

PUBLIC PROCUREMENT: CATCH 22

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There was only one catch and that was Catch-22, which specified that a concern for one's safety in the face of dangers that were real and immediate was the process of a rational mind. 'Orr' was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn't, but if he was sane he had to fly them. If he flew them he was crazy and didn't have to; but if he didn't want to he was sane and had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle. "That's some catch, that Catch-22," Yossarian observed.

"It's the best there is," Doc Daneeka agreed.

(from: Catch 22 by Joseph Heller; Simon & Schuster; 11 November 1961)

“It’s economy, stupid!”

A paradigm shift is badly needed in Public Procurement in The Netherlands.

I INTRODUCTION: PUBLIC PROCUREMENT AND CATCH 22

A large number of celebrated novels have been written about maddening bureaucracy. Kafka’s ‘The Trial’, ‘1984’ by George Orwell and the afore-quoted ‘Catch 22’ by Joseph Heller. Public procurement generally scores high as an example of maddening bureaucracy. It frequently receives a lot of attention. Practically always, negative attention. It is a nuisance factor, an eternal dissatisfier.

It is a classic Catch 22: if you closed a good deal, you probably didn’t keep to the rules; if you kept to the rules, you probably didn’t close a good deal.

Public procurement involves important interests, material and immaterial: large sums of money, the integrity of public administration and innovation. The situation is therefore worth further analysing; a dossier which everyone complains about, and where no winners and only losers appear to exist.

In this article, we will delve deeper into the situation in the Netherlands. Public procurement in the Netherlands (and probably elsewhere as well) is dominated by a legal perspective: compliance with laws and rules takes priority over achieving results. It appears to be forgotten that procurement is essentially an economic/commercial activity.

In the first part, we will deal with the question: What are the characteristics of the dominant legal perspective and what causes it?

In the second part, we will analyse the problem in a more extensive manner. What are the consequences of the dominant legal perspective and the absence of a more economic/commercial approach? Little attention is for example paid to systematically keeping track of market knowledge relevant to the government; of which there is a lot. When a government agency requires a new ICT system, the procurement department utilises a tender procedure. This procedure does not differ much from procedures to buy new furniture, training courses for employees or for the purchase of school books. What is missing is knowledge of the ICT market, the furniture market, the training course market and the market for school books; knowledge that is important for the formulation of the correct request and for choosing the correct procedure.

Consequently, selection and award in a tendering procedure take place on a narrow basis, namely based on offers made. There is little knowledge available of markets, market shares, providers and their history, technological developments, business models in that market; all relevant information on which to base a decision.

In the third part of this paper, we will search for solutions of which the most important is a paradigm shift: **"It's economy, stupid!"**

II THE CURRENT SITUATION: PLENTY OF ROOM FOR IMPROVEMENT

- ***Dissatisfier, nuisance factor***

In public procurement no one is satisfied. Large companies are not satisfied; nor are SMEs, no employee businesses or governments. The starting point for this paper is therefore the assessment that there is a problem with public procurement.

There are a number of well-functioning awarding authorities, and there are some buyers doing a good job, though the context within which procurement takes place is a significant hindrance to effective procurement. For convenience's sake, I will define good procurement

as: 'good products at a good price'. 'Products' should be broadly interpreted: it includes works, goods and services.

Over the past three years alone, there have been significant problems in the Netherlands with the WMO (Social Support Act), school books, taxis, pupil transportation, the New Subway in Amsterdam, and the High Speed Train South.

Many of these examples concern matters regarding government performance, as perceived by the general public. While frequent complaining about the government by citizens is of course a phenomenon that is both eternal and inevitable, it is also closely linked to the results of bad public procurement.

