

## BELGIUM

### KEY FACTS AND FIGURES

Key Facts and Figures in Belgium						
<b>Overview</b>	<b>Total procurement</b> 52,010,000,000€		<b>Procurement % GDP</b> 14%		<b>2013 GDP</b> 395,242,000,000€	<b>Contracting authorities</b> 5,000
<b>Procedures applied</b>	<b>Open</b> 77%	<b>Restricted</b> 3%	<b>Negotiated procedure</b> <b>with call</b> 15% <b>no call</b> 3%		<b>Competitive dialogue</b> 0%	<b>Direct award</b> 2% <b>Other</b> 1%
<b>Share of contract notices by buyer</b>	<b>National</b> 14%		<b>Regional/local</b> 37%		<b>Body governed by public law</b> 12%	<b>Other</b> 37%
<b>Contract type</b>	<b>Services</b> 44%		<b>Works</b> 10%		<b>Supplies</b> 46%	<b>Framework agreement</b> 15%
<b>Ex ante conditionality criteria as of 2014</b>	<b>EU rules</b> Fully met		<b>Transparency</b> Fully met		<b>Training</b> Fully met	<b>Admin. capacity</b> Fully met
<b>E-procurement adoption</b>	<b>E-notification</b> Mandatory		<b>E-access</b> Mandatory		<b>E-submission</b> Mandatory	<b>Uptake rate</b> 3%
<b>Perceived corruption</b>	<b>Corruption widespread in society</b>			<b>Corruption widespread in procurement</b>		
	<b>Businesses</b> 47%		<b>Individuals</b> 67%		<b>At national level</b> 45%	<b>At local/regional level</b> 45%
<b>TED indicators</b>	<b>Value of tenders</b> 9,912,383,556€		<b>Of total procurement</b> 19%		<b># contract notices</b> 5,001	<b># contract awards</b> 3,138
<b>Other indicators</b>	<b>Received single bid</b> 13%		<b># days for decision</b> 91.1		<b>Price only criteria</b> 36%	<b>MEAT criteria</b> 64%
	<b>Won by foreign firms</b> 5%		<b>Related to EU funds</b> 5%		<b>Joint purchase</b> 15%	<b>Central purchasing</b> Yes, CMS-FOR

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

### Summary of public procurement system

Belgium is a federal state with decentralised authority, including over procurement, shared among the central government and the three regions: Wallonia, Flanders, and the Brussels-Capital Region. Public procurement is regulated at the federal level by a procurement law, and each region has a certain level of flexibility for interpreting and implementing the legislation.

Belgium is one of the pioneers for e-procurement in Europe. Although e-submission is not yet mandatory throughout the country, the public procurement system is developing towards this goal. Flanders has already implemented mandatory e-procurement for both economic operators and purchasers in 2012. Wallonia and the Brussels-Capital Region are still in the planning phase for e-procurement implementation.

### DESCRIPTION OF FEATURES

#### Legal features of public procurement system

The Belgian procurement system operates under a legislative framework that splits authority between the federal and regional governments. The EU public procurement Directives are transposed at the federal level through the Law of 15 June 2006 that entered into force in 2013. It is applied to contracts above and below the EU thresholds. Regional governments, which carry out roughly one third of all procurement by volume, are given substantial freedom to interpret this legislation and define their own implementation rules.

The Council of Ministers has formulated a draft law transposing the 2014 Public Sector and Utilities Directives into Belgian law and sent it to the State Council for review and approval<sup>1</sup>. A draft law transposing the Concessions Directives is awaiting approval by the Council of Ministers and ultimately by the State Council. A decision has not been

taken yet whether Public-Private Partnerships (PPPs) will be subject to the concessions law, or to the Public Sector Directive law<sup>ii</sup>.

### ***Institutional system***

Belgium's federal system disperses procurement authority across approximately 5,000 contracting authorities spread among the three regions, the provinces, the municipalities, and at least 26 public entities<sup>iii</sup>. At the federal level, several bodies are in charge of public procurement: the Federal Public Service Chancellery of the Prime Minister, the Central Procurement Body for the Federal Services, and the Purchasing Advice and Policy Unit (*ABA-CPA*).

