

## **POLAND**

### **1. Country overview**

Poland is characterised by a decentralised procurement system, which encompasses approximately 14,000 contracting authorities spread out over the Polish territory and the various levels of government. Close to 60% of procurement is disbursed by sub-central government<sup>1</sup>. Over the past decade, Poland has reformed its procurement system substantially, aligning it to the EU's rules and principles.

In Poland, the award of public contracts to the 'lowest price' is widespread, primarily due to a relatively instable legal framework and an overall low level of procurement skills. Nevertheless, efforts to counter this development are bearing fruit. A 2014 amendment of the procurement law 2014 requires the inclusion of at least one non-price related criterion<sup>2</sup>.

In terms of strategic public procurement, Poland has been active in introducing policies for GPP/SRPP as well as PPI since the mid-2000s. However, these policies launched at the central level have often resulted in little participation from the broader share of contracting authorities.

### **2. Legal framework of strategic public procurement**

Public procurement in Poland is governed by the Public Procurement Law (PPL) - Act of 29 January 2004<sup>3</sup>. In terms of strategic public procurement, the PPL refers specifically to environmental issues in three instances. Art. 30 paragraph 6 indicates that functional requirements may include a description of the environmental impact. In Art. 91 paragraph 2 it is stipulated that award criteria may involve the application of the "best available technology with regard to the impact on the environment". Additionally, Art. 91 paragraph 8 stipulates that the Prime Minister may issue regulation on mandatory non-price tender evaluation criteria. On the basis of Art. 91 paragraph 8 PPL, the Regulation of the Council of Ministers of 10 May 2011<sup>4</sup> implements the Clean Vehicles Directive (2009/33/EC), whereby vehicles procured by certain public authorities must respect minimum environmental standards.

The implementing rules<sup>5</sup> following Art. 25 paragraph 2 of the PPL provide that contracting authorities are entitled to demand the following in order to check compliance with the specified requirements: certification by an independent entity regarding compliance with quality assurance; certification by an independent entity regarding compliance with European standards of environmental management. Other equivalent certificates may be provided by economic operators to demonstrate quality assurance and environmental management.

In addition to procurement law, national law on energy effectiveness, energy consumption, technical documentation and labels, buildings, public transport as well as Eco-Management has a bearing on GPP public procurement, too. The relevant national acts are summarised in Table 1 below.

**Table 1: National law related to GPP**

| <b>National law related to GPP</b>   |
|--|
| • Act of 15 April 2011 - Effectiveness of energy   |
| • Act of 14 September 2012 - Obligations with regard to information on consumption energy products using energy  |
| • Regulation of the Minister Economy and Labour of 20 May 2005 on requirements on technical documentation, the application of labels and characteristics technical and label designs for devices |
| • Act of July 7 1994 - Right Building  |
| • Act of 16 December 2010 - Public Transport collective (Dz. U. 2011. No. 5, item. 13, and No. 228, item. 1368)  |
| • Act of 15 July 2011 - On the national system Eco-Management and Audit (EMAS)   |

Source: National Action Plan on Sustainable Procurement 2013-2016<sup>6</sup>

With respect to SRPP, a number of provisions of the PPL provide the legal basis for social procurement. Specifically, the PPL allows the inclusion of social employment in procurement contracts, such as employment of unemployed, disabled or young people that need vocational training. Social clauses can also be applied to homeless, alcohol and drug addicts after rehabilitation, mentally ill, former convicts or refugees. Furthermore, the PPL defines exclusion criteria for contractors that are in breach of their obligations as employers.

### **3. Policy framework for GPP, SRPP and PPI**

The Public Procurement Office (PPO) is the main body responsible for public procurement in Poland, including strategic public procurement. It carries out policy, executive as well as oversight functions.

In terms of strategic procurement, the PPO is mainly active in GPP and SRPP policy undertaking the overall policy coordination. Other institutions and ministries, such as the Building Research Institute (ITB), have responsibilities in policy implementation, too. The Polish Agency for Enterprise Development plays a role in supporting public procurement for innovation.

**GPP and SRPP.** Poland's policy framework for sustainable procurement, the National Action Plan on Sustainable Procurement 2013-2016, includes both green and social public procurement, albeit the two policies have distinct objectives, tools and a schedule for activities<sup>6</sup>. While the National Action Plan sets overall targets for both GPP and SRPP, the approach to both policies is voluntary meaning that contracting authorities are free to choose the extent to which they implement GPP/SRPP policy.

- The main objective of the National Action Plan in terms of GPP is the market stimulation for development of products with high environmental value and innovative environmental technologies, which results from the enhanced demand of the public sector. In addition, the National Action Plan defines quantifiable targets for the uptake of GPP, awareness raising through participation to trainings and conferences as well as wider use of environmental labels and environmental management systems (see GPP targets in

Table 3).

Poland's National Action Plan builds on two previous Actions Plans related to GPP and sustainable procurement, the 1<sup>st</sup> GPP Action Plan for the years 2007-2009 and the 2<sup>nd</sup> Action Plan on Sustainable Public Procurement for 2010-2012. The 2010-2012 Action Plan already introduced an integrated approach for GPP and SRPP policy.

The Polish approach to GPP is primarily based on the environmental criteria developed at EU level, the so-called EU Toolkit<sup>7</sup>. During the course of 2010-2012 the EU GPP criteria were translated into Polish and published on the PPO's website. In addition to the EU's criteria, a national expert group has developed environmental criteria for office equipment, street lighting and traffic lights.

Furthermore, the National Action Plan 2013-2016 foresees a number of activities to foster the uptake of GPP. Among these, the PPO is planning on conducting trainings and a GPP conference, also dedicated to audit authorities. In addition, the PPO will prepare information material and analysis on GPP, as well as develop a manual on GPP that is based on the upcoming legal framework, which implements the 2014 public procurement directives<sup>6</sup>.