- ***The debate is only about rules***

When discussing or writing about public procurement, the focus is almost always on the legal aspect. Rules are always the main topic. A good example of this in the Netherlands, is the implementation in 2008 of a new system for the financing of school books. Up until 2008, parents paid for their children's school books. Often, they also purchased them. As of 2008, children get the books from school for free. Schools are given an allowance of €16.00 per student for this by the Ministry of Education. The (unintended) consequence of this measure is that schools have to procure books in accordance with European (and national) rules. This has generated an enormous discussion, extending as far as parliament. The discussion was almost exclusively about the rules; parliament raised the question as to whether schools might be given an exemption from the rules. All parties involved discussed the European rules as an external calamity brought upon them, similar to a natural catastrophe. The high level of monopolisation of the schoolbook market was not discussed, nor was the fact that tendering can provide a chance to improve competition. The parliament grilled the responsible State Secretary. She subsequently promised measures to help the schools. Excerpt from a letter of the State Secretary to parliament:

"In order to guarantee the smooth implementation of free school books, I have provided schools with support, both financially and in terms of content. All schools have received an implementation cost subsidy of €10,000 per school and €1 per student. Against the background of the fact that European tendering was a new phenomenon for both schools and parties in the educative book market, schools have been – in certain conditions – eligible for subsidies for potential costs of legal procedures in the implementation year.

So the government admits that procurement according to the rules is so complicated and that the possibility of legal procedures is so great that extra funding has been allocated to pay for the extra effort. We therefore pity schools that have to purchase books according to the

rules. Apparently, it is more expensive too, as – in addition to the purchase of books itself - a large sum has been allocated for the purchasing process around it.

- ***Compliance is a bad indicator for the professionalization of public procurement***

Most initiatives for the improvement and renewal of public procurement concentrate on the rules and how to deal with them. This leads to new manuals, guidelines, new contract types, bending of rules, exploitation of exceptions within the rules etc. This strengthens the idea that tendering is of a primarily legal nature.

The cumulative effect, and therefore whether the system of public procurement is improving, is measured by way of the following indicator: ‘compliance with the rules’. Since 2002, the Ministry of Economic Affairs has carried out a biennial study into the extent to which procurement services are complying with the rules. This is the most important official indicator for the professionalization of public procurement. The minister subsequently reports to parliament.

Table with summarised results of compliance studies since 2002

	Purchase volume				Product categories			
	2002	2004	2006	2008	2002	2004	2006	2008
State	81	84	78	86	59	74	78	69
Provinces	31	26	43	50	9	19	30	39
Municipalities	44	76	90	90	29	44	60	60
District water boards	41	51	66	68	12	24	32	40
Academic hospitals	24	59	57	65	23	57	50	54
Colleges (of higher education)	19	34	33	66	9	20	23	35
Universities	40	52	50	66	21	43	40	51
Police districts	31	48	64	65	21	46	46	52

The figures in the cells indicate the percentage of compliance with the rules

In our opinion however, it is questionable whether compliance with rules is in fact a good indicator for good public procurement. It can certainly not be ruled out that in the future 100% compliance with the rules will be achieved and that procurement will still be bad, measured in completely different terms.

Rules are complied with, though the train is still not running on time, the elderly are still not getting their dinners on time, roads are badly maintained and handicapped pupils are being let out of the bus unaccompanied. A focus on rules alone can lead to: ‘operation successful, patient deceased.’

- ***the 'other side' of the table is going to show governments a better way of doing things***

The business world is equally dissatisfied, particularly SMEs. The government carries out economic policy specially targeted at the proper functioning of SMEs. The same SMEs however complain incessantly about public procurement, mainly because SMEs are being excluded due to high turnover requirements, reference requirements and the like.

There is such a level of irritation among the business world, that market parties have taken initiatives to improve the quality of purchasers. *Bouwend Nederland* (the association of Dutch construction companies) founded a Tendering Institute, which is involved in the assessment of publications for the tendering of works. This assessment is forwarded to the tendering service along with recommendations for the improvement of the publication.

These are commendable initiatives, as at least something is being done, though at the same time it feels very strange that the 'other party' is telling governments how to tender. It is the equivalent to suppliers of Philips explaining to Philips how to better carry out procurement. It would truly be the world turned upside down.

- ***Better businesses are pulling out***

Lawification, synonymous with bureaucratisation, also causes some businesses to pull out of the government market. Commercial trade with the government is looking increasingly less like commercial trading with a private company. You are usually dealing with legally trained contacts instead of commercially trained contacts.

