

THE NETHERLANDS

KEY FACTS AND FIGURES

Key Facts and Figures in Netherlands							
Overview	Total procurement 136,320,000,000€		Procurement % GDP 23%		2013 GDP 650,857,000,000€	Contracting authorities 7,500	
Procedures applied	Open 71%	Restricted 14%	Negotiated procedure with call 2% no call 3%		Competitive dialogue 1%	Direct award 10%	Other 0%
Share of contract notices by buyer	National 18%		Regional/local 44%		Body governed by public law 28%	Other 10%	
Contract type	Services 56%		Works 11%		Supplies 33%	Framework agreement 15%	
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met	
E-procurement adoption	E-notification Mandatory		E-access Mandatory		E-submission Voluntary	Uptake rate 7%	
Perceived corruption	Corruption widespread in society Businesses 75% Individuals 61%			Corruption widespread in procurement At national level 33% At local/regional level 52%			
TED indicators	Value of tenders 10,359,452,963€		Of total procurement 8%		# contract notices 3,874	# contract awards 3,412	
Other indicators	Received single bid 8%		# days for decision 64.2		Price only criteria 10%	MEAT criteria 90%	
	Won by foreign firms 3%		Related to EU funds 1%		Joint purchase 3%	Central purchasing No	

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

Summary of public procurement system

The Netherlands is a highly decentralised unitary state in which power is shared quite diffusely among the central government, 12 provinces and 393 municipalities. In the Dutch system, each contracting authority is responsible for the management of its own public procurement procedure, regardless of its level of authority. Coordination and policy-making are handled at the central level by the Ministry of Economic Affairs and its Public Procurement Expertise Centre, PIANOo.

The recent transposition of EU Directives into the Public Procurement Act led to a number of changes, which include facilitating better access for SMEs, reducing the administrative burden for contracting authorities and economic actors, and granting contracting authorities more flexibility in how they organise their proceduresⁱ. Furthermore, the Netherlands is increasingly investing in implementing sustainable public procurement mechanismsⁱⁱ.

It should be noted that, due in part to the country's uniquely decentralised political system, and the variety of public and private actors at play, the Netherlands does not collect or publish comprehensive, nationwide data on their public procurement practices or outcomes.

DESCRIPTON OF FEATURES

Legal features of public procurement system

In 2013, the Netherlands incorporated the EU public procurement Directivesⁱⁱⁱ into the main national procurement law, the Public Procurement Decree (PPD), as well as into the legally binding Proportionality Guide. Transposition of the Directives introduced several new regulations to the Dutch legal system, including the establishment of a commission of public procurement experts, and measures to reduce administrative burdens for SMEs^{iv}.

For tenders whose value is below the EU thresholds, individual contracting authorities have broad discretion in how they conduct procurement. The reforms that went into effect in 2013 codified a broad set of standards, including the principles of transparency in procedures, objectivity in award, proportionality of requirements, and non-discrimination. Contracting authorities are also now required to publish announcements in the central online database TenderNed, break tasks into lots where appropriate, award according to most economically advantageous tender criteria, and notify unsuccessful candidates within 15 days of award.

Contracting authorities may ask tenderers to submit a 'declaration of conduct' in public procurement. This document is obtained from the Ministry of Security and Justice as evidence that the tenderer is not legally disqualified from bidding due to criminal proceedings or administrative restrictions. The certificate also gives an overview of the procurement processes that the tenderer has dealt with in the past at the European or national level^v. It should be noted that obtaining this document can take up to 16 weeks in the case of an investigation being needed, which can be burdensome for suppliers that do not regularly bid on government contracts^{vi}. Also, foreign firms are ineligible to apply. Typical processing time is closer to eight weeks, and the declaration is valid for two years.

Institutional system

The Ministry of Economic Affairs has primary authority over procurement issues in the Netherlands. It is responsible for drafting procurement legislation, interfacing with the EU, and controlling the compliance of contracting authorities with procurement law. The Ministry of Economic Affairs also operates the Public Procurement Expertise Centre, PIANOo, which brings together a network of more than 3,500 Dutch public procurement experts and tendering professionals to share their experiences and best practices. PIANOo hosts an online forum, publishes guidance, organises conferences, training sessions and meetings, and runs the TenderNed e-procurement platform.

Also, under the Ministry of Economic Affairs is the Commission of Public Procurement Experts. The Commission was established in 2013 to act as an alternative means of claims resolution to the legal system for procurement bidders with complaints. The Commission can act as a mediator between the economic actor and the contracting authority, and has the power to issue non-binding advice on how to resolve claims. In its first year, the Commission received 70 complaints, primarily from SMEs.^{vii} Claims are still also handled by the Civil Courts, whose decisions can be appealed before the Court of Appeal and ultimately before the Supreme Court.