The Table 2 below provides an overview of the product groups for which GPP criteria have been translated in Polish and are available on the PPO's website.

**Table 2: GPP Product groups**

| GPP product groups  | National expert group                          |
|---|--|
| • Copying paper and graphic paper                               | • Office equipment (electrical and electronic) |
| • Cleaners and cleaning services                                | • Street lighting                              |
| • Office hardware   | • Traffic lights                               |
| • Construction  |  |
| • Transport   |  |
| • Furniture   |  |
| • Electricity   |  |
| • Food and catering services                                    |  |
| • Textiles  |  |
| • Product and service supplies                                  |  |
| • Wall Plates   |  |
| • Combined Heat and Power                                       |  |
| • Street lights and traffic lights                              |  |
| • Interior lighting   |  |
| • Armature  |  |
| • Toilets   |  |
| • Imaging devices   |  |
| • Electrical and electronic equipment used in the health sector |  |
| • Water infrastructure and sewage                               |  |
| • Water heaters   |  |

Source: Public Procurement Office<sup>8</sup> and National Action Plan on Sustainable Procurement 2013-2016

In terms of SRPP, the National Action Plan lays out the objective of supporting social policy by means of public procurement as well as reaching a 10% target of social procurement by 2016. Similar to GPP, training and dissemination of guidance material are some of the key actions described to foster SRPP.

In addition to the National Action Plan, SRPP is promoted by the Recommendations of the Council of Ministers on the application of social clauses in public procurement by the governmental agencies adopted in 2015<sup>9</sup>. The Recommendations are another initiative undertaken in order to use public procurement processes as an instrument for implementation of wider objectives of national social policy. The Recommendations

were addressed to the governmental administration, but also other institutions of public administration can apply them appropriately shaping their policy on public procurement.

The following targets for GPP and SRPP are defined in the National Action Plan, as summarised in

Table 3 below.

**Table 3: GPP and SRPP Targets**

| <b>GPP Target by 2016</b>   |
|---|
| <ul style="list-style-type: none"> <li>• Increase the level of GPP to 20% of all contracts awarded in Poland</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Increase awareness of GPP measured by the number of newly trained procurement officials (600 beneficiaries of dedicated training and conferences)</li> </ul> |
| <ul style="list-style-type: none"> <li>• Increase the number of entities that are holders of a verified environmental management system</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Increase the number of EU Eco-label certified products and national eco-labels, Type I ISO standards</li> </ul>  |
| <ul style="list-style-type: none"> <li>• 20% increase in users of section on "Green procurement public" on the website of the PPO</li> </ul>  |

Source: *The National Action Plan on sustainable public procurement for the years 2013-2016*

| <b>SRPP Targets by 2016</b>  |
|--|
| <ul style="list-style-type: none"> <li>• Achieve a 10% level of social public procurement</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Increase awareness of SRPP measured by the number of newly trained procurement officials (600 new beneficiaries of training at the PPO Conference)</li> </ul> |
| <ul style="list-style-type: none"> <li>• 20% increase in the users of the section "Social Public Order" on the website of the PPO</li> </ul>   |

Source: *The National Action Plan on sustainable public procurement for the years 2013-2016*

**PPI.** The Strategy for the Innovation and Effectiveness of the Economy 'Dynamic Poland 2020' (SIEG) developed by the Ministry of the Economy is the overarching policy framework for innovation and R&D<sup>10</sup>. The strategy emphasises innovation and R&D as key factors of competitiveness of the Polish economy. Among other goals, SIEG promotes innovation in public procurement. In particular, SIEG calls for the dissemination of information related to PPI, notably the competitive dialogue procedure. Furthermore, it calls for purchasing and testing of innovative solutions and a 'smart' approach to the preparation of procurement. SME participation in the procurement process is an objective of the SIEG, too.

An important initiative in PPI was the project "The new approach to public procurement – training and advice",<sup>11</sup> which focused on disseminating knowledge in order to facilitate SME participation to innovative procurement. Part of the training was also dedicated to contracting authorities.

In addition to efforts at national level, Poland is active in participating in EU-funded PPI projects, such as the ECOQUIP project on medical equipment, LCB-HEALTHCARE on low carbon healthcare, COMPLETE for optical networking solutions as well as EPP e-Health dealing with e-health for public buyers in the health sector.

#### **4. Practices of strategic public procurement**

The PPO is active in supporting contracting authorities with information, guidance and tools, which are available through a dedicated GPP tab on its main website<sup>12</sup>. Importantly, the environmental criteria in Polish language are published on the PPO website. Furthermore, the dedicated GPP section hosts the following support material: a library of case law on GPP both by the European Union Court of Justice and by the Polish National Appeal Chamber; contact data to an EU GPP Helpdesk; and a catalogue of best practices.

The corresponding section on SRPP is similarly equipped with useful information including case law, legal opinions of the PPO, a guidance book on "Social aspects in public procurement", as well as the results of a survey carried out by the PPO in 2012 on SRPP<sup>13</sup>.

Furthermore, Poland is part of a pilot project at EU level and carried out other flagship initiatives in strategic public procurement, as described in the box below.

### ***Flagship initiatives***

**Pilot ETV programme:** The EU Environmental Technology Verification (ETV) pilot programme managed by the Joint Research Centre aims at offering innovative technologies an independent assessment in order to establish their environmental value. In turn, such verification allows an easier access to market for newly developed technologies. A pilot ETV programme has been established in several EU countries including Poland (Denmark, France, Finland, Czech Republic, Belgium and the United Kingdom). The pilot is carried out under the Ministry of the Environment.