Businesses are frequently in the news because they refuse to continue doing business with the government. It is plausible to assume that those companies refusing to do business with the government - because they regard it as excessively cumbersome - are among the better companies. Their order portfolio is sufficiently full anyway, with private sector projects.

With private buyers, who already know how good you are, you usually do not have to make an enormous effort to bring in new orders. Your reputation is enough. With the government however, you have to go through the entire process time and time again; past results do not count. The underperformance of public procurement is therefore deep-rooted in the cumbersome system, and causes better suppliers to pull out.

Furthermore, or partially as a result of this, some suppliers are perhaps spending more energy preparing for the procedure than they are for the actual goods, delivery or work. Simply put: if you are not very good at your profession, you can always attempt to specialize in tendering rules and beat the competition there instead.

Also, the more innovative the companies, and the more technologically outdated the call for tender is, the less well those companies are being reached. Companies may well have a better offer, though one that does not fit into the specifications of the call for tender.

Many experienced public procurers are familiar with these mechanisms, and know the tricks of the trade. Consequently, they are often more occupied with the question 'how can I prevent the rules from inevitably bringing me to that bungler', than 'how do I find the best supplier?'

A buyer from a medium-sized municipality in the Netherlands at PIANOo-desk on 18 December 2009: "The problem at the time was: how do you prevent the outcome of a call for tender wherein you do acquire a contract with very low prices, though with very ugly furniture; i.e. things you don't want to use? This market is full of bunglers."

It is an anomaly. The government is doing everything it can to enable the better functioning of the market and stimulate the economy, though is simultaneously doing a bad job at marketing so much of the GNP.

The well functioning of an economy needs high quality of the governments procurement.

- ***Public procurement requires 'consistent counterintuitive' behaviour***

Buying is done at markets. The government however, does not have an economically oriented infrastructure. It only has rules that supervise the correct procedure. Action is not based on any (economic) studies of the market: who are the suppliers, what are the latest inventions, how are the market shares, what is the business model, the prices, the margins, the discount systems?

There is no organisation to this end, such as the (Dutch) Consumer Association, which exists for private consumers. There is no in-house research agency carrying out frequent tests of cleaning companies, catering companies, road builders, bridge builders, geriatric helpers.

A government buyer must act counter intuitively. You cannot just phone up the supplier to check whether written messages back and forth have been understood. Recognized bad suppliers need be given a clear field. You sometimes have to formulate your purchase request in vaguer terms than necessary, since the exact thing you want would lead too obviously to the supplier you have in mind. The latter leads to remarkable antics, particularly when procuring –hiring-consultants.

For government buyers, suppliers are like vultures; in the event of a breach of rules by the buyer they immediately run to the courts.

For sellers, the government is a strange market with a lot of administrative hassle and little easy contact. It is not always entirely clear what they want, and yet, the rules do not allow you to just pick up the phone for a quick discussion. Competition is fought mainly on price and sometimes a little bit on quality.

A seller expects to be meet the buyer. With government purchases however, he is often only confronted with a legal expert. This makes communication difficult. Instead of being about the goods to be purchased, the delivery or the work, the conversation often becomes one about the procedure, the requirements of the seller, and the conditions.

A lawsuit is a normal instrument in the sales process.

It is therefore difficult to acquire government projects, while surely the government exists to support us, the business world. After all, government money is our money to some extent. We paid those taxes, didn't we? Surely, we *are* the economy? Public procurement is of course not the same as subsidies, but still.

If you meet the criteria, surely you should be awarded the project. The same goes for permits. What exactly is the difference between an award and a permit?

Furthermore, if you don't get the government project, surely the government must have a very good reason.

If a government does not grant you a supply contract, you protest; something you would not even consider with business-to-business relations. If you didn't get the job there, the most you would do is perhaps humbly ask whether there was 'any other way you could be of service'.

Particularly for bona fide suppliers, the government market is a strange one. And yet, it's a large and diverse market: involving tens of billions of Euros. It is a difficult consideration.

