

The influence of a new public procurement directive on SME's

Lisanne van Zadelhoff
University of Twente
P.O. Box 217, 7500AE Enschede
The Netherlands

l.c.s.vanzadelhoff@student.utwente.nl

Since 28th March 2014 a new public procurement directive is introduced by the EU. This directive aims to improve the winning chances SME's have at public tenders. To evaluate the past position SME's had in the public procurement process points of critique SME's have on public procurement were assembled and sorted on the frequency they were found. 148 different points of critique were found from which the 15 most prominent points of critique such as: public organizations use disproportionate selection criteria and demands, or they disproportionately cluster assignments, etc. These critiques were evaluated against the Dutch public procurement law 2012 and the new European public procurement directive (2014/24/EU). The Dutch public procurement law 2012 gives much more uniformity and form to not only the rules above, but also below the European threshold especially promoting the proportionality principle. The European public procurement directive seems to focus even more on improving the position of SME's in public tenders than the Dutch law does. In conclusion, the position of SME's will generally be improved by the implementation of the new European directive to the extent that: assignments are encouraged to be split in parts, information will be more widely accessible, subcontractors can be paid directly by the public organization and SME's will be encouraged to participate in public tenders. A disadvantage might be that by implementing social requirements into the tenders SME's will unintentionally be discouraged to participate.

Supervisor:

**Prof. Dr. Jan Telgen
Dr. ir. Fredo Schotanus**

Keywords

Public procurement, SME, European public procurement directive, SME public procurement, evaluation procurement directive, SME winning tender.

Permission to make digital or hard copies of all or part of this work for personal or classroom use is granted without fee provided that copies are not made or distributed for profit or commercial advantage and that copies bear this notice and the full citation on the first page. To copy otherwise, or republish, to post on servers or to redistribute to lists, requires prior specific permission and/or a fee.

3rd IBA Bachelor Thesis Conference, July 3rd, 2014, Enschede, The Netherlands.

Copyright 2014, University of Twente, Faculty of Management and Governance.

1. INTRODUCTION

In the Netherlands about 60 billion euros is spent on public procurement annually (Aanbesteden, n.d.). According to the OECD (The Organization for Economic Co-operation and Development) the Netherlands procures even 120 billion euros annually (OECD, 2011). The largest part of the money goes to procurements below the European threshold (Weijnen, T., Berdowski, Z., 2009). These are also the most interesting assignments for SME's as they tend to be less big and therefore more doable for a smaller company. In a research that took place in 2008 Panteia found that about 44% of the number of companies that are awarded a tender above the European threshold belong to the category SME according to Dutch standards. In volume these companies were awarded a volume of about 15% of the total amount spend in 2006 (Gibcus, P., Telussa, J.M.J., Van der Zeijden, P.Th., 2008). In 2006 SME's were responsible for 58% of the revenue of all businesses in the Netherlands and of all businesses 99,7% is categorized as a SME (MKB Nederland, n.d.). No specific information can be found about awards and volumes below the threshold, nor any recent information about current numbers. However in 2006 a gap can be seen between the share SME's have within the commercial sector and the share SME's have in the winning of tenders above the European threshold.

Small and medium sized firms not only feel their share in winning tenders is proportionally less than that of larger firms, they also feel they have a significant disadvantage at winning public tenders in comparison with larger companies. A few reasons are for example the notion that SME's are excluded by means of selection criteria. Or the assignments are especially made too big to handle, so that only large companies have the ability to bring together all of the requested capabilities (Arts, L., 2013).

After a long period of lobbying, several umbrella organizations representing SME's had a great influence in the forming of the new European public procurement directive. It may therefore come as no surprise that one of the goals of the new directive is to improve the conditions for SME's when applying for a public tender (Europese parlement en raad van de Europese Unie, 2014).

The goal of this research is to find out if the influence of the lobbying described above can be found back in the Dutch procurement law 2012 and the European directive (2014/24/EU).

2. RESEARCH QUESTION

The research question this paper will answer is therefore the following: **To what extent does the European public procurement directive (2014/24/EU) improve the position of small and medium sized firms when applying for a public tender in the Netherlands?**

To be able to answer this question several sub questions are formulated:

- *What kind of critiques do stakeholder groups have on the participation of SME's in Dutch public procurement?*
- *Which laws within the Dutch public procurement law 2012 are beneficial for SME's?*
- *Which rules in the European public directive are beneficial for SME's?*

The initial problems and position SME's have in public procurement will be evaluated by searching for viewpoints stakeholder groups have on the matter. These viewpoints take the form of critiques on public procurement stakeholder groups have made public concerning the position of SME's in public

tenders. This research will compare these points of critique to the Dutch procurement law. It will thereafter compare the points of critique with the new European procurement directive to see if some problems will be solved when implementing the directive in the Dutch procurement law. To conclude with eventual remaining problems.

3. RESEARCH FRAMEWORK

For the assembling of the points of critique, but also for the assembling of stakeholder organizations, Google is used as search engine. Google is chosen because the research is mostly based on subjective information. Moreover, it is the most popular public search engine and is therefore well-linked to all kinds of information. The search terms used are: kritiek MKB aanbesteden, kritiek MKB aanbestedingswet and kritiek MKB Europese richtlijn aanbesteden. The first 100 hits will be evaluated on relevancy.

Relevant hits are dated from the year 2010 and after. The years 2010 and 2011 are also taken into account as they are perceived to be the run-up to the national procurement law 2012. Adding the run-up will be valuable, for critique is more easily given when stakeholders know that it will have an effect, hence before a new law is made. Another criteria is that the hits have to be of Dutch origin.

From the relevant hits a list of critiques is composed and the urgency of the points of critique will be measured by the frequency they are expressed. Also a comparison will be made per sector, to look if some points of critique may be sector bound.

Further, the search criteria: MKB aanbesteden, is entered on every main page of the organizations involved with outing critique on public procurement. If there are no results for this criteria the search term aanbesteden is used instead. Assumed is that if the search term aanbesteden yields no result, there is no information to be found on public procurement. If the results have over a 100 hits, only the first 100 are viewed for relevancy. Again, relevant results date from the year 2010 and after and are of Dutch origin.

Below a schematic picture is shown that visualizes the research process as explained above.

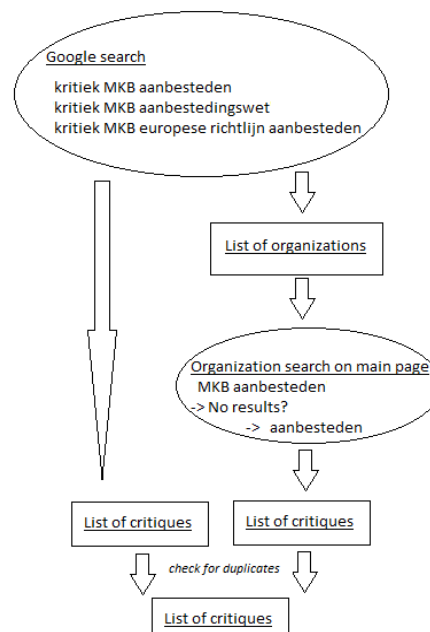


Figure 1. Research framework.

The research framework described above will provide a list of critiques which will provide the framework for the analysis of the Dutch procurement law 2012 and the European procurement directive (2014/24/EU).

4. RESULTS GOOGLE SEARCH

When searching for critiques the following classification was used to put found organizations in a grouping. These are the seven groupings clustering several organizations, the public sector, umbrella organizations, construction firms, IT firms, lawyer firms, research projects and general organizations.

Upon entering the search term “kritiek MKB Aanbesteden” (26th May) 29 relevant hits were found. The identification of organizations is as follows: 9 are public organizations, 4 belong to umbrella organizations for enterprises, 5 were organizations related to construction, 4 were lawyer companies, 3 belonged to the IT sector, 2 were research projects and 3 organizations are grouped under general.

In Google, the search term “kritiek MKB aanbestedingswet” (1st of June) resulted in 44 hits from which 21 were already found before. Distribution of organizations was found to be as follows: 11 were public organizations, 5 belong to umbrella organizations for enterprises (some protect the interests of specific branches), 4 organizations related to construction, 4 lawyer firms, 3 IT firms, 3 research projects, 7 general hits and 1 hit from an organization linked to the EU.

The search term “kritiek MKB Europese richtlijn aanbesteden” (2nd of June) resulted in 26 hits from which 9 were already found before. The distribution of organizations was found to be as follows: 7 public organizations, 5 umbrella organizations (some protect the interests of specific branches), 6 organizations related to construction, 3 lawyer firms, 0 IT firms, 1 research project, 3 general organizations and 2 related to the EU.

Non-duplication and aggregation of results gives a number of 23 public organizations, 12 umbrella organizations, 11 companies associated with construction, 10 lawyer firms, 4 IT firms, 7 research projects, 10 general organizations and 3 organizations associated with the EU.

This research resulted into 101 points of critique organizations expressed on public procurement.

5. RESULTS ORGANISATION SEARCH

The search resulted in 56 hits on websites of public organizations, from which 7 were duplicates. The public organizations with the most hits, and therefore probably the most directly involved stakeholders/influencers in public procurement were PIANOo (20 non-duplicative hits) and the ministry of economic affairs (15 non-duplicative hits). 3 organizations had no search function on their website and 5 had no information on critiques on public procurement.

54 hits were accumulated from the websites of umbrella organizations from which 6 were duplicates. Most influencing organizations are NEVI (23 non-duplicative hits), VNO NCW Rivierenland (10 non-duplicative hits) and MKB Nederland (7 hits). One organization had no search function and two did not have any relevant information.

On construction and architectural websites, 17 hits were found. The most prominent organizations were Bouwend Nederland (6 hits) and Architectuur lokaal (5 hits). Four websites did not have a search function. On two sites no relevant information was found.

Lawyer firms do not give much information on public procurement on their websites. Here only 3 hits were found from

which one was a duplicate. 5 websites did not have a search function. On three sites the results brought no relevant information.

10 hits were found for IT organizations, from which 3 were duplicate. The most influencing organization is Nederland ICT (7 non-duplicative hits). Two organizations had no relevant information concerning public procurement on their website.

Other general organizations together had 10 hits from which 9 were from Schoonmaak journaal, a company that gathers information from and for the cleaning branch. Two companies had no search function and on three sites no relevant information was found.

EU websites had a lot of information on them about public procurement. In total 44 hits were found from which 7 were duplicates. Most prominent organizations were the Europarlement (18 non-duplicative hits) and the European commission (17 non-duplicative hits). On EU websites, the search term “SME public procurement” is used, when this term didn’t yield results the search term “public procurement” was entered.

Together with the Google search the total amount of different points of critique has become 148.

6. CRITIQUES SME’S OUTED ON PUBLIC PROCUREMENT

6.1 Top 10% Most Prominent Points of Critique

In the table below the top 15 most prominent critiques are shown. Some of them are especially problematic for SME’s, others are of a more general nature. However, the more general ones also apply to SME’s.

Table 1. Top 10% points of critique listed by frequency.