**Social clauses in the City of Warsaw:** The Mayor of the City of Warsaw issued a decree aimed at fostering the use of the social clauses in procurement tenders in the City of Warsaw<sup>14</sup>. In fact, the use of clauses will be mandatory in tenders above EUR 30,000 in procurement in a number of selected product groups and services. In other proceedings, and procurement below EUR 30,000 the use of clauses is recommended, but not mandatory. From October 2015, selected units in the city of Warsaw must take into account social criteria in public procurement carried out. Parallel to this, the CentrumCSR.PL Foundation successively monitors the institutions in terms of employment conditions, activation of the disabled and to increase labour market opportunities of marginalised groups in procedures for supplies, services and works.

**Textile PPI in Rawicz County Hospital:** A PPI procedure has been conducted for purchasing hospital staff clothing. An innovative fabric has been used for the production of this clothing that extended the lifecycle of the products, was easier to maintain and was pleasant for the skin. Savings could be generated thanks to the lower life-cycle costs of the old hospital uniforms.

### ***Most commonly used criteria***

Strategic policy goals are usually reflected in tender documents using contract specifications, selection and award criteria or functional requirements. The analysis conducted on 2013 TED database in the framework of the current study consisted in identifying strategic public procurement procedures thanks to a key word search within the information provided in contract award notices and contract notices, in particular in the description of the award criteria. The present section aims at highlighting the most common key terms found during this search as they might correspond to the most frequently used criteria or concepts of strategic public procurement in Poland.

The analysis of 2013 TED data in Poland highlighted a particular focus of GPP on materials, products or processes which can be dangerous for the environment. As per other MS, public authorities seem to pay a strong attention to recycling and to energy efficiency.

In addition, the use of certification such as ISO standards for environmental and energy management is taking up in Poland. They constitute a practical, objective and easy mean to implement GPP, which can be applied by contracting authorities.

**Figure 1: Most common search terms for GPP**

| Search Term                                  | No. | Share |
|--|-----|-------|
| niebezpieczny_szkodliwy_niebezpieczne odpady | 326 | 32%   |
| recykling_zrecyklingowany_recykling          | 230 | 22%   |
| ekologiczny                                  | 92  | 9%    |
| ekologiczny                                  | 92  | 9%    |
| ISO 14001_ISO 50001                          | 63  | 6%    |
| CO2_dwutlenek węgla                          | 46  | 4%    |
| ozon_warstwa ozonowa_wyczerpywanie się ozonu | 45  | 4%    |
| szkodliwy_szkodliwy dla środowiska           | 42  | 4%    |
| gospodarka odpadami                          | 21  | 2%    |
| odnawialny_odnawialne źródło energii         | 19  | 2%    |

Source: Analysis of 2013 TED data.

In terms of SRPP, the 2013 TED data analysis reveals a clear focus on the basic respect of labour rights. Indeed, the most frequently used criteria refer to the ILO convention and working conditions. In addition, the use of the standard OHSAS 18001 on occupational health and safety management also confirms a strong focus on the quality of the work environment.

**Figure 2: Most common search terms for SRPP**

| Search Term                                    | No. | Share |
|--|-----|-------|
| Międzynarodowa Organizacja Pracy_MOP_Konwencja | 207 | 51%   |
| godziny pracy                                  | 112 | 28%   |
| naruszenie                                     | 48  | 12%   |
| OHSAS 18001                                    | 12  | 3%    |
| prawa społeczne_prawa pracy                    | 11  | 3%    |
| warunki pracy                                  | 11  | 3%    |

Source: Analysis of 2013 TED data.

The most commonly used key terms for PPI do not provide precise insight into the most widely used criteria. This is partly linked to the fact that the support of innovation through public procurement is not easy to capture. Furthermore, it must be noted that PPI can also be implemented through need assessments and functional requirements, which may not be identified by the keywords search.

**Figure 3: Most common search terms for PPI**

| Search Term                           | No. | Share |
|---------------------------------------|-----|-------|
| prototyp_pilot                        | 161 | 90%   |
| nowa technologia_nowe technologie     | 5   | 3%    |
| digitalizacja                         | 5   | 3%    |
| w pełni zautomatyzowane_automatyzacja | 3   | 2%    |
| dialog konkurencyjny                  | 1   | 1%    |

Source: Analysis of 2013 TED data.