For less bona fide companies however, the government is the perfect opportunity. The market is more about rules than content. Cleverly dealing with rules and written criteria may well get you further than concentrating on the demand behind the demand. And the rules provide so many opportunities complicating things.....

- ***The Netherlands does not yet have a public procurement policy***

The scale of public procurement is between 60 and 100 billion Euros. If we agree that there is a lot of room for improvement, and place this next to this enormous amount, the conclusion is simple: a lot can be

saved in monetary terms; a lot can be won in terms of quality of purchased works, goods and services.

The Netherlands does not have a 'public procurement' portfolio manager at cabinet-level. The Ministry of Economic Affairs is responsible for legislation. To which additional policy was recently added. This consists of working out concepts such as proportionality, manuals, and the like.

Installing a public procurement portfolio manager at ministerial level acknowledges that public procurement is an important (macro)economic variable and a key variable for the quality of many government services: healthcare, transport and traffic, spatial planning, house-building, public works, culture etc.

According to studies by the European Commission, the improvement of public procurement can lead to growth of 0.7 % of GNP (speech by Bertrand Carsin, director of Procurement of the EU in Oslo, May 2009).

In many other (European) countries, public procurement portfolios at governmental level have already been established. An overview of this can be found in a soon to be published article as a result of the conference of the IRSPP in Lisbon November 2009.

III ANALYSIS

- ***The nature of public procurement***

Tendering is a specific form of procurement. You cannot tender without procurement, you can however procure without tendering. Tendering is, according to the dictionary, "the execution of an activity, the public or private supply of necessities etc at a certain price, after comparison of received tenders." Procuring is: "acquisition through purchase, acquisition through ownership by paying the requested or offered price to that end". Competition is therefore the essence of the word 'tendering'

Similar to all procurement, public procurement is not primarily a legal activity, but an economic/commercial activity. This is not a choice, something you can also *not* choose; this is by definition the case, as the market is based on supply and demand.

Good football is also not primarily about rules, but about combinations, technique, analysis of the opponent, and systems.

Good procurement is about cleverly anticipating market conditions, not about (legal) rules. The fact that you have to adhere to the rules is a given. Even in football, an offside goal is disqualified, however beautiful the attack. The rules of the game are not the same as the rules of play. The rules of the game are included in the European

guidelines, the Tendering Act, and internal regulations. It does not contain the rules of play. The FIFA rule book can not teach you how to play football.

The rules of the tendering game are mostly to be found in books on economics, marketing and negotiations. It is mostly a question of knowing what is for sale and at what price; a game of haggling and offering or a game of cooperation with suppliers in projects. The well-known basic criteria 'objectivity, transparency and non-discrimination' are not (exclusively) legal principles. These are also employed in the procurement strategy of private businesses, given that they are healthy economic/commercial principles.

However important the statutory context, public procurement is still primarily a matter of commerce: How do I get the best goods at the best price? This does not alter the fact that with public procurement, special – political and policy – preconditions can be set, such as the implementation of the unemployed, sustainability etc. A private procurer can also employ similar criteria, without diminishing the commercial character of the procurement activity.

- ***Case law***

As there is consistently more attention for legal rules than for the game, logic is becoming ever harder to find in the game. If you fail to understand the logic of the game, you are more likely to reach for the logic of the rules. By doing so, you are however moving further away from the actual game. What began as 'derived' logic, soon becomes primary logic. The economic/commercial logic of competition becomes in the public sector an individual right of every company to have as many rights as any other company with every tender.

For lack of a developed science of public procurement, many of the rules for public procurement are formed in jurisprudence, and therefore in so-called case law.

In practice, the rules are insufficient to go by, making counter intuitive behaviour necessary.

If matters come to court, the judge will in that case need to reconcile the logic of the game with the logic of the rules. Given the fact that little is known about the rules of the game, and there are also no organisations to assist a judge in the matter, the logic of the rules soon takes on its own life, moving farther away from the game.