Critique	Frequency
1. Disproportional demands and criteria.	36
2. Assignments are often unnecessary aggregated.	22
3. High administration and transaction costs.	18
4. Assignments, procedures and public procurement rules are often too complicated.	18
5. Guideline for public procurement under the threshold is too open-ended	15
6. Public organizations often lack market- and technical knowledge	15
7. Despite of the increasing use of the EMVI criteria, many tenders are made based on lowest price.	14
8. Assignments are often non-transparent.	14

9. There is a public procurement paradox.	14
10. Procurement procedures are executed in a formal way.	12
11. Public procurement procedures are often very time-consuming and add a lot of procedural costs.	12
12. There exist a lot of different rules throughout different municipalities.	11
13. The public procurement procedure is unnecessary heavy, circuitous.	10
14. Public organizations often come up with technical descriptions of assignments which leave little space for new innovative solutions.	9
15. Public organizations often pose unreasonable and one-sided terms in their contracts.	9

In the sections hereafter the critiques will be shortly explained and a comparison is made on which groups have a higher tendency to out a critique. Because the organizations are not grouped equally large, the comparison will be made by dividing the organizations that expressed the critique by the total number of organizations found in their respective groups. A high percentage means that the critique is fairly important to the specific group. The comparison between groups is only shown in a figure if at least one group has a percentage of 40% or higher. For example in figure 1, positioned in the next paragraph, nine of the eleven construction firms have a problem with disproportional demands and criteria.

6.2 Disproportional Demands and Criteria

Public organizations often set their selection criteria too high. The criteria on minimum turnover often exceeded 300% of the assignment. After the Dutch procurement law was enforced, turnover criteria were forbidden unless good arguments were brought forth. However, these criteria can nowadays be indirectly found through other financial selection criteria such as solvability, current ratio etc. Furthermore, companies often had to hand in a point of reference that was identical in form and size as the assignment currently for tender. For example if a school had to be build, a company had to prove he had built a school of about the same size for a public organization (Aanbestedingen in infrastructuur blijven vragen opleveren, 2013; Albert, K., 2012; Balance & Result, 2013; Dalmolen, S., 2010; Ester, P., 2012; G., M, 2012; Groenlinks, 2012; Kritiek op voorstel Aanbestedingswet, 2010; Linders, B., 2010; Renckens, J., 2012; Sakkers, J., 2011; Stichting Aanbestedingsinstituut Bouw & Infra, 2010; Stuiver, J., 2012).

Sometimes public organizations set the criteria high on purpose to eliminate smaller companies. For public organizations it is easier and less work to assign one big assignment then a lot of smaller assignments. Moreover, there is less risk that the company cannot handle the work or breaks down during the assignment. It can also be a source of cost reduction through use of economies of scale. Other times the public organization accidentally set the selection criteria high. For example if the

procurer takes some criteria from previous tenders without assessing proportionality (Arts, L., 2013; Chao-Duivis, M.A.B., Kluitenberg, mr. R.W.M., 2013; Holland van Gijzen, 2012; Haest, J., 2013; Metze, M., 2012; OSB, n.d.; Roelofs, S., n.d.; van Endhoven, F., 2012)..

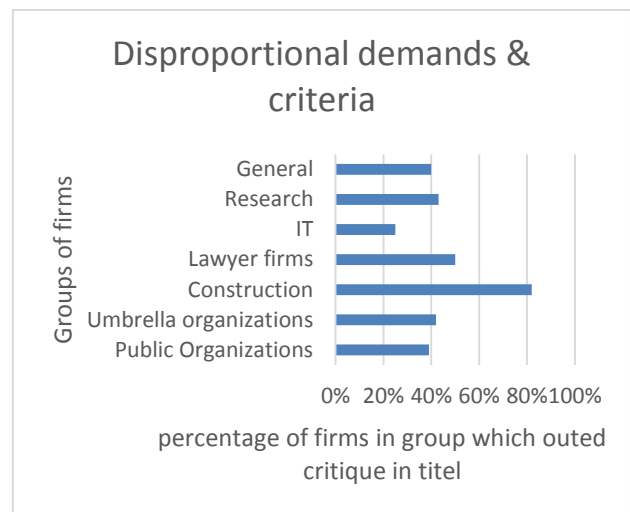


Figure 2. Percentage of firms having a problem with disproportional demands and criteria critique per group.

Notable is that mostly all firms in construction have difficulties with disproportional criteria. This is probably because construction assignments are relatively expensive. Requiring a minimum revenue based on a percentage of an assignment that is relatively high comes down harder than asking the same of a relatively cheap assignment. Bigger assignments are often also a larger part of yearly revenue making it impossible for small construction firms to find the work to triple the revenue of that big assignment. Also construction assignments for the government are fairly unique. No commercial firm will ask a construction firm to build a school or a hospital. Requiring a construction firm to have built a similar building of the same nature and the same size before is therefore very selective.

6.3 Disproportionate Clustered Projects

Public organizations have the tendency to cluster smaller assignments, either with their own other assignments or with other public organizations that have a similar need. As stated under disproportional demands and criteria there are a few advantages for public organizations to cluster multiple assignments. The disadvantage mostly falls to smaller firms. Smaller firms tend to specialize more and have more specific knowledge on smaller areas. Due to clustering, the assignments can divert from a smaller company its expertise as other capabilities are also expected or the assignment can simply become too large for a smaller company to invest in (Albert, K., 2012; Arts, L., 2013; Brand, G., 2010; Chao-Duivis, M.A.B., Europa Decentraal, n.d.; Kluitenberg, R.W.M., 2013; De nieuwe aanbestedingswet, zou het dit jaar wel gaan lukken?, 2011; Ester, P., 2012; G., M, 2012; Haest, J., 2013; Kritiek op voorstel Aanbestedingswet, 2010; Holland van Gijzen, 2012; Linders, B., 2010; Metze, M., 2012; Roelofs, S., n.d.; van Endhoven, F., 2012).

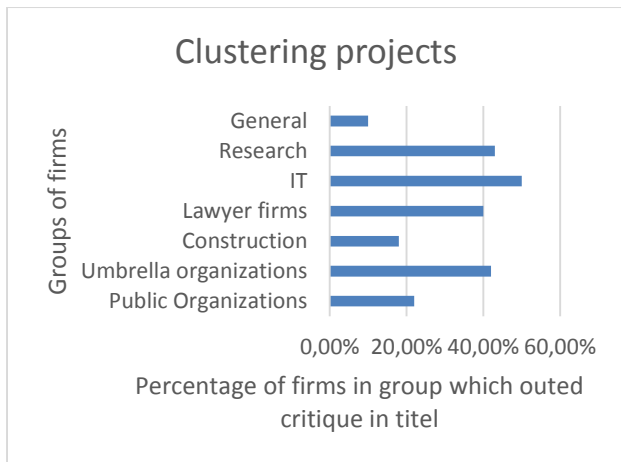


Figure 3. Percentage of firms having a problem with disproportionate clustered projects per group.

A reasonable portion of research points out that often assignments are unnecessary clustered. A large portion of IT, lawyer firms and umbrella organizations also see this as a problem. This problem is probably present by firms who sell independent products which public organizations find less important (is probably needed in relatively small volumes). For example office supplies. There are large companies who deliver all office supplies, but there are also companies that specialize in writing equipment or in paper or in tape, etc. Construction projects are naturally large, so therefore it is probable that these companies are used to handling larger assignments.

6.4 Administration and Transaction Costs

Administration and transaction costs that are made by firms consist of proof they live up to the selection criteria, often an offer, and sometimes a plan on how to tackle the assignment. For example a company has to have a quality certificate, show it operates with corporate social responsibility (ISO) and proof it is solvent enough (annual report). This is relatively easy when all the documents are already in place. However, smaller companies do not have to make an annual report and often also do not have certifications because they are relatively expensive and not always necessary. Adding the fact that it is not sure a company will get the tender, it is a relatively high investment to make for a smaller company getting all the paperwork together (Albert, K., 2012; Arts, L., 2013; Avivas adviseurs, 2014; Balance & Result, 2013; Europese aanbesteding moet eenvoudiger en eerlijker, 2011); Haest, J., 2013; Kritiek op voorstel Aanbestedingswet, 2010; Linders, B., 2010; Meijer, B. van de Wiel, W. Vriezokolk, J., 2013; Metz, M., 2012; Roelofs, S., n.d.; van Endhoven, F., 2012).

6.5 Complicated Assignments, Procedures and Rules

When new public procurement laws are enforced, public organizations often need juridical advice on how to interpret the laws. Documents and rules associated with the public procurement procedure were sometimes too complicated to understand for smaller entrepreneurs. (Arts, L., 2013; Balance & Result, 2013; Buysse Offerte Specialist, n.d.; Europa Decentraal, n.d.; Europese aanbesteding moet eenvoudiger en eerlijker, 2011; NL Ingenieurs, 2013; Ondernemend aanbesteden biedt kansen voor mkb en regionale economische ontwikkeling, 2012; Stuijver, J., 2012; van Endhoven, F., 2012; Witlox van den Boomen, 2013).

6.6 “Gids Proportionaliteit” Too Open-Ended

The “Gids proportionaliteit” was made as a guideline for public organizations to use for public procurement below the threshold. Mainly to prevent problems as disproportional criteria, clustering and too heavy procedures. Public organizations are obliged to follow the guideline. However, the guide works with the comply or explain principle. The guide does not provide a clear answer as to when an explanation is not sufficient, so the “right” motivation is open for interpretation (Arts, L., 2013; Ester, P., 2012; Haest, J., 2013; Roelofs, S., n.d.; Van de Weert, A., 2012).

6.7 Lack of Knowledge

Public organizations often lack knowledge of the market they want to procure in (Kritiek op voorstel Aanbestedingswet, 2010). The procurer therefore not always specifically knows what he needs and what the market can offer. Lack of knowledge can also result in miscommunication between procurer and supplier (Chao-Duivis, M.A.B., Kluitenberg, R.W.M., 2013; Kritiek op voorstel Aanbestedingswet, 2010; Linders, B., 2010; RRBouw, 2012; Stokmans, D., 2014).

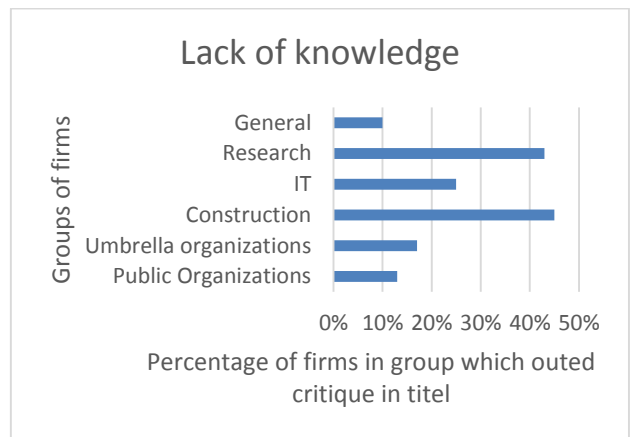


Figure 4. Percentage of firms having a problem with lack of knowledge per group

A large portion of research and a large portion of construction firms experience a lack of knowledge from public procurers with regard to the market. This indicates that especially firms and people that work in a more practical way have this complaint. This indicates a gap in understanding which can be worked on by public organizations by doing more recon as well as by commercial organizations by simple explanation and patience. Maybe also the bigger, more complex projects need more expert knowledge on the market.

