

Procurement Monitoring Report Template

In view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU

Fields marked with * are mandatory.

I. Information about reporting authority

☒ By clicking in this box you indicate that you have read the privacy statement and provide your consent for the processing of your personal data

[EUSurvey Privacy Statement-2020.pdf](#)

* Country

Netherlands

* Name of National Authority

Ministry of Economic Affairs

* Name of Unit/Department

Department for Competition and Consumers

* E-mail address

Name of contact person (not published)

E-mail address of contact person (not published)

II. The public procurement framework

1. Legal framework

- * Please indicate links to the main legal instrument implementing the public procurement Directives and its main amendments that occurred during the current reporting period.

5000 character(s) maximum

Please list the links in the text box below. You can link multiple links.

Public Procurement Act 2012 - <https://wetten.overheid.nl/BWBR0032203/2022-03-02>

For the implementation of the Directive 2014/24 (Chapter 2), the Directive 2014/23 (Chapter 2a), the Directive 2014/25 (Chapter 3) and the Remedies Directive (Chapter 4)

Defence and Security Procurement Act - <https://wetten.overheid.nl/BWBR0032898/2019-04-18>

For the implementation of Directive 2009/81

Proportionality Guide - <https://www.pianoo.nl/sites/default/files/media/documents/2022-04/proportionality-guide-Engels-3rd-revision-january2022.pdf>

For the further interpretation of the proportionality principle

The Proportionality Guide, which contains provisions for practical application of the proportionality principle by contracting authorities, is updated. The update concerns what are known as time-bar clauses, which are grounded in the Grossmann judgment.

There are no significant changes to the Public Procurement Act 2012 and the Defence and Security Procurement Act since the last monitoring report. The Netherlands is currently drafting an amendment to the Public Procurement Act 2012 to better protect the legal remedies for economic operators. These amendments are as followed:

- An obligation for all contracting authorities and entities to arrange a complaints office;
- Some obligatory minimum requirements for the arrangement of a complaints office;
- A (conditional) suspension of the procedure to ensure timely complaint handling and effectiveness;
- An obligation for central, regional and local authorities to yearly report to their respective parliaments about how complaints were handled;
- A clarification of the motivation on selection and award decisions.

2. Procurement institutional framework

Please provide key bodies and institutions regarding public procurement matters, in charge of:

	Relevant bodies <i>(multiple entries possible)</i>
Body of normative regulatory function (including transposition) and policy development	Ministry of Economic Affairs
Bodies responsible for monitoring and reporting	Government bodies, acting in their role as contracting authorities, are monitored by their respective representative bodies (e.g. local councils) and by internal or external auditing bodies. Other bodies governed by public law may not have a representative body of this kind that is directly elected by the population, but they always fall under the political responsibility of a body headed by elected officials. Also, they are audited, for example by private accountant firms. Therefore, each contracting authority is subject to political and financial control.
Review bodies	Any appeal against, for example, award decisions, must be brought before the civil court. If necessary, temporary injunction proceedings can be used as a way of halting the start of a contract. They are therefore frequently used in public procurement cases. Litigation can take place in three instances, not including the European court. Besides the civil courts, there is a special adjudicating body which has been set up specifically to handle public procurement proceedings: the Commission of Public Procurement Experts (Commissie van Aanbestedingsexperts). This independent and impartial body mediates, on the basis of a complaint, between parties involved in a procurement conflict, and issues non-binding, authoritative advice.
Bodies responsible for the e-procurement and the functioning of the public procurement web portal	TenderNed
Centralised procurement bodies	
Competence centres	PIANOo, the expertise centre for public procurement
Other bodies	

III. Key quantitative indicators on public procurement

1. The total number of awarded contracts

Total number of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	15791	16064	13655

* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

5000 character(s) maximum

Most data in this report were extracted from the database of 'TenderNed', the national public procurement platform. All contracting authorities are obliged to publish their contract notices and contract award notices on TenderNed when the value of the contract is equal to or exceeds the European threshold values.

TenderNed acts as a central hub for all procurement notifications and documents. TenderNed is free to use and enables governmental bodies to publish procurement documents, while economic operators can apply for tenders, ask questions to the contracting authorities, etc. Governmental bodies are allowed to use other platforms if they wish. However, all notifications for which publication is mandatory according to the European Procurement Directives are to be published on (TED and) TenderNed before they are published on another platform.

Total number of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Number	399600	405400	349200

* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

5000 character(s) maximum

There is no obligation in the Netherlands to publish contract notices and contract award notices for procedures below the European thresholds in a central database. For this reason, the only possible way to find out the total number of public procurement procedures below the European thresholds is through estimation. On behalf of the Dutch Ministry of Economic affairs and Climate Policy, Significant Synergy has done research on the value of public procurement procedures in the Netherlands and on the total number of procedures both below and above the European thresholds for the years 2017-2019. This estimation percentage is used again in 2024.

We tried to find a different method to have a higher reliability of the data, however this research had only little response and therefore did not give representative image.

