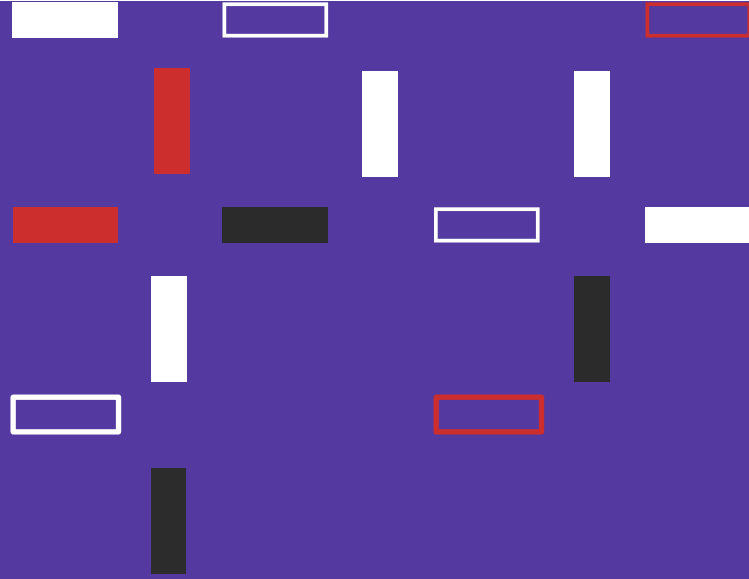


European
Innovation
Council



EIC Innovation Procurement Toolkit

European Innovation Council – Strategic use of procurement to open up business opportunities for EIC innovators.

20 November 2024

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Executive Summary

Chapter 1: Introduction

This chapter of the Toolkit is conceptually divided into three sections with the purpose to present: the EIC and its activities; the fundamentals about Innovation Procurement in B2G and B2B; and an overview of the structure and content of the entire toolkit.

The [European Innovation Council \(EIC\)](#) is Europe's flagship innovation programme to identify, develop, and scale up breakthrough technologies and game-changing innovations. It offers three funding schemes; [EIC Pathfinder](#), [EIC Transition](#), and [EIC Accelerator](#) aiming to support game-changing innovations throughout their lifecycle with a budget of €10.1 billion. [Innovation Procurement](#) is one of the three pillars of the European Commission's [Strategic Procurement](#) along with [Green Public Procurement](#) and [Socially Responsible Public Procurement](#). The term refers to the acquisition of new, cutting-edge solutions that are either not yet widely available in the market or have not yet achieved mainstream adoption or in some cases the development of innovative solutions per se (R&D services).

The present chapter introduces the main aspects, differences and similarities of both public (B2G) and private (B2B) procurement. The advantages and shortcomings of both are analysed, while examining the applicable legal framework from a national, EU and international standpoint. Additionally, the different types of procurers, contracts, the applicable rules and the timescales in both B2G and B2B procurement are explained. Finally, the introduction showcases why innovation procurement can be beneficial for an economic operator, where to find opportunities and how to apply to tenders from a more practical point of view.

The primary objective of the Toolkit is to equip companies, in particular start-ups and SMEs, with the essential knowledge, and guidance tools to actively participate in innovation procurement procedures.

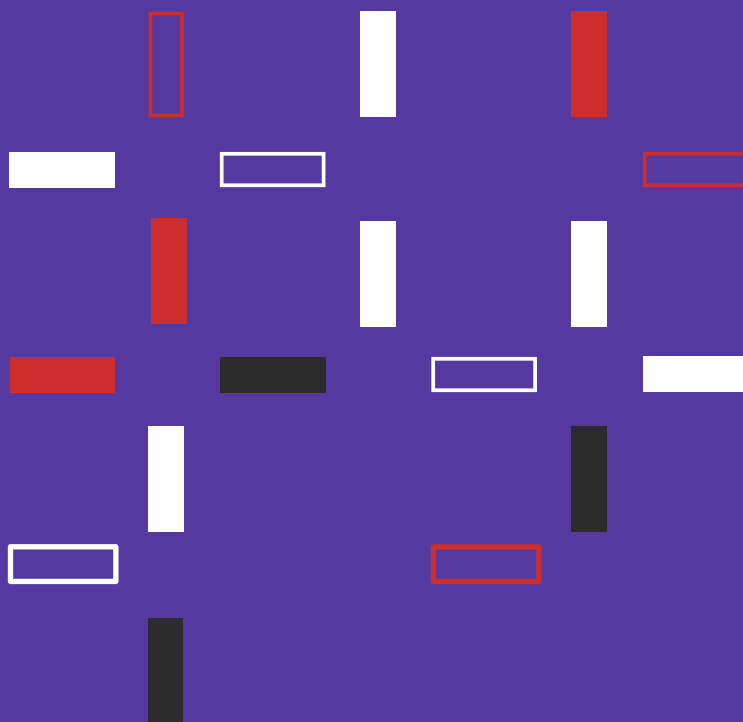
All in all, the first chapter is a friendly comprehensive in-a-nutshell bridge to the rest of the Toolkit that also provides an overview of the structure and content of all the chapters and modules.



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European
Innovation
Council



Introduction

1. Introduction

1.1. European Innovation Council (EIC): mission and programmes

What is the European Innovation Council (EIC)?

The [European Innovation Council \(EIC\)](#) is Europe's flagship innovation programme to identify, develop, and scale up breakthrough technologies and game-changing innovations. It has been established under the EU [Horizon Europe](#) programme, and has a budget of €10.1 billion to support game-changing innovations throughout the lifecycle from early-stage research to proof of concept, technology transfer, and the financing and scale-up of start-ups and SMEs.

What are the funding schemes offered by the EIC?

The EIC offers three funding schemes: [EIC Pathfinder](#) [supporting deep tech projects with a high degree of scientific and technological ambition and risk (TRL 1-4)], [EIC Transition](#) [focusing on validating technologies and developing business plans for specific applications (TRL 3-6)] and [EIC Accelerator](#) [funding the development and scale-up of innovations with the potential to create new markets or disrupt existing ones (TRL 5-9)].

Find out more about the [EIC Programme of 2024](#) and the [EIC Fund](#).

EIC Business Acceleration Services (BAS): the SPIN4EIC Innovation Procurement Programme

EIC support goes far beyond funding. It provides the EIC top-notch innovators with access to a range of tailor-made, high-quality [Business Acceleration Services \(BAS\)](#) helping the scaling up and commercialisation of the EIC innovations.

Under [Horizon Europe](#), the EIC strives to ensure that financial support is only the beginning of the journey of its beneficiaries, with mechanisms available to bring innovations to the market and grow one's business. As an EIC-supported start-up or innovator, a company can benefit from access to a range of tailor-made **EIC Business Acceleration Services (BAS)** available at any stage of development of a companies' activities and of the EIC research and innovation cycle.

Who can benefit from these services?

- **EIC Awardees** from the EIC Accelerator (SME Instrument included), EIC Transition, and EIC Pathfinder (FET Active and FET Open included) funding schemes.
- **Women TechEU awardees** (implemented under the '[European Innovation Ecosystems](#)').
- Members of the [EIC Scaling Club](#).
- As an **EIC Accelerator applicant** invited to prepare a full proposal (successfully passed Step 1), an economic operator can benefit from 3 days of remote coaching and get support with the preparation of the full proposal (Step 2 application).
- Some of the services are also available to companies receiving the **Seal of Excellence (under Horizon Europe)**, as well as to innovators and companies coming from other European or national initiatives that have entered into a specific agreement with the EIC.

The EIC BAS has **no expiration date**. Even if a project has ended, an economic operator is eligible to apply for the services.

What services are available?

The EIC Business Acceleration Services are structured around three main pillars providing companies with access to all that is needed to boost their growth:

- [Contracts](#)
- [Contacts](#)
- [Skills](#)

Find more specifically about the [EIC Innovation Procurement Programme](#).

How can an economic operator access all these services?

Business Acceleration Services are either developed directly by the EIC, or provided through the EIC Ecosystem Partners. All the EIC BAS open opportunities are available on the [EIC Community Platform](#).

1.2. What is Innovation Procurement and why is it important for businesses?

What is Innovation Procurement?

[Innovation Procurement](#) is one of the three pillars of the European Commission's [Strategic Procurement](#) along with [Green Public Procurement](#) and [Socially Responsible Public Procurement](#).

"Procurement" refers to the function of purchasing goods or services from an outside body. It is a process leading up to the conclusion of a contract. Public procurement markets constitute a significant proportion of the economy in most industrialised nations. Public procurement accounts for approximately 13% of GDP in OECD countries.

Innovation Procurement refers to the acquisition of new, cutting-edge solutions that are either not yet widely available in the market or have not yet achieved mainstream adoption. It involves proactively identifying and purchasing innovative products, services, technologies, or business models that can give an organisation a competitive advantage.

According to leading research from [Capgemini](#):

"Innovation Procurement leverages procurement's unique position to identify where and how innovation can create value and enhance business operations, continuously scouting for such opportunities with existing and new suppliers."

According to the [European Commission](#), "Innovation Procurement includes:

- the development of innovative solutions through the procurement of research and development services;
- the procurement of innovative solutions that are not yet available or do not exist on the market; and
- the procurement of innovative solutions that do exist but are not yet widely available on the market."

