

	Very small companies (0-19 employees)	Small companies (20-49 employees)	Medium-sized companies (50-249 employees)	Total SMEs
<b>Number of contracts</b>	65,659	30,691	15,097	111,447
<b>%</b>	59%	28%	13%	100%
<b>Value of contracts in millions euros</b>	7,051,801	4,479,283	9,414,622	14,632,006

<sup>13</sup> Last update made by the Economic Observatory for Public Procurement in July 2007. Data for 2005 presented in the following tables and figures of this document relates to the report on public procurement issued by the Observatory in January 2007.

<sup>14</sup> The definition of small and medium-sized enterprises used by the Economic Observatory for Public Procurement is consistent with the EU definition which came into force on 1 January 2005.

%	34%	21%	45%	100%
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Source: Economic Observatory for Public Procurement, processed by GHK/Technopolis Group

Figure 1 Distribution of number of public contracts by type of company and awarding authority (2005)

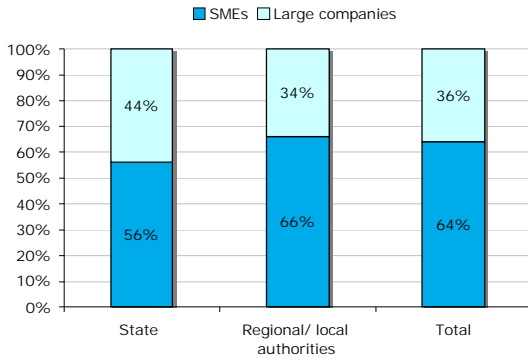
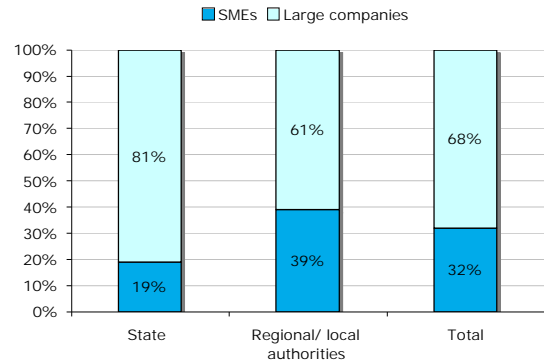


Figure 2 Distribution of value of public contracts by type of company and awarding authority (2005)



Source: Economic Observatory for Public Procurement, processed by GHK/Technopolis Group

In addition, data related to the nature of contract (Figure 3 and Figure 4) indicates that public works is the area where SMEs perform better than large companies. Over three quarters of public works contracts were indeed awarded to small and medium-sized enterprises in 2005. The share of SMEs is still high when considering the value of such contracts (46%).

Figure 3 Distribution of number of public contracts by type of company and nature of contract (2005)

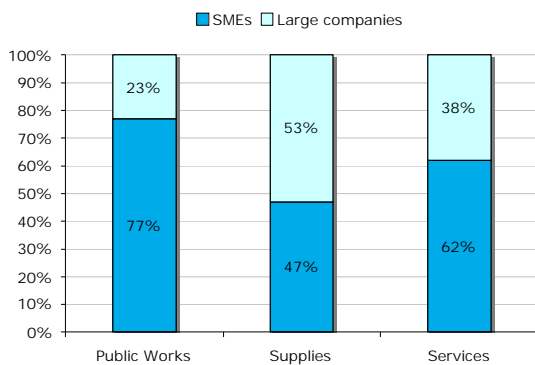
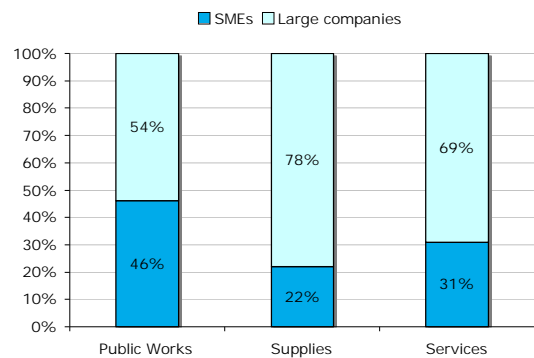


Figure 4 Distribution of value of public contracts by type of company and nature of contract (2005)



Source: Economic Observatory for Public Procurement, processed by GHK/Technopolis Group

Based on the data compiled by the Economic Observatory for Public Procurement, SMEs have an advantage in comparison with large companies when State-level contracts are awarded by using one of the following procedures: adapted procedure, restricted competitive procedure and non-competitive procedure for the definition of needs. In addition, a vast majority of contracts based on a contest and awarded by local authorities in 2005 were secured by SMEs.



Figure 5 Distribution of number of public contracts (State) by type of company and type of procedure (2005)

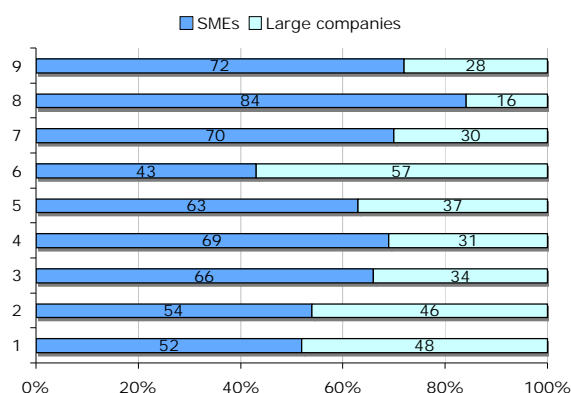


Figure 6 Distribution of value of public contracts (State) by type of company and type of procedure (2005)

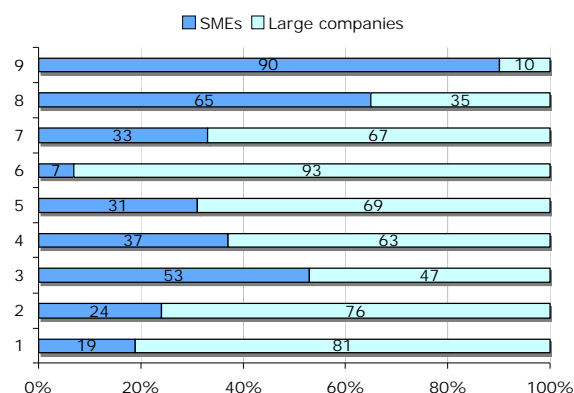


Figure 7 Distribution of number of public contracts (local authorities) by type of company and type of procedure (2005)

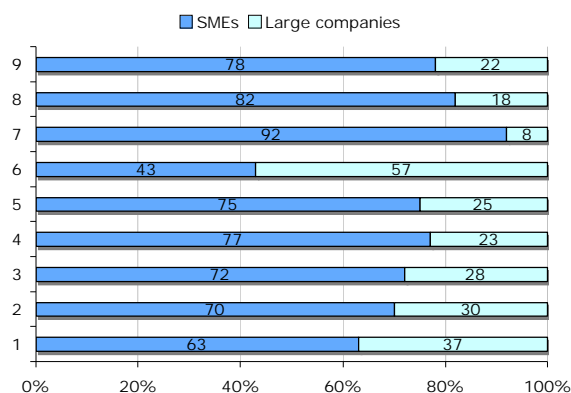
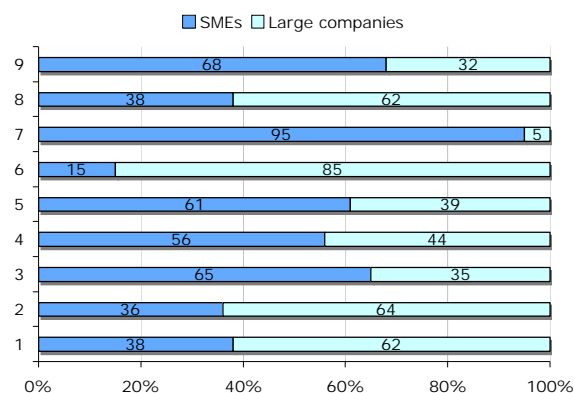


Figure 8 Distribution of value of public contracts (local authorities) by type of company and type of procedure (2005)



Source: Economic Observatory for Public Procurement, processed by GHK/Technopolis Group

Types of procedures (Figures 5 – 8)

- 1 – Open call for tenders
- 2 – Restricted call for tenders, competitive dialogue, procedure specific to design and construction contracts
- 3 – Adapted procedure
- 4 – Competitive negotiated procedure with prior publication
- 5 – Competitive negotiated procedure without prior publication

- 6 – Non-competitive negotiated procedure without prior publication
- 7 – Contest
- 8 – Restricted competitive procedure
- 9 – Non-competitive procedure for the definition of needs

### 2.1.5 Approaches to overcoming barriers to SME involvement in public procurement in France

In 2004, the Court Registrar of the Commercial Court of Paris carried out an on-line survey<sup>15</sup> with the objective of identifying the barriers faced by SMEs in relation with public procurement.

Results showed that 30% of respondents never answered to an invitation to tender. They mentioned the following reasons for not having participated in public procurement:

- § Do not know where to find the notices (34.5%)
- § Difficult to write an application (24.1%)
- § Low chance to win the contract (20.7%)
- § High cost of tendering (13.8%)
- § Insufficient time (6.9%).

Companies which had already been candidates for public contracts indicated what they considered as the main obstacles for bidding:

- § 38% said that the application forms were difficult to fill in;
- § 51% encountered difficulties in gathering all official supporting documents (fiscal, social documents, etc.);
- § 34% considered the provision of other supporting documents (presentation of the company, curriculum, etc.) as complicated, given the diversity of formats from one awarding authority to another.

This relates to the possibility for each public authority to decide on the format of the documents enclosed in the tendering package (*Dossier de Consultation des Entreprises, DCE*). This lack of harmonization represents an issue for SMEs as it makes the process of application even more time-consuming.

Another barrier for SMEs to access public procurement relates to the possibility for public authorities to decide on the mode of publication of procurement notices, for tenders of a value below 90,000 euros. This decision has removed an obstacle for awarding authorities but at the same time, it has created a difficulty for small and medium-sized enterprises: as each public authority has developed its own virtual support system for publicizing procurement notices, it is extremely difficult for SMEs to have a view on all notices of their interest.

**Table 2.10: Initiatives aimed at facilitating the access of SMEs to public procurement**

Activity/ initiative	Description
<b>Informing SMEs about tendering opportunities</b>	The French central government and the local authorities have not yet established a common platform where SMEs could find all public tenders. However, similar initiatives have been developed at local or sectoral levels:

<sup>15</sup> [www.greffe-tc-paris.fr/communication/marches\\_publics.htm](http://www.greffe-tc-paris.fr/communication/marches_publics.htm)

	<p>§ The website <a href="http://www.achatpublic.com">www.achatpublic.com</a> gathers tenders notices issued by central government bodies. Companies have the possibility to download the tendering package and to reply on line, provided that they are equipped with an electronic certificate.</p> <p>§ The Association for purchasing in the public sector (<i>Association pour l'achat du service public, APASP</i>)<sup>16</sup> represents 2,000 procurers and suppliers. One of its main objectives is to promote the exchange of information among potential stakeholders through the organization of workshops and seminars, but also via its website. A “needs and offers” platform allows procurers to publish their needs and suppliers to directly propose offers for tenders of a value below 90,000 € (net of VAT).</p> <p>§ The Ministry of Defence, which accounts for the largest individual public procurement budget (about 17 billion € each year), has created its own common platform (<a href="http://www.marches.achats.defense.gouv.fr">www.marches.achats.defense.gouv.fr</a>). This virtual marketplace gathers tenders issued by more than 250 purchasing entities. It was created on July 1, 2006 by merging two websites: <a href="http://ixarm.com">ixarm.com</a> (for acquisitions of armament) and <a href="http://achats.defense.gouv.fr">achats.defense.gouv.fr</a> (for supplies, services, infrastructures, IT, etc.). Suppliers can benefit from a searchable database with an alert system; they also have the possibility to download the procurement package and to answer on-line. In addition, a private space is made available to companies for submitting in advance the administrative documents requested with applications. Since the creation of its procurement platform, the Ministry of Defence has been cooperating with the General Directorate for the Modernisation of the State (<i>Direction Générale de la Modernisation de l'État, DGME</i>) and the Central Procurement Agency (<i>Agence Centrale des Achats, ACA</i>) of the MINEFI in the view of creating an inter-ministerial procurement platform.</p>
<b>Simplification of pre-qualification requirements</b>	The MINEFI's Directorate for Legal Affairs has elaborated standard forms aimed at facilitating the application of candidates for public contracts.
<b>Training and support for SMEs</b>	<p>Guidelines for the application of the Public Procurement Code have been published together with the Code.</p> <p>Training courses for potential candidates to public procurement are generally supported by the private sector.</p> <p>Training is provided to awarding authorities under the form of short sessions (1/2 day or 1 day), with the objective to inform civil servants about recent changes in the field of public procurement regulation. Comprehensive courses (from 2 days to 3 weeks) are also organised by the Training Departments of the Ministries, by the National schools (e.g. Ponts et Chaussées), or by private companies.</p>
<b>Debriefing arrangements</b>	As set up in the Public Procurement Code, it is compulsory for awarding authorities to communicate to unsuccessful applicants the reasons explaining the rejection of their offer.
<b>Improved payment systems – reduce late payments</b>	<p>In 2005 the average number of debtor days was 32.3 for contracts awarded by the State and 35 for contracts awarded by local authorities. The Economic Observatory for Public Procurement has set up the objective of reducing this number of days to 28 on average for the State by 2008. In order to achieve this goal, the Observatory recommends the following measures:</p> <p>§ Informing public staff about the consequences of late payments</p> <p>§ Simplification of the documents requested prior to making a payment</p> <p>§ Provision of an explanation prior to interrupting a payment</p>

<sup>16</sup> Created in 1962, APASP was controlled by the Ministry of Economy, Finance and Industry (MINEFI) until 1990 when it became independent.

	<p>§ Development of on-line payment</p> <p>§ Diminution of the number of checks</p> <p>§ Spreading costs throughout the year</p>
<b>E-procurement</b>	<p>The French Government is strongly supporting the use of electronic means for public procurement, in conformity with the i2010 strategic policy framework set up by the European Commission.</p> <p>Since January 1, 2005, contracting authorities and bodies cannot prohibit the sending of applications by electronic means.</p> <p>However, the use of electronic means by applicants is far from being a common practice: whilst a vast majority of tendering packages (80%) are downloaded from Internet by candidates, only about 2-5% of companies are sending their application electronically, according to the MINEFI.</p> <p>In order to promote e-procurement, the French authorities have taken measures which aim to overcome barriers to the use of electronic means:</p> <p>§ Fear of the loss or failure in the transmission of applications - Companies are now allowed to send a backup copy together with their electronic application, e.g. a paper copy or a CD-Rom (Art.56 I of the 2006 Public Procurement Code). In addition, the contracting authorities can decide to repair the corrupted files that they receive.</p> <p>§ Heterogeneity of the e-procurement platforms, lack of interoperability between electronic signatures and questions about the reliability and level of confidentiality of electronic applications - In 2007 the MINEFI, the National Federation of Public Works and EdiBuild established an e-procurement label in order to guarantee high quality and safety levels.</p> <p>Regarding the future of e-procurement in France, the 2006 Public Procurement Code has introduced an important change by allowing procuring authorities to require the transmission of tendering documents and applications by electronic means from January 1, 2010 (Art. 56 III).</p> <p>In order to prepare public authorities and companies for this change, the Directorate for Legal Affairs is currently experimenting e-procurement procedures: contracting authorities and bodies already have the possibility to compel companies to send their applications electronically for certain contracts.</p>
<b>Break up work into smaller lots</b>	<p>The Public Procurement Code sets up the obligation for public authorities to award contracts in separate lots, according to the technical specifications, the structure of the economic sector and the rules applying to certain categories of jobs (Art. 10).</p> <p>Public authorities can however decide to not sub-divide the contract into lots, if they consider that a division into lots would limit the competition between companies, create technical difficulties or increase the cost of the work undertaken, or if they are not able to ensure good coordination and monitoring of the various sub-contracts.</p> <p>The Code also provides for the possibility to exclude small lots from the scope of the EU Directives (Art. 27 III).</p>
<b>Use of framework agreements</b>	<p>Provisions of the Directive 2004/18/EC related to framework agreements concluded with several economic operators have been transposed in the article 76 of the 2006 Public Procurement Code. The "Guidelines for the application of the Code" have commented on these provisions. In addition, one of the most reputed journals in the field of public procurement ("<i>Le Moniteur du bâtiment et des travaux publics</i>") has published a template for establishing framework agreements.</p>
<b>Encouraging consortia of small firms</b>	<p>According to the Public Procurement Code, candidates for public contracts have the possibility to establish consortia, which may take two forms: solidarity-based consortia are often set up by companies with similar activities; joint consortia, which imply that each member commits for one specific lot, are</p>

	<p>generally organised by enterprises carrying out complementary activities (such as in the construction sector). The Code specifies that financial and economic capacities and technical abilities are assessed at the level of the consortia, therefore it is not necessary that all members fulfil technical and financial requirements (Art. 52).</p>
<b>More flexible contracting</b>	<p>The possibility of defining technical specifications in terms of performance or functional requirements has been integrated into the Public Procurement Code (Art. 6).</p>
<b>Taking account of quality and total lifecycle cost</b>	<p>Public authorities are legally free to use either the economically most advantageous tender criteria or the lowest price criteria.</p>
Other initiatives	<p><b>Oséo</b></p> <p>§ <b>OSEO was born in 2005, by bringing together ANVAR (French innovation agency) and BDPME (SME development bank), around a mission of general interest supporting the regional and national policies. Its mission is to provide assistance and financial support to French SMEs and micro-businesses in the most decisive phases of their life cycle. More specifically, it can provide cash advance to companies which have been awarded public contracts but which face cash flow problems.</b></p> <p><b>SME Pact (<i>Pacte PME</i>)</b></p> <p>§ <b>This public/private initiative has been launched by the Richelieu Committee (French association for innovative SMEs) and Oséo, with the support of the Minister of Economy. The objective is to facilitate access of SMEs to public procurement by developing partnerships between innovative SMEs and large companies.</b></p> <p><u><a href="http://www.marchespublicspme.com">www.marchespublicspme.com</a></u></p> <p>§ <b>This website, dedicated to public procurement with a specific focus on SMEs, provides various types of information, such as practical guides on public procurement.</b></p>

## 2.1.6 Conclusion

In France, significant efforts have been made to improve the access of small and medium-sized enterprises to public procurement. The main legal provision in favour of SMEs is the obligation, established by the 2006 Public Procurement Code, to break up contracts in smaller lots. However, many initiatives that the French authorities intend to take may be in conflict with Community rules and principles on public procurement. The Government has engaged negotiations with the EU to allow for the exemption of SMEs from the field of application of these rules (established by the WTO). At the same time, it is reflecting on alternative ways of facilitating the access of SMEs to public procurement. The expert who was entrusted with that mission is expected to deliver a report by the end of October 2007.

## 2.2 Germany

### 2.2.1 Public procurement regulation in Germany

Public procurement legislation – as well as implementation – works in a multi-tier system in Germany, following from the federal structure of the country. Framework legislation steering public procurement is adopted at federal level, while responsibilities for procedural arrangements and implementation of the framework regulation rest with the Länder (or key federal authorities, when federal procurement is concerned, such as defence, or the purchases of the Ministry of the Interior). The Länder have also the possibility to set certain non-binding provisions in the framework regulation obligatory for awarding authorities under their auspices.

Traditionally, the topic of public procurement has been embedded in the legislative framework steering the planning and implementation of the federal budget (the Federal Budget Code)<sup>17</sup>, and the Länder budgets, respectively. Here, the general principles governing public procurement were constrained to cost-saving and efficiency (i.e. the prudent management of public funds, ‘value for money’). Though specific legislative requirements have not been adopted, the principles inevitably led to the introduction of competitive procedures to select the best and most cost-efficient bid, regulated in by-laws and procedural codes.

The most relevant procedural codes adopted were the Code for the Award and Contracting of Public Works (‘Vergabe- und Vertragsordnung für Bauleistungen’, VOB), and the Code for Awarding Public Services Contracts (‘Verdingungsordnung für Leistungen’, VOB). These have been developed and adopted by expert committees at national level, with the participation of federal and Länder authorities and the industries concerned, and are still a major pillar of today’s public procurement legislation in Germany. Part A of both codes introduced detailed provisions on the awarding of public contracts, and were made obligatory for public authorities (although they had no legislative force themselves). The Code for Awarding Freelance Services Contracts (‘Verdingungsordnung für freiberufliche Leistungen’ VOF) joined the two codes later, setting out provisions on procurement of freelance services – concerning mostly architectural, design and civil engineering services.

However, the traditional German legislative framework did not contain a number of provisions that is characteristic of current public procurement legislation throughout Europe: e.g. deadlines, safeguarding fair competition, description of the right of bidders to appeal and related procedures, remedies. These features began to enter German legislation on European initiative, based on EU-policies towards strengthening the internal market, ensuring the free flow of goods and services, and fair and unbiased competition in relation to public procurement.

This process was strongly reinforced by a verdict of the European Court of Justice (ECJ), which found that the German legislative framework - based on an embedded approach into budget law, without granting explicit rights to bidders, and setting procedural rules only in by-laws - violated EC law. Answering the criticism, the German parliament adopted the Public Procurement Amendment Act (‘Vergaberechtsänderungsgesetz, VgRÄG’) that entered into force in 1999, which has for the first time provided for a comprehensive regulation of public procurement principles and procedures, also introducing provisions on the rights of bidders, and according appeal and remedy procedures, in public procurement. The amendment added a new part (Part 4) to the federal Act Against Restrictions of Competition (‘Gesetz gegen

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<sup>17</sup> Section 55 of the Code deals with administrative rules of public procurement

Wettbewerbsbeschränkungen', GWB), transposing European procurement rules above the EU thresholds.

As of today, the legislative framework at federal level comprises of the

- § Act Against Restrictions of Competition (GWB);
- § the Code for the Award and Contracting of Public, part A (VOB/A);
- § the Code for Awarding Public Services Contracts, part A (VOL/A);
- § the Code for Awarding Freelance Services Contracts (VOF), sections 2-4;
- § Decree on the Awarding of Contracts ('Vergabeverordnung', VgV);
- § Budget Laws of the Länder and the Federal State.

As demonstrated by the above list, there is no specific legal act on public procurement. However, these documents above provide for a comprehensive regulation of public procurement above thresholds, are regarded as the tools transposing the Directives 2004/17/EC and 2004/18/EC into national legislation.

The GWB sets out the core principles; defines the procedures, the rights and obligations of the awarding authorities and bidders. Article 97 lists the core principles of public procurement, to be applied in all procedures above the thresholds: competition, transparency, non-discrimination, considering the interests of SMEs, awarding contracts only to reliable bidders with sufficient technical and economic capacities, selecting the economically most advantageous tender, and granting the bidders the right to a fair procedure. In Article 101, the GWB describes the main procedures, which, corresponding to the Directives are open tender, restricted tender, negotiated process and the newly introduced competitive dialogue.

The three Codes cover the details of procedures, prescribing e.g. minimum deadlines for the submission of offers, or the number of bidders to invite to restricted tenders. The Codes do not have legal force themselves, but awarding authorities are obliged to comply with the requirements set therein under the terms defined in the Decree on the Awarding of Contracts ('Vergabeverordnung', VgV).

Depending on the value (below or above EU-thresholds), and the nature of contract (i.e. supply, service or public works), the obligations vary significantly. All awarding authorities in Germany have to comply with the provisions set in the three Codes for all their purchases above the EU-thresholds, i.e. for public works contracts above €5,278,000, for supply or service contracts above €211,000 (€137,000 for certain central agencies, and €422,000 for public utilities, in cases defined in directive 2004/17/EC). The provisions here are in full compliance with the Directives.

The procedures of below-threshold procurement are however distinctly less strictly regulated at federal (and even at Länder) level. Neither Part 4 of the GWB, nor the VgV (thus the three Codes) are directly applicable. Although VOB/A has been made obligatory for public procurement activities below the EU-thresholds (for both private and public bodies), the provisions in VOL/A and VOF are not binding - Länder are free to decide where and how to apply the requirements in their own regulations. Bavaria e.g. only obliges public awarding authorities to comply with VOL/A in procurement below the thresholds, but not private entities, while in Baden-Württemberg, VOL/A is also binding for awarding authorities in the private sector.

Generally, three main procedures are followed in public procurement below the thresholds: open tender, restricted tender, procurement from 'free hand' (which is often, but far from exclusively, employed in smaller purchases, and is the only procedure that allows direct negotiation with a supplier). In principle, detailed regional legislation gives priority to open tender procedures at Länder, municipal or agency level, as this procedure is seen as the most competitive, thus probably the most cost-efficient. But the share of openly publicised tenders is still relatively low in Germany (in 2002, it was only 7.5% of total value, compared to 16.2% for the EU-15). The share of procurement from 'free hand' reached 88.4% in 2003.

This German legislation approach also implies inter alia, that federal framework legislation does not put in place a system of appeals and remedies as in above-threshold procurement, though bidders can bring their case to civil court, if the awarding authority has violated the procedural requirements of VOB or VOL/VOF, in case it was obliged to follow them.

The publication of public tenders is less transparent for potential bidders in Germany. There is no single information source where companies can learn about all public procurement opportunities in the country, and even in some of the Länder. Federal, Länder or municipal awarding authorities may choose to publish the tenders in the official public procurement gazette of the respective Land, in newspapers, on their own website, or on any of the supra-regional public procurement portals. Some Länder<sup>18</sup> have public procurement gazettes that contain the tenders of Länder agencies and most tenders of municipalities and other local agencies. Other Länder however (e.g. Lower Saxony, North-Rhine Westphalia, Rhineland-Palatinate) do not publish such gazettes, and awarding authorities rely on newspapers or agency journals to publicise their tenders. Even in the Länder that publish an official gazette, the municipalities are usually not obliged to publicise their tenders in the gazette – as is the case e.g. in Baden-Württemberg – though they often make use of this opportunity<sup>19</sup>.

As a result of the non-existence of a comprehensive information source, companies have to spend significant time and human resources to investigate tender possibilities. Particularly SMEs are disadvantaged by the lack of comprehensive information, as they usually have less access to internal resources able to monitor gazettes and websites regularly.

The recently adopted amendments<sup>20</sup> to the Codes - within the initiative 'Cutting Back Bureaucracy' ('Initiative Bürokratieabbau') of the federal government - further streamlined procedures, and also introduced new mechanisms of conducting electronic procurement, as well as a first comprehensive regulation of certain 'extra-public procurement aspects' ('vergabefremde Aspekte'), i.e. principles, options or other issues in public procurement that lie outside the traditional principles of cost-saving and efficiency. Key topics covered here are labour market and environmental policies. Awarding authorities may e.g. require bidders to prove that their remuneration practices comply with the sector tariff agreements concluded between employers' and employees' association (which may exist at either national or Länder level), or giving priority to offers from such bidders. In the environmental area, German legislation – in line with EU guidance - allows awarding authorities a variety of possibilities to prefer more environmentally friendly products or services in their procurement, as long as they do not restrict market access. The possibilities include inter alia: using detailed specifications on environmental standards

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<sup>18</sup> E.g. Baden-Württemberg, Bavaria, Saxony, Saxony-Anhalt, Thuringia.

<sup>19</sup> Some cities (Mannheim is an example) only use their own official journal and website to reach potential bidders.

<sup>20</sup> The amendments entered into force as of 1 November 2006.



required, the integration of environmental aspects into the selection criteria, allowing the bidders to submit more environmentally friendly variants of their offer, exclusion of tenderers that did not comply with environmental regulation in the past. Advantage may also be given to products or bidders that follow certain environmental standards (proven e.g. by an ISO 14001 certification).

### **2.2.2 The governance of public procurement in Germany**

Germany is a federal state, which implies that the Länder are responsible for the legislation and implementation of most policies, while the federal level is only involved – if at all – in framework regulation and co-ordination. This applies to the management and supervision of public procurement also. Therefore, the governance of this domain is highly decentralised, one of the most decentralised in Europe.

At federal level, the main responsibilities for framework legislation and regulation of public procurement rest with the Federal Ministry for Economy and Technology ('Bundesministerium für Wirtschaft und Technologie, BMWi'). These responsibilities cover – besides VgV and the three Codes (VOB, VOL, VOF) – also the regulation of price and tariffs in procurement.

The key federal ministries (BMWFi included) also operate supervisory offices that investigate appeals from companies or authorities concerning public procurement procedures launched by the respective ministries or agencies under their auspices (this concerns mostly tenders above the EU-thresholds, as German legislation has introduced a well-regulated remedies system only there, and bidders do not have the right by law to appeal to the supervisory offices in below-threshold procurement). The offices can prescribe the cancellation of unlawful procedures or awarding decisions, the implementation of measures to remedy these, but they also act as consultation body and mediator in disputes. Such offices have also been established in the Länder.

Generally however, companies' appeals against awarding authorities are brought to specialised independent courts, the first instance public procurement tribunals ('Vergabekammer erster Instanz'), which conclude an ex-post check of the procedure in question. These tribunals operate at Länder level, and two tribunals work within the Federal Cartel Office, dealing with federal public procurement issues. The tribunals review the process, cancel the results if injury of the rules has been spelled out, and enforce decisions.

Altogether, more than 30,000 awarding authorities exist in Germany at federal, Länder and local level. They bear the ultimate responsibility to conduct public procurement in compliance with national regulation.

At both federal and Länder level, centralised procurement bodies carry out public procurement tendering on behalf of other agencies. These are often procuring (as centralised procurement agencies) goods and services for a large number federal bodies and agencies, and also bundling purchases if appropriate. The Federal Office of Defence Technology and Procurement ('Bundesamt für Wehrtechnik und Beschaffung') or the Procurement Office of the Federal Ministry of the Interior ('Beschaffungsamts des Bundesinnenministeriums') are prominent examples.

### **2.2.3 SMEs and public procurement policy in Germany**

SMEs are of uttermost importance for the German economy, and their interests are generally well-represented in policy-making and implementation. German policies often use the term 'Mittelstand', a concept of family-owned businesses, which has no detailed definition, but roughly corresponds to SMEs. 99.7% of all companies in Germany are SMEs, and they cover 78% of all employment in the private economy.

However, policies aiming at creating a level playing field for SMEs in public procurement have long been rather patchy, and formulated mostly at Länder level, without a sound federal co-ordination. The notion to include the principle and corresponding provisions to federal legislation as 'extra-public procurement aspects' came up only in the course of the major revision of public procurement regulation in 1998-1999.

The key measures in federal legislation that may favour SMEs are:

- § the sub-division of contracts into 'vertical' or 'horizontal' lots ('Fach- und Teillote', i.e. dividing up contracts according to different works, or product/service categories);
- § exclusion of small lots from the scope of the European directives; as reported by German officials and SME representatives, this seems to be done more frequently in recent times by awarding authorities, in order to facilitate the access of smaller contractors to certain parts of larger works or service contracts;
- § prohibiting disproportionate requirements on financial and economic capacities and on technical abilities; which is derived from the provisions in the EU Public Procurement Directives, and are only applicable for procurement above the EU-thresholds;
- § endorsing the joint fulfilment of technical, economic or financial requirements for smaller companies in below-threshold procurement.

At Länder level, the core legislation that contains the elements of SME-oriented public procurement policy are the Laws for the Promotion of SMEs ('Mittelstandsförderungsgesetze'), and/or the Public Procurement Laws themselves. The provisions are slightly different in the single Länder, e.g. concerning the importance they assign to subdivide tenders into lots.

Other key differences in Länder policies and legislation that may indirectly impact on SMEs access to public procurement are:

- § the tariff regulation ('Tariftreue-regelung'), i.e. excluding bidders that can not prove that they and their subcontractors are remunerating their employees according to the sector-specific tariff agreed upon by employers' and employees associations in national or regional bipartite discussions;
- § giving advantage to companies that participate in vocational education schemes;
- § prescribing a women quota;
- § including environmental aspects in exclusion or selection criteria.

SMEs are considered to have more difficulties than larger companies in complying with the above, or in providing sufficient proof that they comply.

Another important factor of SMEs are the position of single Länder towards the use of Public Private Partnership arrangements. PPPs normally require one (large) general contractor, which means that SMEs can only access the contracts as subcontractors (often as third- or fourth-tier subcontractors, to accordingly less favourable conditions)

However, SME associations could not gain adequate oversight on the possible impact of these Länder specificities on SMEs access, as comprehensive data on procurement, notably below-threshold tenders, are not available.

## 2.2.4 The evidence base on public procurement and SMEs

The size of the public procurement market (excluding private procurers) is about 250-260 billion euro<sup>21</sup> annually, with around 1 million tenders of over 30,000 awarding authorities. In 2003, public works took about 43% (112 billion euro) of the total, supply contracts 39% (102 billion euro), and service contracts 18% (46 billion euro). Federal agencies procured around 21% of the total value, Länder agencies 23%, while municipalities and municipal agencies 56%.

It is also known that the overwhelming majority of public procurement is done below the EU-thresholds. According to trade associations, the figure for public works was 98%, which corresponded to about 80% of the total value.

Statistics about public procurement activities above EU-thresholds are collected by the Federal Ministry of the Interior, and forwarded to the European Commission. The Ministry also collects data for below-threshold procurement of federal agencies. However, these statistics do only provide a partial coverage of public procurement in Germany. The aggregated data for federal agencies shown in Table 11 do not correspond to the overall estimates made by the Ministry.

**Table 11: Total reported value of public procurement in federal and Länder agencies, BMWi statistics (€million)**

Description	2001	2002	2003	2004	2005
<b>Value of public procurement of federal agencies</b>	<b>4,906</b>	<b>42,207</b>	<b>4,708</b>	<b>5,316</b>	<b>5,932</b>
Public works	403	24,153	1,060	1,331	1,594
- above EU-thresholds	403	22,410	634	440	585
- below EU-thresholds		1,743	426	891	1,009
Supply contracts	3,338	3,108	2,362	2,615	2,767
- above EU-thresholds	2,055	1,676	1,194	1,450	1,459
- below EU-thresholds	1,283	1,432	1,168	1,165	1,308
Services	1,165	14,946	1,286	1,370	1,571
- above EU-thresholds	711	14,420	840	934	966
- below EU-thresholds	454	526	446	436	605
<b>Value of public procurement in the Länder (above thresholds only)</b>	<b>16,105</b>	<b>6,114</b>	<b>6,824</b>	<b>5,080</b>	<b>6,617</b>
Public works	12,048	2,460	3,113	2,199	2,672
Supply contracts	1,933	1,197	1,270	1,709	1,482
Services	2,124	2,457	2,441	1,172	2,463

Source: BMWi statistics

<sup>21</sup> The total volume of public procurement in Germany was estimated to move around 350-370 billion euro by DG Internal Markt and Services.