2. The total value of procurement

Total value of contracts awarded **above** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	31500	34600	33900

* Please describe the methodology on collection of data and/on the source (in case of a database(s)) of data collected:

5000 character(s) maximum

Based on the TenderNed data the estimation of the value of awarded contracts above the thresholds is made. Only procurement procedures with a contract value between 100.000 EUR and 100.000.000 EURO are used to make this estimation. This is done in order to guarantee a high level of reliability.

Total value of contracts awarded **below** EU thresholds (in a yearly breakdown)

	2021	2022	2023
Value (in EUR million)	69600	72700	82300

* Please describe the methodology on collection of data (in case of assessment based on a sample) and/on the source (in case of a database(s)) of data collected:

5000 character(s) maximum

For the estimation of the value of contracts awarded below the thresholds, firstly the total value of awarded contracts was calculated based on the national accounts of all the contracting authorities and entities in the Netherlands. After that the percentage share of the total value of contracts awarded above the thresholds was calculated, and based on that data the percentage and value the value of contracts awarded below the thresholds was calculated.

IV. Sources of wrong application or of legal uncertainty (including possible structural or recurring problems)

1. Preparation and launch of a public procurement procedure:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, 7, 8 or 9 is yes, additional options will appear.

- ☐ 1. Preliminary market consultation
- ☒ 2. Estimation of contract value (if yes, please specify below)
- ☐ 3. Wrongful setting of deadlines
- ☐ 4. Inappropriate selection criteria (too restrictive, tailor made for a particular economic operator, not related to subject matter of contract)
- ☐ 5. Discriminatory technical requirements
- ☒ 6. Conflict of interest
- ☒ 7. Procedures without publication (if yes, please specify below)
- ☐ 8. Inappropriate use of specific procedures (if yes, please specify below)
- ☒ 9. Other issues (if yes, please specify below)

2. Estimation of contract value:

- ☐ Underestimation of contract value to avoid application of EU public procurement rules
- ☐ Artificial splitting of the contract (including no aggregation of value of similar contracts)

7. Procedures without publication wrongly justified by:

- ☒ Reference to unsuccessful previous procedure
- ☐ Lack of alternative solution
- ☒ Extreme urgency
- ☐ Other reasons

9. Other issues, please specify:

5000 character(s) maximum

There are commercial agencies/self-employed people that both support contracting authorities and offer support in registering for tenders. The suspicion is that the consultants receive tenders and use that information when they support a tenderer in another tender.

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

Award criteria are often requested qualitatively in the Netherlands. This gives tenderers a lot of scope to address all kinds of issues in the plans. However, the risk of this is that topics from the registrations will be assessed that have not been requested.

2. Evaluation of tenders and contract award:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 8 is yes, additional options will appear.

- ☐ 1. Unlawful exclusion of tenderers/rejection of offers
- ☐ 2. Non compliance with mandatory exclusion grounds
- ☐ 3. Unlawful exclusion of third country bidders covered by GPA or by other international agreement
- ☐ 4. Incorrect evaluation of award criteria
- ☐ 5. Incorrect application of rules related to abnormally low tender
- ☐ 6. Lack of publication of contract award notice
- ☐ 7. Unlawful modification of the tender conditions before conclusion of the contract
- ☐ 8. Other reason (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with 'enter'.

3. Contract implementation:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 2, or 3 is yes, additional options will appear at the end of STAGE 3 to provide further details.

- ☐ 1. Illegal contract modifications
- ☒ 2. Wrong application of procurement instruments (if yes, please specify below)
- ☐ 3. Other reasons (if yes, please specify below)

2. Wrong application of procurement instruments related to:

- ☒ Award of specific contracts under framework agreement
- ☐ Use of electronic catalogues

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

4. Problems that may originate at different stages:

Which are the main sources of wrong application (or aspects with which legal uncertainty is related)?

In case your answer to question 4 is yes, additional options will appear.

- ☐ 1. Wrong application of centralised or joint procurement
- ☐ 2. Failure to comply with legal deadlines (prescribed by EU or national law)
- ☐ 3. Biased prior involvement of candidates or tenderers
- ☐ 4. Other issues (if yes, please specify below)

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

5. Which are the specific legal provisions of EU public procurement law that raise problems?

Directive 2014/23/EU ('Concessions Directive')

Directive 2014/24/EU ('Classical Directive')

Directive 2014/25/EU ('Utilities Directive')

Directive 2007/66/EC ('Remedies Directive')

Please list the articles of the Directives and describe the issue you face (e.g., unclear, too strict/vague, meets contradictory interpretations or practices):

5000 character(s) maximum

6. Which are the patterns and behaviours that do not stem from wrong application or of legal uncertainty, but indicate possible problems in the application of public procurement rules?

In case your answer to any of these questions is yes, additional options will appear below to provide further details.