Why is Innovation Procurement important for businesses?

Innovation is a vital part of the overall strategy of an organisation, as it enables companies to **stay ahead of the competition** by continuously introducing new and improved products and services, leading to increased market share, higher revenues, and increased customer satisfaction.

Innovation fuels business success. [McKinsey](#) estimates that 25 to 45 percent of revenues come from innovative products. In this sense, the procurement of innovation opens significant market opportunities for businesses, accelerates the process of bringing innovative products and services to the market, and attracts funding opportunities.

1.2.1. Public Procurement: B2G

What is Public Procurement (B2G)?

Public Procurement, or Business to Government (B2G) Procurement, is a **complex economic and legal phenomenon**. In the modern European economy, **the State actively participates by ensuring the provision of goods and services needed to fulfill public duties**. Since the State/governments cannot produce everything in-house, they frequently rely on private companies through public procurement to meet their needs.

According to the Organization for Economic Co-operation and Development (OECD), countries typically allocate around 30% of their general government expenditure to procurement. That's more than 13% of their gross domestic product (GDP). Thus, when a government is building a bridge or buying laptops, they are probably using their procurement budget.

Local governments are responsible for a significant part of public procurement. They make sure the community gets what it needs. Local government refers to the lowest tier of administration, distinct from the centralized state-level bodies. For example, these are towns, municipalities, counties, and even special-purpose local governments (like those dedicated solely to schools or healthcare). For instance, the United States boasts over 35,000 local governments, Italy has more than 7,000 municipalities, and Germany has a 10,000-plus municipalities. These local governments handle everything from fixing potholes to managing community centers. Local governments are economic powerhouses. They are responsible for over 50% of contract awards in some countries. **In OECD countries, local governments account for around 30–40% of total public procurement spending.** So, while national authorities might be busy drafting policies, local governments are out there buying school supplies, fixing playgrounds, and ensuring the town hall has enough pens.

Public Procurement constitutes a significant expenditure in the European economy, with approximately 14% of the EU's GDP in 2022 being spent on it. Of course, some Member States spend more, and some spend less. Through that significant spending, Member States cannot only meet their varied and ever-evolving needs but can also **pursue strategic goals or other policy objectives** – from facilitating the green transition to supporting underdeveloped areas and facilitating technological innovation.

Nonetheless, given the **European Union's objective of creating a fully functional, competitive, non-discriminatory internal market, where economic operators have the same opportunities**, Member States do not have unlimited discretion in choosing their contractors. In their procurement activities, they have to observe **the legal framework provided in the Public Procurement Directives** (Directive 2014/24/EU on Public Procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors; and Directive 2014/23/EU on the award of concession contracts) **as well as general principles of EU Law**. Beyond ensuring the proper functioning of the internal market, the legal framework is also intended to prevent governments from engaging in preferential treatment and corruption and to ensure efficient spending of public funds.

Thus, in brief, Public Procurement, in the European context, means the purchasing activities of the State, in a fair, competitive, and pan-European market.

1.2.2. Private Procurement: B2B

What is private sector or business-to-business (B2B) procurement?

Procurement in the private sector is **the process where private entities obtain goods or services, for the**

purpose of achieving organisational objectives, from other private entities without the use of public funds or any interference from public stakeholders. It is a critical component of any successful business, as it helps to ensure that the organisation has the necessary resources to carry out its operations. Procurement involves a number of activities, including **researching potential suppliers, negotiating contracts, and managing supplier relationships.** It also involves **the selection of suppliers, the evaluation of their performance, and the payment of invoices.** In addition, procurement also involves **the management of an organisation's supply chain,** which includes the sourcing, storage and distribution of goods and services.

In private procurement, organisations contract directly with private companies to obtain the goods or services they need. This can include anything from raw materials and equipment to professional services and software licenses. **Private procurement offers more flexibility and customisation,** since organisations can negotiate terms, conditions, and pricing with suppliers, based on their specific requirements. This adaptability allows businesses to tailor their procurement processes to their unique needs under a quite flexible regulatory regime.

1.2.3. Differences & similarities of B2G and B2B

What are the key differences between B2G and B2B procurement?

At a high level, the goal of procurement is the same in both the public and private sectors: to obtain the goods, services, and materials needed to meet organisational goals. However, Public (B2G) and Private (B2B) Procurement have a number of similarities and differences. The latter are briefly addressed in the following part.

The most obvious difference between those two modalities of procurement relates to **the legal regime governing the procurement activity** in question. Public Procurement requires, as explained above, an open, competitive tender procedure – something that private buyers do not have to comply with. Additionally, this **difference in legal regime can affect the legal nature of the contracts** in question, **as well as their review** by the competent body or Court in case of complaints.

Private buyers are subject to far fewer restrictions and conditions, compared to public buyers, who must conform with the EU legal framework on Public Procurement and the applicable national legislation. The legal regime under which a Private Procurement is set up is mainly based on the national laws which govern the contracts in question, and the associated legal principles. Overall, however, the legal framework is clearly different between B2G and B2B procurement, which can affect, *e.g.*, how procurement opportunities are publicised and advertised to potential qualified bidders, and the wider business world. In brief, **B2B procurement is governed largely by contract and commercial law,** while **B2G procurement is governed by Public Procurement Law** within a well-defined institutional framework.

Another obvious difference is that the buyers, and therefore **their needs, are different.** While in a contract for, *e.g.*, the purchase of office supplies the needs and interests of a public and a private buyer can be expected to largely be the same, the same does not necessarily hold true in relation to, *e.g.*, **the B2G procurement of R&D&I activities may have particular policy considerations and require compliance with specialised regulations.** Furthermore, **what a public and a private buyer may prioritise is also different** – from the interest of a private buyer to, *e.g.*, maintain its stable, long-standing commercial relations, to that of a public buyer to, *e.g.*, ensure minimal environmental impacts. In other words, the “wider” considerations can, and often are, different. This difference in priorities and considerations can even extend to elements of price, where the extent of leeway between private and public buyers is different, as despite private and public buyers having the same interest in obtaining the most beneficial deal, **public buyers are often subject to pre-defined budgets.**

In the same context and given the “mission” of EU Public Procurement Law and the areas and principles of

law it interrelates with **public buyers are often more risk averse**. Given this difference, **B2G procurement is also subject to much more scrutiny**, as the funds being spent come from the public purse. The State, widely construed per EU Law, does not always act as a private buyer would and is not profit-motivated – something which is not true of private entities. Thus, while **B2B procurement is driven by profit considerations**, **B2G procurement is partly driven by social/public needs and policy decisions**.

A further difference, from the perspective of the seller, relates to the size and power of the State as a buyer. **Beyond the significant differences in the legal regime mentioned above, there are some economic ones**; mainly the fact that **the State**, for the most part, **can be more reliable to conduct business with**, in that, *e.g.*, it is unlikely to default. Further, the State **tends to be far more significant, in terms of money**, buyers and is more likely, due to its sheer size, **to implement technological solutions aimed at streamlining the procurement process** and can have large teams with accumulated expertise overseeing B2G procurement.

In brief, there are some key legal and economic differences between B2G and B2B procurement, stemming primarily from the nature of the public buyers as a part of the wider State. **B2B and B2G transactions differ** thus not only **in terms of the entities involved** but also **in relation to the procedures and processes** which are to be followed and **the scope of the transactions** in question, as well as **the interests of the buyers and economic/commercial realities**.

Differences		
	B2G	B2B
Legal Regime	Stricter, requiring an open, competitive tender procedure. Public and administrative law applies.	More flexible with far fewer restrictions and conditions. Commercial and civil law applies.
Strategy & priorities	Public buyers with needs that may encompass public goals, policy considerations and specialised compliance issues. There is an overall approach in favour of the interest of society.	Private buyers may focus more on profit and the cost-benefit aspect of a deal or creating stable, long-lasting commercial relations with suppliers. There is an overall approach in favour of the interest of the individual company and the fulfilment of its commercial goals.
Accountability	Society (general public)	Private Investors
Budget	The public buyers usually have a pre-determined budget at their disposal.	The private buyers usually have more flexibility concerning their expenditure.
Risk aversion	High	Moderate
Entities involved	Public buyers	Private buyers
Reliability	High	It varies from buyer to buyer
Implementation	Objective/transparent manner	Subjective/non-transparent manner
Technology & Innovation	More probable for the actors to implement technological solutions to streamline and improve the procurement process.	Less streamlined procedures and less innovative solutions involved in the procurement process.

What are the key similarities between B2G and B2B procurement?

Despite the differences mentioned above, there are also numerous similarities between B2G and B2B procurement.

First off, it is, after all, still procurement. **The nature and type of the economic transactions are largely similar**. This means that even if the legal regime is different, **the basic tents and principles governing the contracts are similar**. Similarly, in economic terms, there can also be significant similarities – *e.g.*, selling office supplies to private and public buyers does not differ much from the perspective of the seller, despite some differences stemming from the legal framework governing B2G procurement, such as meeting certain financial and technical requirements to participate in a tender. However, those similarities can be called into question when it comes to more complex procurements. **The structure of the procurement contract**, despite the potentially major differences in procedure, can also be quite similar. The same applies to the

expectations of the buyer, once a contract has been entered into.

