

Pre-Commercial Public Procurement policies in Finland



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The Finnish National Innovation Strategy

The Finland's national innovation strategy, drafted 2008, emphasises user-driven innovation and demand-driven innovation policies. The innovation strategy defines public procurement as a demand driven innovation policy tool. The intention is to develop public procurement practices, in order to create opportunities for and encourage innovative procurements.

As part of the implementation of Finland's national innovation strategy, the Ministry of Employment and the Economy outlined a policy framework in 2008 laying down the key elements of a demand and user-driven innovation policy.

Based on this policy framework, the Ministry developed a further framework and **action plan for such a policy in 2010 named: Demand and User-driven Innovation policy:**

http://www.tem.fi/files/27547/Framework_and_Action_Plan.pdf

The report includes a chapter on **“Promoting innovation by means of public procurement”**. It contains policy recommendations and measures to be taken, including aspects relevant to development and deployment of pre-commercial public procurement models. It also states the responsible actors for each indicated measure within the Finnish Public Administration.

Measures to be taken within the action line: “Promoting innovation by means of public procurement”:

- 1. Developing central and local government procurement and methods for promoting the procurement of innovations. Launching trial projects in collaboration with various actors to promote the procurement of innovations and the establishment and dissemination of best practices, for example, through the group for innovative forerunner cities. Together with the Ministry of Finance and other actors, concrete measures will be devised for the implementation of the innovation section off the state's procurement strategy.**
- 2. Strengthening the role of actors who develop public procurement in order to enhance knowledge in procurement of innovations.**
- 3. Examining different incentive models and ways to manage risk, as well as possibilities to implement them, in order to promote the procurement of innovations.**

So far strategic innovation-oriented procurement projects in Finland are still rare. This can be explained by the prevailing risk averseness among public agencies as well as lack of knowledge, experiences and best practice examples.¹

The Finnish Funding Agency for Technology and Innovation (Tekes)

TEKES is the main public funding organization for research and development in Finland, especially directed for innovative and risk-intensive projects. Tekes offers R&D funding and expert services and creates networks between companies and researchers and nowadays even the public sector. Funding is directed mainly for companies that develop new products, processes and services for international markets. Research funding is for universities, research institutes and the public sector.

Part of the funding is directed through thematic programmes such as:

Sustainable community programme (2007-2013): aims to develop sustainable and energy efficient areas and buildings

FinnWell programme (2004-2009): promoted health and wellbeing through technology applications and service innovations.

Innovations in Social and Healthcare Services (2008-2015): focuses on social and healthcare system innovations. The programme aims to renew the social and healthcare production processes, improve the availability of services and their quality and effectiveness and promote new business opportunities in the area.

The Tekes funding instrument for public procurement of innovation

This funding instrument was originally developed in 2008-2009 to support development related to the Social and Healthcare Services but also other Tekes programmes in order to facilitate public-private interaction in development and procurement of Innovations. The instrument has been mainly used for energy, health care and social services procurements² It comprises two stages of public procurement: (see Figure 1).

The former of these concepts (**strategic acquisition or Design of procurement**) concerns planning of procurement in cases when there is a strategic need of services (including a long term cost/benefit perspective), need of outline through requirement specification as well as a need of technical dialogue between different parties and a need of a comparison of different options. This phase seems to come close to earlier phases of the pre-commercial procurement model.

The latter phase (**operative acquisition or Implementation of Procurement**) seems to some extent be the equivalent of the PCP prototyping phase or even the commercial procurement itself. It deals with the implementation of the procurement. It is used e.g. for implementing new solutions or for creating new operational models.³

This TEKES Innovative Public procurement Funding instrument has raised interest and has also been given more emphasis during 2010- also by the the Ministry of Economy and Employment (Finnish acronym TEM) .

¹ Petri Lehto 2009

² Kristiina Laurila 2006

³ Sini Uttu, 2009

Tekes together with its innovation partners such as and the regional development company Culminatum Innovation (through its Innovative Public Procurement Programme, which includes local, regional and EU-wide activities and projects) are working to find, mobilize and facilitate potential pilot projects using this funding instrument.

The aim of Tekes is to make this funding instrument available also for pre-commercial public procurement pilot cases as defined by the COM 2007:799 or any other similar R&D&I pilot projects using PCP type processes.