- ☐ 1. Preference for lowest price as award criteria negatively affective quality of the purchase (if yes, please specify below)
- ☐ 2. Frequent use of derogatory procedures (if yes, please specify justifications used for derogatory procedures)
- ☒ 3. Frequent use of shortest possible deadlines (if yes, please specify below)
- ☐ 4. Recurrent award of contracts to the same economic operator
- ☐ 5. Recurrent award of contracts to third country economic operators not covered by GPA or by other international agreement (if yes, please specify justification below)
- ☐ 6. Contract awarded in suspected situation of unfair competition (if yes, please see below)
- ☐ 7. Low use of green requirements or award criteria (if yes, please provide us with further explanation below)
- ☐ 8. Low use of social requirements or award criteria (if yes, please provide us with further explanation below)
- ☐ 9. Low use of procurement of innovation (if yes, please provide us with further explanation below)
- ☐ 10. Lack of monitoring of implementation of contract (if yes, please specify below)
- ☒ 11. Other issues (if yes, please specify below)

3. Frequent use of shortest possible deadlines due to:

- ☒ Lack of mid-term/long-term planning
- ☐ Situation of unexpected urgency
- ☒ Other justifications

11. Other issues, please name and explain the issues identified:

5000 character(s) maximum

Non-compliance with procurement rules is not structurally monitored and enforced in the Netherlands. The Nerpe Act was introduced in 2012, but no instruction has ever been imposed on a contracting authority. In practice, the auditing accountant is seen as the main form of supervision. However, the accountant's authority only extends to financial legality. Audit offices are authorized to investigate both financial and broad legal legality, but are not obliged to do so.

Indicate best practices that are aimed at mitigating the issues identified in the previous answers and provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

In case your answer to any of the question in this section was 'Yes', please provide further information on these elements, if applicable. You can list multiple links separated with enter.

The working-group on Innovative Procurement identified in 2022 several bottlenecks that are related to the procurement of innovations. See: <https://www.pianoo.nl/nl/document/20817/innovatie-inkopen-de-publieke-sector>

V. Qualitative reporting on application of public procurement review system

1. Please indicate relevant figures for the national review system in the table below, as described below.

(A) **Number of first instance review decisions** (all the first instance review decisions),

(B) **Median length of first instance reviews - median length of all the first instance reviews** (the number of calendar days between a starting date and an end date, where the starting date is when the complaint/action is registered and the end date is when the review decision is issued) and

(C) **Number of first instance review decisions that were appealed to the (next) judicial level and its results** - (all the first instance review decisions that were appealed to the (next) judicial level, both on merit or procedural reasons, in addition, it shall include the number of first instance review decisions that were

a) (primarily) upheld;

b) (primarily) rejected; or

c) neither upheld nor rejected by the (next) judicial level (e.g. because they were not yet decided, retracted).

	2021	2022	2023
A. Number of first instance review decisions	Civil court: 10 Temporary injunction: 138	Civil court: 16 Temporary injunction: 127	Civil court: 12 Temporary injunction: 100
B. Median length of first instance reviews	Civil court: the court aims to plan court sessions within two months. This depends on the availability of the lawyers of both parties. Temprary injunction: within 42 days	Civil court: the court aims to plan court sessions within two months. This depends on the availability of the lawyers of both parties. Temprary injunction: within 42 days	Civil court: the court aims to plan court sessions within two months. This depends on the availability of the lawyers of both parties. Temprary injunction: within 42 days
C. Number of first instance review decisions that were appealed to the (next) judicial level and its results	Civil court: - upheld: 1 - rejected: 1 - neither: 0 Temporary injunction:	Civil court: - upheld: 2 - rejected: 1 - neither: 0 Temporary injunction:	Civil court: - upheld: 1 - rejected: 2 - neither: 1 Temporary injunction:

	- upheld: 16 - rejected: 2 - neither: 2	- upheld: 6 - rejected: 4 - neither: 1	- upheld: 10 - rejected: 7 - neither: 0
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2. Indicate best practices that are aimed at reducing the number of obstructive complaints/actions for review (A)

5000 character(s) maximum

The Netherlands is currently drafting an amendment to the Public Procurement Act 2012 to better protect the legal remedies for economic operators. These amendments are as followed:

- An obligation for all contracting authorities and entities to arrange a complaints office;
- Some obligatory minimum requirements for the arrangement of a complaints office;
- A (conditional) suspension of the procedure to ensure timely complaint handling and effectiveness.

These amendments are drafted to aim an accessible and effective complaints system. By addressing the complaints of economic operators at an early stage and during the public procurement procedure, this will hopefully lead to less complaints addressed at first instance review bodies.

3. Indicate best practices that are aimed at reducing the length of first instance review decisions as marked in the previous column (B)

5000 character(s) maximum

4. Indicate best practices that are aimed at reducing the number of first instance review that were appealed to the next judicial level as marked in the table above (C)

5000 character(s) maximum

VI. Fraud, corruption, conflict of interests and other serious irregularities

Describe the actions undertaken and/or mechanisms put in place to ensure prevention, detection and adequate reporting of case of public procurement serious irregularities including fraud and corruption and conflicts of interests.