#### **Type of contracting authorities**

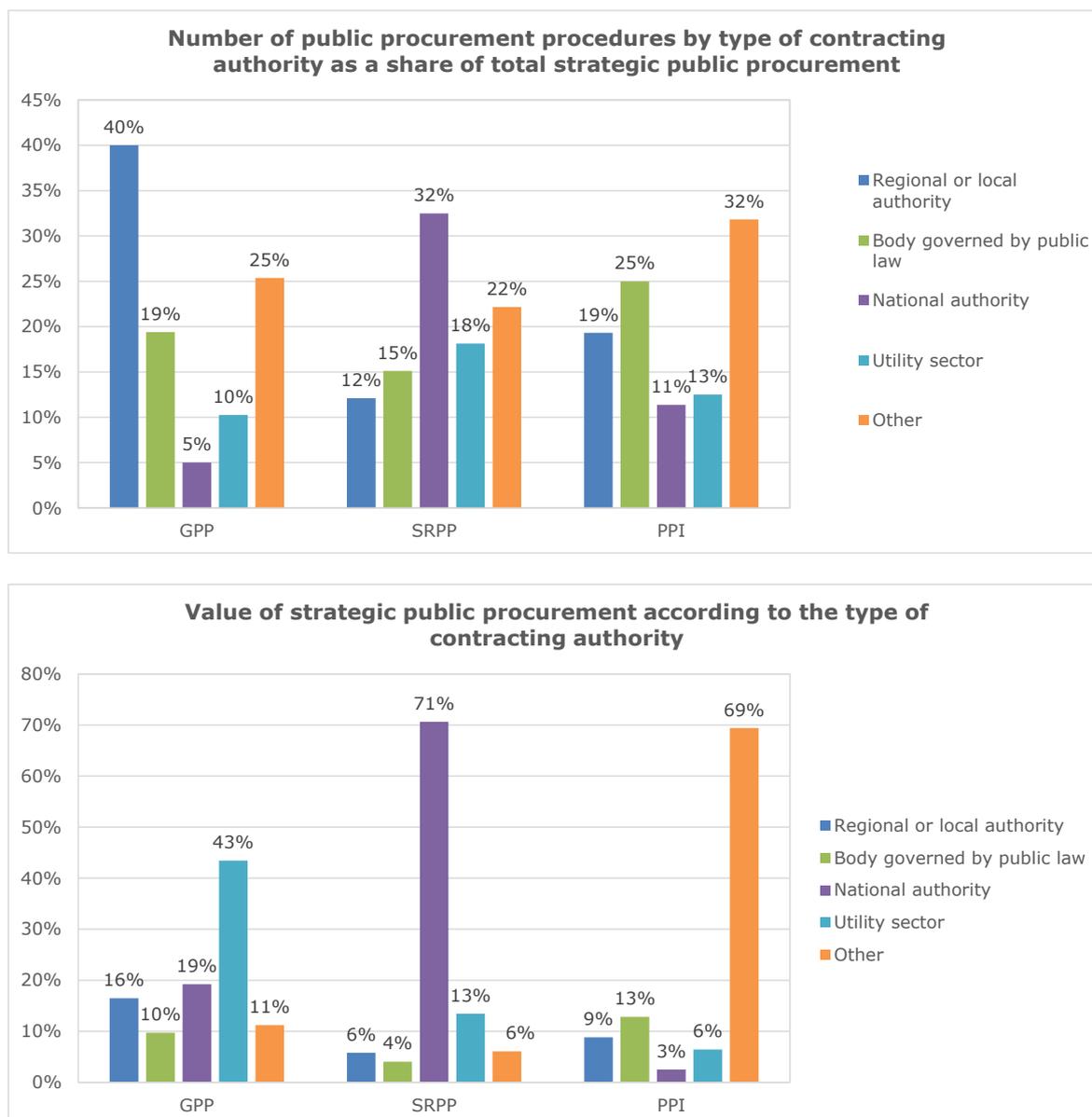
According to the 2013 TED analysis, regional and local authorities are leading the field in GPP where they carry out 40% of procedures. In monetary terms, however, the

utility sector leads in GPP with over 40% of GPP expenditure coming from it. National authorities and regional/local authorities are second and third respectively by spending below 20% of GPP expenditure.

Regarding SRPP, national authorities clearly lead both in terms of number as well as value of procedures. This may be linked to the fact that so far awareness-raising on SRPP has been more effective at national level. Indeed regional authorities come last as to the number of SRPP procedures and also cover a modest share of the overall SRPP expenditure.

No further analysis of trends for PPI with respect to the type of contracting authorities can be performed, as the majority of procedure by number and value come from the category "other", thus giving no specific insight.

**Figure 4: Type of Contracting Authority**



Source: Analysis of 2013 TED data.