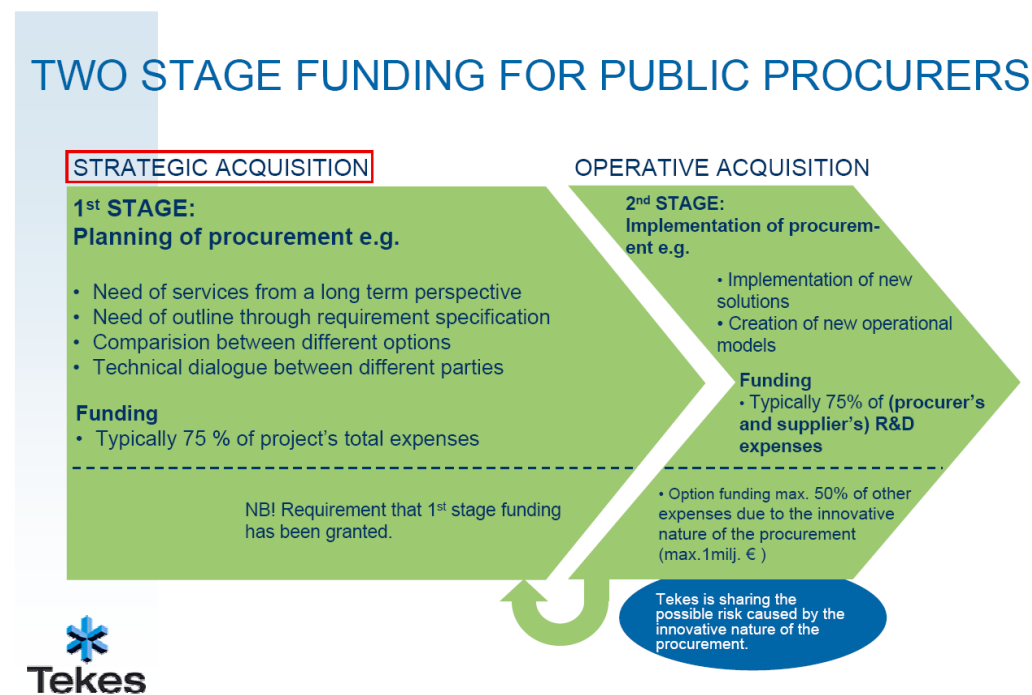


Figure 1: Two stage funding for public procurers

Public procurement legislation and actors in Finland⁴

National legislation

The Finnish national legislation regulating the award of contracts by the contracting authorities consist of: the Act on Public Contracts (Laki julkisista hankinnoista 348/2007; “APC”) and the Act on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Postal Services Sectors (Laki vesi- ja energiahuollon, liikenteen ja postipalvelujen alalla toimivien yksiköiden hankinnoista 349/2007; “Utilities Act”) which entered into force on 1 June 2007.⁵

As in Directives 2004/18/EC and 2004/17/EC, the relevant legislation is divided into “general public procurement” covered by the APC and “utilities procurement” covered by the Utilities Act. These two national Acts implement Directives 2004/18/EC (the “Public Sector Directive”) and 2004/17/EC (the “Utilities Directive”).

⁴ According to the Ministry of Employment and the Economy the share of public procurement in Finland is 15 per cent of GDP and the annual value of acquisitions amounts to EUR 27 billion (2006).

⁵ Ministry of Employment and the Economy: http://www.tem.fi/?92894_m=92895&l=en&s=903

These Acts relate to the GPA (Government Procurement Agreements) rules as for the Directives, and in public contracts falling within the scope of the GPA, the same conditions apply to the tenderers and bids from other contracting States as apply to those from Finland and the other 27 European Union Member States.⁶ The law takes account of the competitive dialogue, framework agreement and some electronic procedures in accordance with the directive.

The regulations concerning related undertakings are based on the case law as implemented by the EC Court of Justice.⁷

The underlying principles of the Finnish regime are incorporated into the national Acts which require the contracting authorities to utilize the existing competitive conditions in the markets. Moreover equality and non-discriminatory treatment among all tenderers is required to be ensured. The important principles are also transparency and proportionality. In Finland, the role of transparency in the public administration is very significant. Most of the bidding documents are considered non-confidential and available to everyone. This extends also to the relevant documents of the actual decision process.⁸

Procurements below the relevant threshold values specified under the EC Directives but exceeding the national thresholds are conducted in accordance with simplified and more flexible national procurement procedure. Open or restricted procedures are the primary procedures used for awarding contracts. Both of these procedures may be used in any circumstances. Moreover negotiated procedures, directly-awarded contracts, the competitive dialogue procedure, framework agreements and design contests may be used under conditions defined in the APC. The dynamic purchasing system and e-auction have not yet been incorporated into the national legislation in Finland although the preparatory work on these matters is ongoing. As the APC only covers contracts above the national thresholds, sub-national thresholds contracts may be awarded without the need any formal procedure. However the contracting authorities are obliged to follow the principles of non-discrimination and proportionality in any case. In the utilities sector the contracting authorities may use the open, restricted or negotiated procedure in any procurement contract award.⁹