Statistical data on the participation rate of SMEs in public procurement is not collected in Germany, neither by the Federal Ministry of the Interior at federal level, nor by the Länder. In addition to the absence of official statistics, no studies or surveys on this matter have been found that contained reliable information. Therefore, the access of the 'Mittelstand' to public procurement, or the trends in the recent years, are difficult to judge.

SMEs associations themselves have only a patchy overview of the market in the different industry sectors. Overall, there is a wide consensus that SMEs are not seriously disadvantaged in Germany, though some features of the German public procurement landscape are considered to affect SMEs access negatively – the difficult access to information in particular (no single information source), and the behaviour of awarding authorities, like the over-reliance on bid prices, as well as not always breaking down tenders into lots.

Besides the above problems, concerns arise on the spreading of Public Private Partnerships arrangements, which are considered to exclude SMEs, due to the significant financial capacities involved in such transactions.

Altogether, the new opportunities endorsed in the European directives, and in the recent amendment of the German public procurement legislation were seen as beneficial. SME associations would generally welcome the further expansion of these practices to the below-threshold area, though action at EU-level was not endorsed in this regard.

## 2.2.5 Approaches to overcoming barriers to SME involvement in public procurement in Germany

**Table 2.12: Initiatives aimed at facilitating the access of SMEs to public procurement**

Activity/ initiative	Description
<b>Informing SMEs about tendering opportunities</b>	In recent years, a number of private-sector initiatives have however been launched to collect and disperse information about public procurement tenders, and thus to remedy the long-condemned problem of the fragmentation of information sources. Arguably the largest amongst these is the 'Ausschreibungs-ABC' ( <a href="http://www.ausschreibungs-abc.de">www.ausschreibungs-abc.de</a> ), which is a common electronic platform of 8 publishers of gazettes, that brings together since 1998 the information content of several publication sources for public procurement, such as the official gazettes from Baden-Württemberg, Bavaria, Berlin, Brandenburg Saxony, Saxony-Anhalt, Thuringia, and the federal gazette – while tenders from inter alia Lower Saxony, North-Rhine Westphalia and Rhineland-Palatine are only partially covered. The coverage will however be further extended with the creation of a new website ( <a href="http://www.vergabe24.de">www.vergabe24.de</a> , launched in September 2007), merging information from 'Ausschreibungs-ABC' and some smaller tender publications. Other examples to mention are <a href="http://www.bi-online.de">www.bi-online.de</a> or <a href="http://www.ibau.de">www.ibau.de</a> , which put a special focus on public works tenders and private construction projects.
<b>Simplification of pre-qualification requirements</b>	The government developed and introduced a new prequalification system for public works in 2006. This has been declared obligatory for all agencies under the auspices of the federal government via a decree issued by the Federal Ministry of Transport, Building and Urban Affairs ('Bundesministerium für Verkehr, Bau- und Stadtentwicklung, BMVBS'). In the prequalification process, companies that wish to participate in federal tenders may – independently from any actual tender – apply for being included on a publicly accessible shortlist of qualified contractors by proving their technical, economic and financial ability that is normally required for public works. Subsequently, they do not have to provide this documentation in tenders, lifting the administrative burden imposed on them. This scheme also reduces the risk of exclusion from tenders due to formal errors.

<b>E-procurement</b>	<p>The supra-regional information portals have already e-procurement features: they give the opportunity for customised searches (based on e.g. CPV codes, place of delivery, etc.), e-mail alerts, but some of them also allow for more developed interactive functions, procurement management systems for the awarding authorities, workflow functions, electronic tools for the communication between authorities and bidders, software for companies, encryption of submitted information.</p> <p>Certain centralised procurement bodies, like the Procurement Office of the Federal Ministry of the Interior have launched their own e-procurement websites and systems (<a href="http://www.e-vergabe.de">www.e-vergabe.de</a>).</p> <p>However, electronic auctioning has only been done in the framework of pilot projects in Germany so far. Although allowed by EU-law and endorsed by some actors, the national regulatory framework is not yet in place. This is also regarded as being less favourable for SMEs, as the products or services being usually subject of electronic auctions are highly standardised, where larger enterprises have a natural advantage based on economies of scale. The roll-out of electronic auctioning will be expected for 2008, when the test phases in some Länder (e.g. Baden-Württemberg) will close.</p>
<b>Break up work into smaller lots</b>	<p>This possibility is advocated in the GWB, and relatively frequently done by awarding authorities. However, SME associations mention that awarding authorities are often tempted to assign a general contractor, in order to avoid the additional time and professional input that is necessary for the specification, co-ordination and supervision of contracts, composed of more lots. A current initiative proposes to reinforce the use of lots by making their use obligatory (except in cases where these would cause disproportionate difficulties to the awarding authorities).</p>
<b>Use of framework agreements</b>	<p>The provisions of the Directive 2004/18/EC on framework agreements have been integrated in the three Codes (VOB/A, VOL/A, VOF). Several official gazettes of the Länder published commentary or guidance on the practical utilisation of the rules on framework agreements..</p>
<b>Encouraging consortia of small firms</b>	<p>The legislation provides for the possibility to allow consortia of smaller companies to jointly fulfil technical, economic and financial requirements. This is however not always followed in procurement below the thresholds.</p>

## 2.2.6 Conclusions

The German public procurement landscape is highly fragmented, with differences in legislation from Land to Land, and no single source of information on tender opportunities with a national coverage. Legislation is generally much more lenient concerning below-threshold than for above-threshold procurement. The elements included in the Directives have only partially filtered down into below-threshold practices, and 88% of all public procurement is done through loosely regulated “free hand” purchases. In addition, the legislation does not define an appeal and legal remedy system for below-threshold procurement.

SMEs call for more and better information on tenders, such as a central information source, and a better harmonisation of different Länder-specific regulations. The comprehensive pre-qualification system in the public works area is however regarded as a good example. The registry procedure, managed by a regional network of chambers, reduces the extensive administrative burden of tenderers, as well as mitigates a potential source for formal errors in applications.

## 2.3 Hungary

### 2.3.1 National policy context of public procurement

#### Legislation on public procurement

Hungary has an act on public procurement only since 1995, when the Public Procurement Act (PPA'95)<sup>22</sup> was adopted by the Parliament. Before that, procurement was only loosely regulated by the Government, which resulted in a very low level of transparency, a number of cases of corruption and fraudulent practices, and lack of appropriate remedies for tenderers.

The act of 1995 was a single and comprehensive regulation of public procurement, applicable to all purchases of public entities in Hungary above certain minimum thresholds (so-called "national thresholds")<sup>23</sup>. Thresholds are set by the act on the annual budget. As of 2007 the thresholds are cca. €120,000 for supply, €100,000 for service contracts, €360,000 for public works and €400,000 for building concessions. It also covered purchases of private actors receiving grants from public funds in specified cases.

The act provided for the rules and procedures to follow for procurement above "national thresholds". It also regulated contractual obligations and remedies, as well as the rights and operation of the then newly established Public Procurement Council (PPC). The Council was brought into life as a formally independent authority overseeing all public procurement in Hungary.

The PPA'95 was already to a large extent consistent with EU Directives effective at that time, but was somewhat simplified, by not introducing all procedures foreseen in EU regulation. These were introduced to Hungary in 2003, one year before Hungary's accession to the EU, with the adoption of the new Public Procurement Act<sup>24</sup> (PPA'03). The new act was in first line adopted to ensure full conformity with EU Directives in force. The PPA now includes regulation of building concessions, framework agreements, as well as specific rules on the purchases of public utilities. Evidently, it was also the first legislation to specify Community thresholds and to describe different rules to follow in those cases – in line with the Directives. In addition, it integrated previous the "freehand purchasing" scheme with an extended scope (applicable for all public entities), slightly revised rules and with increased thresholds as "simple procedure". But until 2005, these were considered very low at approximately €8,000 for supply and service contracts, and €40,000 for works, and were therefore raised in 2006 to cca. €32,000 and €60,000, respectively.

Additional to PPA'03, a number of regulations set out detailed provisions for tender procedures, for centralised procurement, for public procurement advisors, etc. They also define rules for specific cases, including e.g. for the procurement of pharmaceutical products or defence procurement. These regulations are mostly Government Decrees, or decrees issued by the Minister of Justice<sup>25</sup>. The Ministry of Justice is also in charge of the PPA itself.

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<sup>22</sup> Act No. XL of 1995

<sup>23</sup> A government decree from 1996 regulated the so-called "freehand purchasing" of government bodies, which again were applicable from a certain threshold – a step below the minimum threshold of the PPA'95 (e.g. €3,000 for services). These rules were only binding for central government bodies.

<sup>24</sup> Act No. CXXIX of 2003

<sup>25</sup> Other issuers include: the Minister of Labour and Social Affairs and the Finance Minister

The provisions for procurements above the national threshold are basically the same than those for above the Community thresholds, for all open-, restricted-, negotiated procedures and competitive dialogue. The slight differences to mention here are: less stringent requirements on publicising the results of the tender (and no obligation to publicise any document in the EU Official Journal of course); more flexibility to launch negotiations in open procedures; and a limited number of additional exemptions from the scope of the law (e.g. purchase of school textbooks). That means that Hungarian legislation on public procurement extends most requirements of the Directives to national procurements of a lower value. In case of public works, the threshold from which EU-like rules are to be followed corresponds to a mere 7% of the EU threshold.

There are however much less obligations for the “simple purchase” procedure. This includes more exemptions (e.g. urgency, additional works to existing contracts, replacement of equipment if a change in supplier would impose disproportionate additional costs or technical difficulties, etc.), no need to publicise the tender (if the estimated value does not exceed 50% of national thresholds), as well as more flexibility if the number of tenders received is less than three, or if completion of documents is needed.

### **Governance structure**

As Hungary’s basic system of governance is a centralised one, legislation on public procurement is adopted at national level, and there are no regional differences in its application, nor are there any regional devolved bodies responsible for steering, management or supervision of public procurement.

The main body to oversee public procurement in Hungary is the Public Procurement Council. This is an body independent from any ministry that reports to the Parliament. Its members are experts delegated by ministries and other authorities, as well as by enterprise associations and the chamber of commerce, for a period of five years. The Council elects its president autonomously.

The Council supervises all public procurement activities in the country; it investigates in case of suspected or reported irregularities; it publishes the official journal of public procurement; it registers awarding authorities; provides for the accreditation of public procurement advisors; maintains the database of mediators; issues recommendations on legislation and guidelines for awarding authorities and tenderers; and organises trainings. The Council also harbours the Arbitration Committee of Public Procurements, which is entitled to decide upon disputes concerning public procurement. It can e.g. impose fines, and/or oblige the awarding authority to withdraw the tender or cancel the results.

At local level, public procurement is managed by the local authorities themselves. Public entities subject to the PPA have to prepare specific bylaws on how to conduct their tender procedures. This obligation also applies to local authorities, and the bylaw has to be adopted by the local council. These documents may be regarded as legislation at local level (i.e. “local decrees”). They set out - *inter alia* - the responsibilities of different units or officials, regulate membership of the decision-making committees, provide for the practical organisation the tender procedure.

Local authorities – but other public bodies as well – are often assisted by external advisors. Very small municipalities do not have adequate human capacities to carry out public procurement themselves (in Hungary, almost every settlement enjoys a status as independent municipality, adding their number to more than 3,100 – more than half of them with less than 1,000 inhabitants!). They engaged public procurement advisors already in the past (these are usually lawyers). As of the new PPA, the use of accredited public procurement advisors is now obligatory for all procurement above the EU thresholds, and more and more authorities take advantage of

them even in procurements with a total value that does not exceed these thresholds. The use of advisors – though it means additional cost – helps to comply with the law on public procurement that became more complex after 2003. An additional “ex ante” guarantor of compliance is the Public Procurement Council itself, by doing routine checks on tenders before publicising it in the Hungarian official journal of public procurement – or before forwarding them to the EU Official Journal.

Centralised procurement is currently (since 2006) done by the Central Services Directorate. The PPA obliges government bodies to pool certain purchases – like computers, car fleet and fuel, office furniture, etc. – together in a centralised tender. This is usually a framework contract over 2-3 years. Other bodies governed by public law may join (hospitals are a prominent example here).

The centralised agency does take advantage of e-procurement tools, albeit not at the highest interaction level. The legal framework for the introduction and acceptance of electronic signatures is in place, but the arrangements for proper implementation (i.e. certification hierarchies) – in contrast to earlier plans – still not fully operational.

### 2.3.2 Key data and trends in public procurement

During 2001 and 2005, the number of public procurement tenders in Hungary moved in a relatively narrow range between 3,650 and 3,850, with only one exception in 2002, where the number of tenders peaked at 4,243. Since the accession of Hungary to the EU in 2004, the obligation to publish tenders above the EU-threshold in the EU Official Journal entered into force. The number of tenders above the Community thresholds was 991 in 2005, the first full year of EU-membership.

Figure 2.9 Number of tenders above the national thresholds

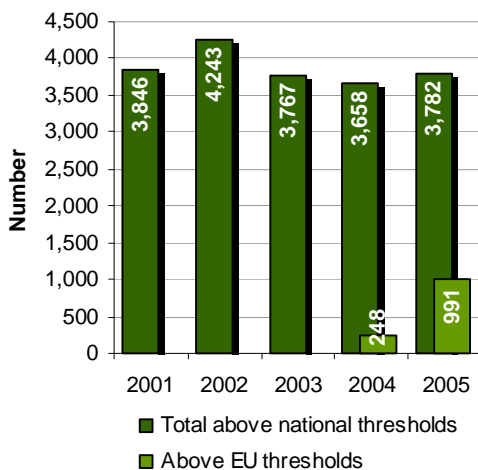
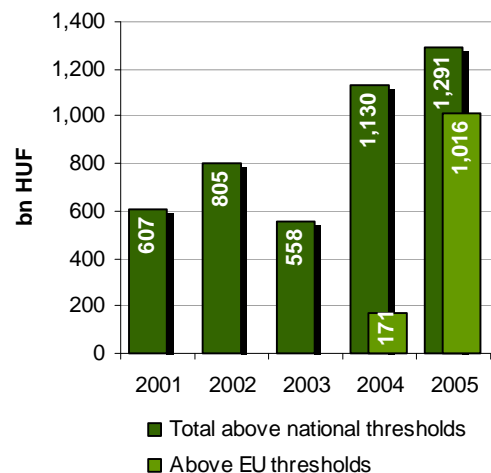


Figure 2.10 Total value of tenders above the national thresholds



As regards of the value of goods and services procured, the figures show greater variation. In the election year 2002, large motorway tenders were launched, while there was a slight decrease in public investment in 2003. In 2004, however, the value of public procurement above national



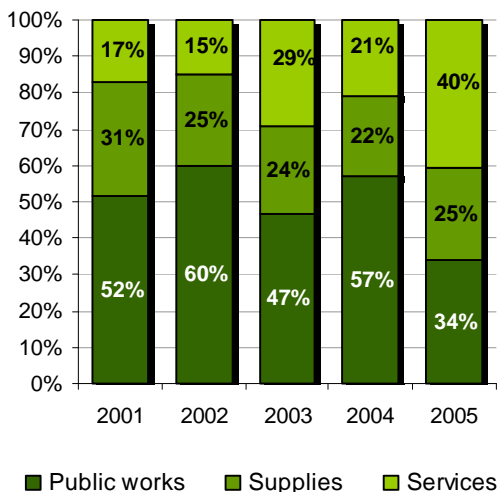
thresholds doubled, and continued to rise in 2005. Its relative value against the country's GDP increased from about 4% in 2001 to 6% in 2005 (with a temporary drop to 3% in 2003).

Most tenders followed the open procedure (65% of tenders, 46% of the total value procured in 2005), but in terms of value, the negotiated procedure came first usually (49% of the value, with only 24% of the number of tenders). This is explained by the fact that the average value of tenders in the latter case was almost three times higher than for open procedures.

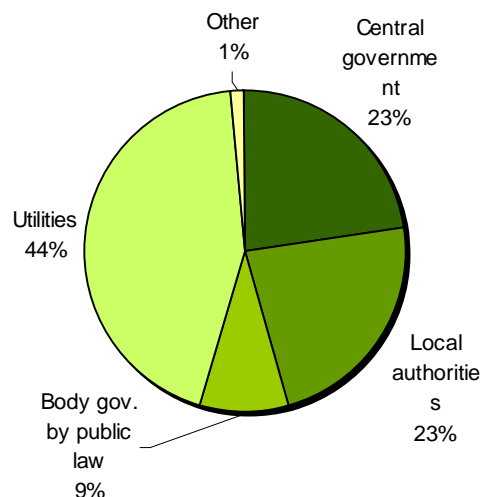
The number of "simple purchases" was with 25,560 about seven times higher than tenders above the national threshold. Their combined value however was only 159 billion HUF, one eighth of the value of tenders above national thresholds (as information on these tenders is limited, they are not covered by subsequent statistics – government officials, experts and SME associations however assume that SME's position is much better than at larger purchases).

On average, about half of the total value of public tenders was spent on public works. Its share dropped however in 2003 and 2005, with the central government spending less on investments in infrastructure. The share of supply contracts remained relatively stable at 22%-25% (except in 2001), while services normally accounted for 15-21% of procurement, but reached an exceptional 40% level in 2005.

**Figure 2.11 Distribution of total value of tenders by nature of contract**



**Figure 2.12 Distribution of total value of tenders by type of awarding authority, 2005**



In this year, utilities were giving the largest share (44%) of procurement in terms of value, which is a rather atypical result (in 2004, they only accounted for 16% of the total value), and an effect of a number of large-scale purchases including the buying of locomotives and rolling stock by the state railway company.

The significance of centralised procurement is at a medium level in Hungary. In 2005, more than 1,000 government bodies were obliged to take part in centralised procurement procedures by law. About 900 other awarding authorities joined the system voluntarily (e.g. healthcare providers). The value of goods and services procured was 66 bn HUF (about €260 mn, and corresponding to

5% of all procurements in Hungary above national thresholds). ICT tools took the lion's share (35 bn HUF), fuels came second (11 bn). The total value of goods and services procured through centralised procurement did not change much over the years from 2001 to 2005, but this might change now as there are plans to extend the scope of products, and some authorities report of increasing budget pressures to increasingly use this tool. Framework contracts outside centralised procurement is less frequent.

### **2.3.3 SMEs' access to public procurement**

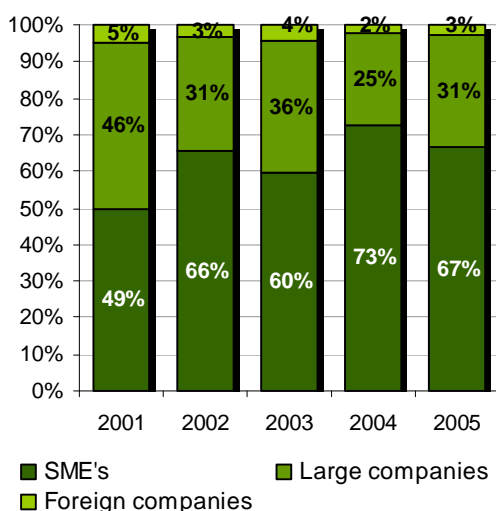
#### **Key data**

In Hungary, all awarding authorities are obliged to collect information on whether the companies that won public contracts are SME's (broken down into micro-, small-, and medium-sized categories), and to forward this information to the Public Procurement Council, which aggregates data and includes national figures in its annual reports. The basic information is provided by the companies themselves, via a signed statement on their classification in the sense of Act No. XXXIV of 2004 on Small and Medium-Sized Enterprises. The categorisation therein is fully consistent with the EU definition, also covering the provisions on accounting for linked- or partner enterprises (but multinational supplier-SME distributor links can not be excluded).

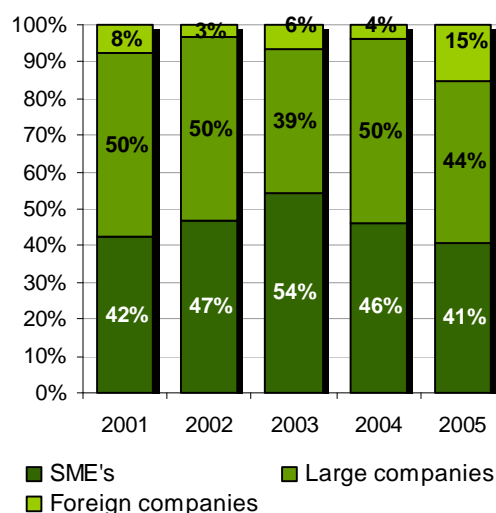
Based on the reports, the number of public contracts above national thresholds that were awarded to Small and Medium-sized Enterprises was 2,529 in 2005. The proportion within the total thus increased from 49% in 2001 to 67%. In terms of value, SMEs' share was 41% in 2005, which is a significant decrease when compared with the 54% in 2003. Within the category of SME's, micro-enterprises only had a minor share of about 5% of contracts in terms of value in 2005, while medium-sized enterprises secured about 75% of total contracted value.

The headline figures are closely corresponding to EU-wide data on SME's share in public procurement above Community threshold. One should however note that these statistics include purchases above EU thresholds, giving 26% of the tenders, but accounting for 79% of their combined value in 2005, the first full year of Hungary as Member State. We do not have data for procurements below the national threshold, as no information regarding the size of winners is collected on these.

**Figure 2.13 Number of public contracts awarded by type of company**



**Figure 2.14 Total value of public contracts awarded by type of company**



One could expect SME's to be less successful in (the larger) negotiated tenders, but the figures interestingly do not differ much from those of the open or restricted procedures. The same is valid for the analysis by type of awarding authorities: no matter if the authority was a central government body, local authority, body governed by public law, utility or other, SME's share was almost constant at 60-70% in 2005.

#### Specific bottlenecks of SME's

Although SME's share in public procurement is seen as being around EU average, the government and especially the Public Procurement Council expressed the objective to take actions that would enable better access of SME's to public contracts. Although it is still not unanimously seen as a key instrument of economic policy in politics, the notion of regarding public procurement as more as just a legal procedure is emerging.

The common problems felt by SME's in Hungary in regard to tendering are considered the complex legislation that is uneasy to understand, lack of appropriate knowledge of the exact requirements for a tender, the high administrative costs of tendering, the lack of information on relevant tenders, disproportionate requirements, the tight deadlines. The fear of late payments, and difficulties to compete against traditional customer-supplier contacts has also been mentioned by chambers of commerce. Most of these bottlenecks can be eliminated or diminished by improving information and publicity.

It is to be said that there is a plethora of information on public procurement in Hungary. Public procurement advisors are available for tenderers. Chambers of commerce in the larger cities, enterprise associations provide general information and consultation opportunities for SME's. The PPC itself – besides producing guidance, explanations and a vast repository of document templates for awarding authorities – also publishes guidelines for tenderers. The European Information Centre operated by ITDH in Budapest offers customised access to information notices of, and advice on, public procurement tenders abroad (via the TSS software developed by

the Brussels EIC with the support of the European Commission)<sup>26</sup>. More and more experts have attended courses in public procurement (organised inter alia by the PPC), their knowledge is considered adequate.

But the advisors are too costly, chambers of commerce have only a limited customer base and internal capacities, and the PPC guidelines (although reliable and comprehensive) are still written in a very legal style.

#### **Actions undertaken**

One specific problem arises with a lack of accurate and customised information (on time) on upcoming or launched tenders. Although all Hungarian public procurement above a certain value (50% of national threshold) is centrally publicised in the official journal managed by the PPC, and available on-line, this journal is in a simple text format (i.e. PDF files), and does not have search, notification or customisation features yet (some of these features are under development). Therefore, the government decided in May 2007<sup>27</sup> to launch the development of a central database on public procurement. A feasibility study has been commissioned to define requirements, but initial plans foresee a searchable database, similar to the TED, which may possibly send out customised alerts for registered users.

A current policy initiative called "Turned to Business" of the Ministry of Economy and Transport, aimed at improving the administrative environment to businesses, is also exploring opportunities in relation to reduce unnecessary burden in public procurement.

Other actions are undertaken by the Public Procurement Council. In its recommendation No. 3/2006, the PPC reflects upon the new (or existing) possibilities included in Directives 2004/17 and 2004/18 in support of SME's access to public procurement. In the recommendation, it stresses that it is prohibited to build in direct preferences towards SME's into public procurement tenders, but it brings into awarding authorities' attention, and calls upon them to make use of, following options:

- § consider thoroughly the functionality and results expected from the subject of procurement, by conducting an adequate market research
- § always provide for a Hungarian version of all tender documentation, and allow the submission of tenders in Hungarian
- § describe the subject of procurement accurately in the tender notice, in order to enable potential tenderers to decide whether to buy the tender documentation
- § determine tender deadlines carefully, avoid unfeasibly short deadlines, and consider that smaller tenderers with less experience (and no designated procurement expert) may need more time to compile their tenders
- § consider preparing prior information notices

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<sup>26</sup> The service is in operation but only 73 SME's registered so far for the customised notification of EU procurement possibilities published on TED. The EIC also organises 2-day seminars and training on public procurement, focusing on EU cross-border procurement issues

<sup>27</sup> Government Decision No. 2073/2007 of May 3

- § establish the size of required guarantees carefully, not to impose a disproportionate burden on SME's
- § do not hinder the access of SME's through defining too high technical or financial requirements that are not justified (with a special emphasis on the eligibility criteria)
- § consider breaking down tenders into lots whenever possible and whenever this does not contradict the economic rationale, in order to enhance the access of SME's with limited capacities
- § eligibility and selection criteria may be specifically tailored to different lots, taking into account the different subject and different requirements
- § publicise tenders that are not subject to obligatory publication in the official journal on the authority's website
- § provide for cheap and easy access of tender documentation (e.g. website), consider making it accessible in an electronic format and free of charge
- § if documentation is not provided not free of charge, allow for its inspection
- § avoid terminology that is difficult to understand and formulate the requirements clearly and comprehensible
- § prepare a "control checklist" of documents required for the eligibility of the tender
- § avoid the introduction of disproportionate protective clauses in the contract template provided, which could deter SME's from tendering
- § provide opportunity to request additional information, best in form of consultation, including eventually an on-site visit – and bring this opportunity into the tenderer's attention in the tender documentation
- § allow for completion of documents
- § consider the appropriate length of framework agreements (which is 4 years maximum), and the number of providers to be selected, in order to not exclude SME's that may have more capacity constraints than large enterprises

Note that the above are merely recommendations, there are no legal obligations in Hungary e.g. to break down contracts into lots, like in France. The PPC is advocating these possibilities through various means (trainings, conferences, ad-hoc consultation, etc.), but their implementation at awarding authorities is said by some organisations to be just slowly progressing. As a government official pointed out, there is much more room for using the options that the PPA'03 opened up (use of lots has been especially highlighted, but also encouraging companies to group together to fulfil tender requirements).

The PPA provides of course for the prohibition of disproportionate requirements. Such requirements are however still used by awarding authorities, according to SME's associations. Disputes and legal procedures are not always initiated by the companies, in the fear that this could reduce their chances of winning public contracts later.

### **2.3.4 Conclusion**

Summing up the Hungarian experience, key initiatives all concern the provision of more and better information on tenders. The searchable database is regarded as an important tool to foster SME's awareness of tendering opportunities. It might be also advisable to better publicise consultation possibilities at associations, chambers of commerce, or at the EIC. Additionally, enhanced networking between these bodies could bring efficiency gains and exchange of experience, beneficial to both companies and the associations.

Hungary did not introduce legal requirements to apply the possibilities also endorsed by the Directives if feasible (breaking down tenders into lots, excluding small lots from the scope of the Directives, etc. - see e.g. France), though this may be certainly an option to consider.

## 2.4 Italy

### 2.4.1 Public procurement regulation in Italy

The latest national legal document on public procurement in Italy is the **Code for works, service and supply public contracts** (*Codice dei contratti pubblici di lavori, servizi e forniture*), which was established by the Legislative Decree n° 163 of 12 April 2004 and came into force on July 1, 2006. It was completed very recently by the Legislative Decree n° 113 of July 31, 2007 (*Ulteriori disposizioni correttive e integrative del decreto legislativo 12 aprile 2006, n. 163*).

**Guidelines for the implementation of the Decree** were published on July 13, 2007 (*Schema di regolamento di esecuzione e attuazione del decreto legislativo 12 aprile 2006, n. 163*).

The organization of public procurement in Italy is decentralized. Regions must comply with the national Code, yet they have some flexibility to adapt it to the local context. All regions have thus set up their own norms on public procurement<sup>28</sup>. The most recent one is the Regional regulation on public works, supplies and services for Sardegna, adopted on 7 August 2007 (*LR SARDEGNA 5/2007 Disciplina regionale lavori, forniture e servizi*). However, the degree of freedom of regions and provinces in this area is not very clear. For example, the regulation adopted by the Toscana Region on 13 July 2007 (*LR TOSCANA 38/2007 Disciplina regionale lavori, forniture e servizi*) is contested: by bringing limitations to sub-contracting (Art.20), this law would contravene the Code for works, service and supply public contracts.

Before 2006, public procurement in Italy was regulated by the Framework Law on Public Procurement (L.109/1994) – also called *Legge Merloni*, established in 1994 and amended several times.

Compared to this law, the new Code has introduced the EU definition of tender procedures: awarding authorities have indeed the possibility to choose between open procedure, restricted procedure and negotiated procedure in specific cases (defined by art. 56 and 57 of the Code). When the tender appears as particularly complex, authorities can also award the contract pursuant to a competitive dialogue. In addition, the Code has extended the possibility to set up framework contracts for traditional sectors (in addition to specific sectors).

For tenders below Community thresholds the Code has provided for specific arrangements: the negotiated procedure is always admitted for tenders of a value below € 100,000. Public works contracts of a value below € 750,000 can be awarded via a simplified restricted procedure: awarding authorities have the possibility to invite at least twenty candidates to bid, but are not obliged to publish any notice<sup>29</sup>.

Regarding the publications of contract award notices, requirements depend on the nature and value of contracts, as shown by

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<sup>28</sup> Such regulations are adopted by the Regional Councils (*Consigli Regionali*), which are the legislative bodies of the Italian regions.

<sup>29</sup> Art. 123, paragraph 1 of the Code for works, service and supply public contracts

Table 2.13 below (including some optional possibilities).



Table 2.13: Advertisement of notices according to the nature of contract

Nature of contract	Advertisement requirements under the different thresholds			
	Between €0 and 211,000 <sup>30</sup>	Between €211,000 and 500,000	Between €500,000 and 5,278,000	Above €5,278,000
Public Works	<b>Local procedure</b> § Albo Ente § Profilo commitente <sup>31</sup> and websites (optional)		<b>National procedure</b> § GURI <sup>32</sup> § Albo Ente § Profilo commitente § Websites § At least 1 national daily newspaper § Regional Official Bulletin (optional)	<b>European procedure</b> § OJEU <sup>33</sup> § GURI § Albo Ente § Profilo commitente § Websites § At least 2 national daily newspapers § At least 2 regional daily newspapers § Letter to the Prefect § Regional Official Bulletin (optional)
Supplies and services	<b>National procedure</b> § GURI § Albo Ente § Profilo commitente § Websites § Regional Official Bulletin (optional)	<b>European procedure</b> § OJEU § GURI § Albo Ente § Profilo commitente § Websites § At least 2 national daily newspapers § At least 2 regional daily newspapers § Letter to the Prefect § Regional Official Bulletin (optional)		

Source: Legge 163/2006, processed by GHK/Technopolis Group

## 2.4.2 SMEs and public procurement policy in Italy

Confindustria, the leading organisation representing manufacturing and service companies in Italy, and its French counterpart Medef have engaged in negotiations with the EU in order to obtain the exemption of European SMEs from the field of application of the World Trade Organization Agreement on Government Procurement (WTO-GPA).

ANIEM, the National Italian Association for the Construction Sector, which is member of CONFAPI (Italian Confederation of SMEs), has also been lobbying the Italian Parliament in order to obtain significant changes to the Codes in favour of SMEs.

<sup>30</sup> For local authorities and 137,000 € for the State

<sup>31</sup> The “*Profilo Commitente*” (literally ‘profile of the buyer’) is the website of the awarding authority, on which information about the tenders is published.

<sup>32</sup> Official Journal (*Gazzetta Ufficiale della Repubblica Italiana*)

<sup>33</sup> Official Journal of the European Union

However, it must be said that so far the Code for works, service and supply public contracts has not set up any substantive measure specifically aimed at facilitating the access of small and medium-sized enterprises to public procurement.

### **2.4.3 The governance of public procurement in Italy**

Drafting primary legislation is the responsibility of the Italian Parliament and the Council of Ministers, whereas the drafting of secondary legislation is done by the Ministry of Infrastructure, the regions and the self-governing provinces.

The public procurement structure in Italy is dominated by two institutions:

#### **The Public works, services and supplies Control Authority**

On July 1, 2006, the Public works, services and supplies Control Authority (*Autorità per la Vigilanza sui Contratti Pubblici di Lavori, Servizi e Forniture*) replaced the Public Works Authority, which had been established in 1999 with the task of controlling public works contracts. The Authority is a body composed of 5 members, nominated by the president of the Parliament and the president of the Senate, selected from technical, economic and legal fields.

The new Code has extended the role of the Authority to all types of public procurement. Activities of the Authority include the following: to monitor public contracts in order to guarantee their compliance with the rules and principles of public procurement (transparency of procedure, competition, efficiency of contracts' execution, etc.); to communicate to the Government and the Parliament the most serious cases where legislation was not correctly applied; to fine contracting authorities – if necessary – that infringe public procurement rules; to make suggestions to the Government concerning legislation on public procurement.

In addition, the Authority is in charge of collecting and processing data on public contracts, at local, regional and national levels, through the management of the Observatory for Public Procurement (*Osservatorio dei Contratti Pubblici*).

#### **Consip**

Consip S.p.A. is a limited company, totally and directly owned by the Ministry of the Economy and Finance (MEF). It was created in 1997 with the objective to provide advice, assistance and IT solutions to support Italy's public administration in its drive towards modernization.

In 2000 Consip was entrusted with the management of the Programme for the Rationalization of Public Expenditure (*Programma di razionalizzazione degli acquisti nella Pubblica Amministrazione*), which is based on the use of information technology and innovation tools for the purchases of the administrations.

Other organisations involved in this project are: the Ministry of the Economy and Finance, with the Office for the Rationalization of Public Expenditure; the National Centre for the use of information technology in public administration; the Competition and Market Authority, as well as various administrations and suppliers.

The main objective of the Programme is to improve the efficiency of the public procurement procedures, through the achievement of the following goals: limitation of public procurement expenditure; improved quality of goods and services provided; simplified and faster procurement procedures.

The Decree n° 101 of 4 April 2002, which set up provisions for the use of electronic procedures by public authorities, has led to development of two e-procurement systems. An e-procurement platform ([www.acquisitiretepa.it](http://www.acquisitiretepa.it)) has been established to support this initiative.