1. Regulatory requirements on:

- ☒ Enhanced rules on the application of whistle-blower system
- ☐ Enhanced rules on transparency
- ☐ Enhanced rules on conflict of interest
- ☐ Enhanced rules on anti-corruption
- ☒ Enhanced rules on the application of exclusion grounds
- ☐ Other rules (if yes, please describe below)

1.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

5000 character(s) maximum

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Besides the Procurement Act, there are rules governing integrity, such as the general rules on integrity for civil servants (for example, see the Municipalities Act (Gemeentewet), the Civil Servants Act (Ambtenarenwet 2017) and the House for Whistleblowers Act (Wet Huis voor Klokkenluiders)). Also, bribery or attempted bribery of civil servants is punishable by criminal law. If provisions on integrity are infringed, concerned parties can take legal or other action against the infringing contracting authority.

The Dutch Procurement Act implements the EU Procurement Directives, including the provisions on fraud, corruption and conflicts of interest. In the general part of the Procurement Act, which applies to all procurement procedures regardless of the value of the contract

2. Enforcement measures:

- ☒ Reporting/monitoring system in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- ☐ Reporting/monitoring system in place to measure fraud, corruption, conflict of interest and other serious irregularities
- ☐ Systemic audit in place to prevent/detect fraud, corruption, conflict of interest and other serious irregularities
- ☐ Sanction system in place to remedy fraud, corruption, conflict of interest and other serious irregularities
- ☐ Other rules (if yes, please describe below)

2.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

5000 character(s) maximum

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Reporting/monitoring system in case of cartel formation: the Tender Tool when it is operational.

3. Soft law/Policy measures

- ☐ Guidance related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- ☐ Recommendations related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- ☐ Guidance on ethical conduct for public administration staff
- ☐ Guidance on fighting bribery practices
- ☒ Guidance on the detection of collusion/bid-rigging practices
- ☐ Guidance on compliance with competition rules
- ☐ National strategy to prevent fraud, corruption, conflict of interest, serious irregularities
- ☐

Action plan for the implementation of practices to prevent fraud, corruption, conflict of interest, serious irregularities

- ☐ Training/conference related to the prevention of fraud, corruption, conflict of interest, serious irregularities
- ☐ Reinforced cooperation among different state bodies
- ☐ Establishment of open-access information system to enhance transparency (public registry, declarations)
- ☐ Other measures (if yes, please describe below)

3.1. Best practices.

If available, indicate best practices aimed at detecting irregularities as marked in the previous column and provide a link to any publicly available document relevant for the issues you indicated.

Please provide quantitative data e.g.: number of cases detected and pursued further by the competent authorities.

5000 character(s) maximum

Please provide further information on these elements, if applicable. You can list multiple links separated with enter.

Several agencies have been set up specifically to give guidance to decentralised authorities, including on the implementation of the provisions on integrity by contracting authorities and public utilities operators. For example, the Association of Netherlands Municipalities (VNG), Europa decentraal (Europe decentralised) and the website of the Dutch central government provide detailed information on preventing fraud and corruption within the government in general and within procurement procedures in particular. The most detailed effectuation of the provisions on preventing fraud and corruption within procurement can be found on the website of PIANOo. PIANOo collects and presents information on the prevention of integrity violations on its website, gives advice and answers questions on this matter. Furthermore, the Netherlands Authority for Consumers and Markets (ACM) monitors and investigates fraud, collusion, corruption and conflicts of interest in procurement procedures. The ACM encourages contracting authorities and economic operators to contact the ACM when they suspect anticompetitive or fraudulent behaviour in procurement procedures. The ACM provides information about indicators that could signal suspicious agreements, prices and behaviour.

Regular informal guidance to contracting authorities with best practices. Every now and then, tenders are a spearhead to which we temporarily pay more attention with guidance. Guidance concerns both detection and prevention. See for example: <https://www.acm.nl/nl/publicaties/publicatie/7100/Bid-rigging-Herkennen-en-voorkomen-van-samenspanning-bij-inkooptrajecten> and <https://www.acm.nl/nl/publicaties/publicatie/13932/Bijeenkomst-over-herkennen-van-kartels-bij-aanbestedingen>.

VII. Level of SMEs' participation in public procurement

SMEs' participation

SMEs are defined in the Commission Recommendation (2003/361/EC) as having less than 250 persons employed and an annual turnover of up to EUR 50 million or a balance sheet total of no more than EUR 43 million.

Further information is available at http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en

1. Qualitative reporting on SME participation

Policy measures:

- ☒ Policy initiatives launched to support SMEs participation in public procurement;
- ☐ Measures targeting SME participation in different techniques for aggregated procurement (framework agreements, dynamic purchasing systems, and centralised procurement activities);
- ☒ Measures targeting the participation of start-ups and scale-ups in public procurement;
- ☒ Measures ensuring that payment for public contracts are made on time, especially in the case of SMEs;
- ☐ Measures addressing the payments to subcontractors;
- ☐ Guidelines for contracting authorities on the application of 'divide or explain' principle (concerning division into lots);
- ☐ Policy measures in place to monitor SME participation in subcontracting
- ☒ Other measures (if yes, please describe below)

Other measures, please describe below:

5000 character(s) maximum

Procurement policy has a strong link with policy aims and budgeting and is also about efficiency and quality. Besides tendering rules and opting for the lowest price, the Dutch government wants to stimulate the market for sustainable products. Sustainable public procurement means focusing on the environmental and social impact of procurement as well as the price of the products and/or services in question. The Dutch government has developed criteria and practical instruments to implement Sustainable Procurement within the organisation. For more information and the environmental criteria for sustainable procurement, see <https://www.pianoo.nl/en>.

