

INNOVATION-PROMOTING PUBLIC PROCUREMENT

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ABSTRACT. There is a rising debate on whether or not public spending can be allocated towards different political interests, and if so, how this can be managed. One of such areas of political interest is how to stimulate innovation, particularly in SME's. Public procurement corresponds to an average of approximately 16 % of the GNP in the Member States of the European Community. Thus, it has attracted a political interest as a means of increasing the growth, both in the European Commission and in most Member States. The European Directives on Public Procurement are intended to create jobs and ascertain a sustainable long term growth. They also aim at promoting business opportunities and to make the economic operators of the internal market competitive on the international market scene, meeting the challenges of the other trade blocks. Since some 90 % of the economic growth derives from SME's, they constitute a specific target for political stimulation. The public procurement regulation, however, also prevents direct promotion, and contains rules on equal treatment and proportionality, in order to promote competition. These preconditions, at a first glance, make it more difficult to promote growth by means of public procurement. The difficulty, however, lies in the introduction of professional skills of procurement, in combination with full knowledge and understanding of how the rules can and should be applied, not to constitute a hindrance to stimulate competition, growth and business opportunities for companies, and in particular SME's. Combining procurement skills with legal scrutiny, there are methods of fulfilling the main ambitions of public procurement – sustainable growth, value for money and innovation promoting. There is a need for setting up a National Action Plan, based on a National Policy for public procurement. The public procurement also has to be organized properly, and there is a great need of education, research and development of methods.

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INTRODUCTION

The fundamental purpose of procurement activities in general may be defined as to acquire what is needed for the business or organisation at best terms and conditions. For public procurement other prerequisites are partly valid.

Firstly, there is a regulation, EC Directives on public procurement. At the time of their creation Europe suffered from a high level of unemployment and a rather low GDP. Since the public procurement is estimated by the EC to correspond to approximately 16 % of the GDP it constitutes a very interesting instrument at the disposal of the politicians.

According to investigations, carried out by the EC, 90 % of the growth is assigned to SME's. Thus, the public procurement may contribute to strengthening the competitiveness of EU versus the other trade blocks in the west and east respectively.

Thus, it is a logical and presumably effective conclusion to use the public procurement for the purpose of increasing sustainable growth, and thereby also stimulate employment within the European Union, by opening up the public procurement to the economic actors on the internal market. It also provides business opportunities for the economic actors on the internal market to become competitive on the global market. The regulation is evidently a political instrument, created to open up the public spending, in particular for small and medium size enterprises.

Secondly, also other interests, on how to make use of the public procurement, are prevailing, e g environmental and social considerations. These are clearly promoted by being introduced in the recently revised public procurement directives (adopted in 2004). Other examples of areas, often of political interest, are labour conditions (ILO94 etc.), child work prevention, ethics, animal protection, equal treatment, usability, e-procurement and SME promotion.

ACTIONS

A question, that has recently entered the political agenda, is how the public sector may be instrumental in support of innovations in the private sector. Within the European Commission, a work is ongoing, investigating what possibilities are available. The Commission has come to the conclusion that there is a need for back-up and practical support to those

performing public procurement. A handbook is therefore planned, preliminary in the second half of 2006, on public procurement and innovation and research, in order to increase the consciousness and awareness of the possibilities for the public sector to use the procurement instrument as a means to promote research and innovation, and to clarify what is possible according to the prevailing rules.

The Commission has also appointed an expert group, with the scope to propose measures and actions, promoting the incentives for increased investments in research, development and innovations. They have submitted a proposal on several actions and considerations to stimulate and promote innovations by means of public procurement, in the report *Public Procurement for Research and Innovation, Developing procurement practices favourable to R&D and innovation*, of September 2005.

SWEDEN

The Ministry of Industry in Sweden is considering a proposal, submitted by an interdepartmental working group, on how this could be achieved within the public procurement. It is a part of the work within the Innovation Strategy, *Innovative Sweden – A strategy for growth with renewal*. Within the frame of the theme innovative public investments, the Ministry is investigating how the public procurement can be used to promote innovations.

An assignment has been given by the Government to two central authorities, the Swedish Agency for Economic and Regional Growth (Nutek) and the Swedish Governmental Agency for Innovation Systems (VINNOVA), to investigate how public procurement is to contribute to increased innovation and renewal. They shall in particular study which methods are most suitable, and which sectors are the most important to create conditions for using public procurement as a driving force for innovation and renewal.