§ E-market (*Mercato Elettronico*)

On this market, suppliers can provide goods and services to registered awarding authorities for values below Community thresholds, via the publication of electronic catalogues. Consip specifies the typology of goods and/or services requested and the rules that will regulate the contracts with the authorities. Prior to presenting their own catalogue, suppliers must receive an authorisation from Consip. They are then able to receive direct purchase orders from the Public Administration or make an offer in case the PA wishes to compare several offers.

§ Electronic calls for tenders

Such calls are based on the electronic negotiated procedure for the purchase of goods and services, for values above or below Community thresholds. The process is articulated around the following steps:

- Definition by the awarding authority of the typology of goods and services needed
- Publication of a pre-selection notice
- Pre-selection of candidates
- Publication of the tender notice
- Receiving requests of participation to the competition from candidates
- Sending invitations to participate to selected suppliers
- Negotiation process
- Awarding the contract.

#### **2.4.4 The evidence base on public procurement and SMEs**

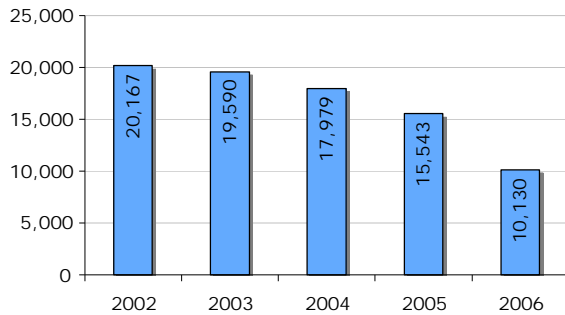
As mentioned before, the Public works, services and supplies Control Authority has been entrusted with the task of collecting data related to public contracts, through the Observatory for Public Procurement (*Osservatorio dei contratti pubblici*).

Data collected concerns the public works contracts of a value above 150,000 euros and covers the period going from January 1, 2000 to December 1, 2006. The new Code provides however that the Observatory gather data on service and supply public contracts as well.

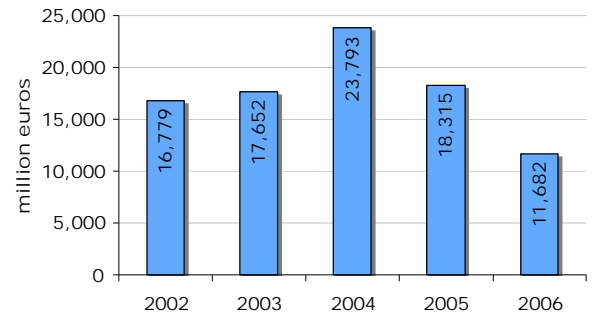
Data are available on a dedicated website. They can be filtered by location (Province, Region, State) and by timeframe (each year between 2000 and 2006, or the whole 2000-2006 period). The website contains general data on public contracts (number, total value, etc.), as well as a break-up of data by sector of intervention, value of contract, type of work, awarding authority and type of procedure.

When looking at the evolution of public works contracts over the last 5 years (Figure 15 and Figure 16), one can immediately notice a strong decrease in the number of contracts over the period (the number halved between 2002 and 2006). The overall value of contracts also dropped by approximately 30% between 2000 and 2006. However, public works contracts in 2004 do not follow this general trend: indeed, while their number is decreasing compared to 2003, their value is much higher than for the other years. This is probably due to the high increase in the value of transport contracts in 2004, more specifically of contracts related to road infrastructures (see Figure 18).

**Figure 15 Number of public works contracts**



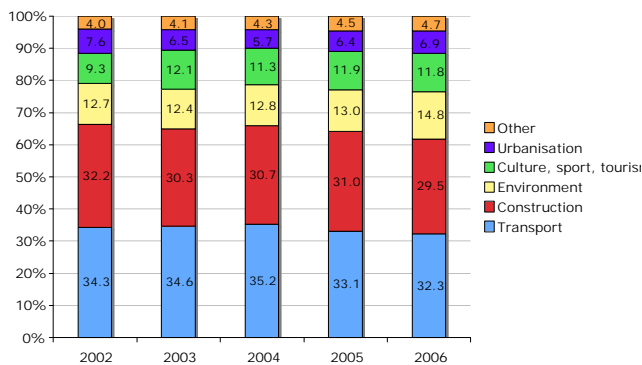
**Figure 16 Value of public works contracts**



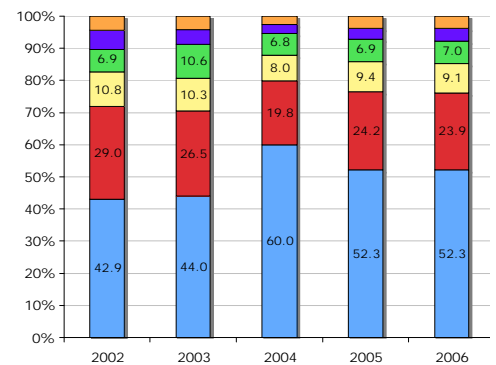
Source: Observatory for Public Procurement, processed by GHK/Technopolis Group

The distribution of public works contracts by sector show the predominance of transport contracts, both in terms of number and of value (Figure 17 and Figure 18). The part of the construction sector (including the building of houses, schools, hospitals, etc.) is also significant.

**Figure 17 Distribution of number of public works contracts by sector**



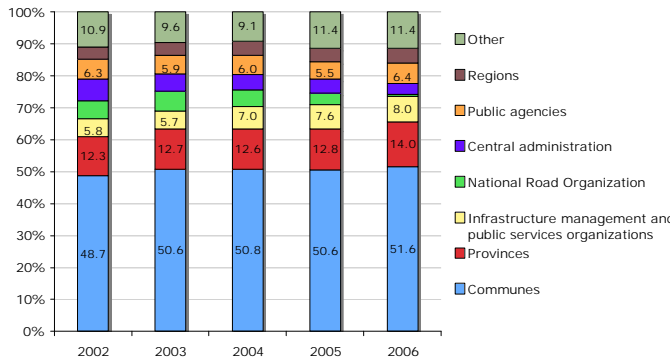
**Figure 18 Distribution of value of public works contracts by sector**



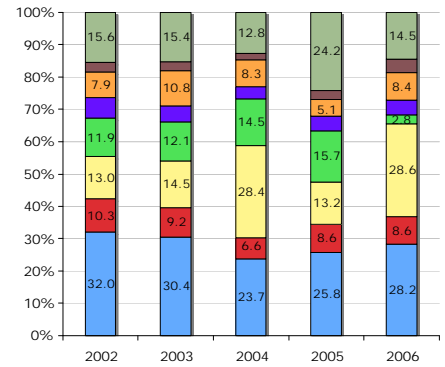
Source: Observatory for Public Procurement, processed by GHK/Technopolis Group

As shown by Figure 19, public works contracts are awarded in priority by the Italian communes (51.6 % in 2006). When considering the value of such contracts, the weight of communes is less significant, and in 2006, the biggest share of contracts was awarded by the organizations in charge of the management of infrastructures and public services (Figure 20).

**Figure 19 Distribution of number of public works contracts by awarding authority**



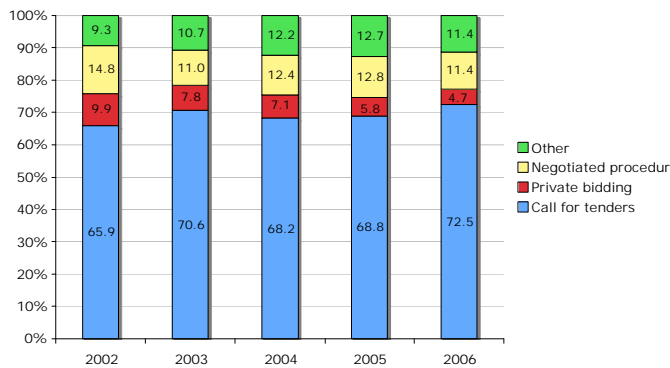
**Figure 20 Distribution of value of public works contracts by awarding authority**



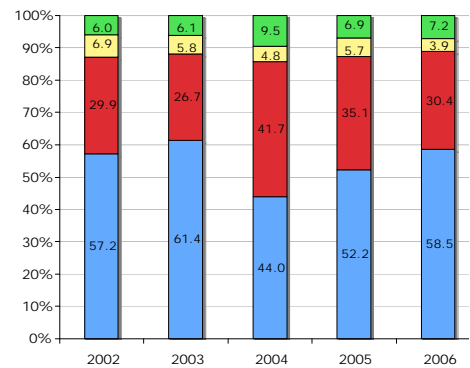
Source: Observatory for Public Procurement, processed by GHK/Technopolis Group

A great majority of public contracts are awarded through the use of open procedure (Figure 21). The use of other types of procedures is relatively infrequent, although the value of contracts awarded pursuant to private bidding is significant over the period: they represent about 30% of the overall value of public works contracts in 2006 (Figure 22).

**Figure 21 Distribution of number of public works contracts by type of procedure**



**Figure 22 Distribution of value of public works contracts by type of procedure**



Source: Observatory for Public Procurement, processed by GHK/Technopolis Group

It is to be said that no specific data on the share of SMEs in public procurement has been made available by the Observatory for Public Procurement.

#### 2.4.5 Approaches to overcoming barriers to SME involvement in public procurement in Italy

As said before, the Code for works, service and supply public contracts has not provided for any measure specifically aimed at facilitating the access of small and medium-sized enterprises to public procurement, despite business organisations prompting to do so.



**Table 2.14 Initiatives aimed at facilitating the access of SMEs to public procurement**

<b>Activity/ initiative</b>	<b>Description</b>
<b>Informing SMEs about tendering opportunities</b>	<p>The Code for works, service and supply public contracts has provided for the possibility for awarding authority to establish an office dedicated to public contracts (<i>Sportello dei contratti pubblici relativi a lavori, servizi e forniture</i>). Such offices will inform candidates about the rules related to public procurement applicable in the perimeter of execution of the contract. The <i>Sportelli</i> will also provide information on the obligations brought by the contract in terms of protection of the environment, safety, working conditions, etc. In addition, the offices will provide the candidates with the necessary application forms and documents. Information can also be supplied via electronic means.</p> <p>In addition to the common electronic platform set up in the framework of the Programme for the Rationalization of Public Expenditure, <a href="http://www.acquistinretepa.it">www.acquistinretepa.it</a> (see below), privately-held websites have been created in order to provide companies with public procurement notices, relevant laws and other types of information. Two examples of such websites are <a href="http://www.infoappalti.it">www.infoappalti.it</a> and <a href="http://www.appaltiinlinea.it">www.appaltiinlinea.it</a>.</p>
<b>Training and support for SMEs</b>	<p>Guidelines for the application of the Code for works, service and supply public contracts have been published together with the Decree.</p> <p>Initiatives in the field of training have been taken at regional or local levels. For example, the Regional Association of Chambers of Commerce of Veneto Region has organized several training courses to help SMEs participate to tenders above EU thresholds.</p> <p>The Association has also published a guide to explain the 2006 Italian Legislative Decree on public procurement, distributed free of charge.</p>
<b>E-procurement</b>	<p>The Ministry of the Economy and Finance, via Consip S.p.A , has established the Programme for the Rationalization of Public Expenditure (<i>Programma di razionalizzazione degli acquisti nella Pubblica Amministrazione</i>) in order to improve the efficiency of procurement procedures and promote the take-up of innovative e-procurement instruments.</p> <p>The Programme has helped to set up an electronic platform (<a href="http://www.acquistinretepa.it">www.acquistinretepa.it</a>) where public authorities can make direct purchase orders or request the provision of several orders (e-market), or launch electronic calls for tenders. Provided they obtain the required authorization, companies have the possibility to present their catalogue of products/services on the website and to submit electronic offers to public authorities. The e-platform aims to be user-friendly and provides on-line demonstrations for using the e-market and calls for tenders systems.</p>
<b>Use of framework agreements</b>	<p>As part of the Programme for the Rationalization of Public Expenditure and under the supervision of Consip, frameworks contracts (<i>Convenzioni</i>) are established between public administrations registered on the e-procurement platform and selected suppliers which commit themselves to accept orders at the conditions and prices pre-defined.</p>
<b>Taking account of quality and total lifecycle cost</b>	<p>Article 81 of the Code for works, service and supply public contracts indicates two criteria for awarding a contract: lowest price and economically most advantageous tender. Contracting authorities are free to choose between these two criteria.</p>

#### 2.4.6 Conclusion

In Italy, business organisations are showing an interest in measures that could facilitate the access of small and medium-sized enterprises to public procurement. Confindustria for example has engaged, along its French counterpart, negotiations in order to obtain the exemption of SMEs



from the field of application of the World Trade Organization Agreement on Government Procurement. However, from a legal perspective, little has been made so far in Italy to facilitate the access of SMEs to public procurement. Regarding the organization and simplification of public procurement in general, the establishment of a national e-procurement platform, in the framework of the Programme for the Rationalization of Public Expenditure, constitutes an example of good practice.

## 2.5 Latvia

### 2.5.1 Public procurement regulation in Latvia

The rules and procedures of public procurement in the Republic of Latvia are governed by the Public Procurement Law (PPL), which was adopted by the Saeima<sup>34</sup> on 6 April 2006 and entered in force on May 1 the same year, replacing the previous law "On Procurement for State or Local Government Needs<sup>35</sup>". Latvia has a specific law regulating the State and the Local Government procurement procedures since 1996. This law was amended numerous times, with the most notable revisions taking place in 2001<sup>36</sup> and 2004<sup>37</sup>.

The PPL is supplemented by a number of regulations<sup>38</sup> issued by the Cabinet of Ministers of the Republic of Latvia (the Government). In its present form the PPL includes legal norms stemming from the following European Union (EU) Directives 2004/17/EC and 2004/18/EC<sup>39</sup>.

The 2006 PPL is applicable to procurements made by the contracting authorities such as the state or municipal institutions and companies fully or partly (for more than 50%) owned or financed by state or municipal institutions. In cases where a private individual or a company is financing supplies, purchases and works from their own resources and are provided with co-financing from state budget or public funds (for example, EU structural funds), is considered as the contracting authority and shall organize procurement procedures. This is done if the expected price of works is equal to 3'550'844 Latvian Lats (LVL) or more for supplies and 141'953 LVL<sup>40</sup> for construction work. The purchase and lease contracts are also included in the scope of public supply contracts.

The PPL also specifies that the contracting authority can provide contracts without specific procurement procedure in certain areas such as research, purchase of immovable property, contracts for maintaining public electronically networks, and supplies of certain military goods. These contract exemptions are governed by other specific laws set by the Government.

In Latvia the procurement thresholds in place are the same at the national, regional and local levels. The PPL is only applied to procurement procedures if the contract value is 10'000 LVL (about € 14'350) or greater. The contracts below 1'000 LVL do not have to be put in a written form. On tenders from 1'000-10'000 LVL only an appropriate information notice shall be published on the home page of the respective contracting authority or in a local newspaper (five days before carrying out the purchase). Within the same time period after the decision about concluding the contract has been made the contracting authority is also required to publish a notice indicating the procurement object, contract implementing body and contract value. The procurement procedure

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<sup>34</sup> The Parliament of the Republic of Latvia

<sup>35</sup> Issued by Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 2001, Nr. 16; 2002, Nr. 23; 2003, Nr. 14; 2004, Nr. 8. Accessible here: <http://www.oecd.org/dataoecd/53/19/35014924.pdf>

<sup>36</sup> Issued by Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 1996, Nr. 23; 1998, Nr. 15; 2000, Nr. 9.

<sup>37</sup> Accessible in English here: <http://www.ttc.lv/index.php?id=10&tid=59&l=LV&seid=down&itid=14877>

<sup>38</sup> See the list of CoM regulations on public procurement (in Latvian): <http://www.iub.gov.lv/iub/2nd/?cat=625>

<sup>39</sup> The PPL does not yet include the regulations of Directive 2004/18/EC on competitive dialogue procedure. The PPL will be amended this fall (2007) to include these rules.

<sup>40</sup> InforEuro 0,697400 LVL/EUR (01/09/07-30/09/07)

for the tenders between 1'000-10'000 LVL is determined by the Government. The contracting authorities note that Latvian requirements about publishing information on procurement are applicable from a very low threshold.

Article 8 of the PPL distinguishes five types of procurement procedures: open procedure, restricted procedure, negotiated procedure, price quotation and design contest (the latter relates only to constructions). The application of certain type of procedure depends from the expected price of a contract and type of the contract (is it construction, supply or service contract). For example, the price quotation shall be applied for all supplies above 10'000 LVL, services between 10'000 and 50'000 LVL, and construction works between 10'000 and 120'000 LVL. The main difference between the price quotation and competition is that in quotation the sole criteria is the lowest price, but in competition also other criteria may be used in the evaluation of tenders (experience, expected quality etc.)<sup>41</sup>.

Table 2.15: The relation between the procurement procedure, type of the contract and their values

Type of the procedure	Type of the contract	Contract values
Open or restricted competition	Public supply contract	50 000 LVL or greater
	Public works contract	120 000 LVL or greater
Price inquiry	Public supply contract	10 000 LVL or greater, but less than 50 000 LVL
	Public works contract	10 000 LVL or greater, but less than 120 000 LVL
Negotiated procedure	Service or works contracts in cases specified by Articles 62 and 63 of the PPL	10 000 Lats or greater
Design contest	Applied specific cases preset by the Chapter X of the PPL	10 000 LVL or greater (not taking into account value added tax)

According to Article 10 of the PPL, the contract value thresholds are defined by the Cabinet of Ministers, based on the European Union international obligations with regard to contract value thresholds that are to be observed by the contracting authority. The Cabinet of Ministers determines the contract value thresholds (these are recalculated from Euros into Lats) at least once every two years within a month of the European Commission announcing the respective contract value thresholds in the Official Journal of the European Union (OJEU)<sup>42</sup>.

Government Regulation No. 364 "Regulations regarding the Thresholds of Public Procurement Contracts" adopted on 2 May 2006 specifies the thresholds which shall be applied to public

<sup>41</sup> Law Offices of Valters Gencs. Tax & Legal News in Latvia. "Public Procurement Law." September 2006. <http://www.gencs.lv/uploads/newsletter/NL-sept-2006.pdf>

<sup>42</sup> Cabinet Regulation No. 364 "Regulations regarding the Margins of Public Procurement Contract Prices", 2006 (in English): <http://www.ttc.lv/index.php?id=10&tid=71&l=EN&seid=down&itid=15601>

service providers at LVL 3 550 844 for works contracts and LVL 92 169 for supplies and service contracts.

In comparison to the previous procedure, the 2006 PPL foresees more cases in which the call of tenders shall be published in the home page of the PMB. According to the Article 25 contracting authorities shall publish a periodic indicative notice on their buyer profile including the total value of the various types of contracts they intend to conclude over the upcoming 12 months. A company wishing to participate in a tender and get a contract assignment shall regularly check the mentioned homepage. The prior notification on planned tenders shall include the subject of the tender, the place where bidder may obtain additional information, and the terms and place for the submission of offers.

### **2.5.2 The governance of public procurement in Latvia**

Each contracting authority in Latvia is responsible for its own procurement. The basic institutional framework, established to develop, monitor and support the public procurement legislation and processes, consists of three state structures: the PMB, the State Audit Office and the Corruption Prevention and Combating Bureau.

Monitoring of the observance of regulatory enactments in the area of procurements is performed by the PMB and other authorities (State Audit Office, Corruption Prevention and Combating Bureau) in accordance with regulatory enactments. The PMB is also involved in the development and improvement of the procurement legislation. Practically the PMB develops and updates the PPL and various other procurement related legislation, which is subsequently discussed and adopted by the Cabinet of Ministers or in the Saeima.

The PMB is a State administrative authority, financed from the State budget, and supervised by the Ministry of Finance (MoF) and operating in accordance with the PPL, Law On Procurement for State or Local Government Needs with the by-laws of the PMB and with other regulatory enactments. There have been some concerns of the PMB not being an independent institution subjected to pressures from the MoF.<sup>43</sup>

The main duties of the PMB are the monitoring of the compliance with the procurement procedures established by the PPL, provision of free of charge full information on the procurement procedure, collection, analysis and presentation of statistical data about procurements in the State (data specifically relating to SMEs is not gathered as the PPL does not distinguish SMEs as a particular category among the general body of enterprises), provision of methodological assistance and consultations to contracting authorities and business representatives, the review of complaints on procurement procedures as well as publishing of the notices on the PMB homepage, sending these for publication in the EUOJ, and providing the European Commission with the information it requests.

The PMB is body responsible for examining and deciding appeals regarding public procurement procedures in Latvia. In order to examine complaints, the PMB forms a complaints examination commission. In any case every entity can appeal the decision also in court according to Law.<sup>44</sup>

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<sup>43</sup> Karklins, Rasma. Review of "Latvia's Anticorruption Policy: Problems and Prospects"  
<http://www.policy.lv/index.php?id=102453&lang=en>

<sup>44</sup> EIC Latgale: <http://eic.latgale.lv/service/lv/toolbox.php>

The State Audit Office of the Republic of Latvia is an independent supreme audit institution subjected only to the law. The State Audit Office takes decisions collegially to ensure successful control over the utilization of central and local government resources, implementation of functions set in regulatory enactments and provision of recommendations for improvement of central and local government work. It performs audits in conformity with international audit standards recognized in Latvia.

The Corruption Prevention and Combating Bureau is an institution of the State Administration under the supervision of the Cabinet of Ministers. The work of the Bureau is based on the Law on Corruption Prevention and Combating Bureau.

The State Audit Office and The Corruption Prevention and Combating Bureau perform the inspections following the conclusion of the contract. The State Audit Office performs the auditing of the legality and usefulness.

### **2.5.3 SMEs and public procurement policy in Latvia**

There is no specific policy or strategy in Latvia relating to the improvement of small and medium-sized enterprises (SME) access to the public procurement.

The PMB – the main state authority developing, informing and educating the various actors concerned on procurement legislation and its various procedures – also does not have a specific policy or approach to SMEs. As neither the PPL nor any State policies set the SMEs apart from the rest of the enterprises in what concerns their access to public procurement, the PMB has no legal basis for introducing preferential treatment for SMEs. Several measures laid down in the PPL just as the information and training programmes of the PMB can be seen as beneficial for the SME access to public procurement, however these are targeted towards various actors involved in the public procurement, rather than the SMEs exclusively. These measures are described in a greater detail in the section 1.4.5.

While there is no explicit centralised policy for SMEs access to public procurement in Latvia, there are a number of initiatives in individual regions and at municipality level that are aimed specifically at improving SMEs' access.

One of these is taking place in one of the Latvian regions (Latgale), supported by regional actors and the Investment and Development Agency of Latvia (LIAA). It is carried out by the European Information Centre (EIC)-Latgale<sup>45</sup> - as part of a larger EU-wide initiative – and its regional, national and international partners aiming at providing the local SME representatives with the information on procurement possibilities, procedures and a one-stop-shop access to public procurement information. The website of the EIC-Latgale offers the possibility of receiving personalised public procurement notices to the subscribers of its procurement research service for 3LVL a week, free of charge seminars for SME representatives on the procurement procedure, access to the national (the PMB homepage) and the EU procurement (TED webpage) notices as well as descriptions of the public procurement Country Profiles of most EU member States.

EIC-Latgale together with international partners also carried out a project entitled "Procurement – it's easy!"<sup>46</sup> that was intended to help the local entrepreneurs to better understand and avoid

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<sup>45</sup> Latgale is one of the four cultural regions of Latvia.

<sup>46</sup> "Iepirkums - tas ir vienkārši!"

mistakes in the procurement process. During the project the international partners provided one-day seminars for 13 local entrepreneurs, produced a hand-book<sup>47</sup> on procurement procedures within the EU, developed an informative webpage<sup>48</sup> and EIC procurement research service in nine partner languages.

The website "SME Forum" is another initiative touching, among other, upon the topic of public procurement and SMEs. The Forum is the initiative of Riga City Council and partners undertaken in the framework of EU Phare CBC SPF project "On-line support for SMEs in the Baltic Sea Region – Virtual Partneriat". The main objective of SME Forum is to provide information for SMEs in Latvia regarding the development issues in the context of EU enlargement. Their Internet portal contains a database of Latvian SMEs, as well as an online partner search facility. The SME Forum website offers its target audience – the Latvian SMEs and their partners - the assessment of the current situation in Latvia and foreign trade through a provision core of economic information and news updates<sup>49</sup>. The webpage also provides information on public procurement in Latvia and the EU, explanations of the main terms and procedures as well as the access to national and the EU procurement notices. The webpage also has a search function for public procurement announcements issued by private entities and local government, as well as partner- and project search facilities.

The interviews with the PMB and contracting authorities indicate that there is no specific national rationale of assisting SMEs with regards to the access to the public procurement. The PMB and the contracting authorities consider that the result of the procurement process is best regulated by the forces of the free market competition and the egalitarian provisions of the PPL. Thus, SMEs do not enjoy preferential treatment, and authorities do not put particular emphasis on promoting measures that are considered to help smaller companies.

The smaller lots and purchases are expected to be serviced by smaller companies (the bigger companies are less likely to compete for these) and the bigger contracts requiring higher collaterals - by larger companies that can provide the guarantees specified by the PPL. Ensuring the optimum security of the public investment in the procurement is among the principal aims of the PMB as it oversees and enforces the implementation of the PPL, which states "efficient use of State and Local Government resources, reducing the risk of contracting authorities to a minimum" among its core purposes.

Regarding the disadvantages of using SMEs in public procurement the PMB and contracting authorities mention the following factors:

- § The lack of experience may be one of the selection criteria speaking against the choice of SME as a contractor. SMEs may not have a long history of existence in a dynamic business environment (like Latvia) and thus may not provide the necessary experience required to perform the tasks under a contract;
- § Smaller financial capacities. The contracting authorities may demand sound financial background and sometimes financial guarantees from the tenderer, which are more difficult to

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<sup>47</sup> The hand-book is accessible in Latvian and Russian at:  
<http://www.eic.latgale.lv/lv/services/procurement/pme.html>

<sup>48</sup> [www.winningtenders.eu](http://www.winningtenders.eu)

<sup>49</sup> Mazie un vidēja izmēra uzņēmumi Latvijā <http://www.mvu.lv/pub/index.php>

provide for SMEs As there are large numbers of SMEs being created and liquidated in Latvia, the work with SME is also perceived as requiring additional guaranties and security;

- § A possible lack and the need to outsource the human resources may be regarded as potential weakness of SMEs. Unlike bigger companies, which may have the resources and procedures already in place to perform the same tasks, SMEs may need to attract specialists to carry out a certain order and thus may not be so operative.

The considerations in advantage for the SMEs mentioned by the contracting authorities are:

- § The SMEs may be more suitable for small scale contacts and provision of services for small projects (maintenance, repairs, consultancy services, IT services, transport, catering and supplies, small-scale construction, etc. below 50 000LVL);
- § They may be more dynamic in their response to the clients tender, suggestions and feedback (the scale and nature of the SMEs facilitate the development of a long-standing, mutually beneficial business relationships, where certain providers specialise in the provision of specialised services, see the point below);
- § They may be (highly) specialised providers in the areas that require unique expertise (such as work with specific target audiences, work in a “public sphere”, provision of specialised products and services, etc.);

In general the representatives of the PMB and contracting authorities argue in favour of the natural market selection of the best value for money, in which the size of the contacts or the objects to be serviced, the level of complexity of the order to be performed as well as the price-quality relationship determine the winner of the contract. Any concessions in favour of SMEs in terms of financial guarantees or other are perceived as exposing the public funds to unnecessary risks. The very nature of such concessions are contradictory to the equal treatment of the enterprises foreseen in the PPL, supervised by the PMB and shall not be endorsed by the contracting authorities.

#### **2.5.4 The evidence base on public procurement and SMEs**

The “Report on the Economic Development of Latvia<sup>50</sup>” prepared by the Ministry of Economics (MoE) to diagnose and forecast the economic development perspectives of the country states that according to provisional data, 99.9% of all Latvian companies fell in the category of SMEs<sup>51</sup>.

However, there is no data on the SME share in the public procurement in Latvia and there has been no specific study concerning this subject undertaken in the country. The assessment of the public procurement system in Latvia has only been done in the context of the analysis of the

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<sup>50</sup> Report on the Economic Development of Latvia. <http://www.em.gov.lv/em/2nd/?lng=en&cat=137>

<sup>51</sup> The distribution of economically active SME in Latvia according to their size is similar to the one in EU member states: micro enterprises – around 75%, small enterprises – 20%, medium-sized enterprises – 4%, large enterprises – less than 1%. 69.9% of private sector employees in the country are employed in SME, which create 63.2% of GDP.

deficiencies of the 2002 PPL with the view on improving the procurement legislation<sup>52</sup> as means in the fight against corruption before the country's access to the EU.<sup>53</sup>

The interviews with the contracting authorities identify a general trend of a growing number of SMEs in the Latvian public procurement market. While there were more large and foreign companies filling the gap of supply in the country before 2000, now this has been complemented by dynamic local SMEs that work on their own or as subcontractors to meet the public demand for services and supplies (mostly on contracts below 100 000 LVL that are not so attractive for bigger companies). Although there are no statistics on the size-class of companies winning public contracts, the PMB indicates that there are particularly many SMEs active in the delivery of food, drugs and IT equipment sectors (partly as dealers).

As mentioned above the PMB collects and presents statistics on the public procurement in Latvia on its website.<sup>54</sup> However, the legislation (PPL) does not make the distinction between SMEs and other enterprises with respect to the access to public procurement, and does not require the collection of data in this regards, therefore the statistics compiled by the PMB (presented below) relate only to the categories of the national and foreign enterprises.

### **2.5.5 Statistics on public procurement in Latvia**

In 2005 the total sum of the public procurement in Latvia was 1461 million LVL, from which 931 million were contracted for the State and municipalities' needs (566,1 million of the State and 364,9 million of the municipality procurement) and 530 million LVL of procurement for the needs of the organisations providing public services. The sum of the public procurement is growing with each year. If compared to 2005, the total amount of the procurement grew by 332,2% since 1998 and by 48,4% in relation to 2004.

The total sum of the public procurement in Latvia above the EU threshold was 799,1 million LVL in 2005. From these 443,3 LVL million were State and municipality procurement (328,2 million LVL of the State and 115,1 million of the municipalities' procurement) and 355,8 million LVL of procurement carried out for the needs of the organisations providing public services. The total amount of the procurement above the EU threshold in 2005 has grown by 1289,7% in comparison with 1998 and by 194,2% to 2004.

In general during the period 2002-2005 both the total sum of the procurement in Latvia as well as sum of concluded contracts above the EU thresholds has grown.<sup>55</sup>

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<sup>52</sup> Kalnins, Valts. "Latvia's Anticorruption Policy: Problems and Prospects", Soros Foundation - Latvia, COLPI, 2002.

<sup>53</sup> Limanski, Andrew. "A First Assessment of the Public Procurement System in Latvia." International Advances in Economic Research. February 2001. <http://www.allbusiness.com/legal/745533-1.html>

<sup>54</sup> The statistics on public procurement gathered by the PMB (in Latvian): <http://www.iub.gov.lv/iub/2nd/?cat=728>

<sup>55</sup> Valsts pašvaldību un sabiedrisko pakalpojumu uzdevumu iepirkumu rādītāji Latvijā (indikator – 2005) In Latvian: [http://www.iub.gov.lv/iub/images/modules/items/item\\_file\\_1723\\_indikatori\\_2005.doc](http://www.iub.gov.lv/iub/images/modules/items/item_file_1723_indikatori_2005.doc)



**Table 2.16: Total procurement and procurement above EU-thresholds (1998-2005)**

Dynamics of total public procurement, 1998-2005 (in million LVL)								
	1998	1999	2000	2001	2002	2003	2004	2005
Central and local government	338	539,4	481,8	491,8	484,3	397,9	546,5	931
Public utilities	0	0	0	0	51,2	160,8	438,2	530
<b>Total</b>	<b>338</b>	<b>539,4</b>	<b>481,8</b>	<b>491,8</b>	<b>535,5</b>	<b>558,7</b>	<b>984,7</b>	<b>1461</b>
Dynamics of public procurement above EU-thresholds, 1998-2005 (in million LVL)								
Central and local government	57,5	202,7	193,9	200,6	70,9	73,7	138,3	443,3
Public utilities	0	0	0	0	51,2	160,8	133,3	355,8
<b>Total</b>	<b>57,5</b>	<b>202,7</b>	<b>193,9</b>	<b>200,6</b>	<b>122,1</b>	<b>234,5</b>	<b>271,6</b>	<b>799,1</b>

Source: PMB

The "Collection of Statistical Overviews on the Procurement in the Republic of Latvia in 2005"<sup>56</sup> produced by the PMB provides the following summary of the contract sums concluded in 2005 by various procurement groups, national and EU procurement thresholds:

**Table 2.17: Aggregated statistics on public procurement in Latvia, 2005**

Procurement groups and concluded contract thresholds	Contract sum (million LVL)	Proportion %			
<b>Procurement of individual contractors (decentralised purchases)</b>					
<b>Purchases that are made within the procedures determined by law</b>					
below EU threshold	342.4	45.3%	36.8%		
above EU threshold	4.1	54.7%	44.4%		
<i>Total</i>	7.6	100.0%		81.2%	
<b>Purchases that are made applying the exemptions of the law:</b>					
below 1000 LVL	111.6	63.9%	12.0%		
above 1000 LVL	63	36.1%	6.8%		
<i>Total</i>	174.6	100.0%		18.8%	
<b>Total procurement of individual contractors</b>					
	<b>931</b>		<b>100.0%</b>	<b>100.0%</b>	<b>96.3%</b>
<b>Bundled procurement for multiple contractors (centralised procurement)</b>					
below EU threshold	30.5	85.0%			
above EU threshold	5.4	15.0%			
<b>Total procurement for the needs of several contractors</b>					
	<b>35.9</b>	<b>100.0%</b>			<b>3.7%</b>
<b>Grand Total</b>	<b>966.9</b>				<b>100.0%</b>

Source: PMB

This Overview indicates that in 2005 the State and the municipalities have concluded contracts on a total amount of 966,9 million LVL, including 931 million for the needs of individual contractors

<sup>56</sup> Available in Latvian: [http://www.iub.gov.lv/iub/images/modules/items/item\\_file\\_1631\\_parskats\\_pdf.pdf](http://www.iub.gov.lv/iub/images/modules/items/item_file_1631_parskats_pdf.pdf)

and 35,9 million LVL for the needs of multiple contractors, within the framework of centralised procurement.