1.1. Best practices.

Indicate best practices that are aimed at encouraging the participation of SMEs in public procurement as marked in the previous column.

Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

The programme 'Beter Aanbesteden' ('Better Public Procurement'), initiated by the Dutch government in 2016 until the end of 2024, encourages SMEs and contracting authorities to identify constraints and develop concrete actions to improve the practice of public procurement.

PIANOo provides contracting authorities with examples of how to take measures to improve the participation of SMEs in the tender procedure. Examples of these measures are, amongst others:

- organising local meetings with representatives of SMEs on a regular basis;
- providing SMEs with specific information about the procurement process (while respecting the principle of transparency);
- making SMEs aware of the possibility to create a combination or consortium in procurement procedures;
- explaining ways to pay subcontractors directly.

When it comes to young, innovative startups and scale-ups, the Dutch government has developed a special program 'Startup in Residence Intergov', aiming to help innovative entrepreneurs (further) developing their products and finding launching customers in public sectors. At Startup in Residence Intergov, governments challenge startups to pitch their innovative solutions for social challenges. The startups with the best solutions are selected for the program. Over a period of five months, entrepreneurs are guided through a valuable innovation program that helps them preparing their solution for implementation, together with the

government. See <https://intergov.startupinresidence.com/>.

The payment terms of the entire central government, provinces, and municipalities are monitored annually. This monitoring report is sent to the parliament and provides insight into the percentage of payments that have been made within thirty days. For the monitoring report from last year, see <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/07/06/kamerbrief-betaaltermijnen-overheid-2022-en-rapport-over-publiek-toezicht-wet-verkorten-wettelijke-betaaltermijn-tot-30-dagen>.

2. Quantitative reporting on SME participation

Please quantify the impact of these best practices in the table below:

2.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – above threshold

	2021	2022	2023
Value (in EUR million)	19900	21800	22400

2.1.1. Value of contracts directly awarded to SMEs over total value of awarded contracts – below threshold

	2021	2022	2023
Value (in EUR million)	55700	58200	65800

Please explain the calculation/assessment method used for collection of data.

For TenderNed it is known (based on data of the Chamber of Commerce) which of the economic operators is listed as a SME. With this data TenderNed analysed the awarded contracts known to them to calculate a percentage of the SME ratio in the value of the awarded contracts, this percentage is used to calculate the value of the contracts (above and below the thresholds) which are directly awarded to SMEs.

For above the threshold this number is very reliable, since this is all based on known data by TenderNed. For below the threshold, the participation of SMEs is an estimation based on the contracts below the thresholds that are awarded via TenderNed and a little bit of data retrieved from a commercial procurement platform, Merzell. However these are not all the awarded contracts below the threshold and also in the Merzell data it is not always known whether it is an SME which is awarded the contract. The reliability of this number is therefore lower.

2.2. Number of contracts directly awarded to SMEs over total number of awarded contracts – above threshold

	2021	2022	2023
Number	63 percent	63 percent	66 percent

2.2.1. Number of contracts directly awarded to SMEs over total number of awarded contracts – below threshold

	2021	2022	2023
Number	80 percent	80 percent	80 percent

Please explain the calculation/assessment method used for the collection of data.

5000 character(s) maximum

Since the number of contracts which are awarded in the Netherlands is already an estimated number, the reliability becomes too low to calculate these percentages in numbers. Therefore we only have an estimation in percentages. These percentages are calculated in the same way as the value of the contracts.

VIII. Practical implementation of national strategic procurement

1. Green procurement ('GPP')

Green Public Procurement ('GPP') is defined as "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured." [1] A voluntary target of 50 % GPP per Member State in number and value of relevant procedures was proposed by the Commission and welcomed by the Council in 2008.

[1] Commission Communication (COM (2008) 400) "Public procurement for a better environment".