Further, it is essential to demonstrate **value for money, in both types of procurement**. Both public and private buyers are subject to **oversight**, albeit from different bodies – public buyers being accountable to taxpayers, watchdogs, and, overall, the components of political life, and private ones to boards and shareholders. Additionally, both in public and private procurement, **proper accounting and bookkeeping practices** ought to be followed, **and compliance with financial and other obligations and policies** must be demonstrated.

It is also worth noting that with the **rise of ESG**, and the introduction of more and more sustainability-oriented policies and legal instruments in Europe and beyond (such as the Corporate Sustainability Due Diligence Directive, or the Sustainability Reporting Directive), **private buyers are becoming increasingly interested in environmentally and socially responsible procurement practices**.

Similarities	
	B2G and B2B
Nature & type	Both procedures are still considered procurement procedures, where the basic tents and principles governing the contracts are similar as well as the economic transactions per se.
Added value	Clear added value to the customer
Oversight & compliance	Both public and private buyers are subject to oversight, albeit from different bodies and compliance with financial and other obligations and policies must be demonstrated.
Execution of procurement	
Due diligence & formalities	Criteria, evidence, timeframe
Acquisition activities	Costs related
Execution of contract	
Structure	The structure of procurement contracts tends to be similar more often than not as well as the expectations deriving from the respective buyer.
Terms and conditions	Reflected by pricing strategy
Intellectual Property Rights (IPRs)	Protecting the return on investment in IPRs
Trade secrets	Protecting an economic operator's organisational interests
Liabilities (execution of contract)	Reflected by pricing strategy and exit strategy
Risks	Mitigation policy – strategy - preparedness

What do those mean for innovative companies (especially SMEs and start-ups)?

For innovative companies (in particular SMEs and start-ups), those differences mean that, if they are interested in **B2G procurement**, they may have to **navigate a complex legal regime**, and thus could require expert advice. In this context, innovative SMEs and start-ups (including EIC beneficiaries) engaged in B2G procurement have to **comply with financial and technical requirements** and can **be subject to exclusion criteria**.

Further, those differences mean that **the negotiation leeway and flexibility** which **can exist in B2B procurement** do not exist when it comes to B2G procurement. The State has its hands tied, due to the legal framework to which it must adhere, on top of the contractual rules and principles which underpin all procurement contracts. **The process for securing a procurement contract is thus different** – and **differing needs and interests** ought to be taken into account by sellers.

1.2.3.1. Advantages and disadvantages of B2G

B2G Procurement	
Advantages	Disadvantages
Open, competitive, non-discriminatory, and transparent procurement procedure	Reduced flexibility & high level of complexity concerning the regime
Stability & predictability of the legal regime	High risk aversion that can be problematic in the context of R&D&I
Highly beneficial process from an economic perspective	Rigidity and slow reaction in relation to new emerging needs
The “State” is more often than not a reliable buyer	Increased compliance costs
Predictability concerning the public sector needs	Time-consuming process
Accelerated process of bringing innovative scientific results to market	The “State’s” size and economic power can be problematic for private entities, especially when it comes to dictating terms
Facilitated entry and access of new innovative players to the procurement market	
Growth stimulation of the supplier(s) in the context of R&D&I	
Multiple funding opportunities and investments attraction	

What are the main advantages of B2G procurement?

There are many reasons why a private entity may wish to engage in B2G procurement, as such procurement can present numerous advantages.

First, the legal regime is such as to mandate **open, competitive, non-discriminatory, and transparent**

procurement procedures. This means that regardless of business contacts, or pre-existing commercial relationships, a qualified bidder can submit a competitive bid, and the “best” bid will be selected. The quality of a given bid is assessed on objective selection and award criteria, which are known to potential bidders. The openness and fairness of the legal framework, as well as its objective of promoting free and fair competition within the internal market, can represent a significant benefit for economic operators. In the same context, the obligation to publicise the tender documents, and the existence of EU and national procurement portals and related databases, can allow economic operators to monitor available opportunities, and plan their activities accordingly. This legal certainty is of significant importance and economic value.

Further, the legal regime is well-established and is thus stable and governed by overall predictable rules. This **stability and predictability of the legal regime** are beneficial for ensuring fair competition and equal treatment and allow for long-term, strategic planning on the part of sellers. Additionally, the regime is applicable throughout the EU, allowing economic operators who master that regime and its intricacies to expand their economic activities beyond the borders of the Member States where they are currently active. That regime imposes the same obligations on all Member States, allowing for further stability and predictability in an economic operator’s activities in the European single market. This can be contrasted with the various in-house practices and policies of private buyers, which can often differ.

Beyond the legal advantages summarised above and the economic advantages resulting from them, such as legal certainty and predictability, B2G procurement can have other economic advantages related to the scope, nature, and scale of some B2G transactions. This applies to the **overall magnitude of public procurement as an economic activity**, representing approximately 14% of the EU’s GDP. Further, engagement in B2G procurement can allow a seller or supplier to gain experience and expertise in the procedures and use the experience with the public sector as a reference and basis for future tenders. Additionally, the State can be involved in and assist with the co-development of a solution with a supplier.

Equally, **the State’s size can be said to be an advantage** – it is much less likely that a State will default on debts or declare bankruptcy. Additionally, beyond the predictability resulting from the legal regime, there is an increased level of **predictability as to the needs of the State**. Equally, a solution which meets public needs, but which may not be commercially viable can still be the subject of B2G procurement, due to the State’s motivations going beyond profit-making.

In the context of R&D&I procurement, there can be further advantages to B2G procurement. First, B2G procurement can help **accelerate the process of bringing innovative scientific results to market**, as it can shorten the timeframe for the deployment of innovative products and services in the market. Further, B2G procurement can **facilitate the entry and access of new innovative players to the procurement market**, especially in the context of SMEs and start-ups. For example, the phased pre-commercial procurement (PCP) approach, with its gradually growing contract sizes which follow the natural growth path of innovative start-up companies, can facilitate the access of small innovative firms (SMEs) to the procurement market. Additionally, B2G procurement can also **stimulate the growth of the selling entity, facilitating the attraction of private investment in the form of venture capital, and facilitating loan facilities or debt financing**. Finally, in the B2G context, there are multiple funding opportunities available for certain types of activities, such as R&D&I.

What are the main disadvantages of B2G procurement?

Despite the numerous advantages outlined above, B2G procurement also has a number of disadvantages and drawbacks, some of which mirror its advantages.

First, the fact that B2G procurement is based on a well-defined legal regime can itself be a drawback, as it **reduces flexibility**. There is very little room for negotiation, and the need to adhere to strict procedures increases the complexity for sellers. In this context, private sellers can find themselves subject to **a large and complex web of obligations** which they cannot negotiate or avoid. In other words, in B2G procurement there is, in fact, quite a severe limitation of freedom to contract. Similarly, States and their bodies/agencies

can be quite **sclerotic and slow to react to new emerging needs**. Their **risk aversion** can be problematic for potentially risky R&D&I activities.

This lack of flexibility and room for manoeuvre, coupled with the complexity of the regulatory regime, can **increase compliance costs**, as well as **the time** it takes for a bid to be won and an agreement to be reached. In this context, it is important to note that the State can afford time delays – for example, the State is less likely to seek, or agree to, an extrajudicial settlement should a dispute arise. Such issues can have vastly different effects in different Member States – depending on the speed and cost of judicial proceedings, and the type/division of Court which gets to hear and decide upon the dispute (*e.g.*, administrative or commercial Courts).

Further, the economic, and overall, size of the State can itself be seen as a potential disadvantage. **The State can operate in monopsony situations** (situations where there is only one buyer on the market) which can allow it to exert economic power over the private buyers. Even in situations which are not monopsonistic, the State gets to dictate the terms of the procurement to a very large extent – and the private entities are generally unable to effectively and fruitfully negotiate with the State.

What do those advantages and disadvantages mean for innovative companies (especially SMEs and start-ups)?

Overall, B2G procurement can have significant advantages and disadvantages – **it largely depends on perspective and on the specifics of a given procurement procedure and agreement**. The predictability of the legal regime, its wide geographic reach, and the legal certainty it creates are in and of themselves significant advantages – yet they also result in limited flexibility. **Inflexibility is**, in other words, **the price one pays for that certainty and stability**. Equally, the size and power of the State can be a definite advantage – it is, after all, a rather safe client for a private seller, and it tends to spend large (and generally stable, as a percentage of GDP) sums of money on procurement and can facilitate and accelerate the deployment of innovative solutions. Yet, at the same time, that economic power can allow the State to dictate terms in a manner that almost no private buyer ever could.

1.2.3.2. Advantages and disadvantages of B2B

B2B Procurement	
Advantages	Disadvantages
Less bureaucracy and procedural complexity	Reduced transparency in this type of procurement
Time efficient procedure	Lack of strict oversight
Great flexibility in the allocation of funds	Risks linked with the potential neglect of ethical, social and environmental aspects of procurement
Fewer regulatory constraints	Largely unregulated procedure that can potentially lead to favouritism, discrimination, or contract management issues
Freedom concerning operations allowing private entities to meet their goals	Legal uncertainty

	Limited use of procurement technology and innovative tools that can lead to reduced publicity
	Lack of streamlined procedures that can influence efficiency

What are the main advantages of B2B procurement?