The document arranges the purchase for the needs of one contracting party in two procurement core groups:

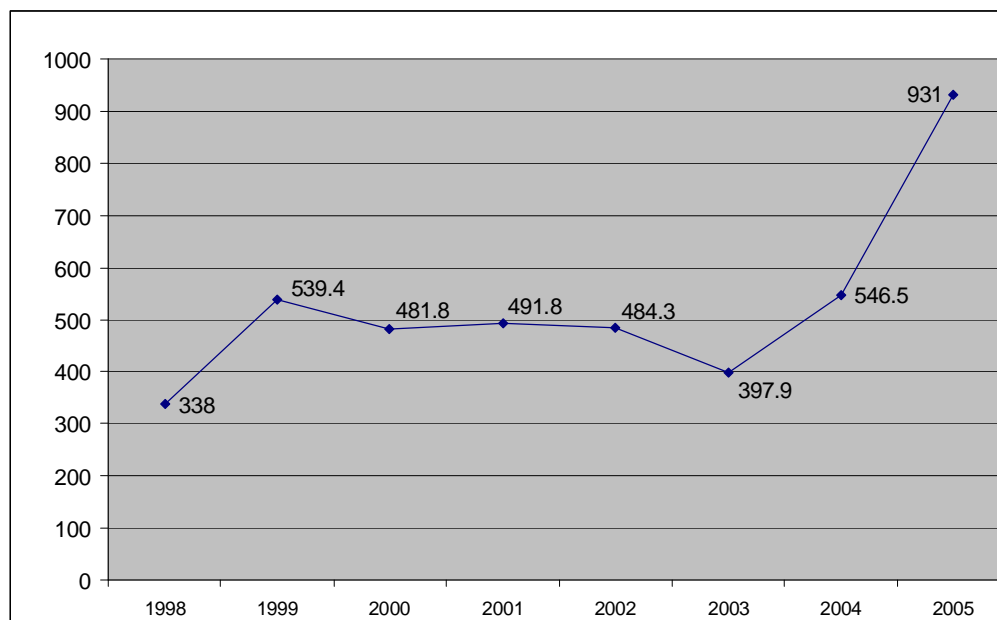
1. Procurement that is made in the framework of the procedures specified in the law “On Procurement for State or Local Government Needs”, in the total amount of 756,4 million LVL (or 81,2% from the total sum of the concluded contracts – 931 million LVL). This includes the procurement below the EU threshold (342,4 million LVL or 36,8 % from the total sum of the concluded contracts) and above the EU threshold (414 million LVL or 44,4% of the total sum).

2. Procurement that is made in accordance with Article 4 of the same law on the applicable exceptions, in the total amount of 174,6 million LVL or almost one fifth of the total amount of contacts (18,8%), including procurement without the application of a certain procedure, because the contractual amount is smaller than 1 000 LVL (111,6 million LVL or 12,0 % from the total sum) and procurement without the a certain procedure applied, but with the contract value higher than 999 LVL (for example, procurement that is made due to unforeseen conditions, Government’s specified and other exceptions mentioned in the Article 4). This procurement constitutes 63,0 million LVL or 6,8% form the total sum of the concluded contractual agreements.

On the procurement that is made for the needs of several contractors (centralised procurement), the total amount of concluded contractual agreements in 2005 constituted 35,9 million LVL. This included procurement that was greater than 91 799 LVL for goods and services and than 3,5 million LVL for construction works (above the EU threshold) – constituting 30,5 million LVL in 2005. The procurement for the needs of one contractor in 2005 represented 96,3% from the total amount of contract concluded, while the centralised procurement accounted for 3,7%.

As indicated by the Figure 1.4.1. the year 2005 witnessed the sharpest growth in the sum of the total concluded agreements in the recent years. The total amount of the contracts concluded grew by 70,4% or 384,5 million LVL. This significant increase may be explained by the utilisation of the EU Funds.

**Figure 2.23: Total contract value of public procurement, 1998-2005 (million LVL)**



The procurement undertaken within the foreseen procedures may be divided in two subgroups according to the contract price – below and above the EU threshold (contract price 91 799 LVL for goods and services and 3,5 million LVL for construction works).

**Table 2.18: Number of purchases, concluded contracts and sum of concluded contracts according to the contract price thresholds**

Contract price thresholds	Nr. of purchases	Proportion %	Number of contracts	Proportion %	Value of contracts (million LVL)	Proportion %
Procurement above 91 799 LVL for goods and services and above 3,5 million LVL for construction works	334	1.3	851	2.8	414	54.7
Procurement from 1 000 LVL to 91 799 LVL for goods and services and below 3,5 million LVL for construction works	25244	98.7	29012	97.2	342.4	45.3
Total	25578	100.0	29863	100.0	756.4	100.0

Source: PMB

As can be observed in the Table 2.18, the sum of the concluded contracts below the EU threshold was 342,4 million LVL or 45,3% from the total contract amount of the purchases falling under procurement procedures and 414 million LVL or 54,7% of the sum of concluded contracts were above the EU threshold. However, the number of purchases and concluded contracts has been significantly lower above the EU threshold.

Altogether, 25 578 procurements have been undertaken in 2005 by applying the procedures foreseen in the law, this included 11 940 procurements or 46,7% for the State and 13 638 or 53,3% for local government needs.

**Table 2.19 Number of purchases, number of concluded contracts, sums of concluded contracts for State and Local government needs**

Contractor	Number of purchases	Number of contracts	Value of contracts (million LVL)
State	11940	14338	465
Local governments	13638	15525	291.4
Total	25578	29863	756.4

Source: PMB

In 2005 the local governments concluded more contracts than central government bodies. However, the total value of the contracts was larger in central government's procurement. This may be explained by the fact that there are twice as many Local government contacting authorities as the State authorities, but the local governments have smaller budgets (both in financial and percent terms) than the State sector. The State procurement accounted for 61,5% of the total sum of the concluded contracts, while the local government procurement represented 38,5%. The State had a smaller number of purchases, but on average the value of the contracts was bigger.

#### Detailed data on procurement below the EU threshold

In 2005 with the use of negotiated procedure, price inquiry, open or restricted competition method the State has entered into 13 710 contracts, which constitute a total amount of 165,8 million LVL. The local governments have entered into a greater number of contracts (15 302). The contact amount for below the EU threshold was bigger in the local government sector than in the State sector – 176,6 million LVL. However, the average contract value in the State sector (12 097 LVL) has been higher than in the local government sector (11 538 LVL). In 2005 there has been a bigger number of concluded contract with lower value in the State and municipality sectors in all types of procurement.

A considerably bigger sum of the contracts concluded were for the procurement of goods deliveries and services in the range from 1000 to 10 000 LVL, while in the construction the biggest sum of the contracts concluded were in the threshold from 2,8 till 3,5 million LVL. The biggest average contract value for both the State and the local government sectors was for the construction procurement in the threshold from 2,8 till 3,5 million LVL – 3 139 180 LVL.

Both local governments and State have chosen price inquiry as the procurement method the most often used in procurement below the EU threshold. In the local government sector it was applied in 90,5% of the cases (5,6% - open competitions, 0,8% - negotiated procedures), but in the State sector in 86,1% of the selection procedures. The method used the most seldom is the project design contest and closed competition (according to the data received by the PMB there has been one project design contest and two closed competitions organised in 2005). The State institutions more often than municipalities have organised open competitions (respectively 10,6% and 5,6% from the total number of procurement) and negotiated procedure (2,3% and 0,8% accordingly from the total number of procurement).

In 2005 2,1% or 537 purchases from all procurement below the EU threshold have been made outside the procedures specified by the law (that is by applying other procedures), therefore these have been qualified as infringements (and the Control unit of the PMB Methodology department

will carry out a further examination of these cases and the assessment of their lawfulness). Infringements are identified more often in the local government procurement rather than that of the State institutions – the procurement cases in which other procedures are used than those previewed by the law account for 3,1% in the local government sector and 1,0% in State sector.

The biggest part (98,5%) of the contacts in 2005 have been concluded with the local providers. The entry into contract with foreign providers was considerably more seldom for the procurement below the EU threshold – 1,5% for State sector and 0,6% for municipalities (the tend is quite the opposite in the procurement above the EU threshold where percentage of the contracts concluded with foreign providers has grown from 2,2% in 2004 to 4,2% in 2005)<sup>57</sup>.

## **2.5.6 Approaches to overcoming barriers to SME involvement in public procurement in Latvia**

Although no specific measures related to SMEs exist in Latvia (only measures open to all the representative of the business an industry in general), there are legislation advances and good practice with potential to improve the SME access to public procurement.

### **Institutional arrangements for SME consultation**

The Small and medium enterprise and crafts council<sup>58</sup> is a consultative institution in the MoE, which comprises the representatives of 27 SME associations, organisations or unions with a observers status in the Ministry. The council meets once a month and is technically assisted by the Department for the development of entrepreneurship<sup>59</sup>.

The goal of the Council is to create an environment that would be beneficial for the development and implementation of SME friendly policies, simulate the development of SMEs, and promote cooperation and the competitiveness of Latvian enterprises in the EU.

The main functions of the Council are the review and follow up of the questions relating to projects of normative documents, economic development conceptions, State budget and other documents that are important for the development of politics, which is beneficial for SMEs and would encourage their growth, prepare propositions and recommendations on these questions, promote the dialogue between the entrepreneurs and the MoE as well as other state institutions, public and international organisations, which influence the work and development of SMEs<sup>60</sup>.

### **Making SMEs aware of the business opportunities in public procurement**

The PMB presents its centralised website ([www.iub.gov.lv](http://www.iub.gov.lv)) as a good practice as it is advertising procurement notices on the national level. The information published includes all the procurement procedures that are regulated by the PPL and the Law on Procurement for the Needs of Public Service Providers as well as the notices that are sent to the OJEU. These include informative notices regarding price inquiry, tender specifications and notices on the results of procedures, etc.

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<sup>57</sup> More detailed data on procurement by type of procurement method and procedures, procurement type (service, delivery of goods, construction) and the number of contract with different values for both State and Local government are available in (Latvian) "The Collection of Statistical Overviews on the Procurement in the Republic of Latvia in 2005":

[http://www.iub.gov.lv/iub/images/modules/items/item\\_file\\_1631\\_parskats\\_pdf.pdf](http://www.iub.gov.lv/iub/images/modules/items/item_file_1631_parskats_pdf.pdf)

<sup>58</sup> Mazo un vid•jo uz••mumu un amatniec•bas padome (MVUAP)

<sup>59</sup> This department is a part of Investment and Development Agency of Latvia (LIAA), which in turn is overseen by the MoE.

<sup>60</sup> <http://www.em.gov.lv/em/2nd/?cat=1912>

The website guarantees open and wide competition and direct access to the procurement information for the enterprises, saving the time in the search for the public procurement announces.

The PMB homepage represents a single official information system on the national level where all the information about the national procurement legislation (with explanations and guidelines) and procurement notices as well as the relevant document templates are published. All this information is free of charge, but available for the most part only in Latvian. The notices on the PMB home page are structured in a chronological way (they can also be viewed according to the type of the procurement procedure). A search engine is also available offering a search possibility for tenders according to multiple present criteria or key words.

The PMB website facilitates the enterprise's access to public procurement primarily by providing a one-step access to public procurement notices. The PMB homepage publishes 100% of the notices, and encourages its users also to publish tender documentation there (specifications, etc.). So far this possibility is not widely used – the PMB estimates that just one percent of the contacting authorities add this documentation in the website.

The PMB also facilitates the SME access by providing all the information and documentation related to the tenders, regardless of its size to the SMEs free of charge. In addition, the PPL also foresees the right for any party participating in the procurement process to send a complaint to PMB free of any charges.

The MoE also publishes a list of procurement notices for the construction sector<sup>61</sup>.

#### **Training and guidance for SMEs**

The PMB regularly organises seminars on the procurement law and various possible procedures for the business sector representatives and SMEs in particular. In these seminars SME representatives can get useful information on how to draw up tenders according to the requirements set in the procurement documentation and on applying the PPL.

In line with the Article 32 (2) of the PPL based on the request of the respective person, the contracting authority must provide information on the reasons the candidate's application to participate in the competition procedure was rejected, on the reasons the candidate's tender was rejected and on the comparative advantages of the selected tender. This information could help the tenderer or candidate to understand and learn from the mistakes made in the procurement procedure. However, the initiative to receive such feedback must come from the tenderer as the contracting authorities usually do not furnish this kind of information without request.

#### **Training and guidance for contracting authorities**

The PMB organises regular seminars for the contracting authorities to educate them about the correct application of the PPL or specific public procurement related themes. These seminars also cover questions and provide examples on how to define accurate, non-discriminative requirements that are in strict compliance with the PPL when developing the documentation for a concrete public procurement case.

Furthermore, among the responsibilities of the Methodology Department of the PMB is the control function of giving opinions on the lawfulness of the concrete procurement procedures, while the

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<sup>61</sup> Report on the Economic Development of Latvia. Pg.105.

Legal Department of the PMB reviews appeals (complaints) about the organisation of the procurement procedures and their compliance with the regulatory acts. These functions of the PMB also help to discipline the contracting authorities and to prevent infringements of the PPL as well as other procurement regulating legal acts.

According to the PMB, some 2000 participants have taken part in these seminars since the establishment of PMB in 2002. Apart from seminars initiated by the PMB, the local governments often use the chance to invite the representative of the Bureau to their premises to explain various norms and procedures of the procurement law.

### **Procurement guidelines**

The PMB has drafted the Public Procurement Guidelines (PPG) on how to apply the PPL and the procurement procedures regulated in it. These guidelines, available on the PMB homepage, are intended for both the public authorities (the contractors) and the private enterprises. The guidelines are published on the PMB website. These are comprised of a set of documents explaining the PPL and the various procedures related to the procurement and reporting (how to fill in the templates, terminology, reports, etc.) well as options like dividing tenders into lots<sup>62</sup>.

### **Division of contracts into lots**

The Article 9 (7) of the PPL foresees the possibility of dividing a contract into smaller lots and provide the possibility of excluding the lots from the scope of the Directives (procedures that would apply to the contracts with value above the EU thresholds) if these are smaller than 20% of the total contract. The procedures related to the national thresholds then must be applied to procuring these smaller lots.

SMEs have more chances to win in the procurement procedure that is organised according to the national regulatory acts (estimated contract value is below the EU thresholds) than in open, restricted or negotiated procedure when the estimated contract value exceeds the EU thresholds, even if sub-division in lots is done. This is because the qualification requirements are less strict in these cases, and are more easily met by SMEs.

The PPGs, published on the PMB website, describe how to exclude the small lots from the scope of the Directives. The PPGs also illustrate how the sub-division of contracts into lots influence the access of the SMEs to public procurement. In addition, the PMB also organises seminars that provide information on the subdivision of contracts into lots and offers individual and telephone consultations for the contracting authorities on how to facilitate access of the SMEs to the public tenders.

However, there are practical problems with the application of the Article 9 (7). The contracting authorities do not see the advantage of applying the procurement procedure and getting a different supplier for the each small part of the contract. The division in lots is not always effective also because the contracting authority is interested in the tender to be submitted in all the parts (avoiding a situation where there's no bidder for one or some lots). Therefore, the contracting authority may require smaller financial guarantees from the supplier if it submits tenders in all of the parts and bigger if it seeks the contract in one or few of the lots.

The possibility of dividing the contract into lots for the most of the time is not used to benefit SMEs, but rather to speed up the procurement procedure (this is used in the end of the fiscal year

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<sup>62</sup> The set of guidelines is available here (in Latvian): <http://www.iub.gov.lv/iub/2nd/?cat=846>

to consume the budget of the contacting authority). Generally however, the contracting authorities assume that the option of dividing a contract into lots only takes more time to prepare procurement documentation and to take the decision, and so they rarely apply this provision.

#### **Framework contracts**

There is a “Explanatory Note – Framework Agreements – Classic Directive” published on the PMB home page, which is intended to help the contacting authorities to understand the advantages framework agreements in comparison with other contracts in certain situations in which it is a better way to fulfil the obligations between the contracting parties. Furthermore, the PMB home page offers a sample form, which can be used as a basis for drafting framework agreements. The benefits and advantages of the framework agreements in certain situations are also closely examined in the PMB seminars and explained in consultations.

#### **Definition of technical specifications in terms of performance or functional requirements**

The PMB also asks the contracting authorities to set requirements about qualification and work experience of tenderer’s staff instead of requirement for concrete years from the establishment of company, as the latter requirement probably would not best serve the aim to get the maximum value for money and also could exclude opportunity for SMEs to submit tenders.

#### **Possibility to use prior information notices**

According to the Latvian legislation there is a possibility to publish prior information notices also for procurements below the EU thresholds. During the procurement above the EU thresholds it is allowed to reduce the time of the procurement procedure by publishing the prior information notice. In the same way the usage of the prior information notices for procurements below EU thresholds is encouraged.

#### **Improvements offered by e-procurement**

In line with the European Commission initiative of 25 April 2006 „i2010” that foresees the development of electronic State procurement system offering 50% of the deals to be made electronically and provision of absolutely all information on State procurement online<sup>63</sup>, Latvia has started the implementations of a national e-procurement system based on the framework agreement. In accordance to the framework rules, the territory for one delivery (procurement) will be reduced by splitting all Latvian territory into five districts. This way, the access to the national e-procurement system is also ensured for the small companies, which work only in one region.

The State e-procurement system was developed on the basis of a conception the “Use of technologies in the development of public procurement system” approved by the Government in 29 January 2004. The Internet address of the electronic procurement system is [www.eiepirkumi.gov.lv](http://www.eiepirkumi.gov.lv) or [www.eprocurement.gov.lv](http://www.eprocurement.gov.lv) and it started to work in 6 December 2005. The catalogue of goods is freely available to public online under the same addresses.

The concept procurement system has been so far tested by the MoF and its subordinated institutions that may find and order paper and IT supplies from the online catalogue. The results of the test show that the e-procurement (use of e-catalogue in the delivery of goods) could reduce the price of computer and printing equipment by 21.79% and printing supplies by 16.41%. The number of people involved in the procurement process would decrease 2.5 times and the total

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<sup>63</sup> Ministry of Economics. Report on the Economic Development of Latvia.  
<http://www.em.gov.lv/em/2nd/?lng=en&cat=137>



savings for the MoF its subordinated institutions within nine month could amount to around 40 000 LVL.

Up to date only the MoF and its subordinated institutions can carry out purchases of IT equipment and supply via the e-procurement system. The further development of e-procurement system will be in the competence of the Electronic procurement agency. The system is planned to be accessible to all the State and local government institutions.<sup>64</sup>

As part of promotion of e-procurement, the Article 66 of the PPL allows setting up a dynamic procurement system to include all the tenderers satisfying the selection criteria and having submitted an indicative tender which complies with the documents of the procurement procedure. In order to establish a dynamic procurement system, the contracting authority publishes a contract notice, indicating that a dynamic procurement system is being established, indicates in the procurement procedure documents the nature of the purchases envisaged under that system, as well as all the necessary information concerning the system itself, the electronic equipment used, the technical connection arrangements and specifications; tenders throughout the entire period of system operation unlimited, direct and complete access to the procurement procedure documents, using electronic means. In the notice, the contracting authority indicates the Internet address where the documents can be found. The electronic submission of tenders is however currently not possible due to the fact that the implementation of electronic signature has not yet been fully accomplished.

Another new procurement mechanism introduced by the PPL is electronic reverse auctions. The Article 47 of the PPL allows the contracting authority to decide to apply an electronic auction before selecting the tender, if the technical specifications can be defined very precisely in the case of an open and restricted competition, as well as for the application of a negotiated procedure, with prior publication of the contract notice. An electronic auction may also be organised before tender selection within a framework agreement. The information regarding the tenderers' relative rankings and, depending on the contracting authority's decision, also information concerning the other prices or values submitted and the number of participants in each phase of auction, is available to the tenderers. In the light of it, the use of electronic auctions is likely to increase transparency and facilitate the getting the best value for money.

**Table 2.20: Initiatives aimed at facilitating the access of SMEs to public procurement**

<b>Activity/ initiative</b>	<b>Description</b>
<b>Informing SMEs about tendering opportunities</b>	There is a single website and the prior information notices are allowed by the PPL. The awareness of firms is growing – this can be seen in the large increase in the number of public procurement cases in 2005. However, measures and legislation are very recent so it is hard to judge. 94% of the SMEs in Latvia have access to internet <sup>65</sup>
<b>Simplification of pre-qualification requirements</b>	There is only information that some contracting authorities have contractors with which they have established a longstanding cooperation
<b>Training and support for SMEs</b>	The PMB provides training seminars on PPL and procurement procedures described there-in. The PMB also offers phone consultations and deals with written inquiries on procurement process and law. No precise data are gathered. Seminars have been attended by some 2000

<sup>64</sup> <http://www.iub.gov.lv/iub/2nd/?lng=lv&cat=575>

<sup>65</sup> [http://www.eps.gov.lv/files/petijumi/analiize\\_MVU\\_v2.doc](http://www.eps.gov.lv/files/petijumi/analiize_MVU_v2.doc)

	people. According to PMB, its consultation services and guidelines are widely used.
	The seminars are also offered to the State and local government contracting authorities on the correct application of PPL and procurement procedures defined ther-in.
<b>Debriefing arrangements</b>	Upon the request of the individual or organisation the unsuccessful tenderer can receive an explanation from the PMB why his tender was rejected and on the advantages of the chosen offer.
<b>Improved payment systems – reduce late payments</b>	According to PMB, improvement of payment systems and reducing late payments are issues that are considered important.
<b>E-procurement</b>	Online submission of tenders is limited by the advancements of the digital signature.
<b>Break up work into smaller lots</b>	Breaking contracts into smaller lots is rarely used. When used this technique is rather employed to consume the contracting authority's budget in the end of the year rather than to assist SMEs
<b>Use of framework agreements</b>	This is allowed in the framework of PPL and there are guidelines published on the PMB website on how to use framework agreements.
<b>Encouraging consortia of small firms</b>	There are consortia of small firms formed, but these are not specifically encouraged
<b>More flexible contracting</b>	The PMB advises contracting authorities to set the contract requirements in terms of employee experience rather than the age of the company.
<b>Taking account of quality and total lifecycle cost</b>	

### **2.5.7 Conclusions**

There is no evidence or data to suggest that SMEs would access a lower proportion of the public procurement than it could be expected. In fact the interviews with the PMB, contracting authorities and the SME representatives suggest that the proportion of the public purchase serviced by the SMEs is growing together with the number of SMEs and the number of public procurement contracts.

There are no specific national policies that would encourage the SME access to public procurement. However, the recent and constant development of the PPL, new procurement procedures, centralised system of procurement notices as well as e-procurement all create a favourable environment for stimulating a more active SME participation in the competition for public construction works, services and goods deliveries.

As the PPL does not distinguish SMEs from the general corpus of enterprises and as no specific national strategy for improving SME access to public procurement exists, there is no data gathered by the public bodies specifically on the SME access to public procurement as well as the possible outcomes of the different measures intended to improve the procurement process with regard to SMEs.

The public procurement actors mention several potential good practice examples in public procurement in Latvia. Amongst them the nationally centralised procurement publishing system, free information on the published tenders and the outcomes of the procedures, as well as the e-procurement system being developed. However, most of these improvements are general efforts

to improve the public procurement system in Latvia by making it sounder and more transparent and by integrating international good practice and newest trends (like PPP). These are general improvements may help SMEs to access public procurement, but are not specifically designed for them.

## 2.6 Poland

### 2.6.1 Public procurement regulation in Poland

The Polish public procurement legislation dates back to 1994 when the first Act on Public Procurement was adopted. The Act was amended several times in the following years, mainly with the aim to clarify its rules and definitions, broaden the scope of application and make the procurement process more transparent. The adjustment of the Polish procurement provisions to the EU requirements was a major factor in the preparation of a new legislation. The new Public Procurement Law was adopted on 29 January 2004 and replaced the Act of 1994. In April 2006 the Public Procurement Law was largely amended in order to implement the provisions of the EU directives 2004/17 and 2004/18. The deadline for their transposition into the national legislation was set on 31 January 2006<sup>66</sup>. The latest amendment to the Public Procurement Law (amendment of 13 April 2007) was published in the Official Bulletin (Dziennik Ustaw) No. 82, item 560 of 11 May 2007.

#### Value thresholds

Currently there are several thresholds in place. The Public Procurement Law is applied when the value of the order placed exceeds the zloty equivalent of € 14,000 (raised in 2007 from € 6,000). The threshold below which the so-called simplified procedure is applied has been set to € 60,000. This provides for an obligation to publish an advertisement on biddings and negotiations on the website and at the head office of the ordering institution. An advertisement can also be published in the press. Publishing advertisements on the outcomes of such procedures is also compulsory.

If the order value exceeds the zloty equivalent of € 60,000, then the basic procedure shall apply. In the case of the basic procedure, the ordering parties, regardless of publishing of advertisements at their seats and on their websites, shall be obliged to forward advertisements for publishing in the Public Procurement Bulletin (PPB) and in the Official Journal of the EU. In the case of the basic procedure, it will not be possible to apply the procedures of conducting public bidding that are not provided for under European Union's directives, i.e. price enquiry and e-auction.

In the case of procedures involving higher amounts, i.e. the so-called "tightened procedure" for supplies or services exceeding the value of € 10,000,000 and for construction work exceeding the value of € 20,000,000, the Act provides for imposing additional requirements and limitations pertaining to the procedure on the ordering parties.<sup>67</sup>

In 2007, a new solution was adopted in the scope of legal protection measures available to participants, i.e. in case of procurement of supplies or services at below EU-threshold values, the participants will not be entitled to any protection measures other than protests to the awarding entity<sup>68</sup>. However, in such cases, they will be allowed to bring claims under civil law.<sup>69</sup>

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<sup>66</sup> [http://www.uzp.gov.pl/en/functioning-of-procurement-system/reports-on-functioning-of-public-procurement-system/reports\\_2005.pdf](http://www.uzp.gov.pl/en/functioning-of-procurement-system/reports-on-functioning-of-public-procurement-system/reports_2005.pdf)

<sup>67</sup> <http://www.paiz.gov.pl/index/?id=46072631582fc240dd2674a7d063b040>

<sup>68</sup> Article 180 of the Public Procurement Act states: a written protest may be lodged to the awarding entity against the contents of the notice, actions performed by the awarding entity in the course of procedure and

## 2.6.2 *The governance of public procurement in Poland*

Poland has a decentralised procurement system. Every public administration entity is responsible for its own procurement procedures and selection of suppliers. There are no central institutions which purchase on behalf of government or regional entities. However, there is a legal possibility that various public administration units agree to award public procurement contracts together (e.g. IT equipment, vehicles etc.) in order to combine their “purchasing power” and get better prices.

Government procurement in Poland is overseen by the centralized Public Procurement Office (PPO). The activities and powers of the PPO are based on the provisions specified in the Public Procurement Law (PPL) of 29 January 2004 (amended in 2007). The independent Office is not a central-purchasing agency, but has a policy-making and coordinating role. It is responsible for ensuring that the public procurement provisions are implemented. The Office publishes tenders above € 14,000 in the official PPB and issues administrative decisions on when, for example, other than the open procedure may be employed. The PPO plays a policy making and coordinating role for the whole Polish public procurement system. The Ministry of Scientific Research and Information Technology is responsible for development and implementation of projects and solutions in the field of e-public procurement in collaboration with the PPO.

## 2.6.3 *Key data and trends in public procurement (2002-2005)*

The PPO estimated that public procurement amounted, in 2002, to 4.5% of GDP for contracts above € 30,000 (threshold applicable until 2004). No figures were available below the thresholds so the global value is unknown<sup>70</sup>.

On the basis of the PPB and annual reports on contracts awarded, the size of the public procurement market in 2005 could be estimated at over PLN 68 billion (€ 17 billion). It means ca. 42% growth on 2004. The estimated value of the public procurement market represented ca. 7% of the gross domestic product (GDP) for 2005<sup>71</sup>. With respect to procedures with the value over the € 60,000 threshold (new threshold from 2004), the estimates based on the contents of contract award notices published in the PPB during 2005 allow to determine the total amount contracted at the level of ca. PLN 55.9 billion (€ 14.7 billion)<sup>72</sup>.

The value of contracts with the value ranging from € 6,000 to € 60,000, as reported by awarding entities in their annual contracts, amounted to ca. PLN 12.2 billion (€ 3.2 billion) in 2005, while its value in 2004 was PLN 9 billion (€ 2.3 billion).

It seems that the source of growth in value of the public procurement market is mainly the inflow of money from the EU's Structural and Cohesion Funds. Another reason for increase in the value of the public procurement market is the growing share in that market of the so-called “sectorial

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in the event of a failure by the awarding entity to act as it is bound to perform under the Public Procurement Act.

<sup>69</sup> <http://www.warsawvoice.pl/view/14775>

<sup>70</sup> <http://www.oecd.org/dataoecd/11/39/34992690.pdf>

<sup>71</sup> The gross domestic product (GDP) in 2005 (in current prices) was at the level of ca. PLN 967.7 billion.

<sup>72</sup> It should be noted that the data for 2005 and 2004 are not fully comparable in that respect. It is due from the fact of increasing, as of the effective date of the Public Procurement Law (i.e., 2 March 2004), the threshold obligating awarding entities to publish contract award notices in the PPB from EUR 30,000 to EUR 60,000. The actual increase in the number of notices published and the value of the public procurement market in 2005 was therefore more than that presented above.

contracts” (contracts awarded to enterprises active in the sectors of water management, power engineering, transportation and telecommunication)

In June 2003, there were about 62,700 contracting entities in Poland and 31,785 contracts above the threshold value of € 30,000 were awarded in year 2002 with the total value of € 35,000 million.

The statistics available for the different categories of supplies, services and works demonstrated the following: 68% of value of contracts in public procurement were public works (47.6% of procedures), supplies 19% (32% of procedures) and services 12% (20.4% procedures). Almost all contracts were awarded to companies registered in Poland. The participation rate in procurement was 5.08 for works, 3.66 supplies and 4.36 for services, in 2002.

According to the PPO most awarded contracts were below the threshold (applicable until 2004) of € 30,000. The PPO gathered the statistics for works below the threshold of € 30,000. According to these statistics, in 2002, 65% of works contracts were below 30,000.

The value of sectorial contracts (awarded to enterprises active in the sectors of water management, power engineering, transportation and telecommunication) that were awarded in 2005 was PLN 14,8 billion (€ 3.8 Billion), representing over 26% of the total value of contract awards published in the PPB. In terms of the type of sectorial contracts that were awarded, the majority of tendering published concerned supplies – 66%, then services – 32%. Works contracts represented a very small share, only 2% of all contracts.

In 2006 34,738 procedures were published on the PPB.

As far as the break down by awarding authority is concerned, statistics for 2006 show that 42% of the awarding authorities was represented by autonomous administration bodies while 7% by the public health sector. 3% of public procurement contracts has been awarded by bodies responsible for the protection of public law while only 2% by the central governmental administration and 1% by academic public bodies.

As far as the division by type of contract is concerned, data for 2006 show that 76,81% of the contract was assigned by open procedure, 16,06% by simple purchasing while 4,15% by restricted procedure.

#### **2.6.4 The evidence base on public procurement and SMEs**

##### **SMEs access to public procurement**

There is no obligation to collect data on SMEs’ participation to public procurement, therefore no statistical data is available on what share in public procurement is awarded to SMEs. Nevertheless, surveys held every six months by the Ministry of the Economy, Labour and Social Policy in co-operation with the PPO make it possible to identify the interest of SMEs<sup>73</sup> and their opinion on the basic institutions and practice of awarding in public procurement contracts.

79% of the SMEs surveyed did not perform any public contract in 2002, 16% participated in the procedures as main contractor, and 5% as subcontractor.

In award procedures under € 30,000, most firms participated during the year in not more than 5 tendering procedures - more than 68% of the respondents; at the same time, in procedures

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<sup>73</sup> The definition of SMEs that is used in Poland has been set up in the law of 2 July 2004 on economic activities (Dz. U. 22004 r. Nr. 173 poz. 1807).

involving higher values about 16% of the respondents submitted tenders in more than 20 procedures (7% in the case of tendering procedures under EUR 30,000).

A significant proportion of income derived by SMEs from public contracts is treated as an additional source of income. Income from public tendering procedures representing less than 10% of their total income is declared by nearly 38% of the respondents. At the same time, however, the survey shows that a group of firms can be identified (about 17%), which operate mainly in the public procurement area and declare income from such activities exceeding 70%.

### Specific bottlenecks of SMEs

Reports on SMEs access to public procurement<sup>74</sup> of the Polish Agency of Enterprise development and the Department of Foreign Trade at The University of Economics in Wroclaw showed that there are three most common barriers hindering the access of SMEs from the public procurement market:

- § The lack of information on public procurement opportunities: SMEs have bigger problems in accessing information on public procurement opportunities. Bigger companies usually have staff who specifically look for procurement opportunities while SMEs have limited human resources available for that purpose;
- § The lack of competences: SMEs do not have managerial and technical competences to deal with complicated tender procedures. Furthermore, contracting authorities often require quality certificate (such as ISO 9000), insurances and other certificates which are hard and costly to get by SMEs; and
- § The lack of financial resources: SMEs have limited financial resources to deal with financial requirements such as participation fees or bank guarantees. Furthermore, often the contractor has to pay a conspicuous sum of money in advance (to buy materials etc.) while the contracting authorities are delayed with payments.

The surveys held by the Ministry of the Economy, Labour and Social Policy in co-operation with the PPO show that even if their market outlook is dim, firms often prefer not to participate in public tendering procedures. In the survey SMEs were asked to indicate what are the most important barriers that they face in relation to access to the public procurement market. Table 8.9 shows the most common answers.

**Table 2.21: Overview of the main barriers hindering the access of SMEs from the public procurement market**

TYPE OF BARRIER	PERCENTAGE OF RESPONDENTS
Excessive conditions imposed regarding the ability of the firm to execute the contract	50%
Lack of financial support in providing the deposit and the contract performance security	31%
Unclear rules for the evaluation of bids	28%
Procedure is rigged	27%
Unclear items in the Specifications	25%

<sup>74</sup> <http://archiwum.parp.gov.pl/wydaw/warunki/roz10.pdf>

And <http://www.cargo.ae.wroc.pl/Bogusz.htm>

Stiff requirements concerning the preparation of the set of documents	24%
Provisions disadvantageous to the firm	20%
High deposit required	18%
Lack of consulting assistance during participation on the procedure	17%
Lack of financial support in the preparation of the tender	16%
Insufficient time allowed for the preparation of the tender	14%
Difficulties in the collection the tender documents	13%
Difficulties in preparing the tenders	12%
Unclear description of the object of the contract	10%
Lack of training in the rules of seeking public contracts	7%
Non-availability of plain-language guides on the subject.	7%

As one of the main reason of such waiver of participation in the public procurement process, 27% of the respondents pointed out that in their opinion the procedure was rigged. Another reason was the belief that the provisions of the contract were disadvantageous to the firm, which accounted for more than 20% of the responses. Another apparent barrier was an excessively high deposit required by the procuring entity (according to more than 18% of the respondents); in addition more than 13% of the respondents were unable to collect all the tender documents, about 12% of the respondents claimed that the tender would have been too difficult to prepare. The other most common reasons of waiver of participation in the tendering procedure were the belief that the Specification contained too many unclear items (more than 25% of the respondents). What appear to have caused most difficulties to firms were unclear rules for the evaluation of bids (nearly 28%), the requirements concerning the preparation of the set of documents required by the procuring entity (more than 24% of the responses), insufficient time allowed for the preparation of the tender (14%), and unclear description of the object of the contract (nearly 10%).