The Federal Public Service Chancellery of the Prime Minister is responsible for the preparation, coordination, and monitoring of public procurement legislation, as well as the transposition of EU Directives into national law and the development of e-procurement. In particular, the Chancellery acts as a secretariat of the Commission for Public Procurement which is a specialised advisory body composed of representatives from the federal authority, federated entities, public corporations, supervision bodies, and representatives of businesses and trade unions.

The Central Procurement Body for the Federal Services (*CMS-FOR*) negotiates contracts on behalf of the federal state. It is composed of 11 sector specific units specialising in insurance, fuel, hygiene, IT, furniture, office supplies, telecommunication, drinks and snacks, cars, and light commercial vehicles.

The *ABA-CPA* gives support to the federal staff and accompanies them through the contracting process by providing advice to purchasing departments<sup>iv</sup>.

The Belgian Court of Audit is responsible for controlling public federal, communities, regional and provincial finances. Among its wide range of activities, it regularly carries out public procurement audits<sup>v</sup>.

According to the public procurement law, the Belgian Council of State and the civil courts are the judicial bodies responsible for the review of public procurement procedures. Reviews may result in suspension of an award a suspending procedure, penalties of up to 15% of the contract value or cancellation of the contract. The Belgian Council of State and the civil courts can add a default fine to their suspension. Unlike other MS, the judgment of the Belgian Council of State is not subject to appeal<sup>iv</sup>.

### ***Key issues that have a bearing on administrative capacity***

***Human resources:*** The number and skill level of employees working on public procurement varies substantially among regions. At the federal level, *CMS-FOR* is composed of 11 members. At regional level, for instance in Flanders there are more than 1,000 civil servants trained in the modalities of e-submission.

***Structures:*** Several entities at federal and regional levels are responsible for capacity building in public procurement. The Federal Public Service Personnel and Organisation (FPS P&O) handles the recruitment, remuneration and training of federal agents through the Training Institute of Federal Administration (IFA). In addition, each region develops its own programmes to train and support public procurement practitioners.

***Training:*** The IFA develops training courses and e-learning on several aspects of public procurement: basic introduction to the legal framework, e-procurement, and specialised courses on works, supplies and services procedures. It also offers trainings to facilitate SMEs use of e-procurement.

The Court of Audit also organises training sessions to keep its agents up-to-date in terms of public procurement legislation<sup>v</sup>. In addition, the *ABA-CPA* provided 84 trainings to the federal administration in 2014, including 964 participants.

In each region, trainings are provided for ministry officers by administration agents or by private professionals, such as lawyers specialised in public procurement.

**Systems/tools:** FPS P&O has developed manuals on different aspects of public procurement, and several tools to foster the use of e-procurement<sup>vi</sup>. These tools are organised around 5 different modules: e-notification, e-tendering, e-catalogue, e-awarding, and e-auctions. They are free to use, and aim at benefiting both economic operators and contracting authorities.

There are also support tools in place at the regional and federal levels such as a help desk for e-procurement, standardised tender documents, information notes, as well as guidelines on green and social public procurement.<sup>vii</sup>

### **E-procurement**

The adoption of e-procurement is advancing in stages in Belgium, with e-notification for contracts above EU thresholds mandatory since 2013 for all levels (federal, regional and local), and mandatory e-submission being phased in over time starting with federal authorities in 2012<sup>vii</sup>. The Flemish Region aims to receive and process all invoices electronically by 2015, through the “e-invoicing” module. E-evaluation is available for ministries at federal and regional levels but not yet for local governments. E-auction, e-awarding, and e-catalogue have been available since 2011.

Two e-procurement portals are currently active in Belgium. The central e-procurement platform is used by the federal administration as well as the Brussels-Capital and Flanders Regions<sup>viii</sup>. On the other hand, Wallonia has developed its own portal, which can be used by all French-speaking authorities and is partially integrated with the federal one. The federal government recently estimated that the use of e-procurement saves 85% of administrative costs related to traditional tender procedures<sup>ix</sup>.