There are many reasons why a private entity may wish to engage in business-to-business (B2B) procurement, as such procurement can present numerous advantages.

In the private sector procurement (PSP) or B2B circumstances, there is **less bureaucracy** and **procedural complexity** hence it tends to be a more efficient procedure.

Additionally, the institutional policies that private companies operate under are tailored in a way to optimise meeting their business goals. This means they can source suppliers quickly and enter into contracts without the need for a bidding process, thus **saving a precious resource, which is none other than time**.

Furthermore, private companies can easily transfer money from one department to another if business conditions end up changing. For this reason, B2B procurement is accompanied by **greater flexibility in the allocation of funds**, even during the performance of a contract. [Private companies can be much more reactive and flexible than the State.]

Finally, the private sector and the B2B procurement overall are subject to **fewer regulatory constraints** in comparison to their B2G counterpart. Even though private companies and their contracts must comply with national and international legislation, there is more freedom during the execution of a procurement process.

What are the main disadvantages of B2B procurement?

Despite the numerous advantages outlined above, B2G procurement also has a number of disadvantages and drawbacks.

In private sector procurement (PSP) or B2B circumstances, due to the fact that private organisations have a more profit-oriented mentality, potential trade secrets, and confidentiality issues, there is a lot **less transparency** accompanying their procurement processes.

Additionally, due to the aforementioned cost and efficiency prioritisation from the side of private entities, there is a **risk that ethical, social, and environmental considerations may be eclipsed**. In combination with the **lack of strict oversight**, there is a higher probability of unethical practices and disregard towards social and sustainability goals.

Furthermore, in the private sector, procurement is largely unregulated, and organisations are free to pursue their own strategic objectives. This flexible regime can constitute a double-edged sword, leading, indirectly, to **favouritism, discrimination, or contract management issues**. Without defined contract management processes, and due to the potential **uncertainty surrounding the applicable legal provisions**, this type of contract may inadvertently be non-compliant, enter legal grey areas, or have inadequate or unclear KPIs and review processes.

Finally, **the use of procurement technology and innovative tools may be limited** in the private sector. For example, the use of e-procurement systems, which allow organisations to modernise the procurement process, reduce costs, and improve transparency, differs from each private procurer usually conducting the procurement process based on its capacity and needs, leading to a lack of a clear streamlined procurement process. This lack of standardised procedures can lead to a **lack of overall transparency and publicity**,

making it difficult for suppliers to identify tenders and learn about the exact terms and conditions. It can also lead to **funds mismanagement and lack of overall efficiency** concerning the resources distribution which is another hurdle in the procurement life cycle.

1.2.4. Applicable legal framework

What is the applicable legal framework for Innovation Procurement?

The legal framework for procurement operates at national and international levels, establishing **rules and principles to ensure transparent, fair, and non-discriminatory procurement practices in public procurement**. Private procurement, on the other hand, **allows businesses to tailor their procurement processes to their unique needs under a more flexible regulatory regime** based on applicable national law.

1.2.4.1. National, EU, and international procurement legislation in public procurement

How is public procurement regulated?

In principle, public procurement is regulated by national legislation and international law, whether it is European law or international law and trade agreements. For example, a number of countries that are part of the World Trade Organisation (WTO) have negotiated the Agreement on Government Procurement to ensure open, fair, and transparent conditions of competition in the government procurement markets. **The Government Procurement Agreement (GPA) is a plurilateral agreement with 22 parties comprising 49 WTO members**, which is composed of two parts: (i) the text of the Agreement, and (ii) the parties' market access schedules of commitments. The text of the Agreement establishes **a set of rules that must be observed in government procurement**. However, these rules do not automatically apply to all the procurement activities of each party. Rather, the coverage schedules play a critical role in determining whether a procurement activity is covered by the Agreement or not. Only those procurement activities that are carried out by covered entities purchasing listed goods, services, or construction services of a value exceeding specified threshold values are covered by the Agreement. These [schedules](#) are publicly available.

The WTO-GPA mandates fair and transparent procurement practices globally, setting out key principles in its articles. Article IV of the GPA requires non-discrimination and national treatment, ensuring that goods, services, and suppliers from any party to the agreement are treated equally. Article VI mandates transparency, requiring that laws, regulations, and procedures be published promptly. Article VII requires fair and impartial procurement processes, mandating that decisions be based on publicly available criteria.

Bilateral and regional trade agreements, such as the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, **further facilitate international procurement by promoting transparency and non-discrimination**. These agreements often **include provisions for market access, procedural fairness, and the establishment of dispute-resolution mechanisms**.

In EU law, public procurement is, first, governed by some provisions of the TFEU. While the European Treaties have not, historically, specifically addressed public procurement, they remain particularly relevant. This is because public procurement, as an activity, falls squarely within the scope of the free movement provision which underpins the EU's internal market. The free movement rules include a prohibition of discrimination, both direct and indirect, by the State - a prohibition which extends to discriminatory procurement practices. (Arrowsmith, 2014, p. 156)

Trade barriers in procurement cannot be eliminated solely by the application of the TFEU provisions. Consequently, the EU has adopted **directives** to regulate award procedures for significant contracts. (Arrowsmith, 2014, pp. 156-157)

In the European Union, the legal framework governing Public Procurement is based on secondary EU law, taking the form of Directives; namely, Directives 2014/24/EU on Public Procurement; 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security; and 2014/23/EU on the award of concession contracts. The most relevant in the context of this document is Directive 2014/24/EU on Public Procurement since it establishes the general rules for public procurement. These rules encompass requirements such as advertising contracts across the EU, conducting competitive bidding processes, setting exclusion criteria, and adhering to minimum time limits for various procurement phases.

Since EU Directives are not directly applicable, Member States must transpose them into national legislation. In practical terms, the main point of reference for private businesses engaged in Public Procurement should be the **national law of each Member State**. Nonetheless, due to their nature as EU Law, the notions, principles, and practices that underpin and permeate those national laws stem from the Directives. Thus, the national legislation should be read in accordance with the EU Directives and the rich body of case law that has been developed by the European Union Court of Justice interpreting their provisions.

The EU Directives are applicable only to contracts that exceed a certain threshold, based on the premise that cross-border trade is more probable with larger contracts. (Arrowsmith, 2014, pp. 157-158)

The EU Directives offer a framework within which Member State implement their national procurement policies. Due to the framework nature of these directives, Member State often adopt additional rules when implementing national procurement policy through legal regulations. These additional rules may impose stricter requirements than those specified in the directives, which set only minimum standards. (Arrowsmith, 2014, p. 176)

For instance, Germany's Vergabeverordnung (VgV) implements these directives, often adding more stringent or detailed regulations tailored to national contexts and needs. Member States may also include more specifics in their national rules than what the directives require. Additionally, they frequently regulate areas not covered by the directives at all, such as mandating a performance bond to protect the administration's financial interests. (Arrowsmith, 2014, p. 177).

Further, it is important to bear in mind that Public Procurement law can and does interrelate with other areas of law, such as EU internal market law and EU State aid law.

What are the principles/doctrine underpinning the legal framework?

Public procurement is underpinned by core overarching principles of [fair and open competition](#), [equality of treatment](#), [non-discrimination](#), [legal certainty](#), [transparency](#), [proportionality](#) and [sound procedural management](#).

Those principles are given more specific expression through the national laws and the Directives. These principles help to create a level playing field for suppliers and promote integrity and accountability in public procurement.

When and how do EU rules apply?

All public procurement procedures in the EU are carried out on the basis of national laws. However, above certain thresholds, those national laws incorporate the Directives, and thus EU procurement rules, into the national laws. Therefore, despite all B2G procurements being carried out under national laws, those laws, above certain thresholds, need to comply with the EU rules.

The value limits (**thresholds**) mark when **EU rules** are used depending on the subject of the purchase, and who is making the purchase. **These thresholds are revised regularly and the amounts are adjusted slightly.**

Any interested party can check the [detailed public procurement thresholds](#) or verify the limits directly with the respective national rules.

For **lower-value tenders, only national public procurement rules apply** but the general EU principles of transparency, equal treatment, proportionality, protection of legitimate expectations, and legal certainty should be respected.

1.2.4.2. National, EU, and international procurement legislation in private procurement

How is private procurement regulated?

International commerce in private procurement involves the buying and selling of goods and services across international borders, governed by instruments such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) and standardised terms like Incoterms®, developed by the International Chamber of Commerce (ICC). **Business-to-business (B2B) transactions are a major component of private procurement, governed by contract law and international trade agreements** that facilitate smoother transactions by reducing trade barriers.

The ICC plays a significant role in private procurement by providing guidelines, rules, and standards, including Incoterms®, and **arbitration rules for resolving disputes**. **In the EU, private procurement is influenced by Regulations and Directives** such as the Rome I Regulation, which governs the law applicable to contractual obligations, or the Consumer Rights Directive, which impacts contract standards. EU competition law, particularly Articles 101 and 102 of the TFEU, ensures a competitive market environment by prohibiting anti-competitive agreements and abuse of dominant positions. **National laws in Member States primarily govern private procurement, including commercial law, contract law, and specific sector regulations**. These national laws incorporate EU Directives and Regulations, ensuring consistency across the single market. **General principles**, such as transparency, non-discrimination, fair competition, contractual freedom, and legal certainty, **underpin the legal frameworks at the international, EU, and national levels, promoting efficient and fair procurement practices**.