6.8 Lowest Price

Often tenders are won on lowest price. This often breaks with the intention of buying good quality. It also shakes up the market. Organizations reduce costs where they can to make a chance winning the tender. Sometimes CAO's are hereby neglected. In the cleaning branch this has already led to a new accord, so that this does not happen again. Another disadvantage of awarding on lowest price which may have an influence on the negligence of CAO's is the winner's curse. Suppliers offer their goods on a very low price, however if costs are higher than anticipated the supplier has a problem. It has to keep supplying until the contract is fulfilled even if it only costs money (if keep supplying is more

beneficial than trying to end the contract). This winners curse can lead to a supplier going bankrupt (Ester, P., 2012; Koninklijke metaalunie, 2014; Kritiek op voorstel Aanbestedingswet, 2010; Ondernemend aanbesteden biedt kansen voor mkb en regionale economische ontwikkeling, 2012; OSB, n.d.; RRBouw, 2012; Stichting Aanbestedingsinstituut Bouw & Infra, 2010).

The Dutch procurement law states that public organization must opt for the most economically advantageous tender (in Dutch "Economisch meest voordelige inschrijving" (EMVI)) unless awarding on lowest price can be motivated. However suppliers often score equally on the criteria measuring quality, making the decision rest on lowest price.

6.9 Non-Transparency

Organizations face problems with the access of relevant information or to the assignment itself. It is hard to gather information to proof any unjust actions because of this non-transparency. Organizations often have to mail at least three times before public organizations give them the requested information (Albert, K., 2012; Brand, G., 2010; Buysse Offerte Specialist, n.d.; Groenlinks, 2012; Ondernemend aanbesteden biedt kansen voor mkb en regionale economische ontwikkeling, 2012; Schouten, C., 2013; Stuiver, J., 2012; Van Deurzen, M., van den Eijnden, P., 2011).

6.10 Public Procurement Paradox

By focusing on transparency and the correct application of procedures, public organizations loose the focus on return on investment. Public organizations focus on elimination of risk rather than ensuring results (Gemeente Woerden, 2013; Holland van Gijzen, 2012; Kritiek op voorstel Aanbestedingswet, OSB, n.d.; 2010; RRBouw, 2012; Schenk, M.A., van der Horst, H., n.d.; Van Deurzen, M., van den Eijnden, P., 2011).

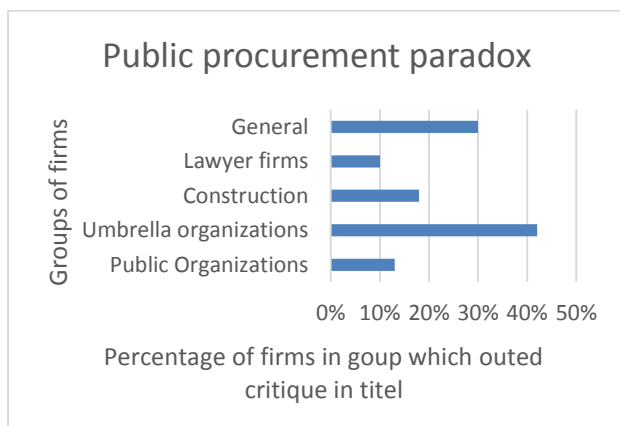


Figure 5. Percentage of firms having a problem with the public procurement paradox per group.

A large part of umbrella organizations expressed this critique. This is curious while umbrella organizations do not deal directly with the public sector in terms of public procurement, they only receive complaints and try to persuade the government to solve these complaints. It is therefore probable that umbrella organizations derived this statement from descriptions of problems firms have and have given it a general name.

6.11 Formal Handling Procedure

Public organizations want to handle public procurement procedures perfectly to avoid juridical procedures. Therefore

they try to follow every rule to the letter and use formal communication and papers to do so. This makes the communication between procurer and supplier also formal. Assignments are fought out on paper instead of discussed in person. This makes the process rather juridical (Balance & Result., 2013; Brand, G., 2010; Hiemcke, A., 2014; Kritiek op voorstel Aanbestedingswet, 2010; Linders, B., 2010; Meijer, B. van de Wiel, W. Vriezokolk, J., 2013; MKB-Nederland, MVO Nederland, NEVI, VNO-NCW, 2011; Nieland, W. Schutjes, S., 2014; Roelofs, S., n.d.; Schenk, M.A., van der Horst, H., n.d.).

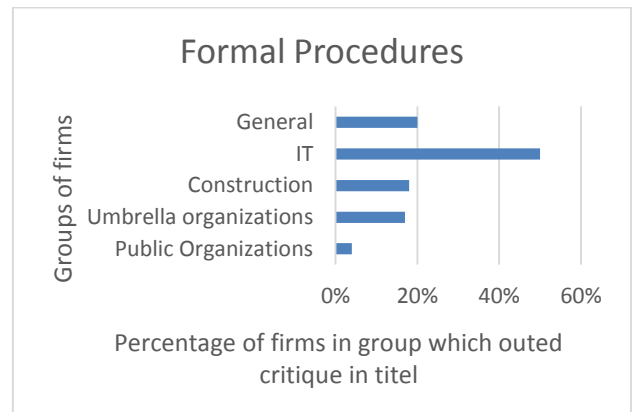


Figure 6. Percentage of firms having a problem with formal procedures per group.

Especially IT firms seem to struggle with formal procedures. IT projects can often be hard to pinpoint beforehand due to the changeable nature of the IT sector (often new products and services enter the market). Therefore informal communication is preferable to together discuss the terms and possibilities of the procurement.

6.12 Time-Consuming High Cost Procedures

A lot of effort not only has to be put in the preparation of the documents that hold the information to the procurement, but also in the registration for the assignment, the measurement of the offers and negotiation of the contract. Therefore, procedures can be very time-consuming and often result in high costs for both the offering and the buying party (De kunst van het aanbesteden, 2011; Gemeente Oosterhout, 2013; Linders, B., 2010; Nieland, W. Schutjes, S., 2014; Witlox van den Boomen, 2013).

6.13 Many Different Rules

Every municipality has its own public procurement policy. These bring about different approaches and hence different rules when handling public procurement. Also different papers and formats are used between different municipalities. Therefore it is less easy for companies to apply for tenders in different municipalities because of this lack of uniformity. Every time the policy of the municipality has to be checked to find out what that specific municipality finds important in their procurements (Ester, P., 2012; Gemeente Oosterhout, 2013; Kritiek op voorstel Aanbestedingswet, 2010).

6.14 Procedure Heavy and Circuitous

A lot of relative small assignments can be assigned using less heavy procedures. Often public organizations are afraid if they use a less heavy procedure they will not adhere to the law, so they tend to play it safe and use a standard procedure. However, this

increases costs that wouldn't have occurred by holding a less extensive and heavy procedure (Arts, L., 2013; Ester, P., 2012; Stichting Aanbestedingsinstituut Bouw & Infra, 2010).

6.15 Technical Descriptions

Public organizations often come up with technical descriptions of assignments. These technical descriptions already cover the whole assignment, leaving little option for suppliers to implement their expertise or come up with innovative solutions. The only thing suppliers have influence on are the price they offer and maybe aspects of social return they can provide. Mostly the awarding criteria is only fought out on lowest price because the rest is already set in stone (Buysse Offerte Specialist, n.d.; Chao-Duvis, M.A.B., Kluitenberg, R.W.M., 2013; Groenlinks, 2012; Linders, B., 2010; Metze, M., 2012; NL Ingenieurs, 2013; Roelofs, S., n.d.; RRBouw, 2012).

6.16 Unreasonable Contracts

To avert risks public organizations tend to shift risk to the supplier. In contracts this results in unreasonable agreements which a supplier often accepts because of the potential profits (Haest, J., 2013; Kritiek op voorstel Aanbestedingswet, 2010; Linders, B., 2010; Metze, M., 2012; Roelofs, S., n.d.; OSB, n.d.; van Endhoven, F., 2012).

7. DUTCH PROCUREMENT LAW 2012

In this chapter the top fifteen critiques SME's have on public procurement are evaluated against the current Dutch national procurement law. The law differentiates public assignments according to the European thresholds. The law itself prescribes public procurement above these thresholds. The "Gids proportionaliteit" is an extension of the Dutch procurement law that prescribes how to conduct public procurement below the European threshold. The guide also provides some additional definitions on certain proportionality principles in the Dutch procurement law 2012.

The principle of proportionality is based on effectivity and legality. Namely by reaching preset goals and making sure participating entrepreneurs have equal chances and keep integrity.

7.1 Disproportional Demands and Criteria

The law states that public organizations can only ask demands, requirements and criteria that stand in reasonable proportion to the object of the assignment (Manunza, E.R., 2014, article 1.10, 1.13 and 1.16). If the public organization asks for selection criteria based on financial and economic capacity they have to do this on other criteria than turnover, unless the public organization can motivate the use of a turnover criteria. When a turnover criteria is used, it has to be proportional to the assignment and cannot be higher than three times the worth of the assignment (Manunza, E.R., 2014, article 2.90). If the public organization requires a supplier to have experience handling an assignment he can only ask for experience in similar assignments. He cannot ask for experience in assignments that have the same nature, quantity or size and he cannot ask for the goal of the assignment to be equal as the one currently asked for (Manunza, E.R., 2014, article 2.93).

This critique is mostly tackled by the Dutch procurement law 2012. Although it is not clearly stated what in reasonable proportion to the object of the assignment means. Furthermore,

asking for other financial criteria can have the same outcome as asking for a minimum turnover, so the question is if this law is broad enough to capture the underlying intentions. If public organizations keep selection criteria based on size to a minimum, SME's have less barriers to compete and the focus of awarding the tender will rely on quality instead of certainty.

7.2 Disproportionate Clustered Projects

A public organization may not needlessly combine assignments and can only combine them when the following conditions are satisfied (Manunza, E.R., 2014, article 1.5):

- After the aggregation of the assignment enough SME's still have to be able to access to the public procurement procedure. In other words, the aggregation should not influence the composition of the relevant market.
- There are little to none organizational consequences and risks bound to the aggregation.
- The parts of the assignment have some cohesion.

This law provides a clear rule that protects SME's from being excluded through clustering. It is unclear however, how an organization can proof that the composition of the market is influenced through clustering. To be able to know this, one must have knowledge of the composition of the market as it is in the clustered form and in the form where the organization can compete in.

When assignments are clustered, public organizations are obliged to divide the assignment in different parts, unless this does not fit the assignment. This way, smaller organizations can still be eligible for a part of the assignment (Manunza, E.R., 2014, article 1.10).

7.3 High Administrative and Transaction Costs

The law states that at all times public organizations should try to limit the administrative burden that comes forth out of the public procurement procedure for himself and entrepreneurs (Manunza, E.R., 2014, article 1.6). Furthermore, all procurement procedures have to be announced on the electronic system for public procurement "TenderNed". Not only reducing administrative costs, but also making the procedure more easily accessible (Manunza, Prof. mr. E.R., 2014, article 1.18). An "eigen verklaring" has to be send in as means of application. The public organization has to clarify upfront which information has to be put in the application (Manunza, E.R., 2014, article 2.85). The "eigen verklaring" is only necessary when the public organization requires exclusion criteria and selection criteria to reduce the number of offers (Manunza, E.R., 2014, article 1.19). Only selected candidates have to eventually hand in the evidence to proof they adhere to the criteria.