50% of the respondents believed that the conditions imposed by the procuring entities regarding the ability of the firm to execute the contract were too high and limited the access of firms to the public procurement market. On the other hand, 33% of the respondents found the requirements to be consistent with the scale and nature of the contract. The other respondents (17%) described the requirements as insufficient and hence leaving room for the selection of a contractor who would be unable to duly perform the contract.

What was seen to be the greatest obstacle by small and medium-sized enterprises operating in the public procurement market was a lack of financial support in providing the deposit and the contract performance security - about 31% of the responses. Another problem, equally important, indicated by 17%, was the lack of consulting assistance during participation on the procedure. Entrepreneurs also complained about the lack of financial support in the preparation of the tender - 16%; 7% indicated the lack of training in the rules of seeking public contracts and the same percentage complained about the non-availability of plain-language guides on the subject.

The respondents voiced similar, negative opinions on the overall regulatory framework governing the public procurement market. In 50% of the cases it was stated that the regulations barely protect or do not protect the interests of entrepreneurs seeking a contract. Another 25% responded that they are not protected by the law at all. The remaining group (25%) of the respondents believe the law affords them full or sufficient protection.



This attitude is confirmed by the Union of Polish Handicrafts<sup>75</sup>, which in an article dated February 2007, stated that, in the current situation, SMEs have poor access to public procurement. The changes in the law on public procurement introduced in 2006 did not enhance the access of SMEs of the handcraft sector to public procurement. The complex tendering procedures and stiff conditions, which have to be fulfilled by SMEs, practically eliminate them from the public procurement market. As an effect of the law, even the smallest calls for tender are won by big companies, which fulfil the conditions set up by the law.

Also, the Polish Chamber of Commerce declared that, despite the fact that the public procurement procedures have been simplified in the last two years through reforms, the access of SMEs to this market has not been made easier.

### **2.6.5 Approaches to overcoming barriers to SME involvement in public procurement in Poland**

#### **Regulations**

In Poland, there is no specific regulation that creates a preferential treatment for SMEs. There is no obligation and no possibility to reserve contracts or part of contract for SMEs. However, the Polish legislation has been amended in order to implement the provisions of the EU directives 2004/17 and 2004/18 that help SMEs' access by endorsing, for example, the breaking up of contracts into smaller lots.

As stated by the Polish Chamber of Commerce, SMEs constitute an important sector of the national economy. However, in the actual situation, it does not seem that the reforms in the public procurement law take into account the needs of this specific group.

The only measure that has been explicitly taken to facilitate the broader access of small and medium enterprises to the law enforcement measures is the Prime Minister's Regulation of 16 March 2005, where the rate of a registration fee charged for an appeal lodged in public contracts award procedures was cut down to 3.25 times (to € 378) the basic amount as defined in the Budget Act for a given year, namely up to PLN 4,674 (€1,230).

#### **Support Programme for Small and Medium-sized Enterprises Participating in the Public Procurement Market for 2003-2005**

2005 was the final year of implementation of the Programme of Public Procurement Educational & Informational Measures in 2003 – 2005. That Programme was created to promote the awareness of public procurement, launch good practices and provide professional support to awarding entities and tenderers and, hence, to reduce opportunities for corrupt practices in the public procurement system.

The preparation and implementation of the programme is a joint effort of the PPO and the Ministry of the Economy, Labour and Social Policy.

Small and medium-sized enterprises are active participants of the public procurement market, but they still need support to be able to overcome difficulties in access to the market. The programme provided for legislative, training/consulting, organisational/information measures as well as financial support, which is to serve the following ends:

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<sup>75</sup> <http://www.zrp.pl/pliki/plik.doc?Id=4246>

- § provide small and medium-sized enterprises with wider and fuller access to information on the public procurement system;
- § overcome the "competence barrier"; and
- § create and activate mechanisms of financial support to small and medium-sized enterprises participating in the public contract award process.

The programme provided for close partnering with organisations of entrepreneurs and business support institutions, in particular with the network of Consulting and Advisory Outlets established to provide free-of-charge (state-funded) aid to small and medium-sized enterprises.

#### **Other programmes and activities for SMEs:**

Through The Polish Agency for Enterprise Development (PAED) Academy Portal ([www.akademia.parp.gov.pl](http://www.akademia.parp.gov.pl)) the agency organises trainings using e-learning technology. The portal offers a wide range of courses in entrepreneurship, among which on rules of participating in public procurement system.<sup>76</sup>

The Ministry of Economy (Department of Crafts and SME's) has worked on a policy program "Directions of the Government Activity Towards Small and Medium-Sized Enterprises till year 2002". One aim of the program was to facilitate the access to public procurement for SMEs. Also, the programme supported the promotion of entrepreneurship through the development of the information system on export opportunities, on EU regulations and on foreign public procurements.

As far as informing SMEs about tendering opportunities is concerned, public procurement notices are available on the website of the PPO. The website provides also useful documentation/publications on public procurement procedures. These can be downloaded easily and free of charge. Furthermore, training programmes are provided to SMEs in the frame of EU projects financed by the EU funds.

Improved payment systems have been introduced by the law of 12 June 2003 on the timeframe for payments in business transactions. This law, which has established 30 days as the time limit for payments in business transactions, has been introduced to reduce late payments. However, as stated by the Polish Chamber of Commerce, delays in payments still exist, especially in the hospital sector.

As far as e-Procurement is concerned, there is currently no central e-procurement infrastructure in Poland. At present public tenders are published on the website of the PPO (those above € 14,000). In the future, the integrated information system for e-government service delivery ('Gateway to Poland') will include an e-procurement platform.

The website of PPO provides an official PPB with search engine (simple and advanced search), database of contract awards and online tender publication system. The search criteria include the type of document (contract award notice or prior information notice), the type of procedure (restricted, open or competitive dialogue), the type of contract (work, services or supplies), CPV code, the place, number and name of contracting authority. The development of a fully transactional e-procurement platform is underway as part of the integrated information system for e-government service delivery project ('Gateway to Poland').

The use of framework agreements does not seem to be a regular practice in Poland, however, statistics on this type of contracts are not available. Also, the institutional bodies do not seem to encourage small companies to form consortia (allow SMEs to jointly meet requirements) even if such a possibility is provided in the law. Similarly, more flexible contracting and taking account of quality and total lifecycle costs when evaluating proposals are also foreseen by the law. However, as stated by the Polish Chamber of Commerce, the contracting authorities do not use these possibilities in practice. For example, in 2006, 64% of the procedures have been evaluated taking into account, as exclusive awarding criteria, the lowest price.

### 2.6.6 Conclusions

The Polish SME sector plays an important role in the national economy as it represents 99% of all active enterprises and provides for almost 7 million jobs. Unfortunately, in the actual situation, there are few initiatives targeted to increasing the participation of SMEs to the public procurement market and the reforms in the public procurement law take poorly into account the needs of this specific sector.

SMEs access a lower proportion of public procurement than would be expected. Despite the fact that the public procurement procedures have been simplified in the last two years through reforms, the access of SMEs to this market has not been made easier. Public contracts seems to be moderately important in the activities of the smaller firms, which sometimes even prefer not to participate in public tendering procedures

There are three most common barriers hindering the access of SMEs from the public procurement market:

- § The lack of information;
- § The lack of competences; and
- § The lack of financial resources.

What appears to have caused most difficulties to firms were unclear rules for the evaluation of bids, the requirements concerning the preparation of the set of documents required by the procuring entity as well as the excessive conditions imposed by the procuring entities regarding the ability of the firm to execute the contracts.

Some activities have been put in place to facilitate the access of SMEs to the public procurement market. However, these seem to be still poor and not well implemented in practice. The biggest initiative put in place for SMEs has been a "support Programme for Small and Medium-sized Enterprises Participating in the Public Procurement Market for 2003-2005" organised by the PPO in collaboration with the Ministry of the Economy, Labour and Social Policy. The programme has been especially conceived in order to overcome difficulties of SMEs in accessing the public procurement market and thus can be considered as being a particularly valuable initiative. Such programme may be advisable for other EU Member States as provides SMEs with helpful legislative, training/consulting, organisational/information measures as well as financial support. Also, it enhances close partnering amongst organisations of entrepreneurs and business support institutions.

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<sup>76</sup> [http://archiwum.parp.gov.pl/dotacjedoc/ulotki/parp\\_12\\_2005\\_ang.pdf](http://archiwum.parp.gov.pl/dotacjedoc/ulotki/parp_12_2005_ang.pdf)

## 2.7 Slovak Republic

### 2.7.1 Public procurement regulation in Slovak Republic

Slovak Republic has legislation on public procurement since 1994. The first public procurement law was based on the model from United Nations Commission on International Trade Law and had for main objective to achieve “best value for money” through competition and equal rights for everyone. Its amendment in 1996 was a first step towards consistency with EU legislation. The 1999 public procurement act (PPA) went further in the process of aligning Slovak Legislation with EU directives. The main innovation was enlargement of its application to a wider spectre of entities such as legal entities created or controlled by public bodies (such as public utilities). The 2001 PPA created new national thresholds and introduced regulations for small value contracts. The main motivation of this modification was to support the national programme for fight against corruption. The following modifications in 2003 introduced more detailed definitions of procurers and established new methodologies, such as “rapid procedures”. They also contained further alignment with EU legislation. In 2004 Slovak legislation was fully harmonised with valid EU Directives. The main change of the 2004 amendment was the introduction of new appeal procedures,

Currently, Slovakia has a new PPA, valid from January 2006. The new legislation was motivated by the changes in EU Directives and the subsequent requirement to align national legislation with EU directives. It had also set out the objective to enhance transparency and make controls of public procurement more effective. The new PPA also simplified national PP processes and introduced methods for using information technologies with the objective to administratively simplify and fasten procurements.

The Slovak legislation differentiates between three types of procurers (awarding authorities), procurers from the traditional sectors addressed by the legislation as “public procurer”<sup>77</sup>, procurers from selected public utility sectors addressed as “procurer” and other procurers. “Public procurers” may be public bodies from one of the following categories:

- § central government
- § local authorities
- § regional authorities
- § legal entity without an industrial or commercial character which is fully or partially financed, controlled by bodies from the above categories, or if such bodies elect more than half of the members in its managing/ controlling organs
- § association of legal entities with at least one member being a body from the above four categories

The “procurer” is a body exercising activities specified by the PPA in the fields of energy production and distribution (electricity, gas or heating), water and sewage systems, transport, mail services and airports, ports and other terminals. “Other procurer” is a person or a legal body who

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<sup>77</sup> The references “procurer” and “public procurer” are used in Slovak legislation.

receives more than 50% of financial resources which will be used to order supplies, works or services<sup>78</sup>.

Table 2.22 shows that different thresholds apply to these three types of procurers. According to the financial thresholds, Slovak legislation differentiates between four types of public procurements. The EU thresholds - transposed to the PPA - mark the highest value public procurements. In addition, other, lower-level national thresholds have also been designed. The breakdown of thresholds applied in Slovakia can be found in Table 2.22 below. As can be noted, from this table, only the highest thresholds, as adopted from the EU legislation, apply to procurers from the public utility sector.

The main differences among the four types of thresholds concern the administrative requirements. In comparison with procurements “beyond EU thresholds”, procurements “beyond national thresholds”:

- § do not need to establish a detailed report on each public procurement (i.e. on the proceeding, the assessment and the results)
- § do not communicate the announcement and results of the procurement at EU level, but only in the national Bulletin
- § do not need to publish an prior information notice in advance of the publication of public procurement
- § do not apply to public utilities
- § comply with different deadlines: time requirements in terms of when does the procurement announcement have to be published, time left before publication and deadline for submission, etc.

Procurements “below threshold”: require fewer documents from participants, do not require a commission to assess the results of a public procurement, one accredited person is sufficient, comply with different deadlines, do not need to publish the call in the national Bulletin, but communicate outcomes of the procedure to PPO. Procurements with “low value” do not necessitate an accredited person and no reporting to the PPO is required.

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<sup>78</sup> Such entities are obliged to select contracts through public procurement.

**Table 2.22 - Public procurement thresholds in Slovakia (€)<sup>79</sup>**

Type of procurement	Type of Procurer	Beyond EU threshold	Beyond national threshold	Bellow threshold	Low value	
	Public procurer	Central Government (in case of defence this concerns only particular goods mentioned in the LPP)	>154 000			
		Municipality; Region; Legal Entity; Association of Legal Entities	>236 000	59 276 - 154 000	29 638 - 59 276	< 29 638
	Procurer	>473 000	none	none	none	
	Other procurer	>154 000	none	29 638 - 154 000	none	
<b>Supply</b>						
	Public procurer	Central government with exception of X	>154 000			
		Municipality; Region; Legal Entity; Association of Legal Entities	> 236 000			
	Procurer	> 473 000	none	none	none	
	Other procurer	>154 000	none	29 638 - 154 000	none	
	Public procurer	X Research and Development services and Telecommunication services	> 236 000	59 276 - 154 000	29 638 - 59 276	< 29 638
		Procurer	> 473 000	none	none	none
	Services	Other procurer	>154 000	none	29 638 - 154 000	none
		Public procurer			355 660 - 5 923 000	118 553 - 355 660
Procurer				none	none	none
Other procurer		> 5 923 000	none	118 553 - 5 923 000	000	none
<b>Public Works</b>						

### 2.7.2 The governance of public procurement in Slovakia

In Slovakia, there are no regional or local rules on public procurement and the only competence regions and municipalities have in this field concerns the control of “below threshold” and “low value” public procurements. Though the legislative competence is shared between the Ministry of Economy and the Public Procurement Office (PPO), it is the public procurement office, which is the main organ governing public procurement rules and their application in Slovakia.

The Public procurement office was created in 2000 as a public agency. The head of the PPO is appointed by the government and its budget is linked to the state budget. The main reasons for setting up the PPO was the necessity to enhance transparency of public procurement, its monitoring and control, but also to improve planning of public procurements across the country, the aptitudes of procurers and of the staff to manage procurements and to use the valid methodologies, together with the need to further develop and inform about these methodologies.

The main functions of the PPO are:

- § To prepare and execute the Slovak policy on public procurement
- § To control public procurements and to apply sanctions
- § To give methodological support on application of valid legislation
- § To publish the Public Procurement Bulletin
- § To collect data and to produce annual reports on public procurement in Slovakia

<sup>79</sup> Please note that the values in Table 2.22 were converted from SKK to euro on basis of July 2007 exchange rates.

- § To deliver certificates for aptitude to supervise and execute public procurements (i.e. a certificate that qualifies a person to supervise public procurements “below threshold”, “beyond national threshold” and “beyond EU threshold”)

When it comes to the supervision of public procurements, the PPO executes two types of controls: those based on an appeal from one of the participants to the procedures and ex post controls. Controls initiated during the procurement process can only be launched based on an appeal from one of the participants of the procurement. The objective of these controls is to remedy eventual irregularities in the procedure. The ex post controls are done in case of information obtained from external sources on suspected irregularities, or on a random sample of procurements. However, as was already indicated above, the PPO does not have any power in relation with “below threshold” or “low value” public procurements, nor can it apply sanctions in these cases.

However, the PPO is not the only organ controlling the correct implementation of public procurement rules. Several other bodies have this competence. For example in case of public subsidies or aids to public bodies or companies<sup>80</sup>, the financing body can control the compliance with procurement legislation and this equally in case of “below threshold” and “low value” procedures. The supreme audit office can also control procurements. In case of public procurements managed by regions or municipalities, these bodies all have their own assigned auditors who can also control these procurements.

Though the PPO has the power to influence public procurement procedures, their impact on SMEs’ access to public procurement is for the moment rather limited. The PPO can introduce and has already introduced methods which can be in favour of SMEs’ participation, such as the possibility of creating consortia which can jointly fulfil technical or financial requirements or subcontracting parts of the contract if subcontractors and their part of work are involved in the proposal; the possibility of using the economically most advantageous tender criteria when evaluating the bids; electronic procurement; etc. However the extent to which these methods are used in the praxis is independent of the PPO.

As was noted by an interviewee from the PPO, the office is hardly ever in contact with SMEs or their representatives. The rare contact takes place during control procedures or when the PPO submits proposals for new legislation for consultation to social partners, including those representing SME’s. Otherwise the methodological guidelines issued by PPO and the training offered are mostly designed for the needs of procurers and concern the interpretation of legislation, rather than an advice on the choice of methods to follow.

### **2.7.3 The evidence base on public procurement and on SMEs participation**

The Slovak public procurement office monitors public procurements in Slovakia since its creation in 2000. Each year the PPO publishes statistical analysis of public procurements based on the announcements of procedures for contracts received by the PPO. As can be seen from Table 2.23 and Table 2.24 below, while the number of procedures is decreasing since 2002, the overall value of contracts is slowly growing. It could be noted that the important increase in the number of public procurements around year 2002 is mostly due to the decentralisation of Slovak administration and the fact that a lot of previously centralised competence was shifted to municipalities and regions in that period. Indeed, following the decentralisation of public services

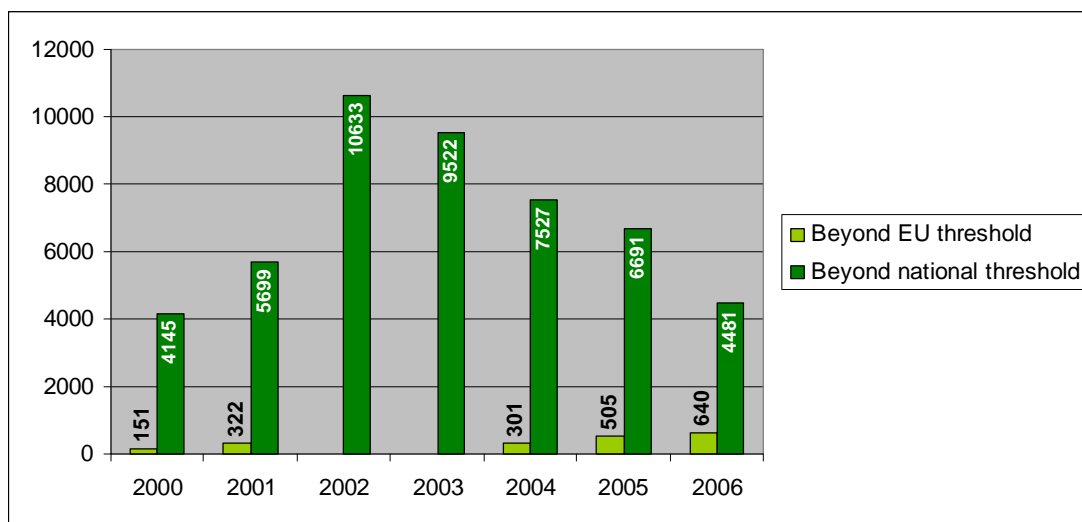
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<sup>80</sup> In case companies or other bodies receive public finances at the level of 50% and more of their budget, they are in obligation to select their suppliers and sub-contractors through public procurements.

in early 2001-2002 regions and municipalities have acquired new competence in provision of health care, public works, education and training services, etc.

As mentioned above this data is based on information received by the PPO. The procurements beyond EU and national threshold have to be published in the Slovak Bulletin, and hence information concerning this type of procurements in the database is regarded as relatively complete. Even though the results of procurements “below national thresholds” have also to be reported to the PPO, the office has no means to control whether this obligation is being always followed or not. In addition, public procurements with “low value” are not subject of any reporting obligation, and are hence not taken into account in the dataset. For these reasons any data presented in this case study gives only an approximation of the total amount and value of public procurements in Slovakia.

**Table 2.23– Finalised public procurements in Slovakia according to the number of procedures<sup>81, 82</sup>**

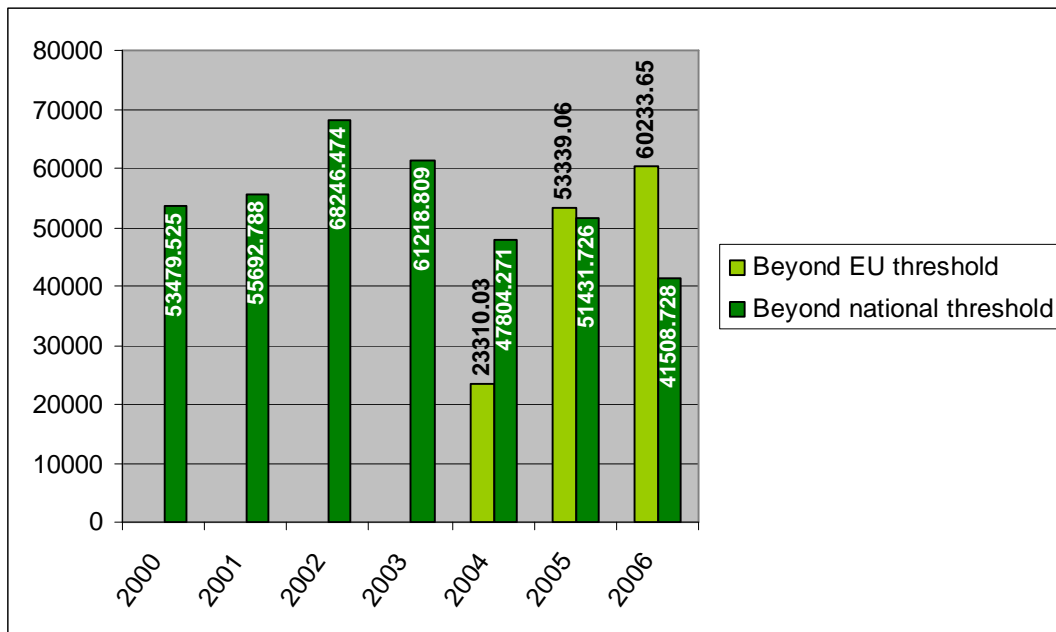


<sup>81</sup> The statistical analysis from years 2002 and 2003 do not contain separate data on PP beyond EU threshold. The figures presented are a sum of procedures “beyond EU threshold” and “beyond national threshold”.

<sup>82</sup> Source: Úrad pre verejné obstarávanie (Public Procurement Office)



**Table 2.24 - Finalised public procurement in Slovakia according to the total value of contracts (in millions SKK)<sup>83 84</sup>**



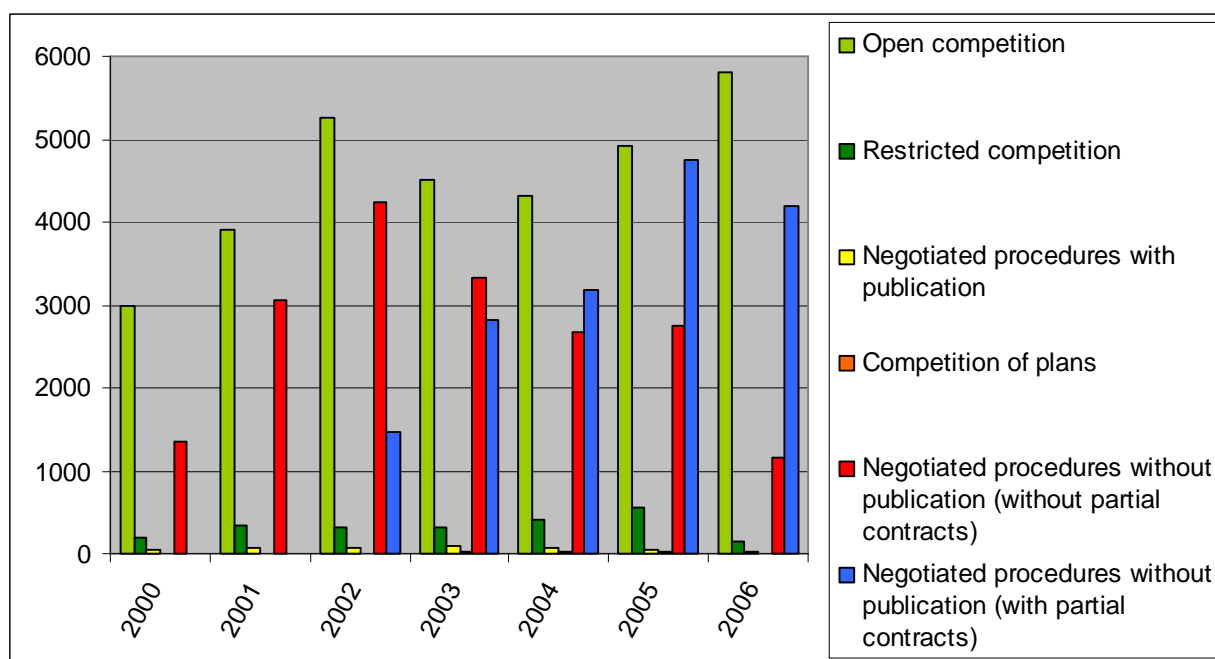
Slovak legislation differentiates among six types of public procurements according to the method used. Besides the traditional open and restricted procedures, Slovakia legislation also allows for design contests (i.e. graphic or written representations for landscape planning, urbanism, architecture, etc.) and competitive dialogue, which can be with or without publication and can be used only under certain conditions. Despite the fact that the new legislation introduced the obligation to publish an announcement also on “negotiated procedures without publication” tenders, the number of procurements using this procedure remains still high compared to the other methods (see Table 2.25). Such frequent use of negotiated procedures is viewed as an obstacle to transparency, as has been underlined by the justification report for the 2006 legislation<sup>85</sup>.

<sup>83</sup> Idem

<sup>84</sup> The statistical analysis from years 2000 - 2003 do not contain separate data on PP beyond EU threshold. The figures presented are a sum of procedures “beyond EU threshold” and “beyond national threshold”.

<sup>85</sup> Justification Report on the proposal of law 25/2006  
[http://www.rokovania.sk/appl/material.nsf/0/CE490319713E0B08C1257083003EB05B/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/CE490319713E0B08C1257083003EB05B/$FILE/Zdroj.html)

Table 2.25 - Numbers of public procurement in Slovakia according to the method used<sup>86 87</sup>.



According to the type of goods, most public procurements in Slovakia concern supplies, when considering the number of procedures. On the other hand, public works represent the highest share, in terms of value, of Slovak public procurements. For details see Table 2.26 below. This table also shows that the highest value of public procurements has been initiated by the central government and its agencies, though the value of contracts in procurement from the selected sectors is also high. On the other hand, territorial bodies (municipalities or regions) issue the most important part of contracts in terms of numbers.

<sup>86</sup> The table contains data on all public procurements launched, including those which were cancelled.

<sup>87</sup> Source: Úrad pre verejné obstarávanie (Public Procurement Office) : Správa o výsledkoch činnosti Úradu pre verejné obstarávanie v roku 2006. <http://www.uvo.gov.sk/index.html>

Table 2.26– Public procurements in Slovakia according to type of goods and procurer<sup>88</sup>

According to the Type of good					
		2005		2006	
		Value (thousands SKK)	Number	Value (thousands SKK)	Number
<b>Beyond EU threshold</b>	Supply	12,672,722	227	15,674,041	274
	Services	22,631,435	254	21,688,430	332
	Public Work	18,034,902	24	22,871,181	34
<b>Beyond National threshold</b>	Supply	13,702,591	2,851	5,295,105	1,781
	Services	5,909,286	1,919	4,334,224	1,519
	Public Work	31,819,849	1,921	31,879,399	1,581
According to the procurer					
		Value (thousands SKK)	Number of active procurers	Value (thousands SKK)	Number of active procurers
<b>Central government</b>		24,558,040	426	18,346,419	321
<b>Organisation governed by public law</b>		24,443,412*	238*	19,608,908	126
<b>State governance</b>		<b>49,001,452</b>	<b>664</b>	<b>37,955,327</b>	<b>447</b>
<b>Municipality or a region</b>		20,345,131	656	20,369,367	794
<b>Organisation governed by public law at municipal/ regional level</b>		*	*	1,266,203	71
<b>Association of legal entities</b>		317,306	20	310,797	46
<b>Territorial governance</b>		<b>20,662,437</b>	<b>676</b>	<b>21,976,367</b>	<b>911</b>
<b>Selected sectors</b>		31,521,979	108	37,207,362	67
<b>Cases where public procurer provides</b>		3,447,846	120	2,832,435	198
<b>Voluntary proceedings</b>		137,071	28	1,800,889	8

\* this data was not divided in 2004

The participation of SMEs in public procurements has not been assessed until 2006. In 2006, the PPO for the first time also collected and published data on the classification of successful tenderers as part of the annual statistical analysis on public procurement. According to this data, SMEs won the biggest share of public procurements examined in 2006, when it comes to the value of contracts (for more details see Table 2.27 below). Interestingly, the Table 2.28 below shows that in Slovakia SMEs were also very successful in winning contract with high values (i.e. beyond EU thresholds). However, as noted above this data is not complete when it comes to covering contracts with “low value” or “below threshold”. Therefore in reality the share of SMEs is likely to be slightly higher as the participation of SMEs in these types of procedures is more important.

To put this data into the Slovak context it is important to know that in Slovakia, like in most small countries, SMEs represent the overwhelming majority of domestic companies (99.8%)<sup>89</sup>. In 2004, SMEs represented 46%<sup>90</sup> of the total turnover for all sectors in Slovakia. In light of the latter figure, the participation of Slovak SMEs in public procurement can be seen as proportionate to their participation in Slovak economy.

<sup>88</sup> Source: Úrad pre verejné obstarávanie (Public Procurement Office)

<sup>89</sup> Source : Slovak Statistics office (<http://portal.statistics.sk>)

<sup>90</sup> Source: Eurostat

**Table 2.27 - 2006 Data on Companies share of the total value of public procurements in Slovakia<sup>91</sup>**

	Share from the total value of PP		Share from the value of contracts won by private companies	Share from the total value of PP
Private companies	87%	Large companies	37.40%	32.54%
		Medium companies	29.50%	25.66%
		Small companies	23.00%	20.01%
		<b>Sub- total SMEs</b>	<b>52.50%</b>	<b>45.67%</b>
		Other (foreign companies + unknown)	10.10%	8.78%
Public bodies	4.40%			
Other (foreign companies + unknown)	8.60%			

**Table 2.28 – 2006 data on Companies share of the total value of public procurements in Slovakia according to the type of threshold<sup>92</sup>**

	Small companies (0-9)	Small companies (10-49)	Medium companies (50-249)	Total SMEs	Large companies (250 and above)
Beyond EU thresholds	25.9%	13.1%	19.0%	58.0%	42.0%
Beyond National Thresholds	19.2%	20.6%	26.3%	66.1%	33.9%
Bellow thresholds	29.8%	31.2%	24.3%	85.3%	14.7%

#### 2.7.4 SMEs and public procurement methods in Slovakia

There is no national strategy regarding SMEs' access to public procurement as such. This topic is rather new and the debate around it has been so far mostly triggered by the EU discussion. On the other hand, the Slovak legislation has been designed in order to ensure fair and open access to public procurement to everyone. Therefore it contains several features which can play in favour of SMEs participation.

##### Debriefing

Debriefing of unsuccessful participants to public procurements could be used as a learning process for companies. If detailed, debriefing enough could be particularly useful for SMEs in order to enable them to improve their offers. The Slovak public procurement act contains a condition for procurers to inform all participants about the outcomes of public procurement. Participants excluded on grounds of the eligibility criteria are informed about the exclusion of their bids and the reasons for that. Participants who satisfy the conditions but are not selected are informed about the reasons why their offer has not been accepted and about the features and advantages of the successful offer.

It has been noted in one of the interviews for this case study that such debriefing information is also being frequently sent to unsuccessful candidates in "below threshold" and "low value" procurements which do not legally have to proceed in this way. On the other hand, an interviewee noted that this information is hardly sufficient to give participants a good idea on reasons of their failure and hence can not serve as a lesson for future tenders. It is rather a transparency measure. In the past it was possible to rank all participants and inform them about their ranking.

<sup>91</sup> Source: Úrad pre verejné obstarávanie (Public Procurement Office) : Informácia o celkovom štatistickom vyhodnotení procesu verejného obstarávania za rok 2006  
<http://www.uvo.gov.sk/legislativa/vladne/stat2006/material.pdf>

<sup>92</sup> Source: Úrad pre verejné obstarávanie (Public Procurement Office)

However, as many procedures were slowed down because of appeal procedures from candidates at rankings which actually had no influence over the result (i.e. the request to be published at 4<sup>th</sup> rank rather than the 5<sup>th</sup>), the possibility of ranking has been cancelled and candidates are only marked as successful or unsuccessful. More detailed debriefings are not a practice in Slovakia.

#### **Technical and economic requirements and deposits**

The Slovak legislation sets that the requirements for financial and economic situation as well as for technical and professional knowledge and competence must be appropriate and relevant for the subject of procurement. Hence the Slovak legislation bans disproportionate requirements which would exclude companies who could otherwise qualify for the assignment. In the past, setting very high economic and financial requirements in terms of annual turnover used to handicap SMEs. However this obstacle has been removed by enabling SMEs to create consortia, where the legal entity is created only once the contract has been won. Consortia enable SMEs to collectively cover the required economic and also technical criteria.

In case a financial guarantee is required this can reach up to maximum five percent of the value of the contract. However, as was noted by an interviewee responsible for public procurements in a large Slovak city, deposits are not being used systematically and are actually rather rare.

#### **Assessment of submitted tenders**

When it comes to the evaluation of bids that satisfy criteria for application, the Slovak PPA gives procurers the possibility to use two types of criteria: lowest price or “best economic offer” (i.e. the economically most advantageous tender in EU-terminology). The type of criteria used has to be noted in the announcement. The “best economic offer” criteria shift the focus to criteria such as quality, low maintenance costs, etc., rather than bid price only, hence giving the opportunity for SMEs to present products which are competitive in the long run, despite the higher initial costs.

No statistical data exists on which criteria are used more frequently. However during the interviews it appeared that though the best economic offer would be the most desired criteria for procurers, the use of lowest price criteria is often the easier to apply, especially when it comes to assessment of service tenders. The lowest price criteria is actually used most often also because of previous experience. Indeed in the past many criteria designed by procurers under the “best economic offer” process were judged as discriminatory by the PPO and lead to cancellation of tender procedures. The criteria listed in the PPA to illustrate “best economic offer” are: price, technical conditions, functionality, environmental characteristics, maintenance costs, post-sale service and technical aid and the timescale for delivery. These criteria are very difficult to apply for services and even though they are not binding, procurers nowadays avoid inventing new ones as there is a risk of being judged as discriminatory.