OBSTACLES

The ruling of public procurement does not allow initiatives directed towards specific suppliers. Procuring authorities are not allowed to discriminate anyone, and all suppliers must be equally treated. Additionally, there is an important requirement on proportionality, which also limits

the demands that may be set by purchasing authorities. All requirements must be proportional, e.g. not be higher than necessary.

Fear of wrong doings is counterproductive on both getting value for money and promoting innovations. This, in combination with the lack of sufficient professionals on public procurement, makes the procurement officers careful, because they don't know how the rules could be applied. Defining, and eventually evaluating, criteria that are often subject to complaints, because there is always at least a little room for interpretation, is therefore a critical part of the tendering process. Even if the ruling in most cases is in favour of the contracting authority, it creates delays and costs. So there is a tendency of going towards fixed criteria and price to be the dominant criterion.

Can public procurement be used – in spite of all this – to promote innovations? Yes, it's possible! But, one of the most important prerequisites is an acceptance and willingness from the highest political decision makers. Hence, it requires certain intervention from the government.

PROBLEMS

Today a cohesive, surveying and at the same time policy developing body in the public procurement area, seldom exists. This, in spite of the great values the public procurement represents, and the great potential of increased efficiency possible by means of suitable procurement. No authority is responsible for renewal or development of the public procurement, providing e.g. models or tools for stimulation of a modern procurement. This also means that there is a lack of an overall "concern perspective" in the government procurement, which makes it hard to see coordination possibilities, and to exchange, deploy or make use of experience and good practice.

In each individual procurement process, the contracting authorities' own, short-sighted need to acquire the specific products, at the lowest price, is often predominant. It is often difficult for a single authority to consider more overriding public interests, e.g. technological development on a longer sight, or access to a wide range of products and suppliers in a longer perspective.

A fear for wrong-doings of procedural character, thereby risking costly and protracted court processes. This leads to a repressive behaviour, not taking any risks, and not performing any creative procurement

or specifications. This is not simplified by the lack of any body to whom purchasing authorities can turn for advice or support on how procurement can be designed to improve creativity and increase quality. There is no available source of collected experience or any structured development of methods, within public procurement of specific goods or services (except from the coordinated framework agreements within the state, and individual authorities' or associations' of interests own initiatives) that a purchasing authority can take part of as source of knowledge for their own procurement.

The competence on public procurement is also differently distributed and spread around to all central authorities, county councils and local authorities, where a number of large purchasing authorities are on the fore-front, whilst many small bodies have limited competence of their own. Running innovation intensive and ceremonious is also very difficult, and requires expert competence, e.g. to specify functions and performance for solutions not yet developed, or to evaluate innovation intensive proposals and tenders.

NATIONAL POLICY

The government should establish a function, in parallel with the always existing legally based function for surveillance etc., responsible for policy development, advice and support within the area of public procurement, where one of the responsibilities should be specifically focused on stimulating innovations by means of public procurement.

Suggested over-riding tasks are:

- Policy development
- Elicitation of a National Action Plan on stimulating innovations with public procurement
- Push renewal and development of the public procurement
- Provide models and tools to stimulate development within public procurement
- Deployment of knowledge, developed methods, guide books and handbooks, good practice

A fundamental purpose of procurement is to obtain more value for money. This is unquestionable for the private sector procurement. For the public procurement, however, there is an uncertainty about which purpose the state has. Three possible alternatives compete on priority, administrative effectuation, value creating or fulfilment of political ambitions. It is of utmost importance that the government the relative importance between these three, by clarifying their relative order and priority. This is most suitably done by means of a National Policy for public procurement.

As regards the various political ambitions, e.g. environmental and social criteria etc., as previously enumerated, it is important to decide upon a National Action Plan for each area. Such an Action Plan must, however, be co-ordinated in an overriding National Action Plan, in order not to create sub optimization. Obviously, a National Action Plan on innovations has much in common with a National Action Plan on e.g. promoting SME procurement.

There are many business models available, e.g. Public Private Partnerships, incentive agreements, risk management, IPR matters etc., that has to be developed and adjusted to be applied within the public procurement regulation. A certain activity on this will create a good platform for better business and improved innovation.

The result of the above must be diffused to the actors, by means of guide books, seminars and training.