1.2.5. Type of contracts and applicable rules

1.2.5.1. In Public Procurement (B2G)

What are the types of public contracts?

As stated in Article 2 of Directive 2014/24/EU, 'public contracts' means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of **works**, the **supply** of products, or the provision of **services**. Accordingly, the work, supply, and service contracts will be explained along with the R&D definitions in this section. These categories are often used in legislation and international agreements on procurement. (Arrowsmith, 2014, p. 1)

"Supplies" procurement by regulated purchasers encompasses a wide array of transactions, from the purchase of basic "off-the-shelf" items like stationery and office furniture to the acquisition of complex

systems such as computer systems, power generation equipment, and military hardware. (Arrowsmith, 2014, pp. 1-2) Article 2(8) of Directive 2014/24/EU defines public supply contracts as contracts having as their object the purchase, lease, rental, or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations. Innovation partnerships are used to procure innovative goods or services that are not yet available on the market, fostering collaboration between contracting authorities and suppliers to develop new solutions.

“Works” pertains to construction and engineering activities, including the building of infrastructure such as roads, bridges, and offices. (Arrowsmith, 2014, p. 2) Article 2(6) of Directive 2014/24/EU defines public works contracts as contracts having as their object the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex II of the Directive, the execution, or both the design and execution, of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work. A work, as defined in Article 2(7), means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function. To give examples; work contracts for the construction of infrastructure like roads, bridges, and public buildings.

The term **“services”** is typically used in legislation to denote the provision of non-construction services. However, construction is also considered a type of service, and the broader concept of “services” encompasses both construction and non-construction services, as seen in the TFEU. (Arrowsmith, 2014, p. 2) According to Article 2(9) of Directive 2014/24/EU, public service contracts are contracts having as their object the provision of services other than those referred to in point 6 (public works contracts). For instance, service contracts for the maintenance of public facilities, such as building maintenance, road repair, and IT system upkeep.

As regards R&D services, **the Frascati Manual**, published by the OECD, **provides guidelines for collecting and using R&D statistics. It defines R&D as comprising creative work undertaken on a systematic basis to increase the stock of knowledge**, including knowledge of humanity, culture, and society, **and the use of this knowledge to devise new applications.**

The Oslo Manual, also by the OECD, **focuses on the measurement of innovation**, defining innovation as the implementation of a new or significantly improved product (good or service), process, a new marketing method, or a new organisational method in business practices, workplace organisation, or external relations.

What are the rules applicable to public contracting?

The standard way of awarding contracts is through competitive tendering. Within competitive tendering there are **different types of public procurement procedures**:

- **Open procedure:** In an open procedure **anyone may submit** a tender. This procedure is used most frequently.
- **Restricted procedure:** Anyone may ask to participate in a restricted procedure, but **only** those who are **pre-selected may submit tenders**.
- **Negotiated procedure without prior publication:** In exceptional circumstances, this procedure can be used to invite parties to submit proposals for the direct award of contracts.
- **Competitive negotiated procedure:** In competitive negotiated procedures anyone may ask to participate, but **only** those who are **pre-selected** will be invited to **submit initial tenders** and to **negotiate**. Procuring entities can only use this procedure when negotiations are necessary due to the specific or complicated nature of the purchase however, the procuring entities in the defence and security, water, energy, transport, and postal services sectors may use it as a standard procedure.
- **Competitive dialogue:** This procedure can be used by a contracting authority with the aim of proposing a method of **addressing a need defined by the contracting authority**.

- **Innovation partnership:** This procedure may be used when there is **a need to purchase a good or service that is still unavailable on the market**. A number of companies may participate in the process.
- **Design contest:** This procedure can be used to award a contract to a winner following a **negotiated procedure without prior publication**.

Additional tendering techniques:

Depending on the circumstances and needs a contracting authority may:

- Sign a **framework agreement** with one or a number of companies for tenders requiring recurring purchases.
- When using the **restricted procedure**, authorise the use of the electronic **dynamic purchasing system** for making recurring purchases.
- Decide that to get the best offer, the final choice of the winner will be made through an **electronic auction**.

1.2.5.2. In Private Procurement (B2B)

What are the types of private contracts?

Private procurement in the B2B context follows similar contract categories and procedures as public procurement, covering **"supplies," "services,"** and **"works"**. In this context, "supplies" typically refer to the acquisition of products, "services" to the provision of professional, technical, or operational services, and "works" to construction and engineering activities. While public procurement is governed by stringent regulations and directives to ensure transparency and fairness, **private procurement contracts are often more flexible, tailored to the specific needs and agreements of the businesses involved**, and may include additional terms related to performance, quality, and delivery timelines.

What are the rules applicable to B2B contracting?

Contracts in private procurement often mirror those in public procurement, encompassing supplies (acquisition of products), services (provision of non-construction services), and works (construction and engineering activities). However, **the procedures and regulations can be more flexible compared to the rules governing public contracts**. In the realm of international private procurement, **the ICC plays a pivotal role**, especially through the publication and update of Incoterms®.

What are Incoterms®?

Incoterms® are the **International Commercial Terms**. They are **a set of rules** published by the [International Chamber of Commerce \(ICC\)](#), **which relate to International Commercial Law**. According to the ICC, [Incoterms® rules](#) provide internationally accepted definitions and rules of interpretation for most common commercial terms used in contracts for the sale of goods.

All International purchases will be processed on an agreed Incoterms® to define which party legally incurs costs and risks. Incoterms® will be clearly stated on [relevant shipping documents](#).

These terms are crucial as they simplify global trade by reducing misunderstandings between buyers and sellers. By defining who is responsible for shipping, insurance, and customs duties, Incoterms® ensures that both parties in a transaction are clear about their obligations. This clarity is essential in preventing disputes

and delays, which can be costly in international trade. Additionally, by defining the responsibilities for customs clearance, Incoterms® facilitates smoother transitions at international borders, avoiding delays and extra costs.

[Read more & Download Incoterms® 2020 chart here](#)

1.2.6. Type of procurers and applicable rules

1.2.6.1. In Public Procurement (B2G)

What are the types of public procurers?

Public contracts are awarded by users of public funds and entities operating in specific, non-competitive conditions (for example energy, water, public transport, postal services), **for the purchase of services, supplies, or civil engineering works**. Public procurers have a **public function** and thus are **subject to public law**. There may be differences in the types of public procurers and approaches under national law, so we will refer mainly to the EU framework.

The EU Directives apply to bodies which are “contracting authorities” – a concept that covers, broadly, public bodies of a non-commercial nature. (Arrowsmith, 2014) (p. 339)

The definition of “**contracting authority**” seeks to cover all those entities that are at risk of giving preferential treatment to the national industry in their purchasing, and the Court of Justice has stated that this objective must be taken into account in interpreting the definition. The functional approach covers central government departments and local authorities, the traditional forms of government authority. In view of the diverse organisational forms employed by the government in the EU, however, it has been necessary to go beyond this and formulate a more sophisticated definition of the “public sector”, which also includes other types of bodies subject to governmental influence or pressure. (Arrowsmith, 2014) (p. 340)

- The State, regional and local authorities
- Bodies governed by public law, which means bodies that have all of the following characteristics:
 - a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
 - b) they have legal personality; and
 - c) they are financed, for the most part, by the State, regional, or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial, or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law
- Associations
- Subsidiary companies of contracting authorities
- Entities without separate legal personality
- Central purchasing bodies

What are the rules applicable to public procurers?

The Public Procurement Directives only apply if a body is a “contracting authority”. The term “contracting authority” is **defined in Directive 2014/124/EC**. If a body falls within the definition of a contracting authority, then its procurement will be subject to the Procurement Directives. **If a body does not fall within this definition, then its procurement will not be subject to the Procurement Directives**. If

the body does not fall within the definition but nevertheless tries to follow the rules, this does not mean that any breach of the Directives' provisions that it commits would be open to challenge.

The Directives either apply or do not apply; there is no 'in-between'. They apply to the **two main categories of contracting authority**, as defined in Directives, namely: **public authorities and bodies governed by public law**.

What is a public "authority"?

Public authorities are defined in the Directive as "state, regional or local authorities".

This definition covers not only the executive authority of the State, but all state entities i.e. state administrations and regional or local authorities. The term 'the State' also encompasses all the bodies that exercise legislative, executive and judicial powers. The same applies to bodies that, in a federal state, exercise those powers at federal level. The definition from a broader perspective can cover bodies which do not exercise any of the three powers (such as school boards, or public hospitals).

The definition of the State is broad, and the European Court of Justice (ECJ) has taken a particularly functional approach in deciding whether or not an organisation falls within the definition of a public authority. It thus looks more at the actual function of the entity concerned than at the formal categorisation that the entity has been given by domestic law. Contracting authorities may also be made up of associations formed by one or several of such authorities or by one or several bodies governed by public law.

What is a 'body governed by public law'?

A body governed by public law does not have a simple definition; it depends rather on whether it has certain characteristics. These characteristics are expressed as conditions that need to be met in order for the body in question to be considered as a body governed by public law.