The law that makes public organizations try to at all time limit administrative costs seems more like a guideline. There is no clear limit in administrative costs defined to strive for, nor can there be due to the number of different assignments and procedures. In theory, if administration costs are lowered, SME's will have a relatively easier time applying and a lower threshold doing so.

7.4 Complicated Assignments, Procedures and Rules

Complicated assignments make the path clear to use a procedure which automatically creates more dialogue between buyer and

supplier, creating a more flexible process. The procedures and rules are as complicated as the eye of the beholder. With more experience using certain procedures and rules the procurer will get more experienced and will find a way to un-complicate work for themselves or with the help of experts. For assignments under the threshold the guideline of proportionality gives a clear structure on how to procure effectively. Making use of the guideline may seem complicated, but can also be a tool for better understanding the procuring situation and the necessary proceedings.

7.5 “Gids Proportionaliteit” Too Open-Ended [Below the Threshold]

Because of the comply or explain principle the decision if something is proportional often lies with the interpretation of a judge. The judge is bound by law to consider negating disproportional costs and, in case of disproportional costs, prevent or contain the discontinuation of a tender (Manunza, E.R., 2014, article 4.18 and 4.19). Disproportionality and certain aspects to assess or to consider when trying to measure the level of proportionality are given. However, the specific way to measure disproportionality or the line in which to accept motivations or reject them is open for interpretation. Making the guideline a useful tool to help with the different aspects of public procurement and to create more awareness for ethical considerations such as involving SME's and making proportional decisions.

7.6 Lack of Knowledge

The lack of knowledge of the market cannot be helped by any law. Here a professionalization of the purchasing function is needed to either actively pursue unknown knowledge of the market or by making sure lack of knowledge is no hindrance in the procurement of needed products or services. When knowledge is scarce experts can be hired to fill the gap. However these experts have to be guided in the needs of the public organization.

The guide of proportionality explains really well how to handle the different parts of a public procurement, making it a source of knowledge procurers can ask for guidance. Market consultation is one of the steps the guide explains to be very helpful in the preparation of setting up specifications for a tender. This step will test the market knowledge of a procurer by getting in direct dialogue with certain parties to confirm or come closer to the actual goal of the need of the public organization.

7.7 Lowest Price

Awarding a tender on the EMVI criteria is obligatory, unless a good motivation is provided to award on lowest price (Manunza, E.R., 2014, article 2.114). If the price seems too low public organizations have to ask the supplier more details on how his price is build up. If the application violated one of the principles stated in article 2.116 the application is seen as invalid.

The law as well as the guideline for proportionality provide examples of sub criteria to measure EMVI, but do not provide clear ways to operationalize these sub criteria. Risks associated with lowest price are taken away by explicitly stating when applications are too good to be true. This should also reduce the concept of the winning curse. When the price seems too low and the organization has to declare how they think the arrangement will profit them and true costs and benefits will come to light.

7.8 Non-Transparency

On a written request public organizations have to provide entrepreneurs with a motivation on the choice of procedure and way the agreement will be made as well as the chosen entrepreneurs or organizations that are accepted to the procedure (Manunza, E.R., 2014, article 1.4). Furthermore the public organization needs to act transparently such that the announcement of the assignment is publically accessible (Manunza, E.R., 2014, article 1.9 and 1.12). The winning tender should also be announced to all the applicants of the assignment, with the relevant reasons why the tender has won (Manunza, E.R., 2014, article 1.15). When there are questions about the assignment, entrepreneurs can ask for additional information which should be answered and returned to all applicants in the form of an official notification (Manunza, E.R., 2014, article 2.53). When the choice is made and the tender is awarded, the public organization has to motivate any rejected party who files in a written request. This request has to be answered within 15 days after receiving it.

The transparency concept is cleverly enclosed. Every aspect of the critique on non-transparency seems to be tackled by these laws.

7.9 Public Procurement Paradox

The existence of such an extensive law is what made public organizations so focused on following rules. However, the prominent focus on procedures will probably fade when procedures are more well-known (according to the theory of the conscious competence ladder). When procurers have expert knowledge on the dos and do not's of procedures they do not have to focus on them anymore and can start focusing on procuring more professionally. However, rules and procedures do constantly change, so they have to be relearned once in a while which might relapse professionalism.

7.10 Formal handling procedure

Especially the standard procedures are very formal. The law speaks of written requests and formal widespread provision of information. Also standardized paperwork on which only the public organization can decide what content it specifically requires. When looking at the section that describes awarding criteria and awarding tenders the words technical description are more often used than the words functional description. With the use of technical descriptions there is not much use for elaborate communication. The applicant only has to show he is capable of executing the requested assignment. Limiting the communication needed also strengthens the formality of the “transaction”. However, if the assignment is complex enough (or adheres to other conditions) and therefore does not fit a standard procedure, other less formal procedures can be used instead.

7.11 Time-Consuming High Cost Procedures

By the law, the timeframe organizations have to put in their application can be cut to a minimum of 22 days with standard procedures, but only if a pre-announcement is made with all relevant information already in it. This way, all involved parties have to keep closer track of the deadlines set for the procedure and handle accordingly.

More flexible processes as described in section 7.4 also gives a possibility to use less time-consuming procedures and avoid a lot of procedural costs. Furthermore, minimizing administrative

and transaction costs in section 7.3 can also lessen time-consuming elements of a procedure. For example through asking more detailed data later on in the awarding process when only a few candidates are left unburdens the rest of the applying companies.

7.12 Many Different Rules [Below the Threshold]

Municipalities had different approaches in their procedures for public procurement. With the guide of proportionality a principle guideline is given when to use which procedure. Whilst different municipalities may still have different strategies, the procedures as well as the line of reasoning will look similar, making public procurement more predictable for organizations.

7.13 Procedures Heavy and Circuitous [Below the Threshold]

The guide of proportionality captures which procedures best to take when, so if public organizations adhere to the guideline, the procedures should not be proportionally heavy or circuitous.

7.14 Technical Descriptions

As described in section 7.10 the law seems to promote technical descriptions over functional descriptions. However, it is also stated that if the applicant does not adhere to the specifications but does have an offer that satisfies the demands in a similar way the specification do, he will not be turned down (Manunza, E.R., 2014 article 2.77). Moreover, the public organization can make room to accept variants if the awarding criteria is based on EMVI. The public organization has to list specifically that he allows variants, and also mentions which demands these variants have to satisfy. When variants do not satisfy these demands they are turned down (Manunza, E.R., 2014, article 2.83).

Too much focus seems to lie on technical descriptions. However, enough room is made for organizations to come up with variants. Moreover, the use of functional specifications is not prohibited, nor the use of technical specifications used as the base of all tenders.

7.15 Unreasonable Contracts

Law states that a public organization should only agree on conditions that are in proportion to the object of the assignment. The proportionality of conditions are laid out in the “gids proportionaliteit” (Manunza, E.R., 2014, article 1.13).

Specific guidelines are given in the guide for proportionality. Namely that the conditions should be customary to the specific market. And to consider if it is wise to negate the existing contract law and use conditions that have a negative impact on the applicant. Prescribed is that the risk should lie with the party that can best control or influence the risk. In any case the public organization may not desire an applicant to guarantee that if another party can offer a lower price for similar output the public organization has to get this offer with retroaction.

8. EUROPEAN PROCUREMENT DIRECTIVE (2014/24/EU)

8.1 Disproportionate Demands and Criteria

The maximum of turnover criteria is brought down to two times the turnover of the contract that is on tender. With a good

motivation organizations can have a stricter turnover criteria (Europese parlement en raad van de Europese Unie, 2014, consideration 83). The basis of the Dutch law is to use no turnover criteria unless motivated. With motivation a minimum turnover of maximum 3 times the turnover received from the assignment may be required. Though it is not explicitly stated that states may take no turnover criteria as the standard, I think that the Dutch law falls amidst the proportions of the European guideline.

Proportionality is encased in the guideline in the form of a working document of best practices. The “Europese code voor beste praktijken bij het faciliteren van toegang tot overheidsaanbestedingen voor het mkb” should be used to encourage public organizations to follow these best practices (Europese parlement en raad van de Europese Unie, 2014, consideration 78). Moreover, proportionality is sealed in article 18.1 saying that every organization has to be handled with equality (Europese parlement en raad van de Europese Unie, 2014). Selection criteria may only be based upon the minimum requirements of the subject, not to disadvantage specific organizations (Europese parlement en raad van de Europese Unie, 2014, article 58).

8.2 Disproportionate Clustered Projects

Public organizations are encouraged to split large assignments into smaller integrated parts. States are free to extend this rule to public procurement under the threshold. However, if splitting assignments is made obligatory there should still be an option to research if multiple parts can be better assigned to less or even one contractor. A public organization should always be able to opt for the most economically advantageous tender (Europese parlement en raad van de Europese Unie, 2014, consideration 79, article 46).

Furthermore, states are free to implement mechanisms to be able to pay subcontractors directly (Europese parlement en raad van de Europese Unie, 2014, consideration 78, article 71). Clustering has to be closely checked for a disproportionate amount of concentrated buyer-power. Clustering should be avoided when transparency and competition can be achieved for SME's (Europese parlement en raad van de Europese Unie, 2014, consideration 59).

Member states can bundle their assignments internationally if this does not conflict national laws (Europese parlement en raad van de Europese Unie, 2014, article 39). This makes public procurement possibilities more flexible, but also invites the use of even bigger assignments.

8.3 High Administration and Transaction Costs

All communication should be done electronically via public channels, unless the situation asks for other methods. Organizations have to be informed beforehand if such a situation exists (Europese parlement en raad van de Europese Unie, 2014, article 22.1). All documents should be accessible without incurring costs on interested organizations (Europese parlement en raad van de Europese Unie, 2014, article 53). The use of a single procurement document “Uniform Europees Aanbestedingsdocument (UEA)” unburdens applicants in terms of documentation beforehand. The UEA is the European uniformed version of the “eigen verklaring”. Only the winning tender has to proof the “eigen verklaring” was filled in truthfully (Europese parlement en raad van de Europese Unie, 2014, consideration 84, article 59). This form is already obligated by the Dutch procurement law 2012

when exclusion and selection criteria are used in a tender. According to the EU guideline the use of the document is not obligatory but has to be accepted by all public organizations. Also most of the procedure is digitalized making it easier to find documents and interesting public procurement projects and lessens the administrative burden for both applicant and public organization. Updating of the European website e-Certis containing all certificates that are accepted by the different states is mandatory. In a later stadium, the use of e-Certis will also be mandatory. The site is mainly made to make it easier for SME's to exchange documents (Europese parlement en raad van de Europese Unie, 2014, consideration 87, article 61). Public organizations may not ask for documents that can be viewed freely via e-Certis or other international databases.

8.4 Complicated Assignments, Procedures and rules

The European directive seeks to clarify existing rules and concepts. It may not exceed the scope of the previous directive (Europese parlement en raad van de Europese Unie, 2014, consideration 4). Indirectly rules will not become more complicated as the area they have effect on is restricted. Moreover, rules tend to get clearer as their goal is to have effect. Rules tend to have more effect when they are widely understood.