- ***Lawyers paradise***

This has created an entirely new reality of 'public procurement', in which mostly lawyers feel comfortable. It is practically impossible to find interventions in that world from an economic or commercial perspective.

Imagine what would remain of the game if football were controlled by the least amount of fouls.

Surprisingly enough, *lawification* takes place with support from organised business. There is an intensive lobby to draft detailed rules and to impose them upon all tendering services. Whenever an incident takes place, the lobby is intensified, and the call for more and stricter rules becomes even greater. Simultaneously, bureaucracy, with all its rules, is bemoaned.

Since a lot of value is attached to the prevention of legal procedures, purchasers seek out certainties in formal aspects, i.e. aspects that are not directly connected to delivery, the work or the actual service in question. The result is that selection criteria are employed that are barely connected to that which is purchased, and everything to do with the tendering department's desire to be covered. For this reason, the ministry of Economic Affairs has had a number of studies conducted over the past years, which constantly indicate that many improper demands are being made. The business world is also complaining about this.

Lawification has become an autonomous, self-strengthening mechanism.

- ***Interest assessment:***

The interest of competition has forced many other interests to the background.

The following interests can be distinguished:

- Performance of the government: many services carried out by the government for its citizens and for society are acquired by way of procurement. The quality of these services is therefore closely connected to the quality of the procurement performance.
- Combating corruption: for the quality of the constitutional state, it is of great importance that public procurement takes place in a fair manner, without bribery and favouritism.
- taxpayer (incl. companies): taxpayers want value for their money
- competition: procurement must provide plenty of space for competition, which is a basic condition in our type of economy
- macro-economy: even if only for its size (10%-20% of GNP), public procurement is a key factor for the development of the economy of the country.

The market a black box; insufficient communication

The market for tendering rules is a black box and the government is blindfolded as regards the market. Governments decide what they

want with their backs to the market, and subsequently throw that decision over the fence into a 'marketplace' and sit back and wait to see what offers are thrown to them from the black box. Offers that only occasionally resemble that which was requested to begin with. This is a slight overstatement, though not entirely untrue. The main issue here is that contact between government and market is seriously hampered. Particularly there where an intensive dialogue between market parties is called for – from a commercial perspective – tendering rules limit and regulate that dialogue to such an extent as to impair commercial activity.

The fact that the rules actually allow for certain forms of contact with the market does not take away from the underlying idea, and sooner confirms it. Competition-oriented dialogue and market consultation are instruments that ease, though do not really remove, the pain of a lack of smooth and easy contact with the market. Also, it surely says enough that that which is essential to a successful commercial transaction, namely intensive communication, must be legislated as an exceptional case.

That type of tendering ridicules everything we know about communication. A lot of empirical research has been done into communication over the past century. Everyone is familiar with the experiment of twenty people in a row; number one whispers something to number two, after which number two repeats the message to number three etc. By the time the message reaches number 20, the message does not sound anything like what number one said to two.

With tendering, communication takes place through specifications, schemes, intelligence reports and highly formalised information gatherings. Based on our knowledge of the laws of communication, we therefore know that this is insufficient, particularly for complicated matters such as care of the elderly, transportation of mentally handicapped children, as well as for complex infrastructure projects and significant system changes (e.g. Public Transport Chip Card).

The prevention of contact with the market is partially caused by the fear of being accused of favouritism, if not of nepotism and corruption. The adage goes that a tendering department must decide what it wants in 'splendid isolation', write it down and subsequently publish it, in order for businesses to react to it.

This lack of true contact with the market may well be an important explanation for the many difficulties with public procurement. Good purchasing will fail or succeed depending on thorough knowledge of what is available. You cannot 'know what you want' if you do not know what is for sale. We actually really wanted a mobile phone for centuries, though it has only been available for approximately two

decades. Now we also want the mobile phone to switch on our dishwashing machine at home; we want it, but unfortunately, such a gadget does not yet exist.

Instead of turning your back to the market, viewing the market as a black box, to which you send messages and from which, for inexplicable and unexplained reasons, messages return, which sometimes remotely resemble a reply to your sent message, you should communicate intensively with the market, attend all the trade fairs, read trade journals, do research abroad etc etc.