The main question centres around three cumulative conditions required by the Directive to indicate the existence of a body governed by public law. The ECJ has consistently held that a body must satisfy all three of these conditions to fall within the definition.

- **Condition 1:** the body is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character.
- **Condition 2:** has legal personality.
- **Condition 3:** it is – alternatively - financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; **or is** subject to management supervision by those bodies; **or** has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

1.2.6.2. In Private Procurement (B2B)

What are the types of private procurers?

In the **private** sector, procurement is largely unregulated, and the diverse types of organisations are free to pursue their own procurement strategies, although the goal of procurement is the same in both the public and private sectors: to obtain the goods, services, and materials needed to meet organisational goals.

What are the rules applicable to private procurers?

Private procurement can take various forms, depending on the context and the specific project. Some common types are:

1. **Public-Private Partnerships (PPPs):** These involve collaboration between public and private entities to deliver public services or infrastructure. [PPPs](#) can be categorised based on the type of asset involved (e.g., greenfield or brownfield projects), the functions the private party is responsible for (e.g., design, construction, operation), and how the private party is compensated.
2. **Supply Chain Management:** In the private sector, organisations focus on efficient supply chain processes, including sourcing, procurement, production, and distribution. This approach aims to optimise costs, and to enhance overall performance.
3. **Supplier Relationship Management:** Private companies actively manage relationships with their suppliers to ensure reliability, quality, and cost-effectiveness. This involves strategic collaboration, performance monitoring, and risk mitigation.
4. **Inventory Management:** Efficient inventory management helps private businesses balance supply and demand, minimise excess stock, and reduce carrying costs. Techniques, like just-in-time inventory, are commonly used.
5. **Preferred Vendors and Contract Renewals:** Private organisations often work with preferred vendors and streamline the procurement process by renewing contracts with trusted suppliers.

Private procurement practices can vary widely across industries and organisations.

1.2.7. Thresholds and applicable rules

What are the thresholds?

Thresholds refer to the financial limits that determine the specific procurement procedures to be followed. These thresholds vary depending on whether the procurement is public or private, and businesses must comply with different sets of rules based on these thresholds. Understanding the thresholds and applicable rules in procurement is crucial for businesses aiming to participate effectively.

1.2.7.1. In Public Procurement (B2G)

What are the public procurement thresholds?

In public procurement, [thresholds](#) are established by national laws and EU Directives. These thresholds **determine whether a procurement must be advertised across the EU or can be limited to a national or local level.** For example, contracts above a certain value must follow stricter and more transparent [procedures](#), including open tender processes. It is important for businesses to be aware of these thresholds to understand the complexity and requirements of the tendering process they are entering.

Usually, **all medium and higher value contracts must be awarded through competitive procedures (tenders).** However, there are exclusions and exceptions to these rules. Those include procurement activities like purchasing real estate, cases of extreme urgency, or situations where there is only one viable supplier may fall outside the standard procedures mandated by the thresholds. These exceptions acknowledge

scenarios where flexibility is necessary due to specific circumstances or constraints.

What are the applicable rules on public procurement thresholds?

EU law sets minimum harmonised rules for tenders whose monetary value exceeds a certain amount and which are presumed to be of cross-border interest. The European rules ensure that the award of contracts of higher value for the provision of public goods and services must be fair, equitable, transparent and non-discriminatory. For tenders of lower value however, national rules apply, which nevertheless still have to respect general principles of EU law.

Thresholds for Defence Directive 2009/81/EC

[Directive 2009/81/EC](#) on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security.

- Works contracts: €5,538,000
- All supplies and services contracts: €443 000

[Commission Delegated Regulation \(EU\) 2023/2510 of 15 November 2023 amending Directive 2009/81/EC of the European Parliament and of the Council in respect of the thresholds for supply, service and works contracts](#)

Thresholds according to type of procurement under the 2014 directives on concessions, general procurement and utilities

Concessions Directive 2014/23/EU

[Directive 2014/23/EU](#) on the award of concession contracts.

- All works or services concessions: €5,538,000

[Commission Delegated Regulation \(EU\) 2023/2497 of 15 November 2023 amending Directive 2014/23/EU of the European Parliament and of the Council in respect of the thresholds for concessions](#)

Classical Directive 2014/24/EU

[Directive 2014/24/EU](#) on public procurement:

Central Government authorities	Works contracts, subsidised works contracts	€5,538,000
	All services concerning social and other specific services listed in Annex XIV	€750 000
	All subsidised services	€221 000
	All other service contracts and all design contests	€143 000
	All supplies contracts awarded by contracting authorities not operating in the field of defence	€143 000
	Supplies contracts awarded by contracting authorities operating in the field of defence	Concerning products listed in Annex III
Concerning other products		€221 000
Sub-central contracting authorities	Works contracts, subsidised works contracts	€5,538,000
	All services concerning social and other specific services listed in Annex XIV	€750 000
	All other service contracts, all design contests, subsidised service contracts, all supplies contracts	€221 000

[Commission Delegated Regulation \(EU\) 2023/2495 of 15 November 2023 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and works contracts, and design contests](#)

Utilities (Sectors) Directive 2014/25/EU

[Directive 2014/25/EU](#) on procurement by entities operating in the water, energy, transport and postal services sectors:

- Works contracts: €5,538,000
- All services concerning social and other specific services listed in Annex XVII: €1,000,000
- All other service contracts, all design contests, all supplies contracts: €443 000

[Commission Delegated Regulation \(EU\) 2023/2496 of 15 November 2023 amending Directive 2014/25/EU of the European Parliament and of the Council in respect of the thresholds for supply, service and works contracts, and design contests](#)

Thresholds applied to type of contract

Threshold / applicable to Directive	€143 000	€221 000	€443 000	€750 000	€1,000,000	€5,538,000
2009/81/EC Defence						
2014/24/EU General Procurement						All works contracts, all subsidised works contracts
2014/25/EU Utilities						
2014/23/EU Concessions						All works or services concessions
2014/25/EU					Services listed in Annex XVII	
2014/24/EU				Services listed in Annex XIV		

2009/81/EC			All supplies contracts, all service contracts, all design contests			
2014/25/EU			All supplies contracts, all service contracts (except for services listed in Annex XVII), all design contests			
2014/24/EU	All service contracts other than those listed in Annex XIV and awarded by central government authorities (cga), all design contests organised by cga; all supplies contracts awarded by cga not operating in the field of defence; supplies contracts concerning products listed in Annex III awarded by contracting authorities operating in the field of defence	All subsidised services, all supplies contracts and all design contests awarded by sub-centrals contracting authorities (sc); all services other than those listed in Annex XIV awarded by sc; supplies contracts for products not listed in Annex III awarded by contracting authorities in the defence field				

Thresholds in currencies other than euro: [Communication from the Commission on corresponding values of the thresholds in Directives 2014/23/EU, 2014/24/EU, 2014/25/EU and 2009/81/EC of the European Parliament and of the Council](#)

1.2.7.2. In Private Procurement (B2B)

What are the private procurement thresholds?

In private procurement, there are no thresholds as such described for public procurement. The thresholds in B2B procurement may relate to **“minimum standards”** set by procurers based on its reasons on a case-by-case basis. Thus, the thresholds understood as minimum standards, **or a point of entry, are generally set by the procuring company and can vary widely depending on the industry and the specific company policies.** For example, [Apple maintains a detailed Supplier Code of Conduct](#) which outlines its expectations for suppliers regarding labour and human rights, health and safety, environmental protection, ethics, and management systems. This Code specifies the standards suppliers must meet to do business with Apple and reflects the company's commitment to responsible sourcing.

Unlike public procurement, **private procurement offers more flexibility.** However, **it is still essential for businesses to understand the expected procurement practices and financial limits set by their potential clients.** Being aware of these can help businesses tailor their proposals and ensure they meet the necessary criteria.

What are the applicable rules on private procurement thresholds?

In private procurement, the thresholds or minimum standards and rules can vary depending on the country

and context. For example, big companies have a sort stepping approach, bids are requested based on the company revenues and assessed on a case-by-case basis. It depends on the professionalism of a company. For example, multinational companies have standard contracts based on the sector.

See for example:

[Shell Supplier Requirements Explained | Shell Global](#)

[Innovate with Philips | Sourcing Program for Innovation and Collaborative Entrepreneurship](#)

1.2.8. Where to find procurement opportunities?

Where can an economic operator find public procurement opportunities?

For public procurement, opportunities are typically published on official government portals, EU databases like [TED \(Tenders Electronic Daily\)](#), and other public sector platforms. These platforms provide detailed information about upcoming and current tenders, making it easier for businesses to identify relevant opportunities.

As a general rule, tenders for **public contracts whose amount is above the thresholds must be published** in the online version of Supplement to the Official Journal of the European Union - the [Tenders Electronic Daily](#) (TED) portal. Public authorities may also choose to publish notices on the TED portal when a contract is of lower value. In TED the **basic information** for tenders is available in all official EU languages.