8.5 "Gids Proportionaliteit" Too Open-Ended

The scope of the directive limits itself to procurements above the threshold (Europese parlement en raad van de Europese Unie, 2014, article 1.1). Therefore, nothing can be said about the open-ended use of rules beneath the threshold.

8.6 Lack of Knowledge

Article 40 provides public organizations with the possibility to consult the market before starting a procurement procedure. Market consultation will provide procurers with more information about the market and increases their knowledge (Europese parlement en raad van de Europese Unie, 2014).

8.7 Lowest Price

Article 67 states that the economical most advantageous tender should be the standard awarding criteria. Also guidelines are given on what criteria should be evaluated when awarding this way (Europese parlement en raad van de Europese Unie, 2014). Life cycle costs should also be taken into account, which will make awarding on lowest price less plausible (Europese parlement en raad van de Europese Unie, 2014, article 68).

8.8 Non-Transparency

Applicants should be able to get all necessary information given by the public organization concerning the tender free of costs and preferably electronically (Europese parlement en raad van de Europese Unie, 2014, article 53). Public organizations are obliged to inform applicants as soon as possible on additional information concerning the reason to be turned down on an application and the reason for not being awarded a tender (Europese parlement en raad van de Europese Unie, 2014, article 55).

8.9 Public Procurement Paradox

States should monitor the national initiatives for the promotion of SME participation on public procurement procedures closely (Europese parlement en raad van de Europese Unie, 2014, consideration 124). This seems like another rule procurers have to put effort in which does not immediately yields professionalism or result. It may be argued that involving SME's extensively is an investment, for if they get experienced with public procurement public organizations have a lot of more options. There should be agencies specifically tasked with the monitoring of the correct and efficient enforcement of the directives and laws (Europese parlement en raad van de Europese Unie, 2014, article 83). This also lays more focus to the precise following of rules, except it also takes into account efficiency which forces public organizations to also look at the end result of their purchase.

8.10 Formal Handling Procedures

The competitive dialogue procedure and the negotiated procedure with the publication of a contract notice are becoming more flexible and more easily accessible for public organizations to answer the need for procedures that work well with innovative projects (Europese parlement en raad van de Europese Unie, 2014, consideration 42). The increased flexibility will bring more room for more informal communication.

8.11 Time-Consuming High Cost Procedures

The periods for partaking in a public procurement procedure should be held as short as possible (Europese parlement en raad van de Europese Unie, 2014, consideration 80). There is an emergency procedure available which makes it possible for public organizations to handle quickly in case of an emergency (Europese parlement en raad van de Europese Unie, 2014, article 88). Article 47 limits the possibility to prolong procedures (Europese parlement en raad van de Europese Unie, 2014). With all these measures to keep procedures as short as possible, applicants and public organizations alike have less time to fulfill time-consuming procedures, thus making it necessary to lighten them up. As stated in section 8.10 a few procedures are already made more flexible. Furthermore the vast administrative burden described under the sections high administrative and transaction costs are also lessened by the rules explained in section 8.3.

8.12 Many Different Rules

The guideline is a good way to uniform public procurement above the threshold, but does not obligate member states to maintain the same rules under the threshold.

8.13 Procedure Heavy and Circuitous

As stated in section 8.10, procedures getting more openly accessible for public organizations enhances the options for public procurement to use a less heavy procedure.

8.14 Technical Descriptions

Just as in the Dutch procurement law the directive has a special section for technical descriptions. The option to use functional specifications is usable, but are not described as a separate possibility. Functional criteria can be added to the list of technical specifications. However, these are two separate ways of procuring (of course they can be used in combination with

each other). Public organizations should be made conscious of the different ways they can describe an assignment to be able to procure effectively. Another complaint described assignments to be totally enclosed in their technical specifications. Article 45 makes it possible for organizations to offer variants and get accepted when they assume the same standards as what was asked.

8.15 Unreasonable Contracts

The directive does not give specific directions on reasonable contracts. However, it does prescribe that public organizations have to include the terms of making a contract in their initial document containing the specifics of the assignment (Europese parlement en raad van de Europese Unie, 2014, consideration 104, article 2.13).

9. CONCLUSION

The European guideline largely equals the Dutch public procurement law 2012, probably because the law was written in the same time part of the guideline was formulated. Table A1 situated in appendix 1 gives a short summary of the comparison between the effectiveness of the Dutch public procurement law and the European public procurement directive for solving the points of critique SME's have. There are a few additions that benefit SME's not yet included in the Dutch law. Namely the use of the website e-Certis by which entrepreneurs have the advantage that every possible certificate that is accepted in the EU will be accessible on that website. This is of course not only a benefit for SME's but a benefit for everyone. Also the possibility to pay subcontractors directly is new. This could make public organizations a mediator between commercial parties and stimulate cooperation. In this way SME's can be motivated to enroll in the procedure even when they do not completely cover all requirements because there is always a possibility to become a subcontractor. By leaving open more options public organizations will have more administrative costs, while this way it is up to them to come up with the most advantageous matches. In the directive however, helping organizations find each other is not part of the view on how to implement this rule, it is more an option for public organizations to ensure that subcontractors get paid (on time).

The overall conclusion on the critique's is that problems occur when there is lack of knowledge of the procedure, a general disagreement on the form of the procedure used or the criteria used and how these criteria are operationalized. Moreover communication and cooperation are very important. Especially in more contact extensive assignments informal communication and active cooperation is preferred. Therefore, both public organizations and companies should gain more experience in public procurement and become more professional in executing the procedures.

However, the rules and guidelines bode very well in general and especially for SME's. In general information will be more widely accessible. In a few years every state should have digitalized their processes and information. Moreover, EU-wide processes will be made more uniform, so it will be easier to gain access to all European tenders. Procedures are being changed to assign a more practical form where needed. Procedures are also shortened to become more flexible. For SME's assignments will be split in parts and they will be motivated from within the public sector to participate in public procurement. The risk for being a subcontractor will also be lessened.

A pitfall for public organizations is that they might start to assess effectiveness at the hand of achieving the goals to encourage SME's and to add factors such as social return and environment. These "additional" goals might conflict with the basic goal of effective procurement. Effective procurement can be achieved through maturing and becoming more professional. In my opinion, professional procurement should always be strived for first.

10. DISCUSSION

While it is shortsighted to only search for the word critique and not some synonyms such as problems, complaints, pain points, objections, etc. I believe adding these to the search would not have added a lot more new content. When searching for: problemen MKB aanbesteden, already 5 of the first 10 links are found before. However, these additional hits may be interesting and worthwhile to add in further research.

Furthermore, everyone is limited by their own frame of reference. Some critiques are aggregated for their similar nature. For another this may not directly seem so similar. However, due to their frequency the top 15 will likely be of a similar nature when repeating this research. Organizations may also be grouped different which will lead to different results in chapter 6.

Also the results shown in chapter 6 are not based on that many companies. Therefore it may be more beneficial to carry out a survey to be able to receive more (and more recent) results. This exploratory research can serve as a base to build up such a survey.

As stated in the introduction, more research can be done to know how much SME's contribute to public procurement and if their situation has really improved over the years. Another possibility is to assess whether SME's are aware of their possibilities in public procurement. Some public procurement assignments may be more beneficial for SME's to go after. A good research project might be to identify types of assignments that have a better chance to be won by a SME.

REFERENCES

1. *Aanbestedingen in infrastructuur blijven vragen opleveren.* (2013). Retrieved May 26, 2014 from http://www.obn.nl/view.cfm?website_id=271&template=nieuws_details&news_id=5196
2. Albert, K. (2012). *Inwerktrading Aanbestedingswet uitgesteld tot 1 April 2013.* Retrieved June 1, 2014 from <http://bgadvocaten.nl/nl/actualiteiten/blog-van-medewerkers/inwerktrading-aanbestedingswet-uitgesteld-tot-1-april-2013/>
3. Arts, L. (2013). *Nieuwe Aanbestedingswet geeft ondernemers meer kans op overheidsopdrachten.* Retrieved 10 May, 2014 from <http://www.mkbservicedesk.nl/6772/nieuwe-aanbestedingswet-geeft-ondernemers.htm>
4. Avivas adviseurs. (2014). *Schiet de nieuwe aanbestedingswet zijn doel voorbij?* Retrieved May 26, 2014 from <http://avivas.nl/nieuws/48-schiet-de-nieuwe-aanbestedingswet-zijn-doel-voorbij>
5. Balance & Result. (2013). *Wat betekent de nieuwe aanbestedingswet voor uw organisatie?* Retrieved May 26, 2014 from http://balance-result.nl/uploads/de_betekenis_van_nieuwe_aanbestedingswet_2013_voor_uw_organisatie_aangepast.pdf

