



VISION ON PUBLIC PROCUREMENT

Wouter Stolwijk (on personal title)

CAGLIARI
7
sept
2018

AGENDA

- **Goal of this contribution**
- **About PIANOo**
- **What is procurement?**
- **Observations**
- **Why PP law?**
- **Skills and competences for professional PP**
- **Concluding remarks**

Goal fo this contribution

- > **Lateral thinking**
- > **Mostrare gli abiti nuovi del'imperatore**
- > **After today never the same image of PP**

WHO AM I?

- **Political science**
- **9 years in government auditing**
- **3 years director Netherlands School of Government (NSG/NSOB)**
- **9 years deputy director Dutch Patent Office**
- **10 years director PIANOo**
- **6 years member expertgroup PP of European Commission**

About PIANOo

- For all contracting authorities
- Support of professionalization
- website, Procurement Forum, congress, expert groups, helpdesk, manuals
- TenderNed
- Basic Approach:
 - Knowledge is spread all over the country
 - PIANOo collects it and distributes it
 - A networkorganization

What is Procurement?

- **Bringing demand to supply v.v.**
- **That is a definition of market**
- **The regulatory framework for the market is private law**
- **Most organizations have also internal financial rules**
- **There exist standards of the procurement profession**
- **Why then do we need PP law?**

OBSERVATIONS

- **Francis Fukuyama in ‘Political order and Political Decay’:**
- **In contrast to private sector procurement, government purchasing is minutely procedural and subject to endless right of appeal. (page 485).**
- **The result is that both law & procedural accountability are used to defeat the substantive ends that they were originally designed to serve (page 543)**

Observations

- **PP is red tape**
- **Nobody really satisfied.**
- **Causes:**
- **PP is full of wrong paradigms, voodoo concepts (MEAT and lowest price, substantial change, crossborder interests, marketled innovation, competitive dialogue, objective motivation, etc).**
- **It is a mess, it is ‘political decay’, says Fukuyama**

CHARACTERISTICS PRIVATE AND PUBLIC PROCUREMENT

- **PRIVATE**
 - **Dynamic**
 - **Customer is king**
 - **Rights of the buyer**
 - **New insights allowed**
 - **Negotiate**
 - **Freedom of contract**
 - **Focus on supplier**
 - **Recognition of subjectivity**
- **PUBLIC**
 - **Static**
 - **Supplier is king**
 - **Rights of the supplier**
 - **Insights fixed at start proc.**
 - **Take it or leave It**
 - **Contracts subject to appeal**
 - **Focus on rejected suppliers**
 - **Illusion of objectivity**

CHARACTERISTICS PRIVATE AND PUBLIC PROCUREMENT

- **PRIVATE**
 - Buy what you need
 - Private law
 - Equal parties

 - Survival of the fittest
 - Keep transaction costs low

 - The buyer want as much value for his money as possible and v.v.
 - Intellectual property is pillar
 - Longlasting relations
- **PUBLIC**
 - Buy what is offered
 - Public law
 - Government and citizens/taxpayers
 - Protection of the weak
 - Transaction costs do hardly matter
 - ‘Reasonable’ price

 - IP is a problem
 - Help! Vendor lock in and dependency!

CHARACTERISTICS PRIVATE AND PUBLIC PROCUREMENT

- **PRIVATE**
 - Focus on substance
 - Focus on market knowledge
 - Management of input and output
 - Foreknowledge is an advantage
- **PUBLIC**
 - Focus on procedures
 - Focus on PP procedures and contract forms
 - Management of the process
 - Foreknowledge is corrupt

Why PP law?

- **What goes wrong tomorrow if we abolish pp law?**
- **What lacks in private law, internal financial rules (handbooks procurement) and the standards of the procurement profession to reach value for money?**

Principles of Good Government

- **Equal treatment**
- **Transparency**
- **objectivity**

- (read Jane Jacobs: *Systems of Survival: A Dialogue on the Moral Foundations of Commerce and Politics*. Random Houde Inc. 1992)

State Aid

- **Definition of state aid:**
- **Public money gives a commercial advantage that could not be acquired in normal market conditions**
- **Isn't pp law than state aid?**
- **Is the principle of equal treatment, applied to the market, leading to state aid?**
- **The concept of competition in PP law**
- **Morale of PP law is wrong**

Conclusion about PP law

- **PP law destroys exactly those characteristics of the market that were the reasons in the first place to outsource:**
 - 1. Freedom of contract**
 - 2. Room to manouver, e.g. to negotiate**
 - 3. Idea of competiton: survival of the fittest**
 - 4. Intellectual property**

Skills and competences

- **The supplyside is as good as the demandside**
- **Since (acting on) the market is subject of economic science you need economists in your procurement departments, more than lawyers.**
- **The goal of pp is value for (taxpayers)money**
- **Learn from private procurement: go to your multinationals and study there procurement**
- **Install tender boards**

BASIC INSIGHTS

- **Communication, contact between CA's and suppliers is necessary**
- **Adherence to the rules is a poor indicator of quality of PP**
- **PP is primarily an economic problem not a juridical problem**
- **Focus on knowledge of Markets, Suppliers and Products**

BASIC INSIGHTS

- In every case the succesfactors are in depth knowledge of:
 - 1.the needs of the organization in relation to what the market has to offer (that is not simple!)
 - 2.The characteristic of the market (buyers market or sellersmarket, businessmodels, marketshares etc.)
 - 3.Recent procurements of other CA's

BASIC INSIGHTS

- **Centralisation of buying is a flight forward:**
 - 1. Enhances bureacracy**
 - 2. Confuses responsibilities**
 - 3. Focus on costs instead of on yields**

- **Centralisation of knowledge**
 - 1. Easy with modern media**
 - 2. Maintains responsibilities**
 - 3. Results in better fit with the needs of the organization**

REQUIRED KNOWLEDGE

- 1. Who are the players on both sides?**
- 2. Marketshares**
- 3. business models (how is the money earned?)**
- 4. (past en current) performance of the players**
- 5. techn(olog)ical developments**

REQUIRED KNOWLEDGE

- **Commercial developments**
- **Annual reports**
- **customersatisfaction**
- **Markets abroad**
- **Recent contracts of CA's**
- **How do big private buyers buy on this market?**
- **Is the demand a good match of what the organization need and of what the market can offer (demand shaping)?**
And what evidence do you have for that?
- **Can the projectleader explain the planned contract?**

POI's for auditors 1

- **Quality of the PP department: are systems in place and processes and competences of procurement professionals on the right level?**
- **Are the files of the procurement process complete?**
- **Do the files show enough knowledge of the market , of the products, of the businessmodel, of the suppliers etc.**
- **How do the paid prices compare with average marketprices**
- **How is the communication between users and PP officials within th CA?**

POI's for auditors 2

- **A good system of contractmanagement?**
- **Categorymanagement implemented?**
- **Suppliermanagement implemented?**
- **Procurementstrategy?**
- **Managementinformation: spend data, per market, per supplier, per product?**
- **Integrity of officials and of the process managed?**
- **Education and developmentplan?**

CONCLUSION

- **If we manage to reform PP in the direction of market conformity we win more than with all the economic stimulation programs of Europe.**
- **The quality of government as experienced by citizens is closely related to the performance of PP**