There is also the EU funding & tenders Portal [EU Funding & Tenders Portal \(europa.eu\)](#)

Some examples of national and regional procurement platforms are:

- Andalusia: [Temas: Contratación pública - Junta de Andalucía \(juntadeandalucia.es\)](#)
- Belgium: [e-Procurement | BOSA \(belgium.be\)](#)
- Canada [Public Services and Procurement Canada - Canada.ca](#)
- Catalonia: [Plataforma de Serveis de Contractació Pública \(contractaciopublica.cat\)](#)
- France: [PLACE - Plate-forme des achats de l'Etat \(marches-publics.gouv.fr\)](#)
- Galicia: [Portada - Contratos Públicos de Galicia \(contratosdegalicia.gal\)](#)
- Greece: [Front Page \(eprocurement.gov.gr\)](#)
- Italy: [e-procurement | Agenzia per l'Italia Digitale \(agid.gov.it\)](#)
- South Korea: [Public Procurement Service \(pps.go.kr\)](#)
- The Netherlands: [TenderNed, hét online marktplaats voor aanbestedingen](#)
- USA: [SAM.gov | Contract Opportunities](#)

[Government contracts | request for proposal | contract bidding | US Government Contracts \(usarfp.com\)](#)

- UK: [Contracts Finder - GOV.UK \(www.gov.uk\)](#)

Where can an economic operator find private procurement opportunities?

For private procurement, opportunities might not be as openly advertised. Businesses can find these opportunities **through industry networks, business associations, corporate websites, and specialised procurement platforms.** Building relationships and staying informed through professional networks and industry events can also help in discovering potential procurement opportunities.

See for example:

- [Direct Procurement Solution | Airbus](#)

- [Siemens Supplier Portal - Siemens Global](#)
- [Purchasing within Volvo Group | Volvo Group](#)
- [Deutsche Bahn Supplier Portal](#)
- [Roche | Partnering with suppliers and service providers](#)

1.2.9. How long does a tender last?

1.2.9.1. Procurement timescales in B2G

What are the procurement timescales in B2G?

The duration of a tender process can significantly impact a business' ability to plan and allocate resources. Understanding the typical timescales involved in public procurement processes is crucial for effective participation.

The procurement starts with a preparatory phase, which, depending on the complexity of the project, could take between 3 to 6 months. For European projects, it can take up to a year, because of the different actions and agreements (*e.g.* regarding the governance structure) that are needed for joint cross-border procurement where several public procurers from different Member States procure together.

The timescale for tendering phase, following the preparatory phase, is estimated from the publication of the **Contract Notice** to the publication of the **Contract Award Notice, and depends on the types of public procurement procedures.**

In public procurement, the tender process is usually governed by strict timelines defined by law. These timescales can vary depending on the value and complexity of the contract. Generally, the process includes a period for advertising the tender, a deadline for submitting proposals, and an evaluation period. It can take anywhere from a few months to over a year from the initial advertisement to the final contract award. Businesses should be prepared for these extended timelines and plan their resources accordingly.

The standard way of awarding contracts is through competitive tendering. Within competitive tendering there are **different types of public procurement procedures (see types of contracts).**

Pre-Commercial Procurement	
Procurement phase of PCP:	3-6 months (open procedure).
Execution of PCP:	2-5 years depending on the nature of the PCP and its complexity.

Open procedure
Timescale: 3 – 6 months.
Restricted procedure
Timescale: 3 – 9 months.
Negotiated procedure without prior publication
Timescale: 1 – 3 months.
Competitive negotiated procedure
Timescale: 3 – 9 months.
Competitive dialogue
Timescale: 3 – 12 months.
Innovation partnership
Timescale: as a restricted procedure, the procurement process lasts 3 – 6 months.
Design contest
Timescale: 3 – 6 months.

Additional tendering techniques	
Sign a framework agreement with one or a number of companies for tenders requiring recurring purchases.	Timescale: 4 years duration as rule.
When using the restricted procedure - authorise the use of the electronic dynamic purchasing system for making recurring purchases.	Timescale: after the selection the DPS can be open (indefinitely or 4 years).
Decide that to get the best offer, the final choice of the winner will be made through an electronic auction.	Timescale: 6 – 9 months.

1.2.9.2. Procurement timescales in B2B

What are the timescales in B2B procurement?

In private procurement, the tender process tends to be more flexible and faster compared to public procurement. The duration can vary widely based on the company's internal processes and the nature of the procurement. Some tenders may be resolved within weeks, while others could take several months. It is important for businesses to maintain close communication with the procuring company to understand specific timelines and ensure timely submission of their proposals.

Subjectivity is involved, as there may not be pre-defined timescales, but a duration on a case-by-case basis. The length of this process can vary, from a few weeks for simple purchases to several months or even a year for more complex acquisitions. Factors influencing the duration include the procurement scale, detailed specifications, and negotiation requirements.

1.2.10. How to apply for B2G and B2B procurement?

How to apply for a B2G tender?

To submit a proposal, a company will need to fulfill administrative, technical and financial requirements. It can participate as a single tenderer, or in a joint tender as part of a consortium or as a subcontractor.

For example, in the EU context it will need to submit:

- **Administrative documents:** Economic operators have access to the "e-CERTIS" online tool, where they can learn what administrative documents could be required in any EU Member States. If they are not familiar with the requirements of other Member States, this should make it easier for them to engage in cross-border procurement.
- **Technical proposal:** It is a comprehensive document that describes a bidder's approach to fulfilling the project's technical specifications as stated in the tender documents. It shows whether the bidder has a thorough understanding of the project's requirements as well as the technical approach, methods, resources, and capabilities needed to carry it out successfully.
- **Financial proposal:** It is a comprehensive document that lists all expenses involved in executing a project as described in the tender documents. It offers a thorough explanation of all costs and indicates the bidder's comprehension of the project's financial components. An essential part of the bid is the financial plan, which aids in the evaluation of the bidder's viability, affordability, and financial soundness.

At national, regional or local level, there could be specific requirements for registration in the procurement platform and access to the tender, as well as the translation and legalisation of documents, which can make it costly to participate in a tender. The language barrier may make accessing tenders in the local language difficult.

In a tender an economic operator will find exclusion, selection and award criteria to be carefully assessed and verified to present the correct evidence in the proposal.

If a company, organisation or institution is established in the EU, it has **the right to compete for a public tender in any EU Member State**. It has the right to:

- Compete for a public tender in another EU country without discrimination.
- Use supporting documents (certificates, diplomas, *etc.*) issued by its country.
- Have equal access to all information regarding tenders, regardless of the EU country in which it is established.
- Have access to the [review procedures](#) in the respective country.

When can an economic operator be excluded?

It may not be allowed to participate in a tender procedure if a company fails to comply with the obligations to make it trustworthy. For example, tenderers:

- **will be excluded** if they do not pay their taxes or social security contributions, participate in corruption, or have links to a criminal organisation.
- **may be excluded** if they are bankrupt, or guilty of grave professional misconduct.

Any interested party can find the detailed description of the reasons for exclusion in the EU Public Procurement Directives, its national public procurement law, and the documents provided by the purchasing entity.

How to apply to a B2B tender?

In private procurement, the procurement process will depend on the rules of the organisation. The process may involve several key steps:

1. **Need identification:** Someone submits a request to the purchasing department, which can be simple (like a new software license) or complex (like setting up a new office). The request may vary in detail depending on the case and is usually made in writing.
2. **Vendor selection:** The procurement department investigates vendors, requests quotes, and selects a vendor based on factors like reputation, cost, speed, and dependability. Getting at least three quotes is a best practice.
3. **Submit purchase requisition:** After identifying the vendor and agreeing on details, written approval is needed from the department responsible for approving purchases. Details provided include the requesting party, item/service description, vendor information, and price.
4. **Generate purchase order:** Once the purchase request is approved, the finance department issues a purchase order to the vendor. This signals approval and allows the vendor to proceed with the request.
5. **Invoice and order:** The vendor submits an invoice to the purchaser, requesting payment and providing a detailed breakdown of the cost.
6. **Payment:** Finally, payment is made based on the invoice and order.

1.3. Objective and structure of the EIC Innovation Procurement Toolkit

What is the objective of the EIC Innovation Procurement Toolkit?

The primary objective of the EIC Innovation Procurement Toolkit is to equip companies, in particular start-ups and SMEs, with the essential knowledge, strategies, and tools needed to actively participate in Innovation Procurement. By providing a comprehensive framework that addresses key aspects such as market analysis, innovation readiness assessment, procurement procedural considerations, and legal compliance, the Toolkit aims to empower suppliers to leverage Innovation Procurement as a strategic avenue for driving innovation, securing procurement contracts, and fostering sustainable growth in the private sector. Through practical insights, examples, and actionable steps, the EIC Innovation Procurement Toolkit seeks to demystify the complexities of Innovation Procurement, enabling start-ups and SMEs to navigate the process effectively and capitalise on opportunities for collaboration and innovation within the public and private sectors.