The definition of evaluation criteria was in the past one of the problematic areas often misinterpreted by procurers. Not only some criteria were judged as discriminatory but, according to the 2006 annual report on PPO activities, Slovak procurers often confused eligibility criteria for participation in the public procurement with the selection criteria for the evaluation of offers, using criteria such as the financial and economic position or technical capacity of tenderer to assess bids. In cases where such criteria were used, the procedures were cancelled by the PPO.

These two observations show that for the moment, Slovak procurers have little experience in using other criteria than price to assess proposals and have also little incentives to do so.

### **Other methods**

Other methods which could facilitate SMEs participation in public procurement such as acceptance of sub-contracting, division of large contracts into smaller lots or framework contracts are also available in Slovakia. Again it is difficult to generalise about the use of these methods as these are not being statistically grounded, however it was noted by the people interviewed that all three methods are being used, depending on the needs of the procurer. Framework contracts are favoured when the procurer does not know the exact volume of work to be contracted during a certain period of time. Tenders are divided into lots when several different activities/ goods are being the object of the procurement.

It appeared from the interviews that the most important barrier for SMEs participation in public procurement concerns the administrative burden and lack of experience with participating in public tenders. The interviewees noted that companies, SMEs more often than large companies, are often being excluded from procedures on formal grounds, i.e. because they do not satisfy the eligibility criteria, such as submitting the complete documentation.

### **2.7.5 Approaches to overcoming barriers to SME involvement in public procurement in Slovakia**

As noted in the previous chapter, there are only few initiatives in Slovakia which are specifically focused on SMEs access to public procurement. However, some wider initiatives have been put in place to lower the administrative burden and improve quality of public procurements, which indirectly also have a positive impact on SMEs' access.

#### **Company register as a prequalification tool**

In order to diminish the administrative burden of companies which participate in public procurements, Slovak PPO runs a company register since 2001. Companies which have once qualified as apt to participate in public procurements and asked for an entry in the register can, in the next public procurement, prove their aptitude to participate by providing an acknowledgement from the PPO. Hence companies only have to provide once a series of documents, such as a clear criminal record, acknowledgements from health and social insurances and the tax office about a clear debt record, etc. The entry in the register is valid for one year and can be renewed. In 2006, 3,562 legal entities were registered and 3,594 acknowledgements were delivered through the year. The figures of entities registered were lower in 2006 than in 2005, when 4,145 entities were listed. However, this decrease should be interpreted in light of the figures on public procurement which reveal that the public demand was lower (in terms of occurrence not value) in 2006 than in 2005 (see Table 2.23).

The company register is seen as very useful for those who participate frequently in public tenders. It can replace nine administrative documents with one only. They also significantly diminish their costs and time as most of the necessary documents have only a limited time validity, three months usually, and are delivered by a number of different institutions. The direct costs of gathering all these documents, as they all require tax stamps, are approximately 800-1000 SKK (€24-30).

#### **Electronic Procurement**

In 2006 the PPO also created an electronic system for public procurement (EVO - <http://www.evo.gov.sk>). Though created in 2006 it has only been fully launched and made accessible in first semester of 2007. Initially the 2006 PPA made electronic procurements compulsory for contracts "beyond EU" and "beyond national" thresholds, concerning supplies. This included not only the compulsory publication on internet but also the compulsory electronic

submission of offers. However as there were important technical difficulties in launching the system, the PPA was amended and it has become optional for procurers to choose electronic procurement.

The main reason for creating an electronic system was to give procurers and tenderers the possibility of using electronic communications for all steps in the process of publishing, submitting offers and assessing public procurements. EVO also facilitates planning and preparation of public procurements. From the point of view of companies, including SMEs, EVO enables them to submit offers electronically which is again expected to lower their administrative burden and could help in avoiding formal errors. However, for the moment we can not speak about full electronic procurement as many required documents about the identity of a company still do not exist in electronic form and hence have to be posted in paper form.

Given that EVO was only finalised recently and it is currently in its beginnings no analysis of its usage and impacts on companies participation in public procurements has been done so far. However, the demand for it has decreased since it was rendered non-compulsory.

### **Training**

There is no specialised training for SMEs in order to participate in public procurement. However, for the moment, there are two types of training concerning public procurements available in Slovakia. The first one is delivered in order to certify people apt to supervise and run public procurements. Indeed in Slovakia, each public procurement has to be run and supervised by one qualified person. This training is delivered by the PPO and its regional offices. Though this training is primarily targeted at civil servants or people within "procurer" organisations, it has been noted by an interviewed trainer, that more and more frequently participants also come from private sector. However these people still constitute a minority of attendees. Another type of training is delivered by accredited providers aimed at larger public and does not lead to certification. Thirteen providers are currently entitled to deliver such training in Slovakia. This is mostly done on basis of a particular demand from an administration or, more rarely, a company and remains ad hoc. Though this could be delivered to SMEs or their groupings and tailored to their needs, such initiatives are not common practice for the moment.

Special training has been designed in order to prepare both procurers and participants for the methods of electronic procurement. The demand for such training was relatively high in the first trimester of 2007 when electronic procurement was still compulsory for supplies. It has radically dropped down since it was rendered optional. It is also interesting to note that the demand for such training was high only on the side of procurers while it was close to zero on the side of companies.

### **2.7.6 Conclusions**

As Slovakia has only started to monitor participation of SMEs in public procurements, it is difficult to make general conclusions as to the success of SMEs on the public market. Neither is it possible to distinguish any trends and observe impacts of legislative changes on SMEs. However, on basis of the 2006 data it seems that SME's participate at the rate that could be expected, when taking into account the share of SMEs in the total annual turnover in Slovakia.

In Slovak Republic the overall focus of public procurement policy is to ensure fair treatment and reduce discrimination, therefore no particular measures in favour of SMEs are being developed

for the moment. However, several methods which could particularly benefit SMEs, such as the possibility of subcontracting, creating consortia or of dividing contracts into lots, have been made available to the procurers. But at the same time little dissemination and information about the use of these methods and about their advantages is available. Equally, it seems that the strict focus on non-discriminatory measures causes that some methods prone to interpretation, such as the use of best economic criteria, are unfortunately being less and less used by procurers.

In some spheres, like training, though the possibility has been created, its use remains limited. Despite the fact that there are means in place to offer training on public procurement to companies and hence also SMEs, for the moment the interest is low. It might be due to the fact that the offer is still not well adapted and focused more on procurers' needs, but it seems also that the interest and awareness of SMEs and their representatives, chambers and associations, on this issue is still rather low.

The area where most progress has been made in Slovakia is in lowering administrative barriers. Without particularly focusing on SMEs, Slovakia has implemented two measures which decrease companies' administrative burden and hence facilitate their participation in public procurements. The company register and can be seen as good practice which make public procurements less administratively heavy for companies. This can be of special interest for SMEs who have less administrative staff and hence less resources to dedicate to the administrative part of putting together an offer. The objective of electronic procurement is to facilitate this process even further. However, as electronic procurement is only in its beginnings it is difficult to observe any impact for the moment as currently the demand seems relatively low.



## 2.8 Spain

### 2.8.1 Public procurement regulation in Spain

Royal Legislative Decree 2/2000 of 16<sup>th</sup> June constituted the main legislation on public contracts in Spain. It covered the national and regional procurement policies to ensure common practice amongst different bodies. This legislation was brought together under the Contract law of the Public Administrations (Texto refundido de la Ley de Contratos de las Administraciones Públicas) and the General Regulation of the Contract Law of the Public Administrations (Reglamento General de la Ley de Contratos de las Administraciones Públicas).

The legislative reforms carried out following the Contract Law of the State ("Texto Articulado de la Ley de Contratos del Estado de 1965") until the Contract Law of public Administrations ("Texto Refundido de la Ley de Contratos de las Administraciones Públicas" de 2000) were carried out to adapt national Law to the European one. This way, the Spanish Public Contract Law was, until 2004 (when two directives on Public Procurement were approved, 2004/17/CE and 2004/18/CE), very much in line with the demands of the Community Directives. Nevertheless, a commission of experts formed on 10<sup>th</sup> June 2003 for the Study and Diagnosis of the Situation of Public Procurement identified several reasons why further reforms were required:

- There was still a need to adapt National legislation to current European Directives on Public Procurement.
- Need to adapt Public Contract Law into the regional/local entities. There are 8,108 municipalities in Spain, and 6,925 of them have less than 5,000 inhabitants. The lack of resources in those small municipalities makes it difficult to integrate centralised bidding procedures. Some of the problems faced at local level are more specifically include:

The minimum amount required to use the Negotiated Procedure (that entails a quicker procedure) is too high for local administrations, so they often have to apply slower and more costly procedures.

In Public Working Contracts there is a requirement according to which only projects referring to the full public work can be accepted; but at the small Local Corporations public working contract are often awarded phase by phase. This means in some cases a work is executed by different entities.

Lack of qualified professional at the local level to supervise projects. A possible solution proposed is the "Administrative Cooperation" (Provinces would support Municipalities at the level of project supervision).

The publication of bidding procedures for local companies. Questions have been raised as to whether they always have to be published in National, Autonomous and Province official journals. The problem comes from the fact that not all autonomous communities have the same structure - some are composed of more than one Province where as others are not.

- The need to simplify Public Procurement contractual procedures.

Motivated by the need to transpose the 2004/18/CE Directive, in September 2006, the Spanish Congress of Deputies agreed on the project of Public Contract Law (“Proyecto de Ley de Contratos del Sector Público”). It includes amendments of the previous regulation based on the conclusions taken out by the Commission of experts. Until the approval of the Project of Law of Public Contracts of 8 September 2006, the main legislation on public contracts in Spain was the Royal Legislative Decree 2/2000.

This latest reform goes beyond the objectives set by the European Directive and includes significant new aspects that aim at bringing the national legislation into line with some specific challenges identified by the Commission created in 2003. The main aspects this new law presents refers to the following:

- Objective and scope of the Public Contract Law - According to the European law of precedent, a “functional definition” of the concept of public organism should be used (clarification of legal criteria that sets the public entities to whom the Public Contract Law should apply).
- On the one hand, the definition of Public Administration used by the Spanish system up to now leaved aside some entities that according to the European Directive should be included under the Public Procurement Law (i.e. some private entities). On the other hand, given the complexity of the Spanish Administrative division, and the differences in terms of structure, organisation or economic systems between local and National levels, the delimitation of objective and scope (“campo subjetivo de aplicacion”) for this law could not be directly transposed from the Community Law. To avoid these problems the new legal text includes an exhaustive enumeration of categories/entities that should observe it. In this way, it does not only transpose the Directive but it eases the extrapolation of the law to the autonomous and local entities. The law distinguishes between 3 groups of entities:
  - “Public Administrations”,
  - “Entities of the public sector, that are not Public Administrations, but to whom the 2004/18/CE Directive should apply” and
  - “Entities that are not under group a) or b) but to whom the new Law must apply”.
- To delimit the extension of the objective and scope of the Community Law the new Law defines the term “Contracts adhered to the harmonised regulation”. Those contracts are the ones to be regulated by the Community Law and their definition is based on the amount, type of contract or kind of contractor.
- Inclusion of social and environmental criteria in the process of assignation of contracts. Beyond the requirements established by 2004/18/EC Directive, the new Spanish Law includes substantial modifications referred to the preparation and award of contracts. Important changes include mechanisms that provide the public procurement procedures with some social and environmental considerations. This means that these will be part of the criteria for the assessment of the bids in some cases, or even special conditions for the execution of the contract in some other cases.
- Simplification and improvement of the contract management. A new system of classification of contractors, means used for proving the applicants meet the

requirements requested for contracting with the Public Sector, and new procedures for awards.

- Introduction of a new type of contract, the so-called "Contract between the public and private sectors".

### **2.8.2 SMEs and public procurement policy in Spain**

It would appear that there is no specific procurement policy in Spain that favours SMEs, but instead there are more general policies enabling small and large companies to compete on an equal basis for public contracts. There has been a major policy push in recent years to reduce the administrative burdens on companies when vying for public work that will potentially encourage more SMEs to come forward and compete for contracts.

A number of the procurement bodies in Spain (national, regional and local) have held registers of companies that have previously bid for work in an effort to reduce the effort for companies to continually re-submit key information for each bid put forward. Further work is being carried out to formalise this process and bring together the various databases held by the procuring bodies into one national data store that can be accessed and updated in a more efficient way.

Further work has been carried out to improve the advertising process of public contracts, which will have benefits for all companies. A range of Internet portals have been developed by procuring bodies to publicise contracts as well as include of the necessary/relevant documentation to enable companies to decide whether to put forward a bid for the tender. Companies are contacted directly following the publication of a new tender based on their search and capability criteria. This enables smaller companies to be alerted to relevant contracts without having to trawl through various publications taking time and resources away from their key tasks.

### **2.8.3 The governance of public procurement in Spain**

There are two important national level departments that look at procurement and also SME policy, including how these two areas can be better organised. The Ministry of Economy and Finance host the Consultative board on Administrative Procurement. This board acts as a centralised consultative body for the separate procuring organisation at national, community, and local levels. Procurement agencies and organisational representative bodies can submit requests for guidance which is considered by the board before a full report is published offering guidance and information to the original requesting body and to all other bodies via their website.

The Ministry of Industry, Tourism and Trade includes the Directorate-General for SME Policy (observatory of SMEs – IPYME.org). Whilst this organisation concentrates on SMEs, there appears to be little work looking specifically at SMEs in public contracts beyond that of advertising contracts and holding a centralised database of companies.

Public procurement is brought together through a unitary national legislation (see section 2.8.1), but it is operated in a decentralised way at different levels. The current structure of the Public Authorities involved in public procurement is:

- The General State Administration
- Autonomous Communities Administrations

- Local Administrations Entities (Municipalities)
- “Diputaciones Provinciales”: have the competence to assist (legal, economic and technique cooperation) the Municipalities and support and advise them in the management of public procurement.
- Autonomous organisations and other entities under public law, linked with any of the above public administrations, that fulfil the following criteria:

Have been created to fulfil needs of general interest that have not an industrial or commercial purpose

Their activities are largely funded by Public Administrations or other Public entities.

#### **2.8.4 The evidence base on public procurement and SMEs**

It is difficult to obtain quantitative information on public procurement in Spain due to the lack of aggregate and updated data. The Commission of Experts for the study and Diagnosis of the Situation of Public procurement estimates that, during the period 2002-2003, the volume of public contracts was about 10,2% of GDP (without including enterprises of public sector).

In some Autonomous Communities, Cataluña Chamber of Contractors for Public Works (Cámara de Contratistas de Obras de Cataluña) for example, are able to provide some detailed information at regional and sectoral level but access to these data is problematic.

The following classifications have been set out to identify small and medium sized enterprises in Spain:

	Turnover	Balance Sheet Total	Employees
Micro	<= €5 million	<= €2 million	Not more than 10
Small	<= €10 million	<= €10 million	Not more than 50
Medium	<= €50 million	<= €43 million	Not more than 250

#### **2.8.5 Approaches to overcoming barriers to SME involvement in public procurement in Spain**

The report “Promotion of the participation of the small and medium company in the processes of public procurement” (Fomento de la participación de la pequeña y mediana empresa en los procesos de contratación pública) published by the DG for SME policy carries out an analysis of barriers faced by SMEs when accessing public procurement contracts. It is based on two different questionnaires among SMEs and organisations working next to them (enterprise organisations, chambers of commerce and others). The study showed that the main barriers for SMEs when bidding for public contracts relate to the legislative requirement imposed on them:

- The provisional guarantees required to bid for contracts
- To be classified with respect to centralised criterion

When it comes to more technical barriers, the most frequent difficulties are:

- Excess of bureaucracy

- Complexity of some of the bids (lack of clarity of language problems when it comes from other Autonomous Community)
- Short notice from the publication of the bid to prepare the technical and administrative documentation
- Difficulties of accessing tender documents electronically.

And finally, among other barriers faced, the most frequent ones were:

- Concurrence with big enterprises (the mentality of procurers that bigger is better/lower risk)
- Not able to offer price reductions, unlike larger organisations
- Public Administrations not turning to SMEs because they are not a known entity in the market (again, favouring larger organisations)
- Internal knowledge that has to be made public (Information on prototypes, plans, drafts).
- Few big contracts are broken down in smaller lots.

Those barriers pose even more difficulties at the Local Administration level. The study also identified another kind of barriers that SMEs have to face once the contract has been assigned, which are:

- Delays in the payments
- Lack of interim payments
- Lack of flexibility regarding time for execution
- Having to assume publication costs
- The application delay penalties

Activity/ initiative	Scale of this activity	Implementation costs and impacts for public sector	Impacts on SMEs	Critical success factors and transferability
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<p><b>Informing SMEs about tendering opportunities</b> (<i>list on a single website, prior information notices or any other advance notice</i>)</p>	<p>The Ministry of industry, Tourism and Trade (DG SME policy - IPYME) has developed an information portal "The Company Information System (SIE)" that brings together:</p> <ul style="list-style-type: none"> <li>- Public procurement on offer – from the central administrations, autonomous-community administrations, local government, and the European Union</li> <li>- Contracts awarded by public tender</li> <li>- Aid incentives by the administration</li> <li>- Rules on European aid</li> </ul> <p>Users can access all of the SIE databases or select specific types of tenders that are then emailed to them on a daily basis.</p> <p>In addition to this, the Procurement Board is an associated Ministry of Economy and Finance procurement agency that centralises the procurement of the department in certain works, services and supplies. From their website (<a href="http://www.meh.es/Portal/">www.meh.es/Portal/</a>) users can access:</p> <ul style="list-style-type: none"> <li>- Summarised announcements of public tenders and adjudications, technical and administrative points of contact for additional information with a link for downloading administrative clauses and, where appropriate, technical specifications. Once the public tender period has elapsed, the information about the specifications is removed from the page. This information is offered in addition to the information that can be obtained, free of charge, from the Department's Information Service until the last date of submission.</li> <li>- Planned Contracts so that users can prepare for contracts before they are put to tender.</li> <li>- Voluntary Register of Bidders: by registering a company, this free service ensures that companies do not have to go through an accreditation process every time they bid for a public contract. From this section, users can request to be registered on the Ministry of the Treasury's Voluntary Register of Bidders, as well as request certificates, consultations and inquire about the status of the certificates.</li> </ul>
<p><b>Simplification of pre-qualification requirements</b> (<i>less detail, database of preferred suppliers</i>)</p>	<p>As above – registry of bidders.</p> <p>A number of procurement bodies in Spain hold registers of bidding companies with the aim of reducing administrative burden. Companies can opt to be included in these registers by providing documentation to show that they meet the minimum requirements for accessing public contracts. Then, when it comes to submitting bids, they need not re-submit certain aspects of the tender process as these details are held on the central register. Work is currently under way to connect these registers into one central repository for all of the procurement bodies in Spain.</p>
<p><b>Training and support for SMEs</b> (<i>capacity building, workshops, published guidelines</i>)</p>	<p>Training is carried out by the Official Chambers of Commerce, national and regional, to assist buyers and sellers in the procurement process.</p>
<p><b>Debriefing arrangements</b></p>	
<p><b>Improved payment systems – reduce late payments</b> (<i>performance targets</i>)</p>	<p>Directive 2000/35/EC of the European Parliament and of the Council of 29<sup>th</sup> June 2000 on combating late payment in commercial transactions was integrated into Spanish legislation by Law 3/2004 of December 29<sup>th</sup> combating late payment in commercial transactions.</p>
<p><b>E-procurement</b> (<i>online submission of tenders, linking public databases in order to lower administrative burden, e.g. retrieving tax data</i>)</p>	<p>Few measures have been adopted in Spain in relation to E-procurement. Previous legislation has incorporated electronic, computer, and telematics techniques into Public Procurement law to give them similar weight to traditional paper based methods.</p>
<p><b>Break up work into smaller lots</b></p>	

Use of framework agreements	
Encouraging consortia of small firms	
More flexible contracting	
Taking account of quality and total lifecycle cost	

### 2.8.6 Conclusions

It would appear that there has been some early work (Fomento de la participación de la pequeña y mediana empresa en los procesos de contratación pública) specifically looking at SMEs in the public procurement process, but most of the established work has focused on the process overall by reducing administrative burdens and ensuring that there is consistency across the different procuring bodies. The reduction of bureaucracy by holding registers of companies as well and forming centralised databases for this information is a useful way of making the entire process more accessible for all companies, not just SMEs. Work has also focused on the introduction of procurement portals offering tailored information on up-coming and current contracts, again reducing the burden on companies when searching for potential supplying opportunities.

## 2.9 Sweden

### 2.9.1 Public procurement regulation in Sweden

The **Public Procurement Act** (LOU) came into force on January 1st 1994 and regulates almost all public procurement of goods and services. Since procurement in Sweden is closely linked with competition, the Public Procurement Act is an essential part of the competition policy framework.

The Act is amended approximately annually to incorporate both EU thresholds and government proposals. It incorporates the following EC Directives on public procurement:

- 93/36/EEC, 93/37/EEC and 92/50/EEC (covering the public sector) as amended by 97/52/EC and 93/38/EEC (covering the water, energy, transport and telecommunications sector) as amended by 98/4/EC.
- The two Directives on remedies in the field of public procurement, 89/665/EEC and 92/13/EEC, are implemented into the same act, while Directive 2001/78/EC is implemented in a specific regulation.

Apart from the explicit provisions implemented from the Directives, the Swedish law contains a general clause, denominated by the principle of good business practice that says: "The award of public contracts should be so arranged as to take advantage of existing competition and should also in other respects accord with the conventions of good business practice. No unwarranted considerations should affect the treatment of tenderers, candidates or tenders." This provision is considered to cover the general principles of non-discrimination, equal treatment, mutual recognition and transparency.

An annex to the Act divides services into A and B-services (prioritised and non-prioritised services):

- § Examples of A-services are maintenance and repair services for motor vehicles and machines, computer services, accounting, auditing and bookkeeping services, market research and public opinion services, management consulting services, architectural services, advertising services, building-cleaning property management including cleaning and routine maintenance, publishing and printing services on a fee or contract basis, sewage and refuse disposal services, etc.
- § Examples of B-services are investigation and security services (apart from armoured car services), education and vocational education services, health and social services, recreational, cultural and sporting services, etc. If a service is not included in annex, it may be considered to be a B-service under the category "other services".

#### Procurement thresholds:

For procurements above the threshold values (except B-services), the Act is based mainly on EC directives. Procurement of B-services both above and below the threshold values is regulated in chapter 6 of the Public Procurement Act. The Swedish procurement process below the European thresholds are very similar to the ones above the thresholds (in terms of basic principles although



the tender procedure is not regulated in as much detail). Having one set of rules above and below the threshold helps promote transparency and equal treatment for bidders<sup>93</sup>.

The threshold values are determined in Swedish currency in the ordinance and they apply for a period of two years. Threshold values since January 1st 2006 are as follows:

§ §	<b>Goods and services</b>	§ §	<b>Public Works</b>	§ §	<b>Public Service Contracts</b>
§	<p><b>SEK 1.8 million</b></p> <ul style="list-style-type: none"> <li>• higher value of SEK 3.7 million for the Utilities Sector</li> <li>• lower value of approx 1.3 million for Central Government Agencies</li> </ul>	§	<p><b>SEK 45.7 million</b></p>	§	<ul style="list-style-type: none"> <li>• :For Government agencies the threshold value is <b>130,000 special drawing rights (sdr)</b>.</li> <li>• For other contracting entities the threshold value is whichever is the lower of <b>€200 000 or 200 000 sdr</b>.</li> </ul>

#### Process of Public Procurement:

- § Advertising: Official journals, print media and the internet are three prominent information channels used for public procurement in Sweden – of which the internet is the most commonly used.
- § Evaluation of tenders: The accepted tender shall be either the economically most advantageous in consideration of the given evaluation criteria, such as price, operating costs, quality, aesthetic and functional characteristics, service and maintenance, environmental impact etc. or have the lowest price. Only one of these two evaluation principles may be given in the contract documents. If the economically most advantageous tender is required, the evaluation criteria must be cited and if possible be placed in order of precedence.

§ §	<b>Procurements above the threshold values</b>	§ §	<b>Procurements below the threshold values, B-services etc</b>
§	<p>Advertising: In order to inform all potential suppliers about forthcoming and concluded procurements, notification of the following information with regard to procurements must be published in the Supplement to the Official Journal</p>	§	<p>Procurement procedures</p>
§	<p>Procurement procedures: Above the</p>	§	<p><b>Simplified Procedure</b> (forenklat upphandling): Suppliers are invited to tender by means of notification. The notice has to be published in an electronic database which is publicly accessible or through the publication of contract award notices in some other way - such as in national</p>

<sup>93</sup> OECD (2007) *Integrity in Public Procurement: Good Practice from A-Z*

<p>threshold values the LOU stipulates three procedures for public procurement.</p> <p>§ <b>Open procedure (uppen upphandling):</b> a procurement in which all suppliers may submit tenders. After advertising, the supplier requests the contract documents and these are dispatched as these requests are received. No negotiations with suppliers may be held.</p> <p>§ <b>Restricted procedure (selektiv upphandling):</b> a procurement in which the contracting entity publishes an advertisement inviting suppliers to submit tenders. The contract notice must specify the conditions that suppliers must fulfil. Suppliers have to verify their ability to fulfil these requirements by submitting certificates and apply to participate in the tendering (pre-qualification phase). The contracting entity then selects the number of suppliers stated in the contract notice (at least five but no more than twenty) from those who meet the stipulated requirements. The contract documents must be sent simultaneously to all of the suppliers selected. Only tenders submitted by suppliers who have been invited to tender will be evaluated by the contracting entity. No negotiations with suppliers may be held.</p> <p>§ Negotiated procedure (forhandlad upphandling): a procurement in which the contracting entity invites certain suppliers to submit tenders and then enters into negotiations with one or several of them. As in restricted procedure there is first a pre-qualification phase. Thereafter the contracting entity invites suppliers to submit tenders or to participate in negotiations. Except in the utilities sectors, negotiated procedures may only be used in a few procurement situations laid down in the LOU. In a few limited cases, negotiated procurements may take place without the preceding publication of a contract notice.</p>	<p>or trade journals - which leads to efficient competition. A contracting entity may not refuse to provide the contract documents to a supplier who requests the documents. All suppliers have the right to tender. The suppliers must be given reasonable time to submit a tender. The participating suppliers must submit their tenders in writing. The contracting entity may thereafter negotiate with one or several tenderers. Under certain circumstances the contracting entities may send a written request for a tender to a supplier without publishing a contract award notice.</p> <p>§ <b>Selective Procedure</b> (Urvalsupphandling): procurement when all suppliers have the right to apply to tender and when the contracting entity then invites some of the applicants to submit tenders. When contracting entities use selective procurement they must always advertise the invitation to apply to tender in a publicly accessible electronic database. Reasonable time must be allowed for candidates to submit their application to be considered for tender. This period may never be less than 10 days from the day on which the invitation to apply was published. There are no rules stating how the qualification of tenderers shall be conducted. Here it can be stated that fundamental EC principles must be followed.</p> <p>§ <b>Direct procurement</b> (Direktupphandling): if the value of the procurement is low or if there are particular reasons, procurement without formal requirements may be used. In cases involving direct procurement, a comparison of prices should be made if possible. If the contracting entity intends to use the possibility of making direct procurements of supplies and services, it should stipulate ceiling amounts for such procurements and indicate when direct procurement may take place.</p> <p>§ If direct procurement of the same type of product or service takes place repeatedly, a framework agreement should be concluded after competitive procurement. Necessary purchases may not be divided into smaller units to avoid exceeding the threshold values. Before contemplating direct procurement a contracting entity must ascertain whether co-ordination of government purchasing applies.</p> <p>§</p>
<p>§ <u>Qualification of tenderers:</u> The LOU stipulates what requirements a contracting entity</p>	<p>§ <u>Qualification of suppliers:</u> Qualification is intended to ensure that a supplier has the stability</p>

<p>may lay down for suppliers concerning their internal conditions (rules for exclusion are mentioned in the LOU), technical ability and capacity as well as their financial and economic standing.</p>	<p>(exclusion must follow the rules in the LOU), experience, organisation, financial standing etc. that the contracting entity considers required for the procurement concerned.</p>
<p>§ <u>Time limits:</u> The LOU stipulates time limits (minimum times) for tenders and applications to participate in tendering. In open procedures the minimum time for the submission of tenders is 52 days and in restricted and in negotiated procedures the minimum time is normally 37 days for applications to participate in the procurement and a further 40 days for the submission of tenders. Other time limits apply to utilities. The time limits commence from the date of the dispatch of the contract award notice to the Official Journal. Under certain circumstances a faster procedure may be used (accelerated procedure).</p> <p>§</p>	<p>§ <u>Reasonable time limits for tenders:</u> Below the threshold values there are no specially stipulated minimum times for the submission of tenders. The requirement is that the contracting entity must allow a reasonable period of time. There are several County Administrative Court decisions which have obliged a contracting entity to recommence a procurement procedure because the period allowed was not long enough.</p> <p>§</p>
<p>§ <u>Main rules and exceptions:</u> If a contracting entity selects one of the exemptions provided in the LOU, it has the burden of proof that it has fulfilled all conditions required for invoking the exemption. For example, the use of the negotiated procedure outside the utilities sectors is regarded as an exemption. The European Court of Justice interprets the possibility of using exemptions very restrictively.</p> <p>§</p>	<p>§ <u>Registration requirements:</u> Swedish suppliers that are limited companies, partnerships or incorporated associations must be registered. These registers are maintained by the Swedish Patent and Registration Office. Furthermore, suppliers must be registered for the submission and payment of value added tax, withheld income tax and social insurance fees, where liable.</p> <p>§</p>

**B-services above the threshold values:** In addition to the rules mentioned above, in procurements of B-services above the threshold values, a contracting entity is required to refer to European specifications and standards when the contract documents contain technical specifications. Furthermore the value of a public procurement must be calculated according to the rules contained in chapter 4 or 5 of the LOU. When the contract has been awarded the contracting entity is required to advertise the result of the procurement in the Official Journal within 48 days (for procurements in the utilities sectors within 60 days).

Procurements concerning national security and defence procurements etc: Procurements covered by secrecy or other special restrictions relating to national security and procurements of defence supplies and services which have no civil use are regulated in chapter 6 of the LOU regardless of their value. However, the Government can make exceptions from the provisions of the LOU for such procurements, in consideration of defence or national security interests.

'Post-bidding phase' is the inter-management process between the administration and supplier that is subject to less strict requirements for transparency. It is not covered by procurement laws and regulation but rather by contract laws. Very few countries, such as Denmark and Sweden indicated that the contract law should be open to the extent that it does not reveal secret information that could harm the interests of the contractor or state.

## 2.9.2 *The governance of public procurement in Sweden*

Public procurement in Sweden is highly decentralized in terms of its procurement organisation with only little or even no coordination at all<sup>94</sup>. Only the central government, though, is included in the national strategy (framework law, overall monitoring etc) for public procurement.

The contracting entities in Sweden include: government agencies, local authorities and other agencies, county councils, as well as certain publicly-owned companies, foundations, societies and associations and also associations of several contracting entities. In addition, certain private companies which conduct operations with special permission from the authorities can be contracting entities in the utilities sectors. Local authorities are known to award 68% to 79% of the contracts.

The main body involved in the governance of public procurement is the **Swedish Competition Authority**. The Competition Authority is responsible for information on and supervision of the Public Procurement Act. It replaced the National Board for Public Procurement from 1 September 2007 for the task of monitoring compliance with the Public Procurement Act for the whole of Sweden.

The appointment of Swedish Competition Authority (as the new authority responsible for information on and supervision of public procurement) has brought about a close link between issues relating to procurement and competition; the broader approach expected to have a number of advantages. The Swedish Competition Authority consists of a "Procurement Council", which will provide a forum for exchanges of experience. The Council will also seek to promote greater awareness of the differing roles and circumstances of purchasers and suppliers.

The Swedish Competition Authority also receives complaints concerning any state authority, municipality or county council, which have started to operate commercial activities in competition with, often small, private enterprises.

Other bodies involved in public procurement include an administration include: an **Administrative Court of Law** and the **National Board of Trade**,

An *Administrative Court of Law* can stop the procurement and order the procuring authority or entity to restart the procedure or correct the procedure. The supplier or service provider may ask for damages in a **Court of Law**.

The National Board of Trade is obliged to handle the problems faced by businesses, and is not expected to pass on the complaint to other authorities or organisations. The goal is that the problems should be solved within four months. The Board deals with the problems in close co-operation with other Swedish authorities and with co-ordination centres and contact points in other Member States.

The **National Board for Public Procurement (NOU)**, which was formerly responsible for procurement activities - such as day-to-day operations and contacts with contracting entities,

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<sup>94</sup> European Commission (2005b) *Innovation and Public Procurement: Review of Issues at Stake*. December. Fraunhofer Institute Systems and Innovation Research

other organizations and individuals, principally companies - has now been phased out. Its duties were advisory in nature (without the power to dictate policies). The tasks of NOU include the following.

- § to supervise observation of the Public Procurement Act (LOU), the GATT agreement and the procurement agreement under the WTO
- § to work for efficiency in public procurement
- § to spread information by means of telephone advisory services, newsletters, publications, seminars and conferences
- § to give general advice and comments on how the procurement regulations shall be interpreted
- § to follow developments in the area of procurement in the EU and the WTO

Legal Issues:

Specific legal recourses have been included in the Public Procurement Act to provide legal remedies for a supplier who has been treated incorrectly. All contracts concluded according to the public procurement act may be subject to legal remedies after an application of an economic operator.

During an ongoing procedure (until the conclusion of a contract) a supplier who considers that he has been harmed or risks being harmed may apply to the **County Administrative Court**. The County Administrative Court may decide whether the award procedure needs to be recommenced or that it may not be concluded until the infringement has been redressed. The court can also make an interim decision pending a final decision. Appeals against the decision of the County Administrative Court can be lodged at the **Administrative Court of Appeal**.

### 2.9.3 *SMEs and public procurement policy in Sweden*

Sweden has no legal public procurement regulation explicitly favouring SMEs, but there has been conscious efforts to include SMEs in its public procurement activities. For e.g. Sweden has adopted a secondary legislation within the system of government procurement of framework agreements, in which one phrase says: "In that connection (framework agreements - editors comment) the possibility of small and medium size enterprises to participate in the procurements shall be considered".

Public purchasing accounts for about a third of the public sector's costs in Sweden. To encourage competition, the procurement process must be conducted in an appropriate manner. The Public Procurement Act, therefore, is an essential part of the competition policy framework<sup>95</sup>.