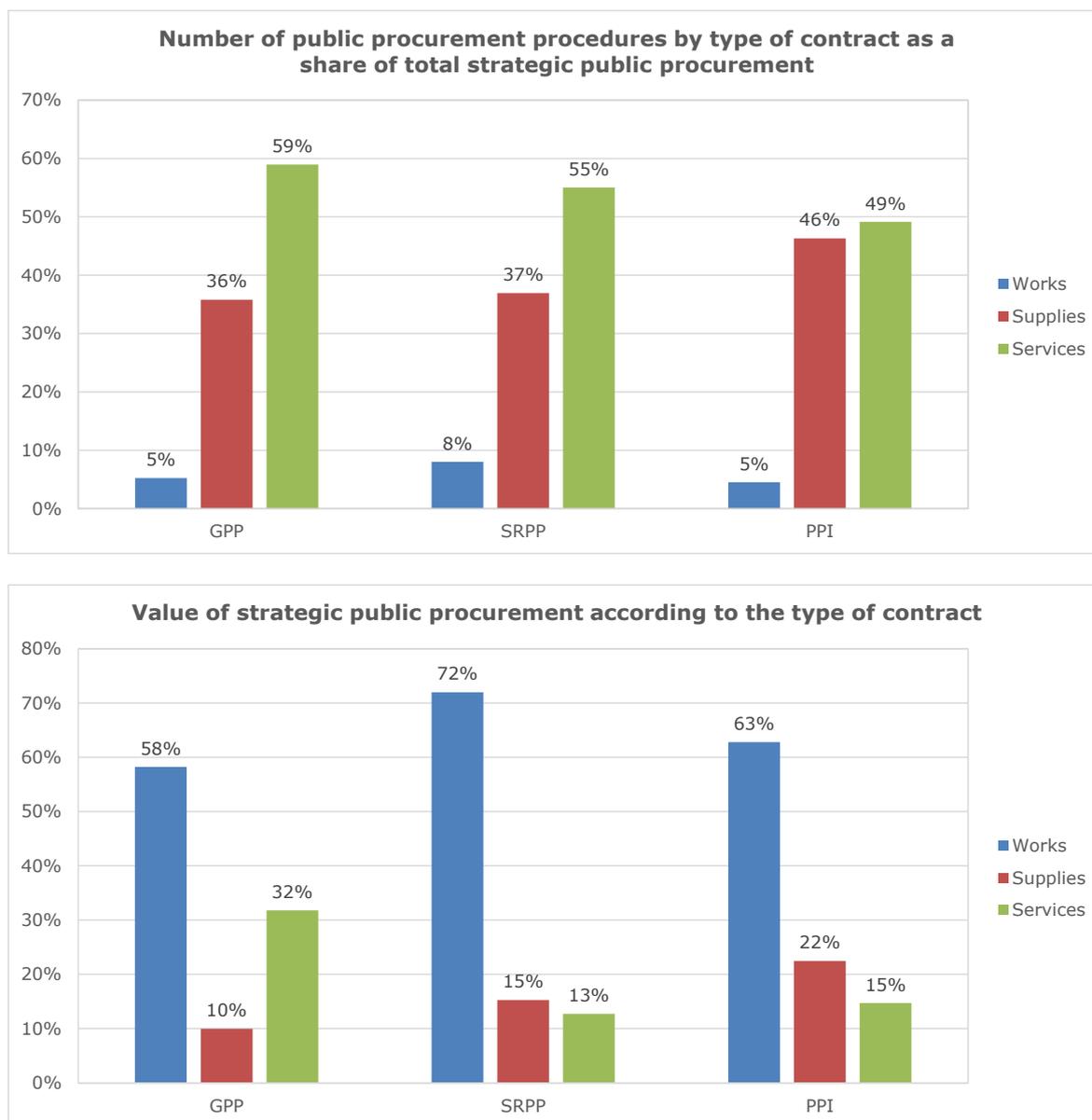
**Type of contract**

According to the 2013 TED data analysis, the types of contract most affected by strategic public procurement in Poland are services contracts. As per the tendency at EU level, services contracts account for the majority of contracts whereas works lie far behind. For PPI contracts, supplies are quite relevant in terms of number of

procedures, which appears to be consistent with the fact that PPI is used for acquiring technology-based supplies, particularly in the health care sector.

However, when it comes to analyse the value of strategic public procurement procedures, services play a much smaller role and works come first for . This is consistent with the fact that works contracts are generally higher in value as compared to supplies and services, and are particularly significant in terms of their social and environmental impact.

**Figure 5: Type of contract**

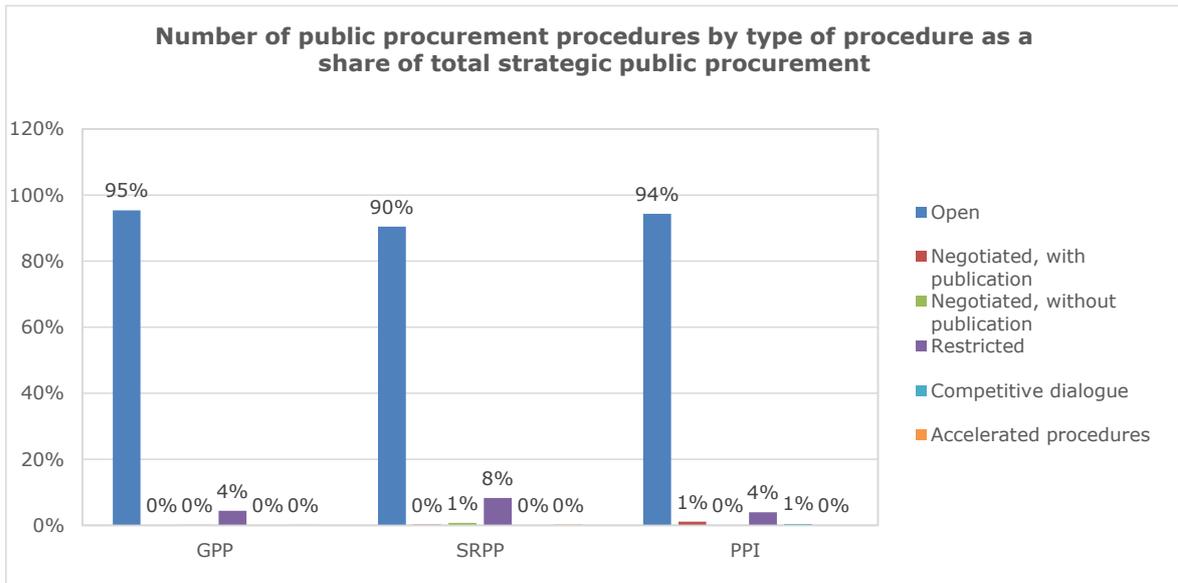


Source: Analysis of 2013 TED data.

**Type of procedure**

In terms of the type of procedure used, strategic public procurement procedures published in TED in 2013 match the overall tendency in European public procurement, in that a strong majority is being conducted through open procedures. Indeed, they represent the vast majority of procedures used, respectively 95% for GPP, 90% for SRPP, and 94% for PPI. The low use of procedures other than the open procedure may be linked to the fact that there are skills gaps for performing more complex types of procurement procedures, such as the competitive dialogue.