During 2010 a remedies reform is planned to be enacted in Finland. In this first phase, the remedies required by Directive 2007/66/EC will be introduced. The new remedies comprise the possibility for the Market Court to declare a contract to be ineffective and also to order the contract to be terminated in a given time limit. In addition the contracting authority may be ordered to pay a fine. The first phase of the reform will cover only contract award procedures above the EC thresholds. However there are also plans to reform the contract award procedures above the national thresholds. In addition there is a contemplated reform of the rectification process. Currently only the municipalities have the possibility to rectify their decisions upon bidder's petition. After the reform is passed, all of the contracting authorities have a possibility to rectify their decisions by themselves regardless the case has been referred to the Market Court. The rectification process however requires a petition from a bidder. Thus the contracting authority does not have unlimited autonomous decision power to alter its decisions once the decision on contract award decision has been made. In addition, the dynamic purchasing system and electronic procurement procedures are being planned. The Ministry of Employment and the Economy is responsible to prepare the relevant provisions.¹⁰

⁶ Borenus & Kemppinen

⁷ Ministry of Employment and the Economy: http://www.tem.fi/?92894_m=92895&l=en&s=903

⁸ Borenus & Kemppinen 2010

⁹ Borenus & Kemppinen 2010

¹⁰ Borenus & Kemppinen 2010

Actors

The areas falling into the Ministry of Employment and the Economy remit include the drafting of national legislation governing public procurement (Acts and Decree on public contracts), providing information about the statutes, following the reforms and topical issues relating to public procurement, and ensuring that the internal market mechanisms are working. The Ministry of Employment and the Economy also influences the decisions made by the EU and the WTO on public procurement. The Act on public contracts defines some of the Ministry of Employment and the Economy's work, such as the publication requirement concerning the thresholds, laid down in Section 16. The Ministry of Employment and the Economy maintains HILMA, the electronic contract notice system.¹¹

The Association of Finnish Local and Regional Authorities and the Ministry of Employment and the Economy maintain the Public Procurement Advisory Unit that focuses on providing contracting authorities with information and advice on procurement. It also advises businesses on issues relating to the application of procurement legislation.¹²

Ministries' activities in public procurement are defined by their respective administrative sectors. The Ministry of Finance is responsible for providing general guidance and development of central government procurement, such as defining the general principles followed in the central government procurement strategy and public contracts, and developing procurement practices and methods. The Ministry of Finance decides which public contracts will be subject to a centralized tendering process in the central government. The Ministry of Defense is responsible for the defense procurement.¹³

Hansel Ltd is the government's central purchasing body, which maintains, and organizes competitive tenders, the framework agreements relating to services and supplies on behalf of the government procurement authorities. It provides the government procurement authorities with expertise on public contracts and procurement practices. Hansel Ltd is a wholly state-owned company operating under the guidance of the Ministry of Finance.¹⁴

The Ministry of Finance appoints the Strategic Steering Group on Government Procurement, which purpose is to support and develop the strategic steering of central government procurement as well as the implementation of the state's procurement strategy. The tasks of the steering group comprise reviewing key questions in Government procurement and examining the role of public contracts in the various sectors of society.¹⁵

In Finland the contracting authorities are encouraged to form joint procurements for advantages in volume and other cost-savings. In fact, there are many regional central purchasing bodies formed by the neighboring municipalities. The municipalities have an option to use company called KL-Kuntahankinnat Oy (owned by the Association of Finnish Local and Regional Authorities) as the central procurement unit.¹⁶

¹¹ Ministry of Employment and the Economy: <http://www.tem.fi/index.phtml?l=en&s=2012>

¹² Ministry of Employment and the Economy: <http://www.tem.fi/index.phtml?l=en&s=2012>

¹³ Ministry of Employment and the Economy: <http://www.tem.fi/index.phtml?l=en&s=2012>

¹⁴ Ministry of Employment and the Economy: <http://www.tem.fi/index.phtml?l=en&s=2012>

¹⁵ Ministry of Employment and the Economy: <http://www.tem.fi/index.phtml?l=en&s=2012>

¹⁶ Borenius & Kempainen 2010