1.1. What is the state of play of green procurement in your Member State? (regulatory requirements and policy measures related to GPP)

1.1.1. How do you in general evaluate the degree of the GPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
 - Existence of GPP policies/action plans,
 - Provisions of practical support to practitioners,
 - Results of monitoring of contracts which include sustainability requirements,
 - Results of monitoring of sustainable outcomes.
-
- ☐ Implementation is advanced
 - ☒ Implementation is in progress
 - ☐ Implementation is low

The broad objectives in GPP policies are met:

- ☒ Yes
- ☐ Partially
- ☐ Not yet

1.1.2. Existing GPP regulatory requirements in your Member State:

- ☐ General legal obligation imposing GPP goals
- ☐ Sectoral regulations requiring sustainable development including public procurement
- ☐ Sectoral regulations encouraging sustainable development including public procurement
- ☐ Other regulatory requirements (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

1.1.3. GPP policy measures applied in your Member State:

- ☐ Guidelines to encourage the use of GPP
- ☐ National strategy to encourage the use of GPP
- ☒ National action plan to implement measurable objectives in GPP
- ☐ National target of GPP in certain sectors/in public procurement
- ☐ Monitoring/reporting on the use of GPP criteria
- ☒ Existence of national competence centre/national network of experts to promote the use of GPP
- ☒ Existence of specific working groups to promote the use of GPP in specific sectors
- ☐ Mandatory regular trainings for the promotion of GPP
- ☐ Optional trainings/events/workshops for the promotion of GPP
- ☐ Online information tool on the use/on best practices of GPP
- ☐ Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

Every five years The Netherlands adopts the National Plan MVI (=SPP) which stimulates and facilitates contracting authorities to implement SPP in their procurement policy. The national plan consists of societal goals, including 'green' goals (like circular economy, climate, environment and biodiversity). See <https://www.pianoo.nl/nl/themas/maatschappelijk-verantwoord-inkopen/beleid-en-uitvoering/nationaal-plan-maatschappelijk>

1.2. What are the key challenges for the uptake of green public procurement?

- ☐ Lack of professionalisation of public procurement staff
- ☒ Lack of capacity of public procurement staff
- ☐ Risk or a perception of a risk amongst public buyers of higher procurement costs
- ☒ Risk of no available offer on the market or a perception of some public buyers that such risk exists
- ☐ Risk of legal actions for wrong application of GPP criteria or a perception of some public buyers that such risk exists
- ☒ Lack of policy guidance and support on GPP
- ☒ Lack of policy strategy on GPP
- ☐ Lack of guidance on implementation of GPP requirements/criteria in procurement procedures
- ☐ Lack of strategic planning by the buyers
- ☐ Lack of interest
- ☐ Other reasons (if yes, please explain below)

Indicate best practices that are aimed at encouraging the use of GPP criteria. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

The national government has founded the Dutch Public Procurement Expertise Centre (PIANOo) to provide contracting authorities with useful information and guidance on procurement including SPP.

The above mentioned National Plan MVI helps contracting authorities to determine their GPP policy.

2. Socially responsible public procurement ('SRPP')

Socially responsible public procurement is defined as procurement that takes into account one or several social considerations for advancing social objectives. SRPP covers a wide spectrum of social considerations, such as employment opportunities, decent work conditions, compliance with social and labour rights, social inclusion, equal opportunities and accessibility.

2.1. What is the state of play of SRPP in your Member State?

2.1.1. How do you in general evaluate the degree of the SRPP implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
- Existence of SRPP policies/action plans,
- Provisions of practical support to practitioners,
- Results of monitoring of contracts which include social requirements,
- Results of monitoring of social outcomes.

- ☐ Implementation is advanced
- ☒ Implementation is in progress
- ☐ Implementation is low

The broad objectives in SRPP policies are met:

- ☐ Yes
- ☒ Partially
- ☐ Not yet

2.1.2. Existing SRPP regulatory requirements in your Member State:

- ☐ General legal obligation imposing SRPP goals
- ☒ Mandatory requirements regarding employment from vulnerable groups
- ☐ Respecting minimum criteria on human- and labour rights in the value chain
- ☒ Specific SRPP requirements for the performance of contracts
- ☐ Mandatory exclusion grounds related to SRPP
- ☐ Sectoral regulations requiring equal treatment and non-discrimination

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

Government contracting authorities formulate their own policies regarding sustainable public procurement, tailored to individual circumstances.

The central government has policies (Procurement with Impact 2019, see <https://www.government.nl>)

/documents/publications/2021/03/26/procurement-with-impact) and policy measures in place for monitoring and reporting on SRPP. Monitoring requirements are currently based on the tender process, e.g. whether and in what way SRPP was included. Results and effects of applying SRPP in central government tenders is not part of these requirements. Monitoring and reporting on GRPP and SRPP are currently part of a large scale research that central government has initiated together with other Dutch governing authorities (to be released in 2025).

In accordance with the SPP National plan (Commissioning with ambition, procuring with impact 2021-2025, see <https://www.government.nl/documents/publications/2021/01/29/commissioning-with-ambition-procuring-with-impact>), all public authorities and other organisations who signed the Sustainable Commissioning and Procurement Manifesto (2022-2025) are required to develop action plans that set objectives and actions on GRPP and SRPP. This includes all the ministries, following both the central policy of 2019, the National plan and the Manifesto.