**Figure 6: Type of procedure**



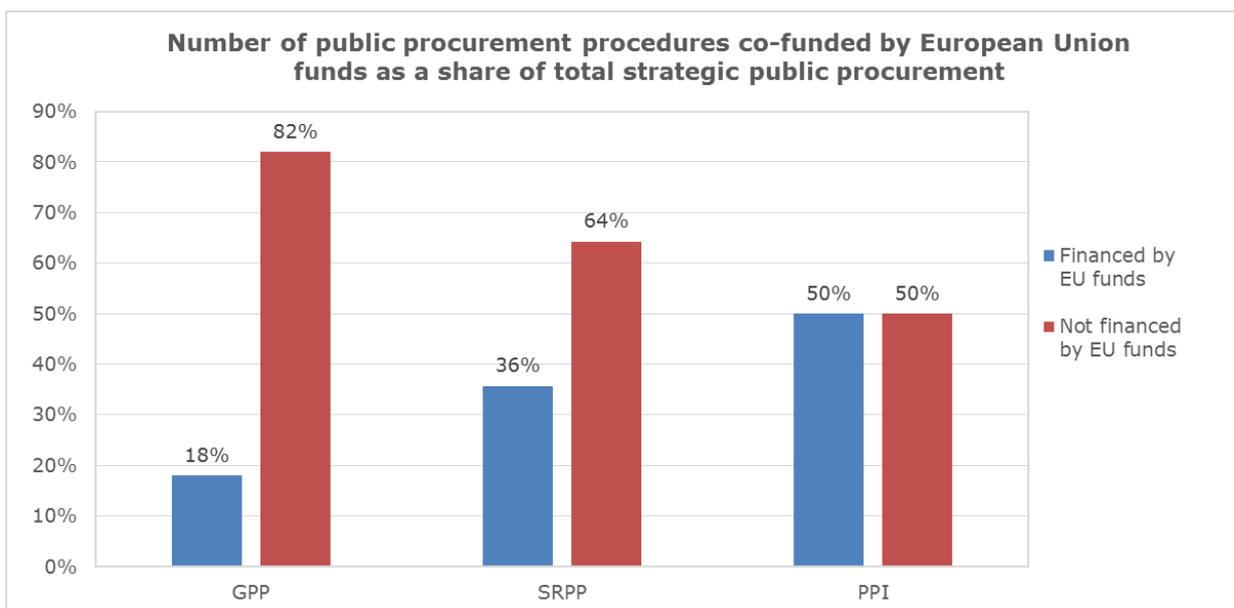
Source: Analysis of 2013 TED data.

**Incidence of EU co-funding**

According to the TED data analysis, most strategic public procurement procedures launched in 2013 were not co-funded by an EU fund in Poland. However, compared to other MS, EU co-funded procedures represent a notable part of SRPP (36%) and PPI (50%).

Even if there is no strong link between GPP and the use of EU funds, a significant part of SRPP and mostly PPI benefits from EU co-funding. All Polish regions were part of the convergence category of the European Cohesion Policy during the period 2007-2013, meaning that European funds and in particular European Structural and Investment Funds (ESI Funds) have played a major role in the Polish economy in the past years.

**Figure 7: Co-funding by EU funds**



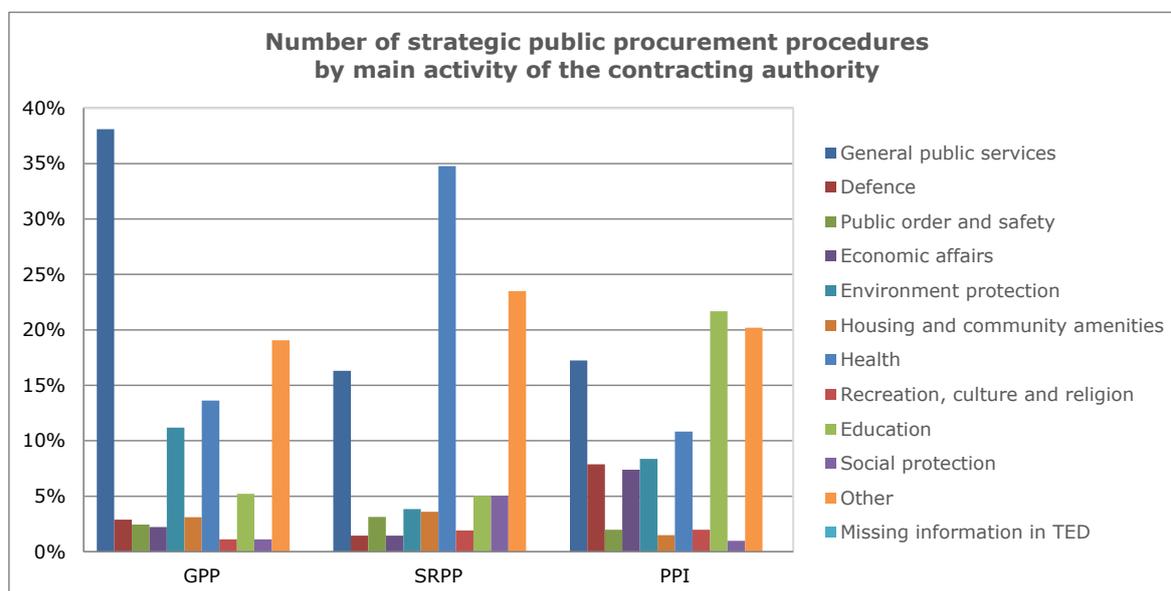
Source: Analysis of 2013 TED data.

### **Main sectors of strategic public procurement**

To identify the sectors most affected by strategic public procurement for the purpose of the present study, the TED data has been analysed through two specific fields: the main activity of the contracting authorities and the main business sectors (CPV divisions). However, the detailed analysis of CPV divisions at national level is not presented here due to the lack of country-specific tendencies compared to the trends presented in the core report of the study.

The cross-analysis of GPP, SRPP and PPI procurement procedures with the main activity of the contracting authorities reveals that the leading activity, in particular for GPP, is the one that applies to the vast majority of public bodies, namely "general services". If we do not consider the "other" category which does not allow for a particular analysis, the contracting authorities that mostly use strategic public procurement come from the health sector for SRPP and education sector for PPI. As in other MS, health is very relevant for PPI, too, given the strong need to be at the forefront of technological developments in this field.