### **Corruption**

Belgium enjoys relatively low levels of perceived corruption<sup>x</sup>, but maintains an active anti-corruption policy that focuses on procurement as an area susceptible to corruption. Both perceptions of corruption and the policy response vary substantially by region. Flanders Region scores relatively low and has a more developed anti-corruption policy than Wallonia<sup>xi</sup>. In addition, some sectors in the economy such as building and road construction are more vulnerable to corruption than the others.

At the federal level, the anti-corruption policy is coordinated by the Office of Administrative Ethics and Deontology. This body only has an advisory function and limited financial and human resources, with just 5 staff members. Enforcement is led by a special unit of the Belgian Federal Police called the Central Office for the Repression of Corruption (*OCRC*), which dedicates one of its three units exclusively to procurement investigations. At the regional level, both Flanders and Wallonia regions have adopted rules of ethics to be applied by elected representatives and civil servants<sup>xii</sup>.

### **Europe 2020 Agenda**

Belgium has introduced a number of initiatives in the field of public procurement within the scope of the Europe 2020 Agenda. Unlike the majority of MS, these initiatives are designed in an integrated way and mainly focus on promoting environmental and social considerations in public procurement, as well as the participation of SMEs to tender procedures<sup>xiii</sup>.

At the federal level, the Ministry of Environment and Sustainable Development has developed an Action Plan for Sustainable Procurement, in cooperation with regional authorities. In this context, a specific circular was published in 2014 to integrate sustainable development in public procurement legislation, including social clauses and measures favoring the participation of SMEs by federal contracting authorities<sup>xiv</sup>. In addition, Belgium established comprehensive channels for dialogue between the government, companies, and purchasing units, which contributed to the constant improvement of the national sustainable public procurement policy<sup>xv</sup>.

Moreover, the Federal Institute of Sustainable Development provides public procurement practitioners with manuals to foster sustainable purchase including detailing labels, environmental and social criteria for specific products and services as well as the use of life-cycle costing.

The Flanders Regional Government has its own Flemish Action Plan on Sustainable Public Procurement<sup>xvi</sup>. Its objective is to reach 100% sustainable public procurement by 2020. The goals fixed in the 2009-2011 Action Plan were achieved, resulting in a better structured sustainable procurement process, as well as in more effective dialogue between the parties implicated in the policy making process. The second Action Plan of 2012-2014 specifies actions and measures in order to accelerate the implementation of sustainability criteria in public contracts. These measures consist in monitoring the sustainable procurement process, including aspects such as sustainable innovation and social considerations, which can furthermore contribute to sustainable materials management<sup>xvii</sup>.

The government of the Brussels-Capital Region has adopted a recommendation concerning the use of social considerations, such as the consideration of working conditions in public procurement, on the example of fair trade. More specifically, Brussels Capital contracting authorities introduced social considerations as award criteria or conditions when performing a contract<sup>xviii</sup>.

The Wallonia region has also developed a methodological guide on sustainable public procurement covering the inclusion of environmental, social and ethical considerations in public tenders and promoting the access for SMEs. Practical tools for public procurement practitioners are also provided in the regional e-procurement portal<sup>xix</sup>.

### **Irregularities and findings of national Audit Authorities**

The Court of Audit conducts controls of public procurement of goods, works and services. At federal level, tender procedures are generally adequate. Yet certain operational risks are currently not entirely covered by the internal control procedures, and could be reduced thanks to more formalised implementation processes, centralised purchases, and fewer systematic extensions of contracts in particular in the field of public works.

In the Brussels-Capital Region, identified irregularities include a lack of transparency and use of negotiated procedure although the legal conditions were not fulfilled<sup>xx</sup>.

In Wallonia, the Court of Audit came across irregularities such as limitation of competition, weakness of control, and several errors and gaps in procurement documents<sup>xxi</sup>.