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<sup>95</sup> Konkurrensverket (2006). *Competition in Sweden 2006* [Online] Available: [www.konkurrensverket.se/upload/Filer/ENG/Publications/rap\\_2006-4\\_summary.pdf](http://www.konkurrensverket.se/upload/Filer/ENG/Publications/rap_2006-4_summary.pdf)

As part of a renewed focus in encouraging SME participation in Sweden, NUTEK (Swedish Agency for Economic and Regional Growth) is reportedly undertaking a survey to identify the reasons behind the administrative burdens involved in SME procurement.

- § Gränslösa Affärer: Gränslösa Affärer was a public procurement project initiated by the National Board of Trade (the Swedish contact point for businesses encountering problems when exercising their rights in the internal market) in order to increase interest and knowledge among small businesses concerning public procurement. (NUTEK is responsible for the part of the project that aims to provide training for companies in public procurement.) The project consists of four measures: a nation-wide information campaign; training of consultants in public procurement; development of a website and training of companies in public procurement.
- § Competition: New rules were introduced in 2001 that included: A prohibition against certain harmful anti-competitive behaviour from public parties, as well as guidelines for the Council's future tasks. A new legal exemption and a new block exemption for the sector in order to facilitate co-operation between SMEs in the taxi sector, as well as providing access to taxi services in sparsely populated areas. Both exemptions entered into force on 1 January 2001.
- § There have been several attempts to break down the past administrative monopoly of the state and local governments - many of the sectors are now open for competition. Although the traditional procurement is still the prevailing method of awarding a contract, many administrations have reorganized into separate divisions for defining the goals and for the execution of the actual operations. In this way an administration may choose to award a contract to the external operator (a procurement contract) or to an in-house division, if the own division on objective grounds offers a better quality and price than the external tenderers.
- § The Public Procurement Act has procurement rules for supplies and services provided by a company that are joint ventures between the government and a private operator. An Act on Local Government administration also regulates the possibilities of government authorities to start a company together with the private operator to aid fair competition.
- § In response to complaints related to the opportunities public parties had of subsidising prices out of tax revenues or of securing competitive advantages through their position as a public body - the government set up a Council for equal competition between the public and private sector in 1998 (which stayed active until 2000). The Council gave advice in specific cases and mediated between the parties in order to end conflicts in competition-related matters. Moreover, the Council was given the task to submit proposals on how to create a level playing field for sound competition for parties within the private and public sector. The result of the Council's work was presented in December 2000.
- § E-procurement: The Swedish government established a coordination function for public procurement in 1998. The task was to coordinate the procurement of all 300 authorities operating directly under the government and its more than 230,000 employees. One result of the agency's efforts is the development and deployment of the Swedish Internet-based public e-procurement system.

There is a general notion that public procurement is tremendously important for the proper functioning of the market. SMEs form more than 99 percent of all enterprises in Sweden – which

makes them an inevitable part of the process especially for the sake of promoting competitiveness.

SMEs are also associated with job creation which makes them a priority in the economy. In 2005, 634,797 SMEs existed across Sweden representing a total number of employees of 1.37 million.

#### 2.9.4 The evidence base on public procurement and SMEs

SMEs account for 99% of the enterprises in Sweden. Within SMEs, 39% of enterprises in Sweden are micro-enterprises, some 49% are small enterprises and a 12% medium-sized enterprises.

Altogether, the SME sector in Sweden accounts for 60 percent of total private employment. In 2005, the SME sector represented 61% of net investments within the economy (a net decline of 5% within the previous four years)<sup>96</sup>. A comparison of the Swedish business structure with the average structure within the EU-15 does not show any eye-catching differences.

Sweden is among the highest in Europe in terms of the number of tenders submitted by SMEs towards public procurement, according to a study<sup>97</sup> carried out in 2004 (on the access to public contracts for SMEs) – based on data collected from TED (2001) followed by a statistical analysis and survey.

The study also threw light on some of the broad trends in SME access to public procurement in Sweden. Swedish SMEs, were very proactive in submitting tenders for procurement - more than half of them submitting in the range of 6-50 tenders annually, said the study which also compared data from other countries. Sweden – which records a high success rate for its SMEs - also had the highest percentage in Europe of successful SMEs having public procurement as part of their definite firm strategy (94%).

According to the study, the percentage of SMEs among the enterprises that won a contract in Sweden was 85.1% of SMEs (39.4% micro, 34.1% small and 11.6% medium) - one of the highest in Europe - although the percentage of Swedish SMEs trying to participate in European tenders was lower than 10% (compared to 45% in France, 33% in Belgium and Luxembourg).

**Table 2.29: Distribution of successful SMEs over classes of number of tenders (2001-2003)**

	Up to 5 tenders	6-20 tenders	21-50 tenders	51-100 tenders	Over 100 tenders
Distribution of SMEs by number of tenders submitted	12%	29%	24%	18%	18%
Distribution of SMEs by number of successful tenders	35%	29%	24%		12%

<sup>96</sup> [http://www.foretagarna.se/templates/ContentPageA\\_\\_\\_\\_2089.aspx?link=bottom\\_In+English](http://www.foretagarna.se/templates/ContentPageA____2089.aspx?link=bottom_In+English)

<sup>97</sup> European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria

Source: European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria

According to the study, Sweden had the highest levels of openly advertised public procurement in the EU - the open procurement accounting for 4.68% of Swedish GDP in 2001. The study also noted that Sweden showed an opposite trend from the rest of Europe in the access of SMEs to public procurement with most of its successful enterprises being relatively small. Even in terms of the median of contract sizes awarded to single SMEs and single LSEs, Sweden and Ireland were the only two EU countries where the medians for SME contracts were larger than those for LSE contracts. For Sweden the median values were EUR 461,000 for SMEs and EUR 432,000 for LSEs.

**Table 2.30: Number of contracts won by SMEs and large enterprises, respectively, in 2001**

Company size-class	One contract	Two to five contracts	Six or more contracts	Total number of contracts won
SMEs	90%	10%	0%	177
Large enterprises	84%	16%	0%	31

Source: European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria

### 2.9.5 Approaches to overcoming barriers to SME involvement in public procurement in Sweden

The main barriers faced by Swedish SMEs mostly comprise: the lack of financial capacity or resources.

**Table 2.31: Initiatives aimed at facilitating the access of SMEs to public procurement**

Activity/ initiative	Description
<b>Informing SMEs about tendering opportunities</b>	According to a study carried out in 2004 (on the access to public contracts for SMEs) – based on data collected from TED followed by a statistical analysis and survey – it was found that Internet (used by 88% of the authorities) and electronic message boards are the most commonly used modes of informing about tendering opportunities. In addition, Swedish SMEs did not see lack of information in the

<sup>98</sup> European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria



	<p>invitation to tender as a problem.<sup>98</sup></p> <p>The Swedish government has not established any central electronic public procurement portals as this is deliberately left up to private operators. Several privately owned and operated portals exist instead. Opic and Ajour are two of them that focus on public procurement.</p> <p><a href="http://www.opic.com">www.opic.com</a>: Private portal with information on public tenders. Functionalities are notice and publication of tenders.</p> <p><a href="http://www.ajour.se">www.ajour.se</a>: Meeting point for authorities and procuring entities searching for suppliers. The company is a distributor of information about public procurement gathered through a vast and well-established network of purchasers.</p> <p>All calls for tenders are structured and distributed through two channels, the printed version <i>AnbudsJournalen</i> and the database <a href="http://www.ajour.se">www.ajour.se</a>. The functionalities are notices and publication of tenders<sup>99</sup>.</p>
<b>Simplification of pre-qualification requirements</b>	
<b>Training and support for SMEs</b>	<p>Although Sweden so far has no explicit strategy encouraging SMEs to access procure markets, awarding authorities are seen to take measures to improve accessibility. Recently - especially with the appointment of the Competition Authority as the national procurement head - the focus on SMEs has been reinforced.</p> <p><b>Gränslösa Affärer</b> was a public procurement project initiated by the National Board of Trade (the Swedish contact point for businesses encountering problems when exercising their rights in the internal market) in order to increase interest and knowledge among small businesses concerning public procurement. NUTEK (the Swedish Agency for Economic and Regional Growth) is responsible for the part of the project that aims to provide training for companies in public procurement. The project consists of four measures: a nation-wide information campaign; training of consultants in public procurement; development of a website and training of companies in public procurement. The former National Board of Trade co-ordinates this project and hosts a website where information on activities, seminars as well as ongoing public procurements are published.</p> <p><b>Swedish Alliance for Electronic Commerce (GEA)</b>: Formed in 1999 by several public agencies and the Confederation of Swedish Enterprises, the main task of this nonprofit organisation is to disseminate the information to SMEs that it is in their best interest to participate in building the national public e-procurement system. Seminars, information meetings and discussion groups are used to focus on the particular interests of the SMEs. Topics discussed include: security in general as well as in specific terms, international integration of e-procurement systems, new standards for VAT, e-invoicing etc.</p> <p>GEA has initiated a project called SVEA in a bid to convince the SMEs that it makes good business sense to implement electronic business practices. One way of doing this is by providing vital business information via the project web site and presenting good examples of the use of electronic business information. In 2001, there were some 500 persons coaching SMEs in business communication via the Internet all over the country.</p>
<b>Debriefing arrangements</b>	
<b>Improved payment systems – reduce late payments</b>	

<sup>99</sup> European Commission (2004) *Electronic Public Procurement in EU/ Member States: Country Reviews*. December. Rambell Management

<p><b>E-procurement</b></p>	<p>While the Swedish government has worked for a number of years (since mid-1990s) to introduce and advance public e-procurement, it has not been possible to identify recent specific objectives in the area due to a decentralised organisation of activities on e-public procurement. According to a survey conducted in 2003, only 15 out of 241 central government authorities had introduced electronic ordering and invoicing, with a further 7 having initiated pilot projects. 76% of the central government authorities indicated that they had no immediate plans to introduce e-procurement.</p> <p>According to the survey, 83 of 290 municipalities had introduced systems for electronic procurement in some form, and according to information made available by the Swedish Ministry of Finance, 75 municipalities and 10 counties presently have solutions in place for electronic ordering and invoicing. A further 50 municipalities are planning to introduce electronic procurement, of which 35 have already initiated pilot-studies. Over 70 municipalities envisage the introduction of electronic procurement over the next few years. Of the municipalities that have introduced electronic procurement, they have mainly purchased food and office material. The total public procurement in Sweden amounts to about SEK 400 billion. Central government is responsible for approximately SEK 85 billion.<sup>100</sup>.</p> <p>Sweden has no special legislation on e-procurement. Initiatives on e-public procurement are an integrated part of different policies on the adoption of the information society among different publications. An example of such a publication is: "An Information Society for All", 2004 (<a href="http://www.oit.org/public/english/employment/skills/hrdr/init/swe_5.htm">http://www.oit.org/public/english/employment/skills/hrdr/init/swe_5.htm</a>), which is about the Swedish IT-policy.</p> <p>The <b>Public Procurement Act</b> regulates some aspects of the use of electronic means in the public procurement process: rules applicable to electronic communication, storage of data, transmission of tenders and use regarding security (such as electronic signatures). A committee of experts was appointed to prepare a new public procurement legislation implementing the new EU public procurement directives (2004/17/EC and 2004/18/EC). The committee published a report (SOU 2006:28) which is currently under consideration, before a corresponding legislative proposal is put forward. The amendments are expected to take effect in 2007 or in the course of 2008. As per eProcurement provisions, the report suggests that both dynamic purchasing systems and electronic auctions should be implemented into Swedish law. As regards central purchasing bodies, the committee recommended that further investigation should be carried out on their potential consequences.</p> <p><u>Reference to the relevant legal acts apart from the Public Procurement Act:</u></p> <ul style="list-style-type: none"> <li>• The Act on Qualified Electronic Signatures (2000): This Act, which implements the EU Directive on Electronic Signatures (1999/93/EC), was voted by the Swedish Parliament in November 2000 and entered into force on 1 January 2001. The Act does not make a literal translation of the eSignature definition stated in the European Directive. Rather, a Swedish electronic signature includes both authentication and integrity requirements. Electronic signature is defined as "data in electronic form attached to or logically associated with other electronic data, and used to verify that the content originates from the alleged issuer, and has not been altered." The definition thus not only includes the authentication aspect, but also an</li> </ul>
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122: European Commission (2004) Electronic Public Procurement in EU/ Member States: Country Reviews. December. Ramboll Management

	<p>integrity requirement. As per the “advanced” and “qualified” electronic signature definitions, they are based on the definitions and requirements of the Directive.</p> <ul style="list-style-type: none"><li>• Electronics Communications Act (2003): Electronic communications in Sweden must be as easily accessible and efficient as possible. Thus, the purpose of the legislation is to give citizens and public authorities access to safe and efficient eCommunications, by promoting competition. These electronic communications should be the most worthwhile possible in terms of choice of transmission services, price and quality. In these respects Sweden should be at the forefront of international developments. Electronic communications should be sustainable and useable and should accommodate the needs of the future. It also aims to ensure that eCommunication services are available to citizens in all regions. The Act is based on the EU regulatory framework for electronic communications<sup>101</sup> ..</li><li>• The directive 2001/115/EC harmonising the VAT invoicing rules has been implemented in the 3 laws that were affected.</li></ul> <p><u>Legal status of the use of electronic means in Public Procurement:</u> Some of the current e-procurement systems already meet the requirements of the EU public procurement directives fully.</p> <p><u>Existing guidelines:</u> Guidelines have been issued (<a href="http://www.eh.svekom.se/mer/litteratur.html">www.eh.svekom.se/mer/litteratur.html</a>), even though none of the guidelines are from central government.</p> <p>The Swedish Agency for Public Management was in 2003 commissioned by the government to carry out a yearly monitoring in cooperation with the Local Government Association of the uptake and progress on electronic public procurement. The monitoring was carried out as a web-based questionnaire, which was distributed to contracting authorities. The Agency also presented an action plan concerning electronic procurement. E-procurement in Sweden is characterised by:</p> <ul style="list-style-type: none"><li>§ Decentralisation: The Swedish government has not established any central electronic public procurement portals as this is deliberately left up to private operators. Several privately owned and operated portals exist instead. Opic and Ajour are two of them that concentrate on public procurement. All calls for tenders are structured and distributed through two channels, the printed version AnbudsJournalen and the database <a href="#">Ajour</a>. The functionalities are notices and publication of tenders.</li><li>§ Although decentralised, Swedish central and local authorities collaborate in different ways. Central authorities, county councils and municipalities work together in a Committee under the name of Single Face To Industry (SFTI). Its programme covers activities like awareness and promotion of eProcurement, development of standards and working practices and support to suppliers.</li></ul> <p><u>Raising awareness &amp; Promotion of electronic means:</u> The main objectives appear to concern the development of the standard of Single Face to Industry: In the mid-1990's, the Swedish experts from national, regional and local agencies started to work on a set of standards called 'Single Face to Industry' (SFTI, <a href="http://www.eh.svekom.se">www.eh.svekom.se</a>). SFTI is an industry standard for electronic commerce in the public sector in Sweden. The purpose of SFTI is to establish a single set of specifications for the interchange of electronic commercial transactions with all public operators, whether at governmental, regional (county council) or local community level.</p> <ul style="list-style-type: none"><li>§ To achieve this, a platform of co-operation has been organized where</li></ul>
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<sup>101</sup> [http://www.epractice.eu/index.php?page=document&doc\\_id=3491&doclng=6](http://www.epractice.eu/index.php?page=document&doc_id=3491&doclng=6)

	<p>representatives for all three levels meet with representatives for the suppliers to develop a shared view of the public procurement processes and agree on common specifications. The objective is that pre-planning, the procurement process, ordering, and the invoicing process shall be done electronically. The processes shall follow the standards that have been produced and adopted under the SFTI concept. It is built on EDI-messages according to the EDIFACT standards, and can be used along with other standards. Some recent developments are based on ebXML.</p> <p>§ In order to remove obstacles to the use of electronic signatures, the Swedish government has appointed a working group with the task to conduct a survey of form requirements (e.g. provisions that a communication or documentation must be signed or in writing). The WG presented a report in April 2003, revealing some 800 provisions that do not allow electronic communication or signatures, 180 of which were deemed to be unnecessary obstacles (<a href="http://europa.eu.int/comm/internal_market/publicprocurement/docs/eprocurement/2004-12-country-reviews_en.pdf">http://europa.eu.int/comm/internal_market/publicprocurement/docs/eprocurement/2004-12-country-reviews_en.pdf</a>). Each Ministry is responsible for carrying out the necessary changes in legislation.</p> <p><u>Existing services:</u></p> <p>Electronic signature: There are five framework agreements with five suppliers offering electronic signatures in Sweden, but e-signatures are so far only used to a low extent in relation to public procurement. There are no plans to make the use of a qualified electronic signature mandatory to participate in public calls for tenders in Sweden</p> <p>Electronic catalogues: Electronic catalogues are used in relation to purchase of goods. Some suppliers when submitting a bid they refer to electronic catalogues and give discount on the prices given in these catalogues.</p> <p>Electronic auctions: E-auctions are not being used.</p> <p>Dynamic Purchasing Systems: Dynamic Purchasing Systems are not being used.</p> <p>Framework agreements: Framework agreements are widely used. Framework agreements and electronic catalogues are often combined.</p> <p>The status for automating procurement phases in Sweden are as follows:</p> <ul style="list-style-type: none"> <li>§ Notification about tender (to a large extent today, both above and below threshold value)</li> <li>§ Publication of tender (to a large extent today, both above and below threshold value)</li> <li>§ Management of receipt/submission of tenders (to some extent today, but expected to be increased within the next three years)</li> <li>§ Evaluation of tenders (automated to some extent)</li> <li>§ Ordering, increasing, particularly within regional and local authorities</li> <li>§ Invoicing is increasing, particularly within regional and local authorities: Generally, evaluation and management of receipt/ submission of tenders are the phases of public procurement that have been automated the least. Many municipalities are scanning their invoices and they are also developing solutions to be able to handle flows of invoices. Some phases are not mentioned, for example planning before the start, dissemination of contract information and follow-up incl. statistics. The Swedish Agency for Public Management will in October 2004 open a website with information about all central framework agreements, <a href="http://www.statskontoret.se">www.statskontoret.se</a>.</li> </ul> <p>The most significant advantages from the introduction of electronic public procurement for public authorities are expected to be:</p> <ul style="list-style-type: none"> <li>§ Speeding up of procurement procedures</li> <li>§ Lower transaction costs</li> <li>§ Better procurement statistics and enhanced budgetary control</li> <li>§ Correct prices</li> <li>§ Better usage of existing framework agreements</li> </ul>
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	<p>Barriers for SMEs include:</p> <ul style="list-style-type: none"> <li>§ Lack of technical clarity and unfamiliarity with the new method: Although Sweden is characterised by a high share of enterprises having Internet (about 90% in 2001), only about 10% of SMEs that look for information are able to download it.</li> <li>§ Lack of awareness about the advantages of being suppliers to public agencies.</li> </ul> <p>Barriers for contracting authorities include:</p> <ul style="list-style-type: none"> <li>§ Reluctance to use new methods in procurement unless they feel assured that they comply with the legal framework.</li> </ul>										
<p><b>Break up work into smaller lots</b></p>	<p>Breaking up tenders into smaller lots is almost a standard procedure by practice in Sweden. According to a study<sup>102</sup> carried out in 2004 (on the access on the access to public contracts for SMEs) – based on data collected from TED followed by a statistical analysis and survey - the percentages of awarding authorities considering breaking up tenders into smaller lots were:</p> <table border="0" data-bbox="550 790 1136 965"> <thead> <tr> <th style="text-align: left;">Frequency</th> <th style="text-align: right;">Percentage</th> </tr> </thead> <tbody> <tr> <td>No, never</td> <td style="text-align: right;">26%</td> </tr> <tr> <td>Yes, sometimes</td> <td style="text-align: right;">22%</td> </tr> <tr> <td>Yes, mostly</td> <td style="text-align: right;">26%</td> </tr> <tr> <td>Yes, always</td> <td style="text-align: right;">27%</td> </tr> </tbody> </table> <p><i>Source: European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria</i></p> <p>However, according to the national legislation, no contract for services may be split up with the intention of avoiding application of the threshold value. In estimating the value of a public contract, the value of material and equipment needed to carry out the services to be supplied by the contracting entity and which are required for the provision of the services shall be taken into account.</p>	Frequency	Percentage	No, never	26%	Yes, sometimes	22%	Yes, mostly	26%	Yes, always	27%
Frequency	Percentage										
No, never	26%										
Yes, sometimes	22%										
Yes, mostly	26%										
Yes, always	27%										
<p><b>Use of framework agreements</b></p>	<p>All governmental authorities are recommended to use frameworks agreements for purchasing. Swedish procurement is characterised by large framework contracts leading to huge sums of money – that often act as a <u>barrier</u> for the participation of SMEs.</p> <p>In the central government administration – that regulates all government purchases - there are framework agreements and framework contracts which have been concluded on behalf of all government agencies and which cover many products and services. The public authorities must comply with the Ordinance (1998:796) on Co-ordination of Government Purchasing and an agency can submit suborders directly to the supplier at the stipulated prices and conditions without having to conduct its own procurement. The government framework agreements can be found in the e-procurement system, which is published on the internet (<a href="http://www.avropa.nu">www.avropa.nu</a>).</p> <p>Local authorities, county councils and publicly owned companies are sometimes linked to the framework agreements and many have corresponding systems. In several cases the use of such agreements is compulsory.</p> <p>Framework contracts with smaller enterprises are a very common practice in Sweden.</p>										

<sup>102</sup> European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria

	<p><u>Co-ordination function:</u></p> <p>A system for co-ordinating<sup>103</sup> the needs of the central government authorities by using framework agreements, has been in force for decades even though it was reinforced in 1998 by the establishment of the “co-ordination function”.</p> <p>The co-ordination function is a strategic function consisting of a small group (six persons) residing in the Swedish National Financial Management Authority (the authority responsible for the system for co-ordination of government procurement). They were assisted by government authorities, which do the operational procurement by procuring different framework agreements for supplies and services needed within the government.</p> <p>The system is based on the principle that whichever authority has the best pre-requisites to perform a procurement, common for the relevant other central authorities, is asked to procure a framework agreement for all the central government authorities.</p> <p>During 2002:</p> <ul style="list-style-type: none"> <li>§ Nine agencies held overall responsibility for general framework agreements - covering prioritised areas such information and communications technologies, office furniture and equipment, software, food, national travel, cars, hotel accommodation, transportation, and laboratory equipment.</li> <li>§ 105 product areas were covered by the general agreements</li> <li>§ More than 360 suppliers’ agreements had been concluded. These agreements saved the Swedish state more than EUR 100 million during the one year.</li> </ul> <p>The scope of activities for the co-ordination function is to develop, co-ordinate and follow up procurement within the central government, as defined above. This includes the establishment, development and deployment of a framework purchasing system, but also includes methods and support for increased procurement competence and practice.</p>
<p><b>Encouraging consortia of small firms</b></p>	
<p><b>More flexible contracting</b></p>	<p>The high qualification levels and certification required of SMEs in the procurement contracts is perceived as a <u>barrier</u> in Sweden</p>
<p><b>Taking account of quality and total lifecycle cost</b></p>	

## 2.9.6 Conclusions

In Sweden, SMEs win a higher proportion of procurement than LSEs, “although there is also a growing concern on the possibilities for SMEs to compete for public procurement contracts– due to the tendency among public agencies to offer joint framework agreements which might exclude smaller firms’ participation and/ or potentially provoke the formation of (illegal) supplier cartels (Sundbom, Per-Arne (2005) Offentlig upphandling kan utnyttjas bättre för tillväxtpolitiska mål. Tillväxtpolitisk utblick, ITPS, Nr 2, Feb, 2005)<sup>104</sup>”.

<sup>103</sup> The system for co-ordination of government procurement is regulated in a government regulation (1998:796) and consists of all central authorities directly under the government (which includes about 550 authorities employing some 230 000 persons). Other government related organisations can - under certain conditions - be included in the system.

<sup>104</sup> ([ftp://ftp.cordis.europa.eu/pub/innovation-policy/studies/13\\_sweden.pdf](ftp://ftp.cordis.europa.eu/pub/innovation-policy/studies/13_sweden.pdf))

Although Sweden has no legal public procurement regulation favouring SMEs, there have been conscious efforts to include SMEs in its public procurement activities. Swedish authorities have made:

- § Substantially more framework contracts with SMEs than most EU countries
- § More measures to improve access to SMEs
- § More considering breaking contracts into smaller lots (such that they are more accessible to SMEs)

Partly as a result of result of government strategies and partly as a result of the long history of procurement in Sweden, public procurement is very often a part of firm strategy for SMEs.

However, SMEs do face obstacles involved in public procurement such as:

- § High qualification and certification levels required (partly due to the presence of large framework contracts, involving several government agencies, awarding large amounts of money)
- § Lack of familiarity with the e-procurement software
- § Unclear wording in the invitation to tender<sup>105</sup>

In Sweden, procurement is closely linked with competition. The Public Procurement Act, therefore, is an essential part of the competition policy framework. One problem of note is that there are no effective sanctions for dealing with infringements of the rules, for instance in cases involving unlawful direct procurement. It is also important to ensure that publicly owned actors do not unlawfully compete with private enterprise, e.g. by subsidising activities out of tax revenues or operating in ways that are incompatible with the principles established in the Local Government Act<sup>106</sup>. Some of the common complaints (under the Competitive Law) during year 2000 concern public procurement and support to undertakings<sup>107</sup>.

#### **Some National good practices:**

Sweden offers many examples of **innovative procurement collaboration** occurring through the interaction between public agencies and private firms. One such example is "24/7 agency" which was started in the late 1990s. Since its start, all levels of public administration in Sweden have, in principal, been exposed to the vision of a "24/7 agency", i.e. the idea that public services through the use of information technologies such as the internet (e.g. e-mail and the web), telephony services (e.g. push-button or voice recognition controlled applications), and television (text TV or interactive digital TV), should be available to citizens at all hours. The Swedish Agency for Administrative Development (SAFAD, or Stadskontoret, sometimes also referred to as the Swedish Agency for Public Management) developed definitions, surveyed the current state within

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<sup>105</sup> European Commission (2004a) Access of SMEs to Public Procurement Contracts. March. EIM/ KMU Forschung Austria

<sup>106</sup> Konkurrensverket (2006). *Competition in Sweden 2006* [Online] Available: [www.konkurrensverket.se/upload/Filer/ENG/Publications/rap\\_2006-4\\_summary.pdf](http://www.konkurrensverket.se/upload/Filer/ENG/Publications/rap_2006-4_summary.pdf)

<sup>107</sup> OECD (2000) *Annual Report on Competition policy developments in Sweden* [Online] Available: [www.oecd.org/dataoecd/51/46/2088183.doc](http://www.oecd.org/dataoecd/51/46/2088183.doc)

different governmental agencies regarding the level of availability, and made suggestions regarding a focus for the further development of the 24/7 project (Stadskontoret, 2000). However, the ambition to bring all agencies through this transition has proven to be quite problematic. One problem, for instance, concerns integrating the different technological platforms used among the different authorities.

Another type of public procurement initiative that is fairly widespread internationally (in countries such as the US) is “labelling. In Sweden, there is a similar practice with respect to labelling of environmentally friendly products with the “Krav” mark. (The label is intended primarily as a guide to individual consumers rather than public agencies.) Any product marked with the “Krav” symbol must live up to certain standards concerning environment, animal husbandry, health and social responsibility (KRAV, 2004). This means that the organization introduces standards into a mature market, on behalf of end users<sup>108</sup>.

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<sup>108</sup> European Commission (2005b) *Innovation and Public Procurement: Review of Issues at Stake*. December. Fraunhofer Institute Systems and Innovation Research



## 2.10 United Kingdom

### 2.10.1 Public procurement regulation in the UK

Over the last ten years much has been published in the UK on public procurement with a series of reports and reviews each proposing a number of policy recommendations on how the process could be improved on a local and national level.

Public Service Agreements were introduced in the 1998 Comprehensive Spending Review to encourage departments to focus on delivering their key priorities rather than the means of delivery, and also highlight to the marketplace where the Government could be a future customer if those priorities are met. Two fiscal rules were put in place that work together to promote capital investment while ensuring sustainable public finances in the long-term. These gave departments the incentives to take a long-term view of value for money.

Sir Peter Gershon performed a review of central civil government procurement in 1999<sup>109</sup>, which resulted in the formation of the Office of Government Commerce (OGC) in 2000. The review highlighted some key shortcomings in the procurement system at that time:

- § Procurement responsibilities had been delegated to departments without any common operational framework. This led to a lack of consistency, wide gaps between best and worst practice, and similar products being purchased at different rates.
- § Procurement activities were fragmented and uncoordinated, with no common process for larger, more complex agreements.
- § There were no common recording procedures making it impossible to produce targets and measure value for money. The skill levels of the Government Procurement Service were also found to be lacking.

The formation of the OGC was designed to be a centralised procurement organisation to disseminate best practice methods across government departments. Its role was later extended to the wider public sector to cover the government's efficiency programmes set out in the Gershon review.

The Byatt Report (2001)<sup>110</sup> set out a series of recommendations to help local authorities develop and improve their procurement practices. These recommendations focused on the development of more stringent practices and capabilities whilst looking to achieve best value for government buyers. Importantly, it introduced the work carried out by the recently formed OGC on gateway project review processes<sup>111</sup> to improve and professionalise the overall procurement process. However, the idea of achieving best value would normally involve bulk/collaborative buying by

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<sup>109</sup> Sir Peter Gershon, "Review of civil procurement in central government", 1999. Available at: [http://www.hm-treasury.gov.uk/documents/enterprise\\_and\\_productivity/ent\\_pep\\_gershon.cfm](http://www.hm-treasury.gov.uk/documents/enterprise_and_productivity/ent_pep_gershon.cfm)

<sup>110</sup> Sir Ian Byatt, "Delivering Better Services for Citizens", 2001. Available at: <http://www.bipsolutions.com/html/reports.html>

<sup>111</sup> OGC Gateway Reviews deliver a "peer review" in which independent practitioners from outside the programme/project use their experience and expertise to examine the progress and likelihood of successful delivery of the programme or project. They are used to provide an additional perspective on the issues facing the internal team, and an external challenge to the robustness of plans and processes.

departments or councils resulting in many small businesses being excluded. This was later identified and rectified by the 2003 Better Regulation Task Force (BRTF) and Small Business Council (SBC) report<sup>112</sup> - "Government: Supporter or Customer?"

A second report by Gershon in 2004<sup>113</sup> assessed the progress of efficiency of the public sector across all government departments and set out a road map to 2008 to achieve the necessary changes and cost savings to the state. Public procurement was identified as one of the six main areas where potential savings could be made. This could be achieved through better supply side management and further professionalisation of the procurement function through shared models.

The rules affecting procurement of contracts for works, services and supplies were brought together in one piece of consolidated legislation for England, Wales and Northern Ireland, the Public Contracts Regulations 2006<sup>114</sup> (which came into force on 31st January 2006) and one piece of consolidated legislation for Scotland, the Public Contracts (Scotland) Regulations 2006<sup>115</sup> (which also came into force on 31st January 2006). These Regulations implement the European Commission's consolidated directive, adopted in March 2004, into UK law.

**Table 2.32 Public Contract Regulations**

Thresholds from 31 <sup>st</sup> Jan 2006	Supplies	Services	Works
Central Government Bodies	£93,738 (€137,000)	£93,738 (€137,000)	£3,611,319 (€5,278,000)
Other public sector contracting authorities	£144,371 (€211,000)	£144,371 (€211,000)	£3,611,319 (€5,278,000)
Indicative Notices	£513,166 (€750,000)	£513,166 (€750,000)	£3,611,319 (€5,278,000)
Small lots	£54,738 (€80,000)	£54,738 (€80,000)	£684,221 (€1,000,000)

**Table 2.33 Utilities Contracts Regulations**

Thresholds from 31 <sup>st</sup> Jan 2006	Supplies	Services	Works
All Sectors	£288,741 (€422,000)	£288,741 (€422,000)	£3,611,319 (€5,278,000)
Indicative Notices	£513,166 (€750,000)	£513,166 (€750,000)	£3,611,319 (€5,278,000)
Small lots	£54,738 (€80,000)	£54,738 (€80,000)	£684,221 (€1,000,000)

<sup>112</sup> Government: Supporter of Customer?, Better Regulation Taskforce & Small Business Council, 2003. Available at: <http://www.brc.gov.uk/publications/smeprocurement.aspx>

<sup>113</sup> Sir Ian Gershon, "Releasing resources for the frontline: Independent Review of Public Sector Efficiency", July 2004. Available at: [http://www.hm-treasury.gov.uk/spending\\_review/spend\\_sr04/associated\\_documents/spending\\_sr04\\_efficiency.cfm](http://www.hm-treasury.gov.uk/spending_review/spend_sr04/associated_documents/spending_sr04_efficiency.cfm)

<sup>114</sup> Statutory Instruments 2006 No. 5 Public Procurement, England And Wales, Public Procurement Northern Ireland - The Public Contracts Regulations 2006

<sup>115</sup> Scottish Statutory Instruments 2006 no. 1 Public Procurement the Public Contracts (Scotland) Regulations 2006

An HM Treasury report published in January 2007<sup>116</sup>, "Transforming Government Procurement", unveiled a range of public procurement reforms to bring it into line with new challenges such as global competition, changing demographics, and growing pressures on natural resources. Central to these reforms was the increased role for the OGC giving it responsibility for 60% of government spending. The current structure of the OGC is outlined in section 1.3. Its new powers included; setting procurement standards and ensuring they are met, capitalising on the Government's collective buying power, and an enhanced role in the successful delivery of projects.

### 2.10.2 SMEs and public procurement policy in the UK

In 2003 the Better Regulation Task Force (BRTF), in collaboration with the Small Business Council (SBC), set out with the aim to "counter the excessive burdens on small businesses"<sup>117</sup>. Their report, "Government: Supporter or Customer?", was produced in reaction to the fact that whilst SMEs are very important to the UK economy (99% of all businesses) they are under represented in public procurement contracts. The report aimed to consider the barriers that face SMEs when doing business with the public sector and the wider benefits to the economy when procuring from SMEs. Eleven recommendations were put forward in the report to be carried out by procurement offices both at the national and local government levels.

**Table 2.34 Recommendations set out by the BRTF/SBC**

**Recommendation 1**

The DTI should ensure adequate resources for the "Supplying Government" web portal project. The portal should advertise lower value contracts from across central government and include information on future contract opportunities. There should be a named contact for each advertised contract. The portal should be set up and piloted by spring 2005.

