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# overview

- intro
- PPPs
- Public Procurement
- Conclusions



# Intro

- Focus

- Current focus on demographic, economic, financial issues
- Less attention: legal issues
- But: a lot of challenges



## intro

- Privacy
- Public procurement
- Intellectual property
- State aid
- Competition law
- Competences (federal, regional, local,...)
  - conflict of competence with one another as well as legal restrictions on matters such as the energy market, procurement, competition and state aid rules

# Intro

- Privacy: processing of personal data/the degree to which smart cities collect private data from inevitable public and public private or even private private interactions...
- Intellectual property: ownership of both infrastructure and data...collected by apps
- State aid: subsidies, grants, etc.

## Intro

- Focus on the role public procurement and PPP can play
- Why?

“According to the European Commission, cities are key contributors to national socio-economic and environmental performance. In the EU-28, about 70% of the population lives in urban areas, and this share is expected to further increase in the future. Furthermore, cities consume about 80% of the energy produced in the EU and generate up to 85% its GDP. It is thus pivotal to create an urban development plan that is both economically viable and environmentally sustainable.”

# Intro

- fast growth of the urban population implies
  - numerous economic and societal challenges in domains such as mobility, housing, employment, education, culture, security and natural resource management such as water, waste and energy

## Intro

- Smart cities need to be able to identify and procure the best technical solutions
- In need of innovative and sustainable to meet challenge.



# Intro

Some of the challenges where smart solutions are needed

- renovation of public sector building stock
- smart energy grids
- broadband access
- electric vehicle charging infrastructure, installation
- heat networks and onsite renewable energy generation;

# PPP

- Solving the issues=



# PPP

- PPP are needed: private sector expertise, private sector funding and financing, private sector efficiency, private sector innovation

## How?

- Strong engagement with the market to procure sustainable solutions is needed

# Public Procurement

- Selecting a private partner in a PPP implies most of the time
  - Public procurement procedure that will result in a public contract or a public service or a public works concession
  - The fact that the preferential private partner is an SME is no excuse not to use PP

# Public Procurement

## Framework

- European framework
  - Public Procurement directive 2014/24
  - Concessions directive 2014/23
- National framework
  - 17 june 2016 on public contracts
  - 17 juni 2016 on concession contracts

# Public Procurement

## What is Public Procurement?

- It is the acquisition:
  - of goods, public works and consultant services
  - by public procuring entities
- contractor can be a private or public entity

# Public procurement

- Can be used to buy smart solutions, to foster innovation
- But requires intelligent organization and choice of public procurement procedures, structuring of public contracts and concessions
  - Otherwise
    - Mismatch offer & need
    - Risk of exclusion of SME's
    - Risk of irregular tenders
    - Risk of no market appetite

# How

- Use Preliminary market consultations

Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

For this purpose, contracting authorities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.



# How

Use a competitive procedure with negotiation or a competitive dialogue

Can be used in the following situations (inter alia):

- (a) with regard to works, supplies or services fulfilling one or more of the following criteria:
  - (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;
  - (ii) they include design or innovative solutions;
  - (iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;
  - (iv) the technical specifications cannot be established with sufficient precision by the contracting authority



# How

- Consider if innovation is required:
- New procurement procedure called “innovation partnership” where there is a need for “an innovative product, service or works that cannot be met by (those) ... already available on the market”.
- =... (to) allow contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of a new, innovative product, service or works provided that such innovative product or service or innovative works can be delivered to agreed performance levels and costs, without the need for a separate procurement procedure for the purchase”

- The partnership procedure shall be structured in “successive stages”; with “intermediate targets” and remuneration in instalments.

=the possibility to enter into an agreement in the form of an incremental contractual arrangement using two distinct stages – the first being the “R&D” or design stage to develop the solution; followed by the service contract that delivers the solution.

## How

- Consider splitting contracts into lots = sme access
- Consider carefully selection criteria
- Consider how much risk the city is willing to take if innovative solutions are needed
- Consider carefully award criteria (do not focus on price, focus on quality, sustainability, etc.)

## Examples

- <https://www.samenklimaatactief.be/>
- *"Samen Klimaatactief is het initiatief van Stad Antwerpen om de CO2-uitstoot door kantoren, lichte industrie en winkels in Antwerpen drastisch te verminderen.*
- *Samen Klimaatactief biedt nu ondernemingen per doelgroep een energiep pad met eenvoudige tot meer complexe ingrepen. Daarbij staan vele energiebespaartips voor u klaar samen met de partners om de bespaarmaatregelen voor u uit te voeren."*

## Examples

- Antwerpen, Roeselare, Eeklo,.... Setting up/implementing/using heat networks
- How – concession for public works

## Examples

- Visit London Official City Guide app: will deliver personalised experiences and offers and uses real-time data to help visitors get around the city more efficiently and explore less busy areas of the capital.

# Smart city contract with Kansas City

- *Wi-Fi network: The contract said Sprint will deploy Cisco's technology to construct and manage the Wi-Fi network. Cisco will help the city seek funding to pay costs associated with deploying and maintaining the network — Sprint is to pay for the construction, deployment and operation of the network — and it will help the city negotiate advertising placement agreements which are intended to generate revenue for the city.*
- *Cisco will also "help develop a partner ecosystem to support entrepreneurship and innovation projects and potentially pilots facilitated by the citywide Wi-Fi network." Kansas City will provide all the permits, access rights and licenses to deploy Cisco's technology.*
- *Smart+ Connected City Services: The S+CC will help "increase the level of information and related services offered by the city and foster innovation and entrepreneurship." Specifically, the city and Cisco are considering deploying "City Infrastructure Management" and "Enterprise Mobility Services Platform Solutions." <https://www.bizjournals.com/kansascity/news/2015/06/15/cisco-smart-city-contract.html>*



## Conclusion

- Smart cities implies/need
- Smart procurement: explore more innovative procurement models
- Smart partnerships: explore new type of partnerships and contractual arrangements
- Smart tender documents, selection & award criteria
  
- Smart people, well trained staff



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