In addition, the Federal Police Annual Report gives an overview of the main fraud cases occurring in public procurement<sup>xxii</sup>. The most common types of fraud identified were undeserved and irregular award of contracts to a tenderer and maximising the benefit of the contractor by using fraudulent means. The contracting authorities currently blacklist companies involved in procurement fraud, but this initiative would need a more centralised approach in order to be more efficient.

### **Outlook**

In terms of legislation, the 2014 EU Directives were implemented as the Small Business Act 2014, which will be implemented nationally by 18 April 2016. The implementation of these Directives also fits in the Europe 2020 strategy to improve innovation, encourage SMEs' participation in the economy, and to consider the social award criteria for their procurement processes<sup>xxiii</sup>. As it was opted to draw up four consecutive action plans, each of which covers a three-year period (2009-2011, 2012-2014, 2015-2017 and 2018-2020), the Action Plan 2012-2014 will be followed by 2 other plans which will further develop and adjust the policy.

Given the progress already made in terms of e-procurement at a national level, the goal of achieving a 100% electronically processed procurement process can be considered as realistic. Belgium is looking into improving e-procurement capacities on a continuous basis, notably through the development of the electronic tools e-notification, e-tendering, e-auction, e-catalogue, and e-invoicing. For instance, as regards e-invoicing, the Flemish region seeks to receive and process invoices electronically by January 2015, and to provide entirely digitalised invoices as well as billing information by January 2017<sup>xxiv</sup>.

## **ANALYSIS**

### **Strengths**

Public procurement processes are generally adequate in Belgium particularly thanks to the development of e-procurement. Indeed, the progress of the e-procurement system has led to a facilitated use of procurement submissions and it has allowed for more transparency, thanks to the publicly open access to tenders. Between 2004 and 2012 the number of notices published on e-notification platforms rose from 213 to 29,499. Between 2007 and 2012, the number of contracting authorities using e-tendering rose from 8 to 3,279. In the Flanders region e-submission became mandatory for contracting authorities in January 2012.

Belgium's integrated and collaborative approach to strategic public procurement is also quite unique. Environmental, social, and innovative criteria are part of integrated sustainable procurement initiatives at both federal and regional levels. And there is regular consultation between the different stakeholders involved in strategic procurement within federal and regional administrations.

### **Weaknesses**

Belgium's regional autonomy means that implementation of procurement measures varies substantially across the country. For instance, Flanders already has mandatory e-procurement, whereas Wallonia and the Brussels Capital Region are still planning the implementation of e-procurement procedures.

Furthermore, there remains rooms for improvement in the oversight system for public procurement at the federal and regional levels. First, there is a considerable lack of human and financial resources in different federal units to carry out internal control and anti-corruption measures, worsened by the constrained budgets in the aftermath of the 2009 financial crisis. The judicial system also lacks expertise in corruption. This challenge exists also at the regional level. For instance, the Flemish region has just

one integrity coordinator, in charge of the integrity policy of all administrations including approximately 50,000 civil servants.

### **Recommendations**

- **Improve oversight:** Public procurement oversight at the federal and regional levels is limited by human and financial resource constraints.
  - Increase staffing levels within oversight entities.
  - Improve internal control procedures at federal level.
  - Implement more formalised processes and work towards aggregation of oversight.
  
- **Promote e-procurement:** Implementation of e-procurement is proceeding unevenly across Belgium's three regions, and the different levels of government.
  - Increase interoperability between the central e-procurement platform and Wallonia's e-procurement system.
  - Foster greater use of e-procurement in Wallonia and the Brussels Capital Region, notably by raising awareness among contracting authorities.
  - Develop a plan to implement e-evaluation at local government level.

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<sup>i</sup> Press release following the Belgian Council of Ministers (24/09/2015), available at: <http://www.presscenter.org/fr/pressrelease/20150924/transposition-de-deux-directives-europeennes-en-matiere-de-marches-publics>

<sup>ii</sup> SIGMA (2014), Brief 31 on Public Procurement "2014 EU Directives: Concessions", available at: <http://www.sigmaweb.org/publications/EU-Directives-Concessions-2014.pdf>

<sup>iii</sup> European Commission (2012), Annual Public Procurement Implementation Review 2012.