The conclusion of this analysis is:

- The focus of public procurement is wrong.
- The importance of competition and combating corruption dominates excessively, as a result of which other interests (government performance, value for taxpayers money, macro-economic aspects) are insufficiently served.
- There is no infrastructure that is tailored to the nature of procurement: market knowledge, methodology, instruments, theory building.
- The formalised communication between clients and service providers hinders the finetuning between supply and demand.

IV SOLUTIONS: IT'S ECONOMY, STUPID!

- *paradigm shift: economists have their say*

Procurement is mainly an economic activity: trade must take place in a market of supply and demand; this is what commercial trade is. Economists have not or hardly spoken out about procurement and tendering in the public sector. An entire army of legal experts is working on this issue, which can be explained by the background of current difficulties of European legislation. The longer economists and managers hesitate, the more the dossier will take on an exclusively legal approach. This is underscored by the question with which some procurement processes begin: "What is permitted?". This question was asked by Members of Parliament in the debate on the tendering of school books. This is also evident in the endless refinement of legal aspects, legal forms of cooperation (e.g. PPP), contract forms (DBFMO (Design, Build, Finance, Maintain en Operate) and all variations thereof).

There is essentially nothing wrong with these constructions, though they are not embedded in an economic analysis of the issue of public procurement.

A thing or two can be learned from the private sector. The procurement department of private companies is of course not primarily populated by legal experts, but by economists, managers,

marketing experts or simply 'buyers'. Procurement there has long been acknowledged as an independent trade, with its own issues, own methods and techniques, and own interests. A proprietary training scheme has been developed over the years, however much there may still be room for further development thereof. In the Netherlands, this is mostly thanks to the NEVI: the *Nederlandse Vereniging voor Inkoopmanagement* (Dutch Association for Purchasing Management). The profession of purchasing in the business world has also 'emancipated' over the past decades. Whereas in the past business focus was on sales, since a few decades it has become clear that putting energy into purchasing could be highly profitable as well. Purchasing has become equal to sales, emancipated 'from backroom to boardroom'.

The private sector needs legal experts, too, because contracts must be concluded from time to time. But that is at the end of the process. In the government sector, legal experts are often involved at the beginning of the process. In the Parliamentary debate regarding school books it was the government prosecutor's advice that played a significant role, not the economic analysis of the market for school books. In such an economic analysis, the problem of an oligopolistic market would be addressed, one in which a few large companies deliver in bulk at retail prices, with the resulting astronomic profits, and the fact that this probably has to do with the reality that those that set the prices never have to pay them, because the schools that choose the books let the parents pay for them. With regard to 'free' school books, schools are given a budget; this is an incentive for them to take another critical look at the school materials that they choose, adjusting their purchasing accordingly.

No fewer regulations apply to purchasing within the industrial community than within the government; but their imperative nature is lacking in the former. A supplier cannot appeal via the court against the regulations of the purchasing company. A supplier that has performed sub-optimally in the past can simply be shut out the next time around. A quotation that, objectively speaking, appears to be the best can nonetheless be rejected, because the 'gut feeling' response to it is negative, the confidence is lacking. The party submitting the quotation cannot take his complaint to court. Such a threat always exists with regard to government projects, even from suppliers with a bad name.

In the private sector, concentration on core business and strong, differentiating points has called specific attention to strategies of sourcing (purchasing), and there is a stream of success stories regarding the possible profit the improvement of such strategies

might offer. Imagine that such results could also be achieved in the public sector; large benefits could be realized in both higher quality and lower costs.

- ***Analysis of the phenomenon; theory building***

In the public sector, one hears more frequently of granting tenders than of purchasing, certainly when it comes to works but also goods and services. This has more of a historic and ideological background than a substantive one. Purchasing always is/sounds much less chic than tendering.

In principle, all government purchasing is based on competition, so it is always tendering. Above the so-called European thresholds it is known as European Tendering, with obligatory publication on the TED (Tender Electronic Daily).