6. Buysse Offerte Specialist. (n.d.). *AANBESTEDINGEN*. Retrieved June 4, 2014 from <http://www.offertespecialist.eu/aanbestedingen/>
7. Brand, G. (2010). *Reisaanbestedingen moeten creatiever*. Retrieved June 4, 2014 from http://www.anvr.nl/_upload/NewsFiles/View_2_april_2010-1413.pdf
8. Chao-Duivis, M.A.B., Kluitenberg, R.W.M. (2013). *Parlementaire Geschiedenis Aanbestedingswet 2012: incl. Aanbestedingsbesluit en Gids Proportionaliteit*. Consulted June 1, 2014 from http://books.Google.nl/books?id=webOOH4lyhYC&pg=PA607&lpg=PA607&dq=kritiek+MKB+aanbestedingswet&source=bl&ots=6nC8-oi5eR&sig=piKTHb9SLpW_B7wOLKj_Kj4e6Es&hl=en&sa=X&ei=N5KLU_e9KcPEPOjyfgL&ved=0CGgO6AEwCDgK#v=onepage&q&f=false
9. Dalmolen, S. (2010). *Onredelijke eisen bij aanbestedingen*. Retrieved May 26, 2014 from <http://www.vantill.nl/uploads/files/100301.vta.vastgoed.nieuws.brief.pdf>
10. *De nieuwe aanbestedingswet, zou het dit jaar wel gaan lukken?* (2011). Retrieved June 1, 2014 from <http://www.mitopics.nl/weblog/de-nieuwe-aanbestedingswet-zou-het-dit-jaar-wel-gaan-lukken-2971>
11. *De kunst van het aanbesteden*. (2011). Retrieved May 26, 2014 from http://www.aanbestedingsadvocaat.nl/upload/File/scan_interview_lsu_relatiemagazine_trigion_juli_2011.pdf
12. Ester, P. (2012). *Aanbestedingen toegankelijker maken voor MKB*. Retrieved May 26, 2014 from <http://www.christenunie.nl/k/nl/news/view/539177/59042/peter-ester-aanbestedingsprocedures-toegankelijker-maken-voor-mkb.html>
13. Europa Decentraal. (n.d.). *Aanbestedingen*. Retrieved June 4, 2014 from <http://www.europadecentraal.nl/onderwerpen/aanbestedingen/>
14. *Europese aanbesteding moet eenvoudiger en eerlijker*. (2011). Retrieved May 26, 2014 from <http://www.rijksoverheid.nl/nieuws/2011/06/30/europese-aanbesteding-moet-eenvoudiger-en-eerlijker.html>
15. Europese Parlement en raad van de Europese Unie. Publicatieblad van de Europese Unie. (2014). *RICHTLIJN 2014/24/EU VAN HET EUROPEES PARLEMENT DE RAAD: betreffende het plaatsen van overheidsopdrachten en tot intrekking van Richtlijn 2004/18/EG*. Retrieved 10 May, 2014 from <http://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32014L0024&from=NL>
16. G., M. (2012). *Onenigheid over Aanbestedingswet*. Retrieved June 1, 2014 from <http://www.linkedin.com/groups/Onenigheid-over-Aanbestedingswet-3688127.S.92975653>
17. Gemeente Oosterhout. (2013). *BELEID*. Retrieved June 1, 2014 from http://www.oosterhout.nl/fileadmin/documenten/internet/sto/Gemeente_Oosterhout_nieuwsbrief_maart_2013.pdf
18. Gemeente Woerden. (2013). *Nota inkoop- en aanbestedingsbeleid gemeente Woerden 2013*. Retrieved June 4, 2014 from <http://www.woerden.nl/regelgeving/nota-inkoop-en-aanbestedingsbeleid-gemeente-woerden-2013>
19. Gibcus, P., Telussa, J.M.J., Van der Zeijden, P.Th., (2008). *MKB en Aanbesteden*. Retrieved June 26, 2014 from <http://www.pianoo.nl/sites/default/files/documents/documents/rapporitmkbenaanbesteden.pdf>
20. Groenlinks. (2012). *Aanbestedingswet*. Retrieved June 1, 2014 from <https://groenlinks.nl/nieuws/aanbestedingswet-0>
21. Haest, J. (2013). *Cumela themabijeenkomst "de aanbestedingswet"*. Retrieved May 26, 2014 from <http://www.cumela.nl/sites/default/files/Presentatie%20J.%20Haest.pdf>
22. Hiemcke, A. (2014). *Ook veel gangbare methoden mobiliseren kracht van leveranciers*. Retrieved May 26, 2014 from <http://quintgroup-blog.com/2014/02/>
23. Holland van Gijzen. (2012). *Europees aanbesteden. HOLLAND LAWYER*. 12 (2), 8-10
24. Koninklijke metaalunie. (2014). *Vraagtekens bij Topsectorenbeleid. METAAL & TECHNIEK*. 59 (5). 11-12.
25. *Kritiek op voorstel Aanbestedingswet*. (2010). Retrieved May 26, 2014 from http://www.vno-ncw.nl/Publicaties/Forum/Pages/Kritiek_op_voorstel_Aanbestedingswet_15508.aspx?source=%2FPages%2FZoek.aspx%3Fstart%3D49%26tags%3Daanbestedingswet#.U5wNKPLtUV
26. Linders, B. (2010). *VAN TENDERLAST NAAR TENDERLUST*. Retrieved May 26, 2014 from http://www.nederlandict.nl/Files/TER/Position_Paper_2010_Van_tenderlast_naar_%20tenderlust.pdf
27. Manunza, E.R. (2014). *Nationale wet- en regelgeving inzake overheidsopdrachten*. Utrecht: Juridisch PAO.
28. Meijer, B. van de Wiel, W. Vriezolk, J. (2013). *Eindrapportage VHG: kan de kwaliteit van het bomenbestand gewaarborgd worden, ondanks vermindering van gemeentelijke budgetten?* Retrieved June 1, 2014 from http://www.vhg.org/media/rtf/Vakgroep_Boomspecialisten/2013_0034_Rapportage_kwaliteit_bomenbestand.pdf
29. Metz, M. (2012). *Meer Markt, Minder MKB*. Retrieved May 26, 2014 from <http://www.metze.nl/tekst/Rapport%20GWW%20def.pdf>
30. *Mogelijke aanbestedingsprocedures*. (n.d.). Retrieved May 6, 2014 from <http://www.pianoo.nl/inkoopproces/fase-1-voorbereiden-inkoopdracht/mogelijke-aanbestedingsprocedures>
31. MKB-Nederland. (n.d.). *Het midden- en kleinbedrijf in een oogopslag*. Retrieved June 26, 2014 from http://web.archive.org/web/20071119132032/http://www.mkb.nl/Het_midden-_en_kleinbedrijf
32. MKB-Nederland, MVO Nederland, NEVI, VNO-NCW. (2011). *Advies Duurzaam Inkopen: 11 aanbevelingen voor een ambitieuze aanpak met de markt*. Retrieved June 4, 2014 from <http://www.mkb.nl/download.php?itemID=5744049>
33. Nieland, W. Schutjes, S. (2014). *Doelen nieuwe aanbestedingswet worden nog niet behaald*. Retrieved June 1, 2014 from http://www.gemeente.nu/PageFiles/27273/001_1392718304903.pdf
34. NL Ingenieurs. (2013). *HIGHLIGHTS 2013*. Retrieved June 1, 2014 from <http://www.nlingenieurs.nl/wp-content/uploads/2014/01/highlights-2.0..pdf>
35. OECD. (2011). *Size of public procurement market. Government at a Glance 2011*. OECD Publishing. Retrieved June 26, 2014 from <http://www.oecd.org/inclusive-growth/Government%20at%20a%20Glance%202011.pdf>
36. *Ondernemend aanbesteden biedt kansen voor mkb en regionale economische ontwikkeling*. (2012). Retrieved May 26,

- 2014 from <http://www.vno-ncwmidden.nl/service/Lists/Middelpunt%20Downloaden/Attachments/30/Middelpunt%20juni%20def.pdf>
37. *Opstellen (sub)gunningscriteria*. (n.d.). Retrieved May 6, 2014 from <http://www.pianoo.nl/inkoopproces/fase-1-voorbereiden-inkoopdracht/opstellen-subgunningscriteria>
38. OSB. (n.d.). *GEDRAGSCODE SCHOONMAAKBRANCHE. SAMEN VOOR EEN SCHONE ZAAK*. Retrieved May 26, 2014 from <http://www.osb.nl/over-osb/gedragscode-schoonmaakbranche-samen-voor-een-schone-zaak/>
39. *PvdA stelt vragen over aanbesteding zonnepanelen*. (n.d.). Retrieved May 26, 2014 from <http://www.pvdafryslan.nl/content/pvda-stelt-vragen-over-aanbesteding-zonnepanelen>
40. Renckens, J. (2012). *D66 kritisch over aanbestedingsbeleid gemeente*. Retrieved June 1, 2014 from https://hoorn.d66.nl/2012/12/16/d66_kritisch_over_aanbestedingsbeleid_gemeente/
41. Rijksoverheid. (n.d.). *Aanbesteden*. Retrieved 10 May, 2014 from <http://www.rijksoverheid.nl/onderwerpen/aanbesteden>
42. RRBouw. (2012). *EMVI & Duurzaamheid: Een richtingwijzer voor EMVI-aanbestedingen*. Retrieved May 26, 2014 from <http://www.scribd.com/doc/117092405/emvi-richtingwijzer>
43. Roelofs, S. (n.d.). *Aanbestedingswet belemmert innovatie*. Retrieved May 26, 2014 from <http://www.nederlandict.nl/?id=9983>
44. Sakkers, J., (2011). *Aanbestedingswet gunstig voor ondernemers*. Retrieved May 26, 2014 from <http://zzpbarometer.nl/aanbestedingswet-gunstig-voor-kleine-ondernemers/>
45. Schenk, M.A., van der Horst, H. (n.d.). *AANBESTEDEN DOE JE ZO: PRAKTISCH HANDBOEK VOOR AANBESTEDERS EN INSCHRIJVERS*. Retrieved June 1, 2014 from <http://www.sdu.nl/pdf/9789012582339.pdf>
46. Schouten, C. (2013). *Bijdrage Carola Schouten aan de Begroting Economische Zaken (XIII)*. Retrieved May 26, 2014 from <http://www.carolaschouten.nl/k/n27712/news/view/582616>
47. Stichting Aanbestedingsinstituut Bouw & Infra. (2010). *OVER DREMPELS: resultaten aanbestedingsanalyse 2010*. Retrieved June 1, 2014 from http://www.aanbestedingsinstituut.nl/_uploads/Statistic/Brochure902f58be-9326-47df-b0bb-68ca247627d2.pdf
48. Stokmans, D. (2014). *Zeker zes jaar te laat, 413 procent te duur. Maar wel een succes!* Retrieved May 26, 2014 from <http://www.plainorange.nl/zeker-zes-jaar-te-laet-413-procent-te-duur-maar-wel-een-succes/>
49. Stuijvers, J. (2012). *Inkoopbeleid OWO gemeenten: kansen voor ondernemers*. Retrieved May 26, 2014 from <http://www.slideshare.net/johanstuijver/mkb-vriendelijk-aanbesteden-owo-gemeenten>
50. Van Deurzen, M., van den Eijnden, P. (2011). *Veranderingen Aanbestedingswet*. Retrieved June 1, 2014 from http://www.stabu.org/extern_nieuwsarchief/839/Veranderingen_Aanbestedingswet
51. Van de Weert, A. (2012). *Nieuwe aanbestedingsregels niet waterdicht*. Retrieved May 26, 2014 from <http://www.advocatenblad.nl/site/magazine/archief/nieuws/detail/20091237.html>
52. van Endhoven, F. (2013). *Nieuwe aanbestedingswet*. Retrieved May 26, 2014 from <http://www.maasdriel.nl/DownloadFile.aspx?fileId=115e840b-225c-41e6-9ab4-e68f44270bfa&fileType=Content>
53. *Verslag regionale bijeenkomst Hoe besteed ik MKB-vriendelijk aan?* (n.d.). Retrieved May 26, 2014 from <http://www.pianoo.nl/over-pianoo/bijeenkomsten-van-pianoo/verslag-regionale-bijeenkomst-hoe-besteed-ik-mkb-vriendelijk-aan>
54. Weijnen, T., Berdowski, Z. (2009). *Het totale inkoopvolume van Nederlandse overheden*. Retrieved June 26, 2014 from <http://www.europeseaanbestedingen.eu/europeseaanbestedingen/download/common/inkoopvolume-nl-overheden.pdf>
55. Witlox van den Boomen. (2013). *DE NIEUWE AANBESTEDINGSWET BIEDT KANSEN VOOR HET MKB*. Retrieved June 1, 2014 from <http://www.wvdb.nl/nl/actueel/actueel-nieuws/de-nieuwe-aanbestedingswet-biedt-kansen-voor-het-mkb>

APPENDIX 1

Table A1. Top 15 points of critique evaluated on the Dutch public procurement law and the European procurement directive.