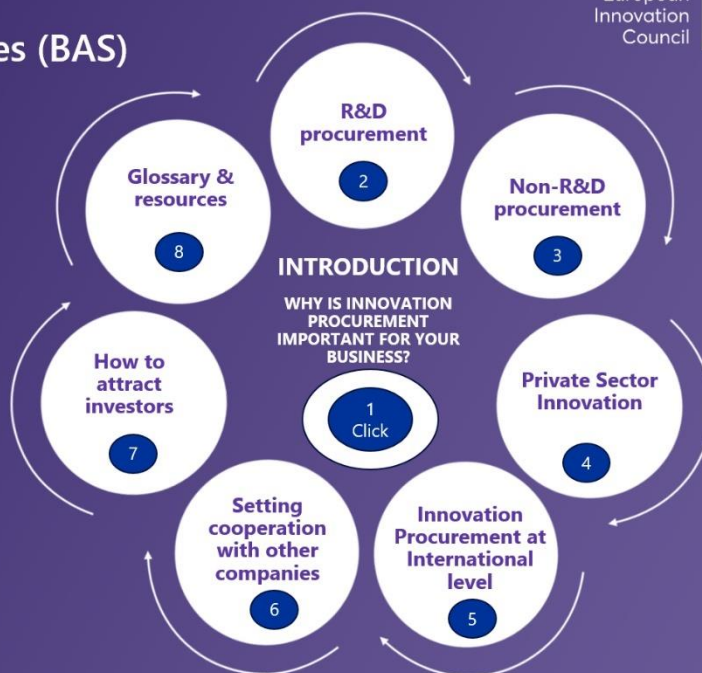
What is the structure of the Toolkit?

The Toolkit comprises 7 Chapters, annexes, and links to relevant resources.



EIC Business Acceleration Services (BAS) Innovation Procurement Toolkit

Through practical insights, examples, and actionable steps, the **EIC Innovation Procurement Toolkit** seeks to demystify the complexities of Innovation Procurement, enabling startups and SMEs to navigate the process effectively and capitalise on opportunities for collaboration and innovation within the public and private sectors.



Overview of the EIC Innovation Procurement Toolkit

Chapter 1 Introduction: provides a general overview and description of all the main concepts and procedures concerning public procurement and, in particular, Innovation Procurement. Additionally, it contains useful information and links concerning the European Innovation Council (EIC), its funding schemes, and its Business Accelerator Services (BAS). This introduction aims to help suppliers: (1) understand the notions of B2G and B2B procurement, (2) grasp some of the main advantages & disadvantages of each procedure as well as their similarities and differences, and (3) familiarise themselves with the regulatory framework of procurement overall.

Chapter 2 Module A - Procurement of R&D Services: provides guidance to suppliers on how to find R&D tenders, and how to submit a good quality bid. The module aims to help suppliers: (1) understand the principles and processes involved in procuring R&D services; (2) learn how to effectively manage R&D procurement projects, including planning, execution, and evaluation; and (3) identify key considerations and challenges specific to R&D procurement and strategies for overcoming them.

Chapter 3 Module B - Innovation Public (Non-R&D) Procurement: provides guidance to suppliers on how to find non-R&D tenders, and how to submit a good quality bid. The module aims to help suppliers: (1) explore strategies for offering innovative goods and services; (2) understand the role of Innovation Procurement in driving progress and addressing societal challenges; and (3) learn best practices for navigating the procurement process for non-R&D innovation projects.

Chapter 4 Module C - Private Sector Innovation Procurement (PSIP): provides guidance to suppliers on how to find private tenders, and how to submit a good quality bid. The module aims to help suppliers: (1) gain insights into private sector Innovation Procurement and its significance in driving innovation; (2) understand different approaches to private sector Innovation Procurement and their applications; and (3) learn how to leverage private sector partnerships to enhance Innovation Procurement outcomes.

In addition to the core modules A, B, and C, the EIC Innovation Procurement Toolkit includes the following horizontal modules:

Chapter 5 Module D Innovation Procurement at the International level: provides insight into the regulatory framework and instruments of procurement, both in the public and private sectors, in various parts of the world. This module aims to help suppliers: (1) familiarise themselves with the legal, cultural, and

procedural regime of a series of countries outside of the EU, (2) acquire practical tips in case they want to participate in procurement processes in countries outside of the EU, and, finally, (3) understand how to participate in tenders in different countries.

Chapter 6 Module E Setting up Cooperation with other Companies: provides insights into the cooperation alternatives and use of matchmaking tools. This part of the Toolkit aims to help suppliers: (1) understand the importance of collaboration with other companies in procurement projects; (2) learn how to establish and maintain effective partnerships with industry stakeholders; (3) explore strategies for leveraging cooperation with other companies to enhance procurement outcomes; (4) identify the risks of a process involving various parties and demanding transparency and coordination; and (5) get inspired by the best practices that not only serve as a guiding example but also set a benchmark for what can be accomplished when collaboration takes precedence over individual efforts.

Chapter 7 Module F - How to Attract Investors in Innovation Procurement: provides guidance to suppliers on how to commercialise solutions, and how to find financial backing. The module aims to help suppliers: (1) explore strategies for attracting investors to support Innovation Procurement initiatives; (2) understand the role of investors in financing procurement projects and driving innovation; and (3) learn best practices for engaging and collaborating with investors to fund procurement projects effectively.

Annexes: provide information on specific topics relevant to suppliers in the context of Innovation Procurement. This part of the Toolkit aims to help suppliers indicatively with the following: (1) learn about topics such as the state-of-the-art (SOTA) analysis, the Technology Readiness Levels (TRLs) of the solutions, the business case, scoring formulas, and value engineering; (2) find templates relevant to public procurement like the European Standard Procurement Document (ESPD); and (3) use specific tools to improve their capabilities.

The Toolkit will also provide insights into case examples, throughout its length, to highlight the successful aspects of different types of procurement, aiming to help suppliers: (1) analyse real-world case studies, and success stories related to Innovation Procurement; (2) gain insights into successful procurement projects, and their impact on organisations and industries; and (3) utilise the best practices and lessons learned from previous procurement initiatives, so as to reflect upon the theoretical and practical knowledge provided by all the previous modules.

Finally, **the Toolkit will include a Glossary** which will provide to the read withers a list of common vocabulary. This part of the Toolkit aims to help suppliers: (1) learn the main concepts and common terminology; (2) obtain basic notions of Innovation Procurement; and (3) understand the definitions relevant to participating in a tender process.

The EIC Business Acceleration Services (BAS) Innovation Procurement Toolkit is a living tool which will be updated with the feedback from technology providers and case examples that depict good practices.

Disclaimers

The Toolkit is subject to the following exclusions, assumptions and qualifications:

- The Toolkit has been produced as part of the contract signed by the Consortium Deloitte, Corvers and Intellera (the “Contractor”) with the European Innovation Council and SMEs Executive Agency (“EIC/EISMEA”), acting under the powers delegated by the European Commission, having as subject matter the “Strategic use of procurement to open up business opportunities to EIC innovators”, also called the Strategic Innovation Procurement Programme (SPIN4EIC) with the number EISMEA/2022/OP/0022 (EISMEA/2023/OP/0003). The information and views set out in this Toolkit are those of the author(s) and do not necessarily reflect the official opinion of EIC/EISMEA. The EIC/EISMEA does not guarantee the accuracy of the data included in this study. Neither EIC/EISMEA nor any person acting on the EIC/EISMEA’s behalf may be held responsible for the use which may be made of the information contained therein.
- The Toolkit is drafted mainly based on European legislation, EU policy enactments, relevant case law emanating from the European Court of Justice, documents used in other EU projects and other articles and materials addressing the issues pertaining to the implementation of innovation procurement methodologies. Other sources worldwide have been used to provide information with a wider geographical coverage for innovators aiming to participate in tenders in other jurisdictions. In drafting the Toolkit, the author(s) has relied on the accuracy and completeness of the referring documents/information thereunder. All sources of information are duly referenced in the Toolkit.
- The Toolkit provides theoretical background (based on, e.g., legal provisions under relevant pieces of legislation, legal analysis and interpretation thereof), as well as practical guidance based on case examples, which innovators (companies, particularly SMEs and startups) could revert to when participating in innovation procurement tenders or when implementing an innovation procurement project. It also includes examples of formulation of text which could be used for tender preparation. However, the information provided should be deemed as mere recommendation, subject to further amendment and tailoring on a case-by-case basis, taking into account:
 - a. the specific needs of public procurers and what suppliers can offer;
 - b. the need to ensure compliance with the legal provisions governing the procurement procedure and the activity of public procurers concerned, in force in the Member State in which the procurement is being prepared, conducted and implemented;
 - c. the need to ensure compliance with internal policies and/or regulations that bound the public procurer(s) to prepare and conduct the innovation procurement project(s).

The Toolkit also includes examples from templates of procurement documents used by public procurers implementing innovation procurements. The examples from templates included in the Toolkit are drafted based mostly on tender documents used in various EU-funded PCP and/or PPI projects. The examples from templates are mainly based on the provisions of the European legislation governing public procurement. Nevertheless, references from other jurisdictions and particularly related to the Agreement on Government Procurement (GPA) of the World Trade Organization (WTO) have been used.

- The Toolkit and examples from templates may be used by innovators/suppliers as general guidance for the drafting of their own tender proposals, and further tailored to their specific case and applicable legislation. As there are always certain legal concepts which exist in one jurisdiction and not in another, proper legal assistance should be sought to adjust them according to specific case-by-case requirements.
- The content of the reports, policy documents, communications, guidelines, opinions, or memoranda from any other person or entity referred to in the Toolkit, is and remains the exclusive responsibility of that person or entity.

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