2.1.3. SRPP policy measures applied in your Member State:

- ☒ Guidelines to encourage SRPP
- ☐ National strategy to encourage SRPP
- ☒ National action plan to implement measurable objectives in SRPP
- ☒ National target of SRPP in certain sectors/in all sectors
- ☒ Monitoring/reporting on the use of SRPP criteria
- ☒ Existence of national competence centre/ specific working groups to promote the use of SRPP
- ☐ Mandatory regular trainings for the promotion of SRPP
- ☒ Optional trainings/events/workshops for the promotion of SRPP
- ☒ Online information tool on the use/on best practices of SRPP
- ☐ Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

Governments take seriously their responsibility to 1) promote international human rights, fair labor conditions and environmental issues through supply chain responsibility (ISV), 2) create employment opportunities for people who are disadvantaged within the labour market (Social Return), and 3) contribute to a diverse and inclusive workplace and society. Efforts on SRPP go far beyond the bare minimum standard of compliance with national labour law and social security obligations.

1) Social responsibility in supply chains

The 'Social Responsibility Standards' (International Social Conditions; ISV) are usually implemented as special terms and conditions of performance in tender documentation. This requires contracting partners to carry out due diligence to identify and address environmental, labour and human rights issues in the production chain. See <https://www.rijksoverheid.nl/documenten/rapporten/2022/06/13/uitvoeringsagenda-internationale-sociale-voorwaarden>

2) Social Return

Social return (SR or SROI) is an important tool for public procurers to encourage or require contractors to create jobs for people with poor job prospects when implementing the contract, where they can participate according to their ability. Many governments agencies have formulated their own policies and quota to contribute to the national target of creating 125.000 jobs for those disadvantaged within the labour market in the Netherlands.

3) Diversity, inclusion, equality and belonging

Whereas diversity refers to the representation of all kinds of people, this can only be successful in an inclusive environment in which all differences are valued and embraced in order to enable full participation (both in the workplace and society). See <https://www.pianoo.nl/en>

PIANOO is the Dutch public procurement expertise centre for government procurement officers and contracting authorities to professionalize (sustainable and innovative) tendering. They organize several trainings, events and workshops (f.e. an network on ISV for contract managers), publish best practices and online information tools (f.e. an e-learning on ISV), and function as an helpdesk to increase knowledge and promote the use of GRPP and SRPP.

2.2. Key challenges – What are the key challenges in the uptake of SRPP?

- ☒ Lack of professionalisation of public procurement staff
- ☒ Lack of capacity of public procurement staff
- ☒ Risk or a perception of risk amongst public buyers of higher procurement costs
- ☐ Risk of no available offer on the market or a perception of some public buyers that such risk exists
- ☐ Risk of legal actions for wrong application of SRPP or a perception of some public buyers that such a risk exists
- ☒ Lack of policy guidance and support on SRPP
- ☒ Lack of policy strategy on SRPP
- ☐ Lack of guidance on implementation/insufficient implementation of policies on SRPP
- ☐ Lack of strategic planning by the buyers
- ☐ Lack of interest
- ☐ Other reasons (if yes, please explain below)

Indicate best practices that are aimed at encouraging the use of SRPP. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

3. Public procurement of Innovation

An innovative solution is defined in 2014/24/EU Art.2 (1.22) as "a new or significantly improved product, service or process". This includes not only those solutions resulting from R&D but also those solutions resulting from activities, "including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations." Please report on both dimensions.

3.1. What is the state of play of procurement of innovation in your Member State?

3.1.1. How do you in general evaluate the degree of the innovation procurement implementation in your country:

Please assess based on:

- Existence of enabling public procurement legal framework,
 - Existence of innovation policies/action plans,
 - Provisions of practical support to practitioners,
 - Results of monitoring of contracts which include innovation aspects,
 - Results of monitoring of innovation procurement.
- ☐ Implementation is advanced
☐ Implementation is in progress
☒ Implementation is low

The broad objectives in policies supporting innovation are met:

- ☐ Yes
☐ Partially
☒ Not yet

3.1.2. Innovation policy measures applied in your Member State:

- ☒ Guidelines to describing the procurement of innovation
☐ National strategy to encourage the procurement of innovation
☐ National action plan to implement measurable objectives to procure innovation
☐ National target to procure innovation in certain sectors/in all sectors
☐ Monitoring/reporting on the procurement of innovation
☒ Existence of national competence centre/specific working groups develop policies on the procurement of innovation
☐ Mandatory trainings related to the procurement of innovation
☐ Optional trainings/events/workshops related to the procurement of innovation
☒ Online information tool on the use/on best practices related to the procurement of innovation
☐ Other policy measures (if yes, please describe below)

Indicate best practices that are aimed at encouraging the procurement of innovation. Please provide a link to any publicly available document relevant for the issues you indicated.

5000 character(s) maximum

The Dutch ministry of Economic Affairs supports the SBIR program financially, so that other public procurement organisations are able to make use of SBIR. Furthermore, buyer groups are supported through the public and private sectors work together to develop specifications and award criteria, with a focus on innovation, sustainability and social goals. Additionally, a program called innovation procurement which is executed by PIANOo (Public Procurement Expertise Centre) is funded by the ministry. Lastly, a working group on innovation procurement has been formed in 2021. This working group consists of leaders and scientists in the field of innovation-oriented purchasing. On the one hand, they inspire and encourage other organizations to purchase in a more innovation-oriented manner. On the other hand, the working group forms a sounding board for policy ministries when drawing up policy for innovation-oriented purchasing.