In addition, the Authority for Consumers & Markets (ACM), the Netherlands' former Competition Authority (*NMA*), consists of an independent body responsible for regulating the public procurement market and investigating signals of unfair competition. Although supervisory responsibilities are highly decentralised, the ACM collects and investigates signals of unfair competition and has the authority to impose fines when procurement rules have been breached. Annual reviews of economic efficiency and legal compliance are performed at the contracting authority level.

Key issues that have a bearing on administrative capacity

Human resources: Although the Dutch system has traditionally afforded contracting authorities substantial autonomy in procuring, lack of administrative capacity is not a significant issue, even at the local level. This is due in part to the existence of PIANOo and its predecessor organisations, which have for decades put a wealth of knowledge and experience at the fingertips of Dutch contracting authorities. The cooperative nature of PIANOo allows it to achieve this task with fewer than 30 full time employees.

Another key success of the decentralised system has been the reliance on consultation with domain-specific specialists. For example, the city of Amsterdam has an Office for

Engineers, which it relies upon to advise on procurement related to ground, water and road building.

Structures: PIANOo is the primary public body responsible for improving administrative capacity among procurement practitioners. It does this in large part by acting as a forum for current procurement professionals to discuss and learn from each other's experiences, such as through the PianoDesk online discussion platform, or by organising peer events such as lunches.

The Dutch Association for Purchasing Management, NEVI, is another important resource for public buyers in the Netherlands. NEVI provides professional purchasing trainings, as well as executive programs related to procurement management.

Training: Procurement training in the Netherlands is offered by a mix of public and private providers. PIANOo organises a wide range of training activities for public buyers throughout the year, including workshops, conferences, and topic specific training sessions. It also directs its members to a long list of private sector skill building organisations that cover procurement topics. PIANOo also offers a free, six part training course on Dutch and EU procurement law for buyers and legal professionals. Furthermore, training and knowledge sharing on public procurement is provided for staff implementing ESI Funds^{viii}.

For economic operators, the TenderNed site offers a list of private providers who offer training and other support services for those looking to sell goods and services to Dutch public sector entities.

Systems/tools: In addition to the interactive fora, PIANOo also hosts a number of documents that procurement practitioners can use for reference. The most general are the Metro Maps, step-by-step FAQs on a number of procurement topics that provide a general guide and include links to other resources. They also offer sample documents, procurement procedural guides and manuals, legal opinions, and a digital newsletter.

In addition, having set a number of aggressive sustainable procurement goals, the Ministry of the Environment and the Netherlands Enterprise Agency have developed a number of sustainability-specific tools for contracting authorities. One such tool is the sustainable public procurement coach, which allows contracting authorities to assess their own performance in meeting sustainability criteria. The coach is a questionnaire that, when completed, will provide tailored advice on how to improve the users' performance in integrating sustainability criteria in the public procurement process based on best practices. In addition to this, there is a FAQ document that provides quick and simple answers on the procurement process.

E-procurement

The availability of the TenderNed platform means that e-procurement is available to all contracting authorities, but actual usage varies by service. Since 2013, e-notification is mandatory for all contracting authorities, either on TenderNed or a local or regional platform. These secondary platforms are all interoperable with the central platform, so all notifications automatically end up on TenderNed. TenderNed also offers e-access capabilities, which are used almost universally by those who post directly to it. The platform has an automatic link with Tenders Electronic Daily (TED) in order to make sure that European announcements are made if there is an obligation to it.

TenderNed also supports e-submission, but uptake remained below 50% in 2013. In addition to the central platform TenderNed, there are also a number of private e-procurement platforms, such as Negometrix, *Aanbestedingskalender.nl*, CTM Solutions, *NétiveVMS BV* and The Solutions Factory, on which contracting authorities can also publish announcements and tenders.

Dutch authorities plan to develop additional tools in order to make public procurement procedures more electronic. These tools include an e-catalogue, a tool for e-auctions and a dynamic purchasing system.

Corruption

The Netherlands' centuries old tradition of promoting transparency and accountability among public officials has helped to hold corruption to some of the lowest levels in the EU. In fact, most Dutch anti-corruption efforts are focused on protecting Dutch businesses that do business abroad from corruption in other countries. Nevertheless, recent corruption scandals in the field of procurement demonstrate that corruption remains an issue.