<sup>iv</sup> Public Procurement Network (2010), Authority for the Supervision of Public Contracts, The comparative survey on the national public procurement systems across the PPN.

<sup>v</sup> National Court of Audit (2014), *Rapport de la Cour des Comptes transmis à la chambre des représentants* (Annual report 2013).

<sup>vi</sup> Federal Public Service Personnel and Organisation (FPS P&O) (2013), Electronic public procurements contracts for the public and private sectors alike

<sup>vii</sup> E-procurement helpdesk, available at: <http://www.publicprocurement.be/fr/contact/questions-relatives-e-procurement>

<sup>viii</sup> European Commission (2013), DG MARKT, E-procurement state of play report.

<sup>ix</sup> Federal government and the governments of the Regions and Communities of Belgium (2014), National Reform Programme 2014.

<sup>x</sup> European Commission (2014), DG HOME, EU anti-corruption report, Annex Belgium.

<sup>xi</sup> GAN Integrity Solutions, Business anti-corruption portal, available at: <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/belgium/show-all.aspx>

<sup>xii</sup> European Commission (2014), DG HOME, EU anti-corruption report, Annex Belgium.

<sup>xiii</sup> *Regeerakkoord - Accord de Gouvernement* (Government Agreement), 9 October 2014.

<sup>xiv</sup> Federal Service of Justice (2014), *Intégration du développement durable, en ce compris les clauses sociales et les mesures favorisant les petites et moyennes entreprises, dans le cadre de marchés publics passés par les autorités adjudicatrices fédérales* (Consideration for sustainable development, including social criteria and measures promoting SME, in public procurement), Circular 16 October 2014.

<sup>xv</sup> OECD (2015), Smart procurement – Going green: best practices for green procurement, public governance committee, available at: [http://guidedesachatsdurables.be/sites/default/files/content/download/files/2015\\_oeso\\_document\\_smart\\_procurement.pdf](http://guidedesachatsdurables.be/sites/default/files/content/download/files/2015_oeso_document_smart_procurement.pdf)

<sup>xvi</sup> SCP Clearinghouse (2014), Sustainable Public Procurement in Flanders.

<sup>xvii</sup> Department of the Flemish Government – Public Governance – (2012), Flemish Action Plan for Sustainable Public Procurement 2012-2014.

<sup>xviii</sup> Law Business Research Ltd (2014), *The Government Procurement Review*, Second Edition.

<sup>xix</sup> Service public de Wallonie (2014), *Intégration de clauses environnementales, sociales et éthiques dans les marchés publics et promotion de l'accès aux pme- Note de cadrage et conseils juridiques à l'attention des praticiens des marchés publics, version 2* (Integration of environmental, social and ethical criteria in public procurement – Methodological guide and legal advice for public procurers).

<sup>xx</sup> National Court of Audit (2013), 20th Report of the Court of Audit presented to the Parliament of the Brussels-Capital Region and to the Brussels' United Assembly of the Joint Commission for Community matters.

<sup>xxi</sup> National Court of Audit (2015), 26th Report of the Court of Audit, Comments and documents presented to the Parliament of the Walloon Region.

<sup>xxii</sup> Federal Police (2013), Department of Financial and Economic Crime, Annual Report 2013, available at: [http://www.polfed-fedpol.be/pub/rapport\\_activites/pdf/2013/ecofin/RAecofin2013-fr.pdf](http://www.polfed-fedpol.be/pub/rapport_activites/pdf/2013/ecofin/RAecofin2013-fr.pdf)

<sup>xxiii</sup> Chamber of representatives of Belgium (2014), Federal Public Service Chancellery of the Prime Minister, General policy note of 21 November 2014.

<sup>xxiv</sup> Partnership Agreement (2014) for Belgium, in accordance with Articles 14 and 15 of Regulation (EU) N.1303/2013 of the European Parliament and of the Council of 17th December 2013: [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2014/slovakia\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/countries-sheets/2014/slovakia_en.pdf)