Regarding European Tendering, the emphasis appears to lie on possible tenderers from abroad, although this is certainly not always relevant. In the matter of school books there was sneering about Greek publishers. That was not the point at all concerning the school books; it had more to do with businesslike choices of desired teaching materials and a clever way of purchasing those materials on the Dutch market.

There is little literature – at least in the Netherlands – that specifically concerns public procurement. Theories must be established. What is the nature of public procurement? Does it differ from purchasing by private organisations? Can supply chain thinking, and the business alignment of the private sector be translated to the government? Can we describe public procurement as the function that finds parties in the markets that add value to Governments functioning? What is the significance of the statutory and political context? What is the relationship between public procurement and policy objectives (return on investment, sustainability etc)? What does it mean that the government is monopsonistic in some markets (civil engineering, infrastructure)? What is the relationship between public procurement, and subsidization and state support? Is there a difference between purchasing for the government's own business operations (frequently facilitative and hiring personnel) and purchasing for the primary process: infrastructure, care sector purchasing, Social Support Act etc?

- ***Economic analysis of procedures, contract forms, development of methodologies and instruments***

Part of the speciality of public procurement is also the analysis and development of instruments, such as outline contracts, purchasing centres, special collaborative forms of clients and contractors, etc.

Do not view purchasing solely as the last operational link in an acquisition chain; let purchasing search the market – even before the phase of operational purchasing transactions has commenced – for

tenderers that can contribute to the realization of the strategy of the government organization. In April/May 2010, when the new Municipal Council coalition agreements have been concluded, let municipal buyers organise large-scale market consultation per municipality, where the central question is the following: “what can the industrial community contribute to the realization of this new Council coalition agreement?” This could lead to a serious social debate, to closer cooperation between the government and the industrial community, better coordination of supply and demand. It could lead to spontaneous offers (unsolicited proposals), as well as to sharper requests during the phase of operational purchasing.

Develop economic models that are useful during public procurement; models about the relationship between characteristics of a specific market and characteristics of various procedures; about outline contracts; the significance of public procurement in individual markets; the significance of public procurement that is consumed ‘privately’ (integration schemes, health care purchasing, education).

What purchasing models can a major player as the State apply in markets with innumerable small actors, such as non employee businesses? Is there still any point in having master contracts in an age in which we can buy and sell online, in real time and centrally? What is the nature of the products ‘advice’ and ‘consultancy’ and, accordingly, how do you purchase these?

Determine the qualifications that government buyers must fulfil at various levels, and develop the relevant training courses.

- ***Market knowledge: maintain expertise in the various markets in which the government is active.***

Category management is (justifiably) embraced by the Ministry of the Interior as an approach to professionalize public procurement. I suggest that this above all be given substance through a gathering of knowledge (much more than in the form of a gathering of volumes), and that this knowledge be separated from operation, that is to say from actual purchasing. The current emphasis on regulations goes together with, and perhaps derives from, fear of the market. However, you cannot effect good purchasing if you are not thoroughly familiar with the market and do not communicate intensively with that market. No matter how you view it, you cannot make good specifications – either functionally or technically - if you do not know what is for sale. Before you know it, you are specifying yesterday's technology or functionality, or indeed the day before yesterday's; or conversely – this is possible above all in ICT - you are asking for things that are not (yet) on the market. The more you know of a market, the more effective your request can be; the less you know about it, the more your request becomes a stab in the dark, albeit firmly encased in bureaucratic frippery in order to hide your embarrassment.

The relevant markets (and there are many!) must be monitored constantly. Visits to fairs (including international ones) must be standard practice, or the government must organise fairs itself where suppliers can present themselves.

What kind of things do we need to know about markets?

- Who are the players in the market (supply and demand side)
- Market shares (supply and demand side)
- Business models (how is the money earned?)
- Performance (past and current) of the various players
- Techn(olog)ical developments
- Commercial developments
- Annual reports
- Customer satisfaction (of governments)
- Markets abroad
- Recent tenders by governments
- How do large private organisations purchase in this market?