**Recommendation 2**

The Office of the Deputy Prime Minister and the Local Government Association should encourage local authorities to develop "selling to the council" websites by 2005. Websites should include information on contracts for tender, forthcoming contract opportunities and guidance on how to do business with the council. There should be a named contact for each advertised contract.

**Recommendation 3**

Within the context of small business support, the Small Business Service should provide advice and training for small and medium-sized enterprises on how to do business with central government and local councils. The Business Links Operators should deliver this by spring 2004.

**Recommendation 4**

Regional Development Agencies should ensure by spring 2004 that, as part of the supply chain development work for which they are already funded, they work with prime public sector contractors to develop opportunities for small and medium-sized enterprises.

**Recommendation 5**

The public sector should develop a common core pre-qualification information document for lower value contracts so that businesses do not have to put together different information in different formats to get past the expression of interest stage. The Office of Government Commerce and the Office of the Deputy Prime Minister working with the Local Government Association should develop and pilot this by spring 2004.

**Recommendation 6**

<sup>116</sup> HM Treasury, "Transforming Government Procurement", January 2007.

<sup>117</sup> Government: Supporter of Customer?, Better Regulation Taskforce & Small Business Council, 2003. Available at: <http://www.brc.gov.uk/publications/smeprocurement.aspx>

The Small Business Service should publicise the mechanism for reporting non-compliance with the Office of Government Commerce "Government Procurement Code of Good Practice" that firms can use to ensure that they receive adequate debriefing.

**Recommendation 7**

The Office of Government Commerce, the Office of the Deputy Prime Minister with the Local Government Association should consider how to promote the wider use of the Government Procurement Card, recently extended by the Office of Government Commerce, to include local authorities and other non central civil Government bodies, in order to improve prompt payment by the end of 2003.

**Recommendation 8**

The Office of Fair Trading should carry out research to identify the characteristics of those markets where it is important to ensure that small and medium-sized enterprises are able to compete to ensure competition, particularly where this may have an impact on innovation and value for money achieved by public sector procurement. Within this, it should also assess the impact of framework agreements and contract aggregation on small and medium-sized enterprises.

**Recommendation 9**

Where public sector procurers opt for prime contractors, they should ensure that their business case for doing so in those particular markets brings value for money. Public sector procurers should ask prime contractors during the procurement process to demonstrate their track record in achieving value for money through effective use of their supply chain – including use of small and medium-sized enterprises. This should also be examined as part of the on-going contract management. Public sector procurers should ensure that prime contractors pay subcontractors on time and that when paying progress payments to prime contractors the payments flow down through the supply chain. In order to make subcontracting opportunities more transparent to small and medium-sized enterprises, Government Departments and local authorities should list details of prime contractors and contracts on their websites.

**Recommendation 10**

The Local Government Procurement Forum, with input from the Small Business Service, should develop an SME-friendly procurement concordat. All local authorities should be able to sign up to this by 2005.

**Recommendation 11**

The Office of the Deputy Prime Minister and the Local Government Association should encourage local authorities to set out in their procurement strategies the steps they are taking to engage with small and medium-sized enterprises by the end of 2003. Government Departments should include in their procurement policy statements the steps they take to engage with small and medium-sized enterprises by the end of 2003 or publish this information in their annual reports.

Source: BRFT/SBC – "Government: Supporter or Customer?", 2003

Each of these recommendations have been internalised and acted upon by local and national bodies, the details of which are outlined in the matrix in section 1.5.

The Small Business Friendly Concordat – Good Practice Guide (2005)<sup>118</sup> was born out of the BRFT/SBC review as well as the National Procurement Strategy for Local Government<sup>119</sup>. The guide provides examples of good practice and explains how Local Authorities can frame and deliver their procurement strategies within the principles of the Concordat. It is a non-statutory code of practice, however, all Local Authorities in England are "strongly encouraged" to join up. Again, the key features of the Concordat are outlined in the matrix in section 1.5.

<sup>118</sup> Office of the Deputy Prime Minister/Local Government Association/Small Business Service, "Small Business Friendly Concordat – Good Practice Guide", March 2005.

<sup>119</sup> Office of the Deputy Prime Minister, "National Procurement Strategy for Local Government 2003-2006".

Guidance published by the OGC and Small Business Service entitled “Smaller supplier...better value?”<sup>120</sup> outlines the rationale for involving SMEs in public procurement as well as some of the barriers faced by SMEs. It offers guidance to public buyers and aims to modify some of the key misconceptions that have, in the past, led to SMEs being overlooked for public contracts. Some of the key challenges and barriers for SMEs identified include:

- § “Not being able to find out about opportunities
- § Believing that the processes involved are unnecessarily long, complex and costly. Yet with limited resources the tight time scales mean that small businesses struggle to keep up with larger competitors.
- § Current trends in public sector procurement towards larger contracts and rationalising the number of suppliers, meaning that smaller businesses often find the resulting contracts too large for them
- § Believing that public sector procurers are risk adverse and therefore overlooks young dynamic businesses (the perception that “no-one got fired from buying from IBM”).”

The benefits of involving SMEs are then discussed in turn through the publication supplemented by case studies to assist public buyers in their policies and methods at the national and local level. The guidance identifies seven key benefits:

#### *Better value for money*

- § Bringing in more suppliers will often bring greater competition to the market place, so reducing the costs of procurement from all suppliers
- § SMEs have lower administrative overheads and management costs than larger firms. Depending on the nature of the procurement, this can result in lower prices.

#### *Better quality of service*

- § SMEs have short management chains and approval routes, so they can respond quickly to changing requirements. SMEs may also be highly focused on particular markets making them particularly responsive to changes in those markets
- § Being a large customer of a small business means your business is important to the SME. This can result in a better, and often more personal, level of service and in a better relationship with the supplier
- § The SME may also be more willing and able to tailor a product or service to meet specific customer needs than a large firm that sells an established offering
- § Many SMEs, including social enterprises, supply higher quality specialist products or services than larger suppliers, either because larger suppliers are discouraged by the limited demand, or because the SME has skills, originality and commitment in that field that are greater than those found in their large company competitors.

#### *Innovation*

- § SMEs can bring innovation through, for example: the early exploitation of new technology, providing products or services in new or underdeveloped markets, or by using innovation to differentiate themselves from established market players.”

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<sup>120</sup> Office of Government Commerce/Small Business Service, “Small supplier...better value?”, 2005.

The guidance published by the OGC on the national level and by the respective regional procurement bodies is aimed at overcoming the barriers faced by SMEs and realise the benefits of involving them in public procurement contracts. However, it should be noted that like the “Small Business Friendly Concordat”, it is merely guidance and there is no specific legislation to involve quotas of SMEs in public contracts. The next section will look at the governance of public procurement in the UK and highlight the regional bodies tasked to act on the policy and guidance of the OGC.

### **2.10.3 The governance of public procurement in UK**

The primary mechanism within the UK to manage public procurement is the Office of Government Commerce (OGC). The OGC, established in 2000 in reaction to the Gershon review (1999), is an independent Office of the Treasury with its own Chief Executive appointed at Permanent Secretary level, who is responsible for the delivery of the Transforming Government Procurement agenda. It is responsible for improving value for money by setting standards and capability within procurement and capitalising on the government’s collective buying power. Under a new remit brought about by the HM Treasury Report (2007), the OGC now controls the following government activities:

- § Strategic supplier development: markets and suppliers
- § Government procurement service
- § Collaborative procurement
- § Policy and standards
- § Procurement capability reviews
- § Government estate transformation

OGC is governed by the OGC Board, which is made up of the Chief Executive, OGC executive directors, the Chief Executive of OGC buying solutions (OGC’s trading arm) and three non-executive directors. Its top-level programme board is the Procurement Council, chaired by the HM Treasury Permanent Secretary. Membership includes Permanent Secretaries from central government departments. In addition, the Chief Executive has a procurement advisory group (CEPAG), the membership of which consists of procurement experts from across government.

Under the OGC, the UK can then be split into four regions of procurement governance, each producing its own guidance within the frameworks and policies set out by the government department.

England – The Department for Communities and Local Government (formerly The Office of the Deputy Prime Minister) is responsible for Local Authority procurement and publishes guidance for government buyers but takes its lead directly from the OGC. The National Procurement Strategy (2003-2006) set out how central and local government, working together with partners from the public, private and voluntary sectors intended to set about improving local government procurement. It set out a vision for procurement in the public sector, linked to the Government’s vision for world-class public services. Strategic objectives are set in relation to four themes;

providing leadership and building capacity, partnering and collaboration, doing business electronically, stimulating markets and achieving community benefits<sup>121</sup>.

Wales - Value Wales is the channel (via the OGC) for representing the interests of Wales in matters relating to EU Procurement regulations. Connections are maintained with Whitehall, Scotland, Northern Ireland, and other nations for the exchange of best practice. Value Wales also provides advice, support and stewardship for procurement activity in the Welsh Assembly Government.

Northern Ireland – The Central Procurement Directorate came into existence on 1 April 2002 as a result of the merger of the Construction Service and Government Purchasing Agency into a single directorate.

Scotland – Is a slightly more devolved region of the UK when it comes to procurement. The Scottish Executive has carried out a number of independent reviews on public procurement in Scotland<sup>122</sup> that have enabled policy development within the Scottish context. Procurement policy in Scotland is directed by the Scottish Procurement Directorate under the Scottish Executive department for Finance and Personnel.

#### **2.10.4 The evidence base on public procurement and SMEs**

Procurement data has been collected by the Small Business Service, a DTI department, for the last five years based on information supplied by government departments, non-departmental public bodies, regional development agencies, and a range of other procuring bodies. The data is of varying quality due to inconsistent collection methods within specific departments but much work has been focused on producing usable statistics to highlight procurement trends. This information is then published in an annual report<sup>123</sup> to assess year on year the number and value of contracts awarded to SMEs with a view to build a picture on the current trends in public procurement. It will also highlight organisations that have a disproportionately small number of contracts to SMEs and then to investigate the reasons for this. The data is based on a sample of public bodies and then split up to analyse the proportions going to large companies and to SMEs. Therefore the data outlined in this section is not based on total statistics, but on survey data. To give an indication of scalability, the survey accounts for £5.283Bn of the £13Bn spent by central civil government.

Figure 2.24 and Figure 2.25 below outline the number and value of contracts for the UK. Whilst the total value of contracts appears to be increasing at a slow rate, the number of contracts is increasing much faster indicating that more contracts are being split up inline with government guidance to offer greater access to SMEs.

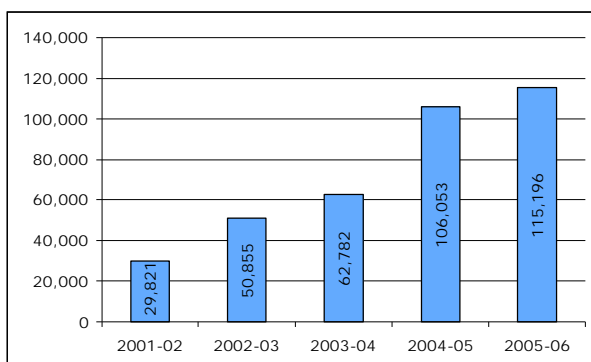
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<sup>121</sup> Office for Communities and Local Government, “National Procurement Strategy for Local Government 2003-2006”.

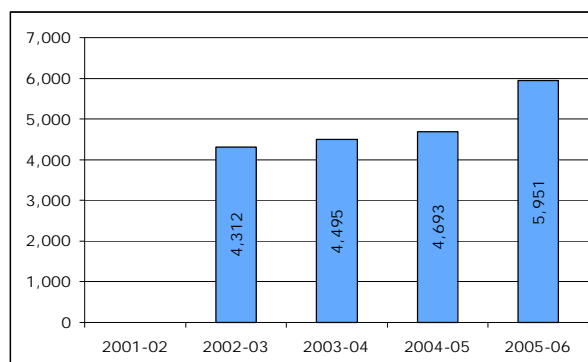
<sup>122</sup> Scottish Executive, “Building a Better Scotland, Efficient Government – Securing Efficiency, Effectiveness and Productivity”, November 2004; Minister for Finance and Public Service Reform, “The Review of Public Procurement in Scotland – Report and Recommendations”, March 2006.

<sup>123</sup> Small Business Service, “Annual survey of contracts awarded by public sector bodies to small and medium sized enterprises, 2005-2006”, 2006.

**Figure 2.24 Total number of contracts awarded**



**Figure 2.25 Total value of contracts awarded (£000,000)**



In order to assess the impact of government legislation designed to increase SME access to procurement contracts it is necessary to break this data down into two parts. According to the UK Department for Business Enterprise and Regulatory Reform (BERR – formerly the DTI) the thresholds for Small and Medium-Sizes Enterprises are as follows:

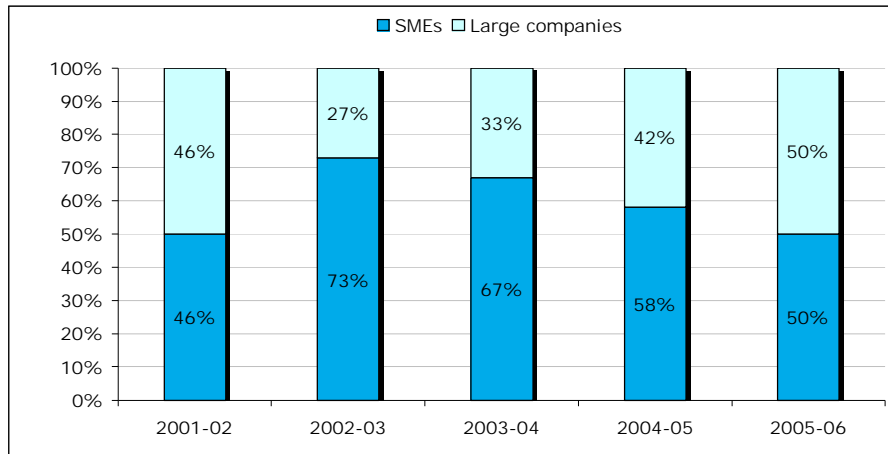
**Table 2.35 BERR definition of an SME**

	<b>Turnover</b>	<b>Balance Sheet Total</b>	<b>Employees</b>
Small Company	Not more than £5.6m	Not more than £2.8m	Not more than 50
Small Group	Not more than £5.6m net (£6.72m Gross)	Not more than £2.8m net (£3.36m Gross)	Not more than 50
Medium Sized Company	Not more than £22.8m	Not more than £11.4m	Not more than 250
Medium Sized Group	Not more than £22.8m net (£27.36m Gross)	Not more than £11.4m net (£13.68m Gross)	Not more than 250

Figure 2.26 and Figure 2.27 break down the overall figures to highlight the proportions of contracts awarded to SMEs and large companies. Whilst the number of contracts awarded to SMEs has been relatively high the total value has consistently remained around the 20% mark. There has been a decline in recent years in the number of contracts being awarded to SMEs following an initial leap in 2002-3 in reaction to the work carried out by the OGC and government reviews.

**Figure 2.26 Number of contracts awarded by company size (2001-2006)**





The value of government contracts awarded to SMEs has remained low signalling a possible failure in the policy push to increase the participation of SMEs in public procurement and also change the perception of government buyers.

**Figure 2.27 Value of contracts awarded by company size (2002-2006)**

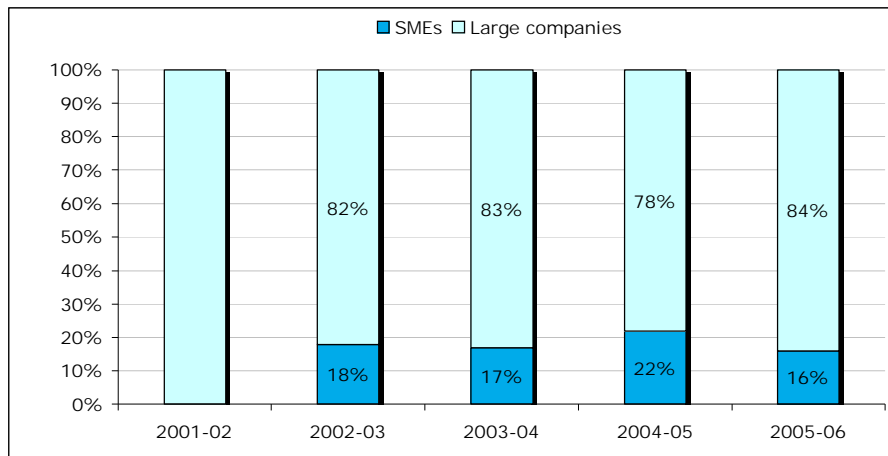
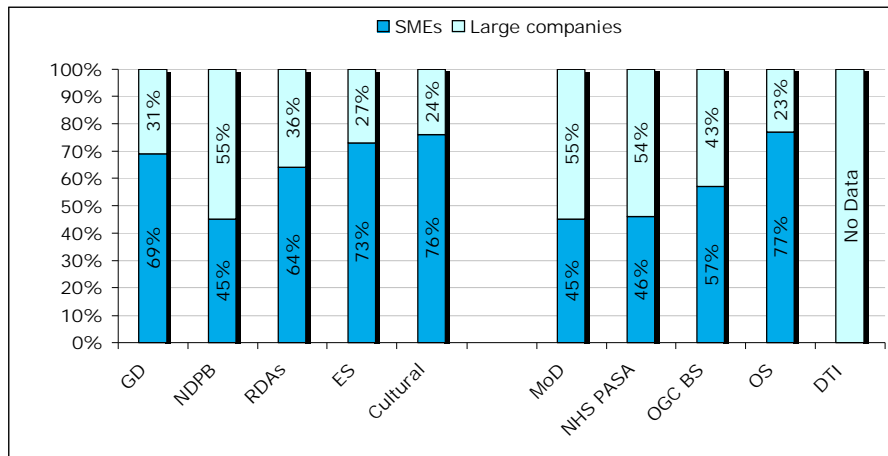


Figure 2.28 and Figure 2.29 outline the number and value of contracts awarded to SMEs and large companies by their original source. The first five columns display the overall breakdown of government purchasing across the range of authorities, with the second group representing major public procurers in the UK.

As before, there are a higher proportion of contracts being awarded to SMEs. However, larger public purchasers such as the MoD and NHS still favour larger companies, which can be attributed to the nature of the products they are purchasing.

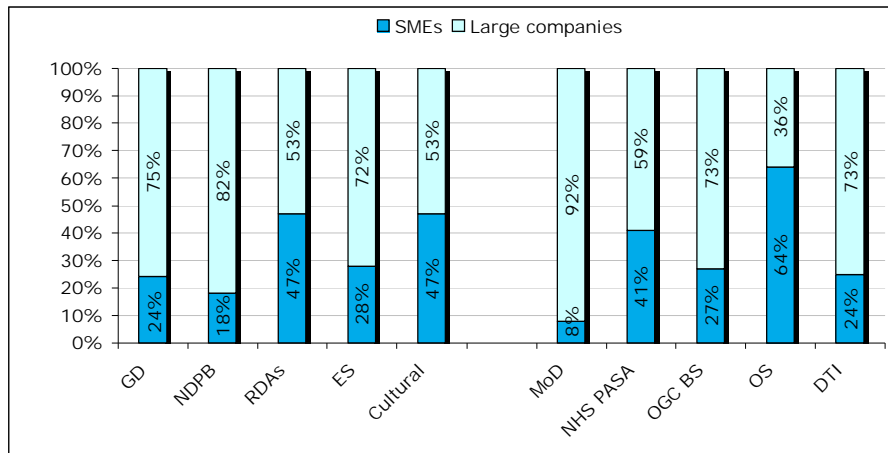
<b>KEY for Figure 2.28 and Figure 2.29</b>	
GD	Government Department
NDPB	Non-Departmental Public Bodies and Agencies
RDAs	Regional Development Agencies
ES	Emergency Services
Cultural	Museums, Sports, Libraries...
MoD	Ministry of Defence
NHS PASA	National Health Service Purchasing and Supply Agency
OGC BS	Office of Government Commerce Buying Service
OS	Ordinance Survey
DTI	Department for Trade and Industry (now BERR)

**Figure 2.28 Number of contracts awarded by company size and source (2005)**



The value of products purchased by public buyers remains under the 50% mark and in some cases falls below 20%.

**Figure 2.29 Value of contracts awarded by company size and source (2005)**



### **2.10.5 Approaches to overcoming barriers to SME involvement in public procurement in the UK**

The majority of the initiatives outlined in the matrix below are a result of the eleven recommendations put forward by the Better Regulation Task Force (BRTF) and the Small Business Council (SBC).

The Office of Government Commerce (OGC) led a pilot project, supported by the Small Business Service (SBS) in response to the BRTF/SBC Report, and its eleven recommendations, to help SMEs. An evaluation of the West Midlands SME Procurement Pilot Project looked at how government had been helping SMEs in the region to access the government marketplace and the successes the project made in just one year. The pilot helped small businesses in the following ways:

- § A web portal was established for government buyers to advertise low value contracts; this made opportunities more accessible to SMEs.
- § Training workshops on how to put a tender together and how to find opportunities were delivered free of charge to SMEs.
- § To support this, training on the benefits of using SMEs was given to government procurers. Over 300 SME and Procurer training places were filled in total.
- § At the start of the Pilot, 14% of the SMEs had successfully tendered for government contracts. Of contracts awarded through the portal as at 30th June 2004, 26% were won by Pilot SMEs.
- § A simplified tender document was tested by government departments in the West Midlands to reduce the bureaucracy involved in the tender process. A standard pre-tender document has now been developed.
- § The project worked with prime contractors in the area to encourage them to open up their supply chains. Ten large suppliers in the region are primed to open up opportunities in the supply chain.

The key lessons learned from the pilot were then used to inform further projects responding to the BRTF recommendations. The successes from the West Midlands have now been delivered nationwide.

Activity/ initiative	Description
<p><b>Informing SMEs about tendering opportunities</b></p>	<p>Following the BRTF/SBC review the original website <a href="http://www.supplyinggovernment.gov.uk">www.supplyinggovernment.gov.uk</a> was redeveloped into its current form <a href="http://www.supply2.gov.uk">www.supply2.gov.uk</a> to cover all four regions of the UK. Its key aims include:</p> <ul style="list-style-type: none"> <li>§ To be seen by public sector buyers and suppliers as the 'first portal of call' for those advertising or seeking below-threshold public sector contract opportunities, typically worth under £100,000.</li> <li>§ To provide an easy-to-use portal uniting buyers and suppliers in a single location.</li> <li>§ To open up the lower-value public sector contract opportunities market to as wide a range of businesses as possible.</li> <li>§ To enable businesses, particularly small ones, to access central and local government's below-threshold (sub-OJEU) contract opportunities, typically worth under £100,000.</li> <li>§ To provide public sector buyers the opportunity to identify a wider range of potential suppliers more easily, both locally and nationally.</li> </ul> <p>It is free for organisations to receive information on tenders in their local areas and from OJEU. Further notifications on a regional or national basis are then charged at a low subscription rate (between £70 to £750). Since its launch in March 2006, over 40,000 businesses have registered to use the portal to gain access to small-scale public procurement opportunities. Information on over 12,000 lower-value business opportunities were posted through the portal in its first ten months. These opportunities were below the threshold above which mandatory advertising in the Official Journal of the EU is required, and would otherwise have been very difficult for small businesses to access. Over 3,000 public sector buyers are subscribed to the portal<sup>124</sup>.</p> <p>In addition, following the recommendations of the National Procurement Strategy for Local Government (2003), every council in the UK has had to develop a "selling to the council" website together with details of forthcoming contracts and other information to help business work with the council.</p> <p>Value Wales has developed a website, <a href="http://www.sell2wales.co.uk">www.sell2wales.co.uk</a>, to advertise tailored information to businesses depending on their search criteria and sector, much like the UK system outlined previously.</p> <p>The Central Procurement Directorate in Northern Ireland uses its main website (<a href="http://www.cpdni.gov.uk/">www.cpdni.gov.uk/</a>) to inform of up-coming and current opportunities.</p> <p>The Scottish Procurement Directorate has developed its own website for informing companies about tendering opportunities. The eProcurement Scotl@nd service (ePS) is reported to be the most comprehensive and successful Public Sector eGovernment initiatives in the world. ePS enables the Scottish public sector, including central government, local government and the NHS to achieve the cost savings and efficiencies of eProcurement. It is a fully hosted and managed eProcurement service which supports the full purchase to pay cycle' providing a range of services including e-sourcing (electronic tendering and auctions) and transactional purchase to pay solutions.</p>

<sup>124</sup> DTI, Progress on Improving Access to Public Sector Procurement, 2007.

<p><b>Simplification of pre-qualification requirements</b></p>	<p>Recommendation five of the BRTF/SBC report (see Table 2.34) calls for the development of a common core pre-qualification document for lower value contracts. As a result, work has been carried out between OGC, ODPM, and the Local Government Association to produce a framework, distributed to procurers, for companies to submit their details and be kept on a central database. The resulting simplified Pre-Qualification Questionnaire (PQQ) comprises a core questionnaire and three supplementary modules (addressing Financial situation, Health and Safety and Equal Opportunities in slightly greater depth) that can be included at the purchaser's discretion. The PQQ asks simple questions to establish suppliers' suitability to tender against the requirement and operates on a 'self-certification' basis, where supporting evidence need not be submitted (although it may be requested at tender stage). Accompanying guidance for completion of the PQQ (for suppliers) and evaluation of submitted PQQs (for purchasers) has also been developed.</p>
<p><b>Training and support for SMEs</b></p>	<p>According to a recent DTI report<sup>125</sup> a new online training package, which will enable small businesses to learn how to access public sector opportunities, will be launched in 2007. The package is aimed at helping SMEs develop new skills in a timeframe appropriate to them and in-line with face-to-face training offered by Regional Development Agencies, Business Links, and other business support services.</p> <p>Each of the regional procurement agencies have published guidance for government buyers (in line with OGC regulation) in relation to working with SMEs, as well as supplier guides to help SMEs better understand and win public contracts.</p> <ul style="list-style-type: none"> <li>§ Value Wales has published "Winning Our Business", a comprehensive guide to public contracts, what the local government looks for in suppliers, and help on how best to use the sell2wales website. A charter for SME procurement has also been produced to assist buyers in best practice methods and inform on the potential of SMEs.</li> <li>§ The Central Procurement Directorate in Northern Ireland has published similar guides for suppliers and buyers entitled "Public Procurement – a guide for SMEs" and "Public Procurement – removing the barriers to SMEs"</li> <li>§ The Office of the Deputy Prime Minister published a best practice guide in 2005 entitled the "Small Business Friendly Concordat". This is a voluntary code of conduct that local governments can sign up to disseminate best practice methods to promote procurement from SMEs. In addition, each council has a "selling to the council" website where SMEs can learn more about the procurement process.</li> <li>§ The Scottish Procurement Directorate has a raft of information on their website for both buyers and suppliers, including a "buyers guide to working with SMEs". This guide highlights the barriers faced by SMEs enabling buyers to modify their behaviour before putting out tenders.</li> </ul>

<sup>125</sup> DTI, Progress on Improving Access to Public Sector Procurement, 2007.

<b>Debriefing arrangements</b>	<p>The Small Business Service (SBS) has developed mechanisms through Business Link Operators to ensure that all companies have the opportunity to receive feedback on a failed tender within ten days of acknowledgement of a non-successful bid. Guidance from the Business Friendly Concordat<sup>126</sup> states;</p> <p><i>“While feedback, where requested by a bidder, is a requirement under EC procurement directives, there is no legal right for feedback to be given for lower-value contracts. However, for contracts below the thresholds, public sector authorities should be operating in the spirit of the directives. It is public sector policy under the OGC’s Government Procurement Code of Good Practice (for Central Government) that ‘feedback that is as helpful as possible and designed to promote future improvement’ should be provided. Good, clear and appropriate feedback is essential, as recipients to help improve bids for the future, particularly for unsuccessful bidders, can use this. Local Authorities should make clear that feedback is available and make clear what its purpose is. They should also seek feedback on their tender process. Successful bidders may also benefit from feedback, as it can be helpful to know which aspects of the bid were seen as the strongest, and whether there were any weaknesses. This approach can improve future bids and generally raise the level of tenders in the future. It is useful for council procurement departments to gather feedback on their procurement procedures. Positive feedback helps to reinforce good practice, whilst negative feedback in the form of complaints can also be valuable in providing useful information to assist in developing efficient and effective processes.”</i></p>
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<sup>126</sup> Office of the Deputy Prime Minister/Local Government Association/Small Business Service, “Small Business Friendly Concordat – Good Practice Guide”, March 2005.

<b>Improved payment systems – reduce late payments</b>	<p>The OGC has introduced the Government Procurement Card (GPC) along with guidelines on its use. GPC is a branded VISA Purchasing Card, available to the entire UK public sector at no cost through a framework agreement between OGC buying.solutions, VISA and six VISA-issuing banks Whether utilised as an entry-level eProcurement solution or an efficient method of payment, the GPC Visa is a simple and effective business tool.</p> <p>It provides:</p> <ul style="list-style-type: none"><li>§ A cost effective means of buying low value goods and services (typically removing 95% of administrative effort)</li><li>§ Enhanced standards of service delivery by making it simpler for employees to buy essential day-to-day items, travel tickets etc</li><li>§ Guaranteed on-time payment to suppliers.</li></ul> <p>The GPC is convenient, cost-effective, and a valuable tool in the drive to meet efficiency targets set out in the Gershon Review (2003). OGC and OGCbuying.solutions are working together to improve the visibility, adoption and use of GPC Visa procurement cards across the public sector.</p> <p>By the end of 2008 it is anticipated that the cumulative spend will have risen to £4.5 billion from 2004's £1.1 billion. The new GPC framework agreement also provides for the provision of VISA travel cards, corporate cards, commercial cards, business cards and virtual VISA cards.</p>
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**E-procurement**

The Office of Government Commerce (OGC) works closely with other procurement advisory bodies to provide advice and guidance to the public sector on the successful adoption of eProcurement. In Autumn 2002 the OGC published "eProcurement: Cutting through the hype"<sup>127</sup>, as a guide to eProcurement for the public sector. Since Autumn 2002 there have been significant developments for eProcurement (Zanzibar Market Place<sup>128</sup>); new techniques such as electronic reverse auctions (eAuctions) have become common practice and the government has launched its drive for greater public sector efficiency following HM Treasury's publication of Sir Peter Gershon's Efficiency Review (2004).

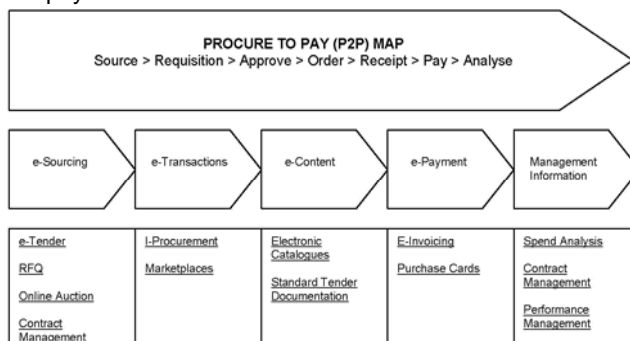
The OGC has collected data every six months from Central Civil Government to monitor electronic procurement activity and plans. By September 2004 the first full year of data had been collected for the period April 2003 to March 2004. Value for money (VfM) improvements of over £57.8m had been delivered through eProcurement. The following table provides a breakdown of these improvements:

**Value for Money Improvement**

	eAuctions	P2Pe	Tendering	Total
Year 2003/4	£5,999,670	£51,624,553	£213,100	£57,837,323

*VfM Improvements from eProcurement in Central Civil Government, April 2003 to March 2004.*

Much of this achievement was delivered by a small number of the large departments that had implemented procure/purchase-to-pay (P2P) solutions, that is, the automation of processes from the point of purchase to the settlement of payment.



Source: North Tyneside Council – eProcurement

Adoption of eProcurement tools across central civil government is growing steadily. Almost a third of departments and agencies have already implemented purchase-to-pay systems, with a similar number planning to do so. Although adoption of electronic Auctions is still in the early stages, almost half the organisations surveyed are intending to implement eAuctions in the future.

The Scottish Executive went live with a hosted purchase-to-pay marketplace for the Scottish public sector in March 2002. eProcurement Scotl@nd is managed by CapGemini using technology from Elcom, and provides central and local government bodies as well as the NHS in Scotland with the following functionality:

- § End-to-end processes from requisitions to invoice matching
- § Integration with finance systems
- § Catalogue management tools for buyer organisations
- § 'Punch out' to supplier web sites
- § Management information reports
- § Electronic tendering

<b>Break up work into smaller lots</b>	Part of the OGC published guidance <sup>129</sup> calls for public buyers to consider whether a contract can be broken down into smaller contracts to encourage SMEs to bid for work.
<b>Use of framework agreements</b>	OGC Buying Solutions run “Catalyst Framework Agreements”, a set of pre-tendered contracts with a range of suppliers from which public sector customers can purchase goods and services with ease. A small commission (averaging less than 1%) is collected from the suppliers for each sale they make under our frameworks.
<b>Encouraging consortia of small firms</b>	No indication
<b>More flexible contracting</b>	No indication
<b>Taking account of quality and total lifecycle cost</b>	No indication

### 2.10.6 Conclusions

As has been highlighted there has been a large amount of work carried out on a national and regional level looking at public procurement. The involvement of SMEs in the process has also been a major area of investigation in recent years. The formation of the Office of Government Commerce has helped the formalisation and professionalisation of procurement across the UK as well as highlighted the important role of SMEs and public buyers in the process.

The current data collected on public contracts is of variable quality by it does give an indication of the number of SMEs that are now winning tenders, however the value of the contracts is still relatively low. There are no specific legislative regulations dictating the increased involvement of SMEs but there is a wealth of guidance and policy to public procurers to consider the benefits of buying from an SME over a larger organisation. Facilities have also been setup (web portals, procurement cards) to reduce the barriers for SMEs to bid for public contracts thus making the overall process more accessible and therefore competitive – again driving down the costs for both procurers and sellers.

There are several good practice examples that can be extracted from this case study including the use of procurement cards in the purchase2pay (p2p) framework and guidance publications to government buyers and suppliers to add clarity to what SMEs can find a time-consuming and complex process.

<sup>127</sup> Later refined and modified in the publication: OGC, “eProcurement in Action – A Guide to eProcurement for the Public Sector”, Spring 2005.

<sup>128</sup> Organised through OGCBuyingSolutions, The Zanzibar Managed Service is a web-enabled Purchase to Pay (P2P) system and eMarketplace available to all public sector organisations in England, Wales and Northern Ireland and is a key part of the Government’s procurement strategy. The system enables public sector buyers and their suppliers to link up over the Internet and transact end-to-end requisitions, orders and invoices.

<sup>129</sup> Office of Government Commerce/Small Business Service, “Small supplier...better value?”, 2005.