Point of critique	Dutch public procurement law	European procurement directive
1. Disproportionate demands & criteria	Mostly covered both by the law as well as the proportionality guide.	Mostly covered. Slightly more flexible considering turnover criteria in comparison with the dutch law.
2. Disproportionate clustered projects	Covered especially for the benefit of SME's.	Covered for the benefit of SME's with an option to opt out for public organizations that can procure more effectively or efficiently without splitting the assignment in smaller parts. The option to bundle assignments with other member states is also embedded in the guideline, so the scope of this rule is widely described with many flexible options for public organizations.
3. High administrative and transaction costs	Covered as much as seemingly possible, relatively more beneficial for SME's than for larger companies.	Covered in the same length as the Dutch law with the exception of explicitly stating that administration costs should be continuously kept down for everybody. And the addition of e-Certis.
4. Complicated assignments, procedures and rules	Seemingly covered by also giving structure to rules under the threshold by means of the guideline proportionality.	Covered to an extend that the scope of the rules does not change. Moreover a desire to make the directive a tool to clarify existing rules helps uncomplicated them in every member state.
5. "Gids Proportionaliteit" too open-ended	X	X
6. Lack of knowledge	The guideline proportionality provides procurers with the option to negate this problem by use of market consultation. It can be easily ignored, so the problem is slightly covered.	Slightly covered by giving an option to consult the market.
7. Lowest price	Halfway covered. EMVI should be used, however the way to use this criteria properly is only slightly touched in the guideline proportionality.	Mostly covered. EMVI will be empowered through the use of life cycle costs, which make it impossible to award on lowest price only because other costs will also be taken into account.
8. Non-transparency	This problem is covered. Public organizations are obliged to inform organizations on all important aspects of the procedure provided that the information is requested in time.	Problem covered. Exactly the same rule as the Dutch law.
9. Public procurement paradox	X	Enhancement of problem. The monitoring and promotion of SME participation seems to enhance the public procurement paradox, becoming another extra rule procurers have to take in consideration. On the long haul it can be an improvement for procurement effectiveness when SME's also become more acquainted with public procurement
10. Formal handling procedure	X – Transparency and equality seem to contradict with informality. The more personal and direct relationships become the more difficult it is to share the same information with everyone else. Also the focus is to remain objective which is more	Slightly covered. Increasing flexibility in the use of different procedures can help avoid ineffective formal communication by reducing the required transparency and giving a public organization the possibility to objectively select on fore-hand.

	difficult with more intimate informal relationships.	
11. Time-consuming high cost procedures	Mostly covered, by applying slightly more time pressure, the need arises to unburden the procedures as much as possible. This can be done by making procedures more flexible and less heavy. Or by lifting some of the administration and transaction costs.	Mostly covered. Procedures should be held as short as possible and prolonging of procedures is made as limited as possible. Also emergency procedures can be opted. Making the options to limit the time-consuming part the same as in the Dutch public procurement law 2012.
12. Many different rules	Mostly covered. The guide of proportionality unifies all rules below the threshold into one general guideline. There are still a lot of rules, but they are clearly put in one procurement law.	Halfway covered. The guideline unifies public procurement above the threshold, not under it.
13. Procedures heavy and circuitous	Partially covered. The procurers that did not know when to take which procedure now have a guideline to help them. Still it is possible that “less beneficial” procedures are used.	Partially covered. Some procedures are made more easily accessible making the choice of procedures more flexible. Leaving more options that involve a less heavy procedure for assignments that do not need such heavy procedures.
14. Technical descriptions	Slightly covered. The use of variants is allowed provided that the procurer specifically allowed it in the documents describing the assignment. The procurer is still encouraged to board up the purchase by specifying the exact technical specifications.	Partially covered. In the EU directive also variants are accepted when previously announced. The use of functional descriptions is not separately described.
15. Unreasonable contracts	Covered. The guideline proportionality obligates the risk within the contract to be taken by the party who has that most influence or can best control the risk.	X – Desired contract terms should be made known beforehand.

APPENDIX 2

Kritiek	Frequentie
1. Drempel om te gaan aanbesteden is voor bedrijven nog erg hoog / Imagoprobleem aanbestedingsprocedures (soms schrikt het gebruik van EMVI af) -> niet proberen = geen ervaring	5
2. Interesse voor aanbestedingen MKB nog steeds laag	1
3. Eisen zijn vaak te hoog en disproportioneel (omzet / bedrijfsomvang, competenties / ervaring / referentieprojecten). Gunnings- en selectiecriteria disproportioneel. Ontzorgt het MKB soms opzettelijk.	36
4. Voorlichting MKB kan beter / nog niet veel actie ondernomen om van slecht imago af te komen	2
5. Opdrachten zijn vaak (nodeloos) te groot	6
6. Opdrachten / procedures / aanbestedingsregels zijn vaak te ingewikkeld	18
7. Projecten zijn vaak niet transparant / problemen met toegang tot relevante informatie / toegang tot de opdracht zelf / lastig bewijsmateriaal aan te voeren onjuiste handeling opdrachtgever	14
8. Opdrachten worden onnodig geclusterd	22
9. De procedure wordt teveel dichtgetimmerd met regels / contact dichtgetimmerd	7
10. Aanbestedingen zijn meestal langdurige trajecten met veel administratieve rompslomp (+ complexe regelgeving + hoge kosten)	12
11. Kleine bedrijven hebben minder ervaring met aanbesteden en maken daardoor meer fouten - > sneller een ongeldige inschrijving (MKB minder kans)	4
12. Gebrek aan professionaliteit bij de overheid (vooral kleinere gemeenten) / voor veel inkopers is aanbesteden ook lastige materie	8
13. Overheid stelt vaak strak geformuleerde eisen (vaak gebruikmakend van een technisch bestek) die weinig ruimte overlaten voor vernieuwende oplossingen	9
14. Inkoopprocedures worden op te rigide en formele wijze in behandeling genomen (eenzijdig contact) / verworden tot een juridisch proces waarbij aanbestedingen op papier worden uitgevochten	12
15. Onredelijke en eenzijdige contractvoorwaarden (risico's worden vaak bij bedrijven neergelegd) / zwaardere risico last	9
16. Hoge administratieve lasten voor ondernemers / hoge aanbestedingskosten (voor kleine bedrijven onevenredig groot) / zijn niet altijd meteen noodzakelijk / bewijsvoering belastend/ dik boekwerk aan regels en voorwaarden om deel te mogen nemen aanbesteding	18
17. Regelgeving onder de Europese drempel is te vrijblijvend / comply or explain principe -> geen duidelijke eisen aan motivatie hiervoor	15
18. Aanbestedende diensten missen vaak de kennis over de markt (vooral (kleine) gemeenten) / technische kennis is duidelijk aan het verminderen	15
19. Aanbestedingsprocedure is onnodig zwaar / omslachtig / gebruik van openbare bureaucratie aanbestedingsprocedures voor relatief kleine opdrachten	10
20. Veel aanbestedingen worden bepaald door scherpe prijsconcurrentie (ondanks wel of niet gebruik van EMVI) / inschrijvers scoren vaak even hoog op kwaliteit	14
21. Soft skills wegen teveel mee in de gunning met EMVI criteria (presentatie en communicatieskills) / de inschrijver met de beste offerte wint ipv de beste inschrijving -> grote bedrijven veel beter in staat dit goed te doen	5
22. Aanbestedende diensten betalen soms te laat	4
23. Aanbestedende diensten geven soms onvoldoende tijd voor de opstelling van inschrijvingen	3
24. Aanbestedende diensten geven onvolledige of onduidelijke informatie vooraf / hebben onduidelijke wensen / kwaliteit van het bestek laat te wensen over / bereiden opdracht slecht voor	8
25. Er ontbreekt een calculatievergoeding (offertes worden soms onbetaald advies) / blijven soms niet vertrouwelijk	3
26. Aanbiedingen doen kosten veel geld en moeite (grote investering) en leveren vaak niks op (deel van de dienst moet soms tijdens de procedure al uitgevoerd worden)	3
27. Uiteindelijk afblazen van tenders of het gunnen van opdrachten zonder dat er een afnameverplichting uit volgt (bij raamovereenkomsten)	2
28. Inkopers en tenderadviseurs hebben een dominante positie / te vaak professionals ingehuurd van buiten de gemeente (incenditele onervaren adviseurs groeiend probleem)	4
29. Toeschrijving van tendereisen zo opgeschreven dat de keuze van leverancier bij voorbaat vaststaat	5
30. Onduidelijke weegfactoren en gebrekkige motivering bij afwijzing	7
31. Aanbestedende diensten werken vaak met preferred suppliers	2
32. Raamovereenkomsten hebben een star karakter (lastig om een beschrijving te maken van een functie die 4 jaar relevant blijft)	1

33. Bedrijven die in combinatie met andere bedrijven inschrijven worden soms hogere eisen gesteld dan bedrijven die afzonderlijk inschrijven	3
34. Alcateltermijn van 15 dagen is kort en soms onduidelijk wanneer deze ingaat / kwart van de gevallen gehanteerde termijnen (algemeen) te kort	2
35. Ambtenaren plooiën de werkelijkheid met lage schattingen (ministeries hebben niet het kostenbewustzijn van bedrijven die failliet kunnen gaan) / hebben financiële huishouding wat betreft inkoopkosten niet op orde / in begrotingen is meer aandacht voor details nodig	3
36. Veel leveranciers leveren slechte klantenzorg / (bouw)bedrijven zouden zich meer in de klant moeten verdiepen / niet elk bedrijf komt afspraken na	4
37. Leveranciers rekenen lage kosten om de aanbesteding binnen te halen om vervolgens veel overige kosten te declareren "uurtje-factuurtje"	3
38. Naar waarschuwingen van onhaalbaarheid wordt vaak niet geluisterd	1
39. Onduidelijke afspraken met toeleveranciers ten aanzien van budgettering, oplevering, resultaatverplichting en de 'what if scenario's'	1
40. De aanbesteding-paradox blijft bestaan. Door op transparantie te letten en het volgen van procedures wordt rendement vaak uit het oog verloren (het richten op risico vermijding ipv resultaat)	14
41. Total cost of ownership wordt vaak vergeten in de vraagstelling -> duurzaamheid dus ook	1
42. Vaak wordt een minimum kwaliteitsgrens beschreven in het bestek -> leidt ertoe dat de kwaliteit van inschrijvingen op deze grens komt te liggen -> leidt tot prijsconcurrentie	7
43. EMVI werkt het ontduiken van de cao in de hand ((onder)aannemers werken met schijnconstructies en bieden mee op veel te lage prijzen)/ onderaannemers werken onder hun eigen voorwaarden	3
44. Controle op social return is minimaal	2
45. Voorzieningsniveau van gemeenten neemt af -> geld gaat op aan overleg	1
46. Leveranciers gebruiken ontwerpen over uit andere gemeenten -> creativiteit verdwijnt	1
47. Quasi-inbesteden / overheden lijken steeds vaker in te besteden -> leidt tot oneerlijke concurrentie	4
48. Ontbreekt de mogelijkheid om een inschrijving te herstellen	5
49. Wezenlijke wijziging van een opdracht (als het teveel veranderd procedure opnieuw)	1
50. Bedrijfsleven heeft behoefte aan een eenduidig, uniform, wettelijk kader	5
51. Aanbestedingsregels worden nog niet adequaat toegepast / onbekendheid met regelgeving	8
52. Wet geldt niet voor private overheidsinstanties	1
53. MKB ondernemers hebben vaak gebrek aan tijd en middelen om juridische stappen te ondernemen bij mogelijke oneerlijke aanbestedingsprocessen. Grote drempel kort geding starten	2
54. Toetsing van integriteit zou niet beperkt moeten zijn tot opdrachten boven de Europese drempelwaarden	4
55. Geldigheidsduur VOG (verklaring omtrent gedrag) zou verlengt moeten worden -> beperken administratieve lasten	3
56. Er worden nog niet veel wezenlijke EMVI criteria gebruikt die kwaliteit onderscheiden / wordt ook weinig aandacht aan besteed	5
57. Commissieleden oordelen onafhankelijk van elkaar	1
58. Commissieleden zijn niet op de hoogte van andere criteria	1
59. Geringe kans op succes bij aanbestedingen voor MKB	2
60. Gemeenten (en ondernemers) hebben juristen nodig om te begrijpen wat precies bedoeld wordt met nieuwe regels / veel en onduidelijke regelgeving	3
61. Inschrijvingen op IT projecten vallen bij heel veel bedrijven te duur uit	1
62. Gebruik van EMVI is administratief zwaarder belastend dan op laagste prijs selecteren (vaak niet altijd gunstig voor MKB-> nog niet ingericht op het inschrijven van zo'n opdracht)	5
63. Veel contracten wijken af van de standaard	1
64. Aanbestedingsprocedure staat te ver van de praktijk af (papieren tijger)	1
65. ARVODI bestaande regelingen van intellectueel eigendom en aansprakelijkheid niet goed geregeld	3
66. ICT leveranciers gijzelen intellectueel eigendom	1
67. ICT leveranciers leveren niet waar gemeenten behoefte aan hebben	1
68. Duurzaam beleid gaat niet meteen samen met een solide financieel-economische onderbouwing	4
69. Wanneer een plan van aanpak wordt gevraagd is het lastig in te schatten wat nodig is om goed te scoren (niet-openbare procedure) -> te weinig informatie vestrekt -> resulteert in hele uitgebreide plannen	3
70. Veel verschillende "eigen" regels / steeds wisselende papieren / lappendeken verschillende regelingen en regelementen	11
71. Nadeel openbare procedure is dat bedrijven niet geweigerd kunnen worden ook al zijn de ervaringen met dat bedrijf slecht	1