Working group:

<https://www.pianoo.nl/nl/themas/innovatie/over-innovatie/werkgroep-innovatiegericht-inkopen>

Website PIANOo, the Dutch Public Procurement Expertise Centre:

<https://www.pianoo.nl/nl/themas/innovatie>

3.2. Key challenges – What are the key challenges for the uptake of Procurement of Innovation?

- ☒ Lack of professionalisation of public procurement staff
- ☐ Lack of capacity of public procurement staff
- ☒ Risk or a perception of a risk amongst public buyers of higher procurement costs
- ☐ Risk of no available offer on the market or a perception of some public buyers that such a risk exists
- ☐ Risk of legal actions for procedures carried out wrongly
- ☒ Lack of policy guidance and support on Innovation
- ☒ Lack of policy strategy on procurement of innovation
- ☐ Lack of strategic planning by the buyers
- ☐ Lack of interest
- ☐ Other reasons (if yes, please explain below)

Indicate best practices that are aimed at mitigating indicated issues.

5000 character(s) maximum

See above. This year the ministry is working on a plan with possible options to mitigate the obstacles as described in the report written by the working group on innovation procurement.

IX. The level of competition in public procurement

1. Do you monitor the level of competition in public procurement in your Member State?

To assess please consider in particular: proportion of single bids, proportion of negotiated procedures without prior publication, proportion of cancelled tenders

- ☐ Yes, the level of competition is monitored
- ☐ Yes, the level of competition is partially monitored (not comprehensive for all the procurement markets)
- ☒ No, the level of competition is not monitored

If the reply to the previous question is no, does your Member State experience a decrease in the level of competition or a generally low level of competition compared to the previous reporting period? (To assess please consider in particular: proportion of single bids, proportion of direct awards, proportion of cancelled tenders)

- ☐ Increased
- ☐ Remained unchanged
- ☒ Decreased

2. Did you launch/complete a comprehensive analysis of main causes of the lack of competition on the public procurement market during the current reporting period?

- ☐ Yes, a comprehensive analysis of main causes of the lack of competition was launched/completed in the current reporting period
- ☒

No, a comprehensive analysis of main causes of the lack of competition was not launched/completed in the current reporting period

- ☒ No, a comprehensive analysis of the main causes of the lack of competition was not launched/completed in the current reporting period as the level of competition is satisfactory

3. What are the sectors mostly concerned by low competition?

Please list the sectors concerned:

5000 character(s) maximum

According to the recent report of the European Court of Auditors on the Public Procurement Directives, the medical equipment and transport equipment sector are the sectors in the Netherlands which are mostly concerned by low competition.

Please list other relevant factors (for example regions, areas, level of administrative level, type of public buyer, calendar period):

5000 character(s) maximum

4. What are the main causes for the decrease in competition?

- ☐ 1. Structure of the market (e.g. size of the market)
- ☐ 2. Market concentration in the sectors concerned
- ☒ 3. Recurrent, particularly low number of bidders due to (if yes, please specify below):
- ☒ 4. Low attractiveness of the public procurement market, in particular (if yes, please specify below):
- ☐ 5. Anticompetitive market practices (collusions)
- ☐ 6. Other reasons (if yes, please specify below)

3. Recurrent, particularly low number of bidders due to:

- ☐ Structure of the market (e.g. monopolistic, oligopolistic market)
- ☐ Suspicion of collusion between bidders (bid rigging)
- ☐ Tailor-made public procurement procedures

4. Low attractiveness of the public procurement market, in particular:

- ☐ Lack of market knowledge of buyers (unrealistic demand)
- ☐ Lack of mid/long term planning of public procurement needs
- ☐ Not optimal contract size (too large for SMEs, too small for non SMEs)
- ☒ Complex tender documents and requirements
- ☒ Short period available for publication and submission of offer
- ☒ High administrative burden linked to submission of offer
- ☐ Lack of trust of companies in fair chances to win (e.g. suspicion of fraud, corruption, conflict of interests and other serious irregularities)
- ☐ Limited possibility of contract modification
- ☒ Strict contract terms and risk of penalties
- ☐ High risk of delayed or no payment
- ☐ Perceived unattractiveness of public procurement

Please provide a link to any publicly available document relevant for the issues you indicated:

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The recurrent, particularly low number of bidders is possibly caused by the fact that the number of public procurement procedures is increasing. If the capacity of suppliers will not increase but the demand does, this could be a cause for the decrease of number of bidders per public procurement procedure. See <https://www.aanbestedingscafe.nl/wie-heeft-zin-om-dit-te-lezen-laet-staan-om-het-op-te-schrijven>

X. Additional information

Please provide any other information you consider relevant:

5000 character(s) maximum

Contact

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