The Dutch anti-corruption framework is built on the Public Administration Probity in Decision-Making or "*BIBOB*" Law, and the associated *BIBOB* Office within the Ministry of Justice. The *BIBOB* Office conducts investigations of potential suppliers for issues such as criminal prosecution or failure to pay taxes, which could potentially be deemed by the contracting authority to be grounds for exclusion^{ix}.

Europe 2020 Agenda

The Dutch have set a goal of 100% sustainable purchasing by 2015, and have instituted a host of tools to achieve it. The most important of these are a library of product specific criteria to be used in drafting procurement documents. These criteria, which must be applied to all procurement tenders, set out supplier, service, and award criteria that reflect the specific environmental and life-cycle costs for a given contract type.

In addition, Dutch authorities have created a number of tools to guide contracting authorities in the implementation of sustainable procurement. For example, the Netherlands Enterprise Agency has established a Sustainable Public Procurement Coach website that offers performance tracking, best practices and guidance. PIANOo also publishes a manual on sustainable procurement, with step by step guidance on the implementation of sustainable criteria in the public procurement procedures^{ix}.

In terms of SMEs and innovation, estimates indicate that 80-90% of public contracts in the Netherlands are awarded to SMEs. However, Dutch authorities still see room for improvement, and are promoting common solutions, such as breaking contracts into lots, eliminating turnover requirements, and using standardised tender documents. The Netherlands are also working to include SME voices in the planning process through greater dialogue and market research.

Understanding the market is also key to innovation procurement, another strategic goal. To facilitate connections between innovative businesses and contracting authorities, Dutch authorities have created a number of tools, including an Innovation Market platform to allow suppliers to promote their products to governments across the Netherlands and beyond.

Finally, starting in 2015, municipalities also have a responsibility to promote employment and social inclusion in their communities. One solution being promoted is the use of procurement to create work opportunities for individuals who might not otherwise have access to labour markets, including youth, the elderly, or persons with disabilities.

Irregularities and findings of national Audit Authorities

Each national and subnational authority has its own independent audit body. At the national level, the Court of Audit, which belongs to the High Council of State, is responsible of the control the conformity of the national government's revenue and

expenditure. Its publications are available to the public and can be found on its website^x. In its last report on public procurement it concludes that errors happened mostly in the context of tenders below the applicable European threshold. Since they could not find a structural explanation, they advised the government to clarify the applicable rules, promote information and evaluate periodically the cause of errors^{xi}.

At the subnational level, authorities rely on independent Auditors. As far as the city of Amsterdam is concerned, the audit institution of Amsterdam *ACAM* is responsible for the control of legality of expenses therefore assesses its respect of the public procurement rules. It does not, however, make its report available to the public^{xii}.

In addition to official audits, several independent institutions also evaluate public procurement performances, such as the Economic Institute for Construction and Housing, and the Tendering Institute, both of which focus on the construction sector.

Outlook

The primary focus in procurement reform is the transposition of the 2014 EU Directives on procurement. To this end, the Dutch authorities plan to publish draft legislation for public consultation laying out how the government intends to use the discretionary policy margins in the EU Directives that are left to the Member States. However, taking into the account the lengthy legislation procedures, it is possible that the Directives may not be transposed before the April 2016 deadline.

The other major goal is obtaining full e-procurement adoption. The independent procurement expertise centre *E-proQure* conducted a study on the use of e-procurement in the public and private sector that indicates that awareness of e-procurement remains low, and that despite the available technical infrastructure, the Netherlands are not on track to meet the EU adoption deadlines^{xiii}. Even though the e-procurement provisions in the Dutch public procurement law of 2012 specify the implementation deadline of October 2018, the Government has not yet decided whether this deadline will be postponed^l.

Finally, the Public procurement act of 2012 states that this law shall be reviewed in April 2015 and examine whether the regulations and objectives have been achieved, as well as their effects and impacts shall be evaluated^{xiv}.

ANALYSIS

Strengths

Overall the Netherlands' public administration has a good reputation, and a tradition of providing a reliable and business friendly environment^{xv}. Reflecting their fundamental value for integrity, transparency and accountability within public administrations, the Netherlands has set up a sophisticated administrative framework to prevent corruption within its public services. As a result of this and of their proactive approach to promoting these values, the Dutch authorities have managed to keep the corruption cases significantly low compared to the other European Union countries.

Weaknesses

The primary weakness of the generally high performing Netherlands procurement system is the lack of centralised tracking and measurement statistics. The availability of such data would be a valuable tool in crafting future procurement reform measures, and more generally in guiding the public policy debate.