72. Toezicht / controle van de opdrachtgevers op het werk / naleving afspraken is vaak slecht	2
73. Nalevingslasten nemen voor ondernemers toe	1
74. Criteria leiden niet tot verduurzaming en innovatie	1
75. Geen goede communicatie tussen opdrachtgever en opdrachtnemer	3
76. Conflicterende of aanvullende eisen gesteld in de criteria documenten / soms aanvullende eisen die niet in het bestek staan	2
77. Criteria lastig in te zetten voor gunning / vraagtekens bij meetbaarheid van kwaliteit criteria / inschrijvers vinden gunningscriteria niet onderscheidend genoeg / criteria ondoorgrondbaar	4
78. Wet leidt tot tal van juridische conflicten / juridisch steekspel / leveranciers proberen steeds vaker binnen juridische wegen een opdracht binnen te halen	4
79. Europese opdrachten boven de drempel zijn voor het MKB vaak niet interessant -> te groot	1
80. Gemeenten en ondernemers zijn werelden die mijlenver van elkaar afliggen / nog meer door het gebruik van externe bureau's	3
81. Bedrijven moeten af van het idee dat concurrenten niet samen kunnen werken	1
82. De openbare verantwoordingsplicht, vaak onvoorspelbare politieke besluitvormingsprocessen en wijze waarop de financiële huishouding is ingericht maakt het de overheid ook niet makkelijk aan te besteden.	1
83. Er wordt in de projectenpraktijk van alledag (onnodige) (formele) fouten gemaakt, door bedrijven en opdrachtgevers	5
84. Men zoekt onvoldoende ruimte in de wetgeving die er is / er kan veel meer dan men denkt	3
85. Opdrachtgever worstelt met precieze criteria	4
86. Formulieren zijn onduidelijk	4
87. Rechters hebben de neiging een defensieve houding aan te nemen en aanbesteders in het gelijk te stellen	4
88. Goed EMVI beleid werkt alleen maar met continuïteit. (benoem een paar kwaliteitsaspecten en hou dat vol ipv maar weer 80% laten afhangen van prijs)	4
89. Publieke opdrachtgever gaat beter met marktpartijen om dan marktpartijen met hun onderaannemers en toeleveranciers / hoofdaannemers kiezen onderaannemers op laagste prijs	5
90. Aanbestedingsregels hebben een betere aansluiting nodig bij politieke, sociale en economische ontwikkelingen	1
91. Wijzigingen in de opdracht gedurende de looptijd is voor de praktijk steeds belangrijker en daarmee problematisch geworden	1
92. Niet alle lidstaten houden consequent en systematisch toezicht op de uitvoering en werking van de aanbestedingsregels	1
93. Soms sprake van corruptie en vriendjespolitiek	2
94. "level playing field" tussen lidstaten moet nog wel eerlijker worden	1
95. Voor opdrachtgevers lastig om onafhankelijk advies te krijgen voor architectuuropdrachten omdat veel partijen kennis beschikken over verschillende kennisdomeinen en deze allen hun eigen positie willen versterken	1
96. Integrale samenwerking is een mentaliteit die zich niet laat vastzetten in juridische regels	1
97. Selectie moet niet alleen gemaakt worden door managers, er moeten meer vak deskundigen betrokken worden	1
98. Er heerst angst kwaliteit te formuleren (bang dat het te subjectief is voor de rechter)	1
99. Aard, omvang en algemene kenmerken niet voldoende terug te vinden in de aankondiging	1
100. Veel aankondigingen vermelden geen eisen of de gestelde eisen waren niet voldoende compleet	1
101. Er heerst een plan-van-aanpak-reflex, bij aanbesteders en adviseurs is het idee ontstaan dat EMVI alleen kan worden ingevuld door het schrijven van plannen van aanpak	1
102. In de crisistijd is haast geen bedrijf te vinden die voldoet aan extreme "gezondheidseisen"	1
103. Aanbestedende diensten stellen soms onbewust eisen die, hoewel toegestaan, het aantal inschrijvingen sterk beperken / richten onbewust drempels op	1
104. Social return criteria vormen vaak een struikelblok voor kleine ondernemers (last verdringing) / passen ze nog nauwelijks toe	3
105. Uitspraken van de Commissie aanbestedingsexperts zijn niet bindend maar "zwaarwegend"	3
106. De procedure van de Commissie aanbestedingsexperts hebben geen opschortende werking -> hoewel dwingend verzoeken aan aanbestedende dienst, deze schort haar procedure niet altijd op -> ondernemers zullen eerder een kort geding starten	4
107. Onder de drempel hanteren nog niet zoveel aanbestedende diensten een groslijst	1
108. Omzeteisen zijn niet meer toegestaan, dus wordt gebruik gemaakt van andere financiële kengetalen (min. Solvabiliteitsratio bijv.) -> verkapte omzeteisen	1
109. Gedwongen inkopen bij de materiaaldienst van de gemeente draagt niet bij aan concurrentie.	1
110. Voor ondernemers is het vaak lastig om te ontdekken hoe zij aanbestedende diensten kunnen benaderen voor mogelijke opdrachten	3

111. Een overzicht van de aanbestedingen die eraan zitten te komen wordt in bijna geen geval gegeven	3
112. Er vindt weinig marktconsultatie plaats	3
113. Voor het stellen van duurzaamheidseisen en het gunnen op EMVI zijn duidelijke regels opgesteld door de rijksoverheid, deze worden alleen nog lang niet altijd vertaald naar de eigen situatie van de aanbestedende dienst	3
114. Blijft vaak onduidelijk wie als eerste aanspreekpunt voor een ondernemer is aangewezen	3
115. Thema's als SROI en duurzaam inkopen worden vaak slechts summier omschreven	3
116. Vaak lastig voor overheid en bedrijven om elkaar te vinden	2
117. Weinig vertrouwen tussen opdrachtgevers en ondernemers	2
118. Bestuurders betrekken de werkvloer niet bij de uitvoering	1
119. Het is lastig de belofte het MKB meer te betrekken in praktijk te brengen	1
120. Conflicterende politieke doelen maken het inkopers lastig	1
121. In de praktijk proberen aanbestedende diensten nogal eens onder de Europese aanbestedingsregels uit te komen	1
122. Er wordt slecht naar inkopers geluisterd / ze worden pas laat in het proces betrokken	1
123. Van diverse dienstverlenende ondernemers wordt een lidmaatschap van een beroepsorganisatie verlangd terwijl dat niet in alle gevallen voor de opdrachtgever van toegevoegde waarde is	1
124. E-facturering is voorzien van nationale normen waarvan de meeste niet interoperabel zijn -> steeds hogere kosten voor ondernemingen die aan grensoverschrijdende aanbestedingen willen deelnemen	1
125. De standaard klachtenregeling is bijzonder zwak uitgewerkt aan de zijde van de ondernemers	1
126. Klachtenregeling zal naar verwachting "misbruikt" worden om de regels helder te krijgen	1
127. Kosten voor het voeren van een aanbestedingsprocedure, eventuele rechterlijke procedures en nu ook nog een klachtenprocedure zijn niet zelden hoger dan de totale kosten van het in te kopen product	1
128. Nederlandse aanbestedende diensten worden niet gestimuleerd om de Europees ontwikkelde criteria te gebruiken	1
129. Interne organisatie bij veel gemeenten zijn onvoldoende ingericht op innovatief aanbesteden en aanbesteden op basis van MVO -> overheid moet anders durven aan te besteden	4
130. De baten van europees aanbesteden wegen niet op tegen kosten van de procedure -> drempel verhogen	1
131. MKB liet het vooral afweten bij aanbestedingen door MVO criteria (lastig aan te tonen dat je voldoet aan MVO criteria	1
132. Overheid heeft nauwelijks nog ruimte om beleid te maken -> regels worden gezien als voortrekken van specifieke bedrijven / waken voor verdere inperking beleidsvrijheid gemeenten en extra regeldruk	2
133. Ondernemers weten vaak niet welke regels er zijn en hoe ze in aanmerking komen voor de opdracht	2
134. Publieke opdrachtgevers zijn niet altijd goed in het SMART formuleren van social return aspecten	1
135. Diensten van een overheidsinstelling zijn niet altijd op de hoogte van elkaars insteek en activiteiten	1
136. Aanbestedingen lijken roulette te worden, als je geluk hebt krijg je de opdracht	1
137. Vaak stellen aanbestedende diensten net aan het eind van een deadline nog een extra vraag	1
138. Door inkoopmarkt van grotere leveranciers worden MKB bedrijven vaak geconfronteerd met lagere prijzen, nadelige leveringscontracten, of contracten die worden geschonden	1
139. Ondernemers ervaren dat zij onvoldoende mogelijkheden hebben om problemen in de praktijk aan de orde te stellen	1
140. Nog veel discussie en onduidelijkheid over EMVI	1
141. Veel opdrachtgevers maken keuzes zonder met lokaal bedrijfsleven te overleggen	1
142. Het standaard toepassen van social return bij ieder bestek schiet vaak zijn doel voorbij	1
143. Aanbestedende diensten willen architecten selecteren op creativiteit, maar lopen vast in de aanbestedingsregels	1
144. Lastig voor aannemers om zich te onderscheiden in een aanbestedingsprocedure	1
145. Klagen bij onderhandse aanbestedingsprocedures gebeurd nagenoeg nooit -> inschrijvers bang van het (voorkeurs)lijstje afgehaald te worden en niet in aanmerking te komen bij de volgende aanbesteding	1
146. Van uniformiteit is bij social return nog geen sprake	1
147. Aanbestedingen horen geen podium voor sociale politiek te zijn	1