**Figure 8: Main activity of the Contracting Authority**



Source: Analysis of 2013 TED data.

## **5. Monitoring and evaluation of strategic public procurement**

In Poland, there is no general monitoring system that allows monitoring of all public procurement tenders. Moreover each monitoring organisation or institution uses its own methodology and therefore the data/results of monitoring are often not comparable.

Nevertheless, monitoring of GPP/SRPP is anchored in the National Action Plan on Sustainable Procurement and conducted by the PPO. Given Poland's decentralised public procurement system, there is no automatic tracking of tenders with environmental or social criteria. The Public Procurement Office conducts annual monitoring of GPP and SRPP procedure based on 4% sample of randomly chosen public procurement announcements published in the national Bulletin of Public Procurement or the European Tenders Electronic Daily. Notices are being checked whether they have sustainable character and/or whether they include sustainable clauses.

The following GPP monitoring indicators are defined in the National Action Plan<sup>6</sup>:

- The share of quantity and value of contracts taking into account environmental aspects;

- The number of Polish entities registered under EMAS;
- The number of Polish companies certified with ISO 14001: 2005;
- The number of Polish products labelled with the EU Eco-labelled products Eco-label and national labels Type I environmental ISO standards;
- The number of people participating in trainings and conferences related directly and indirectly to green public procurement;
- The number of visits to the tab "Green Public Procurement" on the website of the PPO.

The National Action Plan includes the following indicators for SRPP<sup>6</sup>:

- The share of quantity and value of procurement taking into account social aspects;
- The participation of quantitative reserved contracts in the total number of procurement published in the Bulletin of Public Procurement;
- The number of people participating in trainings and conferences related directly and indirectly to SRPP;
- The number of visits to the tab 'Social Public Procurement' on the website of the PPO.

Importantly, monitoring of strategic public procurement is also carried out by an external organisation. The CentrumCSR Foundation performs its independent evaluation of the usage of strategic clauses in public procurement. CentrumCSR Foundation has its own methodology of evaluation and monitors only selected organisations and institutions in terms of the use of sustainable clauses.

### **Monitoring results**

The PPO's monitoring of GPP shows a slow but growing uptake of "green" contracts between 2006 and 2014. However, it must be noted that after steady increase in GPP until 2013, there is a slight drop in GPP uptake from 12.2% to 9.25% in 2014. The yearly GPP monitoring results present the following picture: in 2006 – 4%, in 2009 – 10.5%, 2010 – 9%, 2011 – approx. 12%, 2012 – 12%, 2013 – 12.2%, 2014 – 9.25%.

SRPP policy and monitoring started at a later stage and is therefore less developed. In fact, the PPO registered relatively low levels of uptake over the years 2010 to 2014: in 2010 – 3.9%, 2011 – 2%, 2012 – 2.9%, 2013 – 4.5%, in 2014 – 3.1%.

Furthermore, a "Survey on the use of social clauses" was launched by the PPO in 2012 in order to gather insight on the level of knowledge related to SRPP and on how to further develop social procurement policy<sup>15</sup>.

According to the survey results, only 19.6% of respondents implemented social clauses in tendering procedures, despite being acquainted with the relevant legal provisions for SRPP. Most social criteria were applied for contracts for cleaning services, security and concierge service, service training as well as contracts for repair and construction<sup>15</sup>.

The estimation of the magnitude of strategic public procurement based on 2013 TED data shows a lower take up than national monitoring data but is consistent in terms of overall tendency. According to these results (see Table 4 below), GPP represented 4% of procurement procedures published in TED in 2013, SRPP 2% and PPI only 1%. In terms of monetary value, the share of strategic public procurement in total procurement published in TED is higher for GPP and SRPP with respectively 7% and 4% of the total value of procurement procedures. The estimation of PPI is lower representing 1% share of the total value of procurement.

**Table 4: Estimated magnitude of strategic public procurement based on TED database**

|   | <b>GPP</b> | <b>SRPP</b> | <b>PPI</b> |
|---|------------|-------------|------------|
| Share of procurement procedures in number | <b>4%</b>  | <b>2%</b>   | <b>1%</b>  |
| Share of procurement procedures in value  | <b>7%</b>  | <b>4%</b>   | <b>1%</b>  |

Source: Analysis of TED data 2013.

### **Key findings of policy evaluations**

The 2013 Research Report on the New Approach to Public Procurement analyses the three barriers to public procurement markets, namely the access of SMEs, the uptake of innovation procurement as well as the uptake of e-procurement<sup>16</sup>. With respect to innovation procurement, the study finds that over half (51%) of contracting authorities do not carry out PPI. Furthermore, public authorities often do not consider that PPI has strong potential in generating improved or innovative solutions. Thus, the main barrier to the uptake of PPI is the lack of interest in such practices. Negative incentives as well as risk aversion may also play a role with respect to attitudes towards PPI. Furthermore, the deterioration of innovative firms participating in procurement markets was observed over the years 2011-2013<sup>16</sup>.

In the period January-June 2015 CentrumCSR.PL Foundation analysed a total of 803 public contracts for construction works, services and supplies. The analysed orders were carried out by the central administration, universities, marshals' offices and municipal offices and subordinate units in Warsaw, Krakow, Poznan, Wroclaw and Katowice. The analysis concluded that social and environmental clauses are still used on a very little scale in comparison to their potential use.

