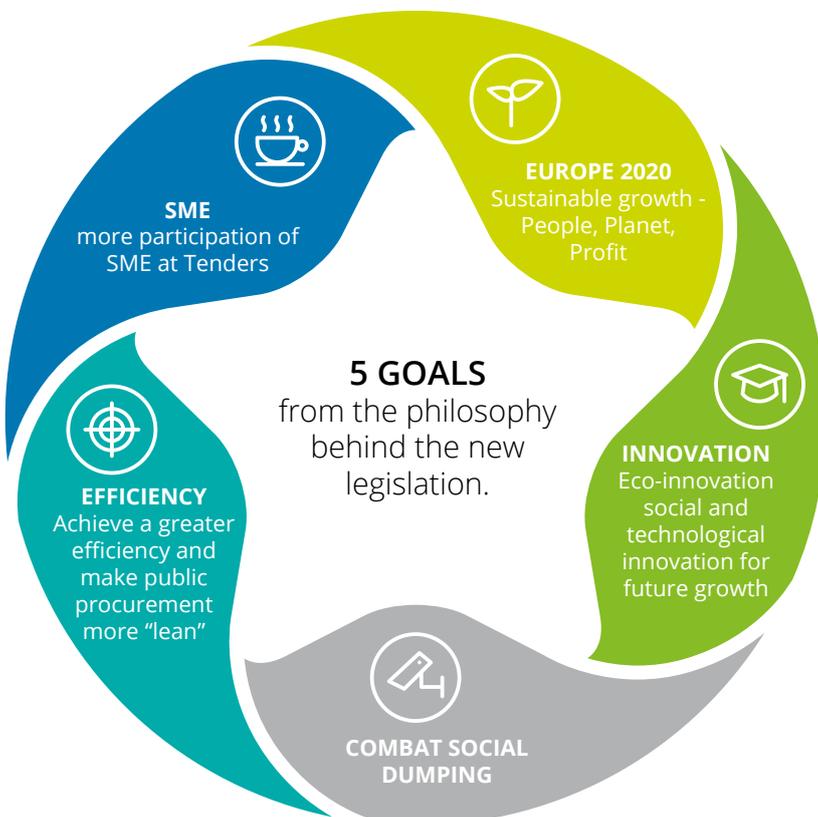


**New Legislation Public
Procurement expected 2017**

March 2017

In June 2016, a new Belgian law on Public Procurement was adopted as an implementation of the European Directive 2014/24/EU, however these has not yet entered into force, awaiting the official publication of the Executory Decisions in 2017.

Steps towards more efficiency, increased participation of small and medium enterprises, more innovation and sustainability.



Awaiting the official publication of the Executory Decisions, which future changes are relevant to you as a Procurement professional? And what is the philosophy behind it?



New terminology

The new legislation introduces new terminology for the procedures. The Negotiated procedure with publication (Onderhandelings-procedure met bekendmaking/ procédure concurrentielle avec publication) is now called Competitive procedure with negotiation (Mededingingsprocedure met onderhandeling/procédure concurrentielle avec négociation). The different terminology between a Tender (aanbesteding/adjudication) and a Request for Quotation (Offerteaanvraag/appeel d’offres) is no longer applied, and all procedures are referred to as procedures, which can be open (one-phase) or restricted (two-phases).

Past	Future
Negotiated procedure with publication	Competitive procedure with negotiation
Tender (Aanbesteding/ Adjudication) RFQ (Offerteaanvraag/ appel d’offres)	General term “procedure” which can be open or restricted.



Increased efficiency and flexibility

More negotiation possibilities

The new legislation creates new possibilities to use the Competitive procedure with Negotiation in certain well defined situations: in case the needs of the public authority cannot be fulfilled without adaptation of the available resources, or in case the Tender cannot be awarded because of specific circumstances relating to the nature, the complexity, the legal and financial conditions or the risk of the tender.

Public procurement is an important instrument to realise the Europe 2020 Goals.

Through the introduction of the “divide or explain” rule, the broader principle of accepted invoice, the “self-cleaning” possibility and more negotiation possibilities the participation of SME’s will be stimulated.

Digitalisation

Further digitalisation of Public procurement is stimulated and the use of e-Tendering will be obliged for local municipalities by 2018.

Increased flexibility

the new legislation opens the way for increased flexibility such as the possibility to use different awarding criteria in mini-competitions, on the moment of the conclusion of the contract and on the execution of the purchase order.

Accepted invoice up to € 30.000

The limit for the use of an accepted invoice will be increased from € 8.500 to € 30.000 excl. VAT.



More innovation: innovation partnerships

The public authority has often the need for development of an innovative product or service, but this need cannot be fulfilled with well-known and already existing solutions on the market. With the introduction of this new procedure, contracting authorities are able to conclude an innovation partnership on the long term for the development of innovative solutions, without having to split the Tender in two separate phases: the development and the acquisition of the product or service.



Small and medium enterprises “Divide or explain” principle

The division in different lots will be obligated for all tenders above € 135.000 excl. VAT (deliveries, services) and € 5.225.000 (works), unless motivated otherwise. This measure aims to create more opportunities for small and medium enterprises to participate.

“Self-cleaning” possibility

Enterprises can – in certain circumstances – defend themselves from exclusion from the procedure on the Exclusion Criteria by providing specific and objective proof of countermeasures. This provides more chances to start-ups or young and small companies.



Sustainable Procurement

By introducing the new procedure of the innovation partnership and explicitly mentioning a legal framework for life cycle costs, Europe wants to create flexibility for public authorities to use public procurement for eco-innovation, social innovation and future growth. The new legislation mentions example awarding criteria which can be used. By doing so, the European Commission wants to fully use Public Procurement spend to realise its Europe 2020 sustainability goals.

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