PREVENTION

The fear of wrong-doing can be prevented with guidelines on how the rules on public procurement, relevant for innovations and technological development, can be used in practice to achieve procurement availing innovative products.

Also guidelines and support and advice to purchasing authorities on how the new procurement processes and other changes, e.g. projects in design contest, in the new EC-directives, can be used in an innovation promoting manner.

Analysis and guidelines on proper application of the exception in the rules on services for research and development is important, in order to understand and properly make use of them.

DEVELOPMENT

Also other efforts are required to make the purchasing authorities adopt new procurement methods, and see the possibilities for increased stimulation of innovations by alternative design of the procurement process and contract.

The government should consider commissions to analyse how the financing of the authorities influences the possibilities of sustainable financing of larger, innovation intensive projects.

It should also be considered to establish pilot projects with secured long-term financing.

The practitioners, not just the legal people, must actively participate in EU initiatives and work towards improvement and development of the public procurement, and spread the result of such work.

FRAMEWORK AGREEMENTS

Government framework agreements, e g coordinated by a central coordination function, may be used as an instrument to promote innovations. The government should consider a procurement policy, wider than just for coordination, by using framework agreements to refocus from short term savings to fulfilment of other political ambitions, e g to promote and push technological development in a desired direction (e g in the environmental area), or to support innovations.

Initiating a policy, defining areas relevant for the state to procure more coordinated, is required. This, not necessarily via big framework agreements, but also with support from an expert body, giving suitable support on development of methods to the purchasing authorities, or identifying suitable areas for cooperation between relevant purchasing authorities.

Such a body, responsible for policy development in the public procurement field, should have a certain task to consider framework agreement models attracting small and medium size enterprises.

Let the policy developer analyse the pros and cons with increased coordination, and suitable forms for coordination.

Let the policy developer consider to what extent it is suitable to work more with coordination of procurement, where authorities with similar

requirements or interests coordinate in the specification of needs and requirements.

DIRECT CONTROL

To achieve a break-through, in the efforts to make purchasing authorities act in an innovation stimulating way, direct control of certain particularly interesting purchasing authorities could be taken, by means of commitments in their “regulation letter”, limited pilot projects, etc.

Assignments could be given to some specific authorities to, in their drawing up of procurement consider the interest of availing innovative solutions.

Assignments could also be given to some specific authorities to perform pilot projects, involving technological development.

A commitment could be set on state owned companies to include innovation promotion in their procurement.

Assignment should be given to a policy developing body to analyse the controlling of central authorities procurement to include innovation supporting criteria in their procurement.

The policy authority should be given the authority to initiate coordination projects for innovations, also outside the coordinated framework agreements.

BEST PRACTICE

Although a few of the bigger authorities have come far in the use of different contract models, promoting innovations and technological development, the need for deployment of experiences and knowledge to smaller purchasing authorities is still great. A large number of models need to be analysed, developed and adjusted to the public procurement. Examples of this kind are procurement based on specification of functions, public private partnerships, concessions and technology procurement.

A policy developing body should be given an important role of edifying knowledge, by providing information and good examples on contract models stimulating innovations. The role should be performed in

cooperation with other institutions active within research and development, authorities with experience from innovation procurement, and with other interesting parties working for an increased competence and development of the public procurement.

The policy developing body can assist in the creation of requirements based on specification of functions, or specific models in sectors with such is desired, e g for procurement involving a great portion of creativity (design, form, architecture). Coordination should also be initiated with relevant business associations, to identify such demands, and to cooperate on suitable, balanced requirements.

Good examples on contracts with built-in incentives should be spread, by the policy developer.

The policy developer may provide recommendations on how concessions can be used in a way to permit innovations, flexibility, incentives etc., and at the same time comply with the fundamental EC principles.

A SPECIAL BODY

A very important prerequisite for success, in promoting innovation by public procurement, and otherwise for development of the public procurement, is the establishment of a specific responsible body, having a clear task as policy developer and providing advice and support on public procurement, one of the tasks being particularly focusing on innovation promoting public procurement.

This must not be confused with the role of a public procurement office or agency, having a specific role for surveillance and information on public procurement, saying what must be done and what is not allowed.

Now we are talking about fully developing the value creating powers to restore the force of innovation. As an example, take look at Sweden one-hundred years ago! What does it look like to-day?