## **6. Analysis**

### **Strengths and best practices**

Over the past years Poland has shown a positive trajectory in the establishment of policies for strategic public procurement. Notably, the framework for GPP and SRPP has been developed in a comprehensive way, featuring targets and key actions to reach the stated targets. Furthermore, important elements of the previous GPP/SRPP Action Plans have been implemented and have led to a modest but positive increase in the uptake of green and social procurement. The PPO runs numerous trainings, conferences and other educational activities to promote solutions that contribute to the development of strategic public procurement.

Furthermore, Poland's efforts in monitoring of GPP/SRPP are positive. In fact, Poland has defined a monitoring system that includes well-defined indicators as well as a methodology for implementing the monitoring. While the data collection of GPP/SRPP contracts is not carried automatically, the monitoring represents an important step in the right direction.

### **Weaknesses and barriers**

Poland faces two main barriers in its implementation of strategic public procurement. On the one hand, the complexity of legal framework, which is characterised by frequent amendments, contrasting interpretations of the law and is generally perceived as instable, does not offer suitable framework conditions. On the other hand, contracting authorities have a tendency to take a conservative stance in matters of procurement, in order to protect themselves from the possibility of appeals. The concern that sustainability criteria might raise questions from the anti-corruption authorities prevents contracting authorities in engaging with GPP/SRPP. Furthermore, fear of charges from audit institutions for restricting competition also constitutes a key barrier to the uptake of strategic public procurement<sup>13</sup>.

In part this is due to limited practical knowledge of procurement legislation as well as lack of appropriate training. In fact in a survey on SRPP practices launched by the

PPO, 47% of survey respondents declared insufficient knowledge of procurement provision to implement social clauses<sup>13</sup>. In some cases purchasers still struggle to define what an "environmentally and/or socially preferable" product or service is, and how to include appropriate criteria for strategic public procurement. The ability to accurately assess and verify information submitted by tenderers in response to environmental criteria is also a challenge.

As a result, the implementation of GPP/SRPP is often a result of commitment and interest of single individuals rather than of a particular policy of the purchasing institution. This means that the clauses are not applied in a systematic way, so the efficiency of their use is limited to individual situations.

In the case of PPI specific barriers are related to limited skills in the application of functional requirements as well as heavy use of the experience criterion, which may exclude innovative companies that are new on the market.

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<sup>1</sup> OECD (2015), *Government at a Glance*.

<sup>2</sup> *Amendment to the Public Procurement Law of 2004 (see below)*, available at: <http://dziennikustaw.gov.pl/DU/2014/1232>

<sup>3</sup> *Act of 29 January 2004 - Public Procurement Law*, Journal of Laws of 2013, No. 907, 984, 1047, 1473, of 2014 item 423, 768, 811, 915, 1146 and 1232.

<sup>4</sup> *Regulation of the Prime Minister of 10 May 2011 on non-price mandatory tender evaluation criteria with respect to certain types of public contracts*, Journal of Laws No. 96, item 559, available at: <http://www.uzp.gov.pl/cmsws/page/?F:370>

<sup>5</sup> *Regulation of the Prime Minister of 19 February 2013 on the types of documents which may be requested by the contracting authority from the economic operator and forms in which these documents may be submitted*, Journal of Laws of 2013, item 231.

<sup>6</sup> Public Procurement Office (2013), *Krajowy Plan Działań w zakresie zrównoważonych zamówień publicznych na lata 2013-2016* (The National Action Plan on sustainable public procurement for the years 2013-2016).

<sup>7</sup> European Commission (2015), *EU GPP Criteria*, available at: [http://ec.europa.eu/environment/gpp/eu\\_gpp\\_criteria\\_en.htm](http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm)

<sup>8</sup> Public Procurement Office (2015), *EU GPP Criteria*, available at: [http://www.uzp.gov.pl/cmsws/page/?D:975;kryteria\\_srodowiskowe\\_-\\_gpp.html](http://www.uzp.gov.pl/cmsws/page/?D:975;kryteria_srodowiskowe_-_gpp.html)

<sup>9</sup> *Zalecenia Rady Ministrów w sprawie stosowania przez administrację rządową klauzul społecznychw zamówieniach publicznych* (2015) (Recommendations of the Council of Ministers on the application of social clauses by the government administration in public procurement)

<sup>10</sup> Ministerstwo Gospodarki (Ministry of Economy) (2013), *STRATEGIA INNOWACYJNOŚCI I EFEKTYWNOŚCI GOSPODARKI „Dynamiczna Polska 2020”* (Strategy for the Innovation and Effectiveness of the Economy 'Dynamic Poland 2020').

<sup>11</sup> Public Procurement Office, *A New Approach to Public Procurement*, available at: <http://www.uzp.gov.pl/cmsws/page/?D:1270>

<sup>12</sup> Public Procurement Office (2015), *Green public procurement*, available at: <http://www.uzp.gov.pl/cmsws/page/?F:291>

<sup>13</sup> Public Procurement Office (2012), *Results of the Survey on the Use of Social Clauses by Polish Authorities*.

<sup>14</sup> Decree No. 1243/2015 of 01-09-2015, available at: <http://bip.warszawa.pl/NR/exeres/DF6B1EBC-C60B-4183-B6AC-037C5300D292,frameless.htm>

<sup>15</sup> Public Procurement Office (2012), *ANKIETA UZP NA TEMAT STOSOWANIA KLAUZUL SPOŁECZNYCH W ZAMÓWIENIACH PUBLICZNYCH* (Survey on the use of social clauses in public procurement).

<sup>16</sup> POLSKA AGENCJA ROZWOJU PRZEDSIĘBIORCZOŚCI (Polish Agency for Enterprise Development) (2013), *NOWE PODEJŚCIE DO ZAMÓWIENI PUBLICZNYCH: Raport z badań 2013* (New Approach to Public Procurement: Research Report 2013).