On the basis of this knowledge, government market experts can quickly provide support to tendering services, as well as organise information gatherings, seminars, and the like.

Moreover, a Consumer Association-type function should be developed. Easily accessible, up-to-date tables with price, product and supplier comparisons. For example, publish weekly or monthly overviews of the rates of consultants. Or, compare the costs of the construction and maintenance of a kilometre of bicycle path in the provinces of Noord-Holland and Limburg. The business world will not always be pleased with such price transparency.

• ***organisation of the profession: change the 'bookkeeper' image; strengthen the professional association; develop training and certificates***

Over the past decade, personnel managers have become HRM managers and bookkeepers, controllers. Spokespeople are now called Director of Communications or Director of Public Affairs or Director of Public Relations, many organisations now have a CFO (Chief Financial Officer), and a CIO (Chief Information Officer). This can be regarded as the emancipation of these different positions. The traditional position title 'bookkeeper' no longer exists within the government.

The purchasing position has undergone emancipation in the private sector as well: buying is now named purchasing or procurement or sourcing. The managers are called Chief Procurement Officers.

Never before there has been as much attention for Procurement and Tendering in the public sector. All the same, the public sector is far

behind the private sector in the area of recognition of procurement and tendering as a trade and a profession, as well as in the area of scientific analysis and accumulated knowledge. There isn't yet a coherent programme in the field of Procurement and Tendering with SMART objectives in the areas of compliance, driving back administrative burdens, positioning of the procurement function, and stemming the flow of complaints and law suits. Political will is the key here; it is often forced by political turmoil, as was clear with the parliamentary inquiry into the fraud in the Construction Sector. Potentially, there can be political turmoil in the next few years over, among others: sustainability, SSA (was already, to an extent), WVG (Services for the Disabled Act), construction sector (obviously extra sensitive), Public Transportation and implementation of new rules (WIRA (Public Procurement Directives Act), General Administrative Measure regarding Integrity and Proportionality).

- ***demand determines supply and not the other way round***

The professionalization of procurement may have a greater effect on innovation than specific measures: subsidies, a Launching Customership project etc. Large government clients in the works field will by now know that renewal in the construction branch can only come about through the renewal of public procurement. This is a surprising claim, and then again maybe it is not; it is a variation on an old law: demand determines supply. Quantitatively, government demand is massive. Professional procedures can therefore provide an enormous stimulus for the market.

It would also help if there was accountability to parliament in terms of procurement: 'so many millions went to Vodafone, so many to Ernst&Young, so many to IBM etc.'" Why be transparent at the front (tendering) and not at the back?

Why would we not announce what one ministry is paying for an Ernst&Young consultant and what the other is? Why should it not be visible that a temporary worker earns €15.00 per hour, while the temp agency receives almost double that per hour?

Here too, demand determines supply: parliament should ask for it.

- ***organisation of the procurement function***

In order to improve government procurement and serve all relevant interests in a balanced manner, there must first be acknowledgement that things are not going nearly as well as they could. This acknowledgement must become apparent through the creation of a 'public procurement' portfolio at ministerial level. Public procurement must be listed as a topic in the coalition agreement.

Knowledge needs to be provided of the relevant government markets, and these are many. (International) developments must be constantly

monitored per market, and regular reports should be issued. This knowledge is at all times available to all tendering departments. The connection between procurement and policy (business alignment) must be guaranteed within tendering departments, more so than between procurement and finances. Money is not an issue of procurement, but of policy/strategy. Procurement needs to seek out good solutions in markets for problems the organisation has defined.

In two years time, an evaluation of the European guideline will take place. It is now the right time to try to develop alternatives for the actual legislation; legislation that is better attuned to the nature of public procurement, that better balances the different interests, better stimulates the European economy, and increases the chance of good government performance.

Sources:

For the development of the above-mentioned vision, PIANOo has made use of the intensive exchange of experiences with all practitioners in our network. We have furthermore been particularly inspired by the ideas of the NEVI professors Jan Telgen and Arjan van Weele and by the recently published book by Gerco Rietveld: 'Procurement, a new paradigm'