Another issue is the high number of direct award procedures for tenders under the EU thresholds. While in the Netherlands, direct award is not directly linked to concerns about corruption, it does impede efforts to foster private sector competition and

maximise public sector value for money. The sub-threshold award requirements put in place in 2013 should reduce this impact, but do not obviate the preference from more openly competitive processes. Another critical aspect of the Netherlands' procurement system is the fact that it has a very low rate of publication of EU-wide public contracts: the share of EU contracts in 2013 was 7.6% of total procurement expenditure excluding utilities compared to the EU average of 19.1%. A larger percentage of EU-wide public contracts would increase competition and related economic welfare^{xvi}.

Recommendations

- **Bigger data:** Due mainly to the Netherlands' decentralised political system, it does not collect or publish comprehensive procurement statistics.
 - Put in place a centralised data collection system or make the current systems interoperable in order to generate procurement statistics for analysis and publication.
- **Open it up:** In the Netherlands, the number of direct award procedures for tenders under the EU thresholds is substantially higher than in other MS. This may have a detrimental impact on efforts to foster private sector competition and maximise public sector value for money.
 - Promote the use of more openly competitive procedures where applicable.
- **Improve publication rate:** The Netherlands' low rate of publication of EU-wide public contracts impedes efforts to increase competition. An issue, which is also indirectly linked to the high number of tenders closed under the EU thresholds.
 - Implement a tender publication system with easy-access for all contracting authorities.
 - Increase transparency through publication of below-threshold contracts.
- **Accelerate digitisation.** Although e-procurement systems are in place, full adoption is not yet complete.
 - Conduct awareness-raising campaign to inform contracting authorities about the benefits of e-procurement.
 - Develop guidance materials to facilitate the use of e-procurement systems.
- **'Declaration of conduct':** Contracting authorities may require bidders to submit a 'declaration of conduct' in public procurement, certifying that they are not legally disqualified from bidding. In its present form, the procedure for obtaining this document is cumbersome, and can take up to 16 weeks.
 - Streamline the process for obtaining a "Declaration of conduct" or allow bidders to fulfil the requirement with a signed declaration of honour.

ⁱ Public Procurement Network (2010), Authority for the Supervision of Public Contracts, Comparative survey on the transposition of the new EU public procurement package.

ⁱⁱ Partnership Agreement between Netherlands and the European Commission on ESI Funds for the 2014-2020 programming period (2014).

ⁱⁱⁱ 2004/17/EC, 2004/18/EC, 2009/81/EC, 92/13/EEC and 89/665/EEC.

^{iv} Main changes for Procurement, available at: <http://www.pianoo.nl/belangrijkste-wijzigingen-aanbestedingswet-ten-opzichte-van-bao-wira>

^v Ministry of Justice Report on procurement activities, available at: <https://www.justis.nl/producten/gva/>

^{vi} Application Behavior Procurement Statement, available at: <https://www.pianoo.nl/document/2670/aanvraagformulier-gedragsverklaring-aanbesteden-gva>

^{vii} Public Procurement Commission (2014), Periodic Report, available at: <http://www.commissievanaanbestedingsexperts.nl/sites/default/files/bijlage/Periodieke%20rapportage%20van%20de%20Commissie%20van%20Aanbestedingsexperts%2028-03-2014.pdf>

^{viii} Rijksoverheid (2014) *Partnerschapsovereenkomst Nederland 2014-2020*.

^{ix} Netherlands Reports to the Seventeenth International Congress of Comparative Law.

^x *Algemene Rekenkamer*, Publication, available at: <http://www.rekenkamer.nl/Publicaties>

^{xi} *Algemene rekenkamer*, EU trend rapport 2015, available at : http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2015/03/Trendrapport_open_data_2015

^{xii} Auditor van Amsterdam, available at: <http://www.amsterdam.nl/gemeente/organisatie/overige/acam-0/>

^{xiii} EproQure (2014), *E-aanbesteden in Nederland: de tijd dringt* (E-procurement in Netherlands), available at: <http://www.e-procure.nl/2014/07/e-aanbesteden-in-nederland-de-tijd-dringt/>

^{xiv} Evaluation Procurement Act 2012, available at:

<http://www.rijksoverheid.nl/onderwerpen/aanbesteden/aanbestedingsregels/evaluatie-aanbestedingswet-2012>

^{xv} European Commission (2014), Assessment of the 2014 national reform programme and stability programme for Netherlands.

^{xvi} European Commission (2015) Country Report Netherlands 2015 Including an In-Depth Review on the prevention and correction of macroeconomic imbalances.