

## Harmonizing and communicating social requirements in public ICT hardware procurements

Electronics Watch and the Circular and Fair ICT Pact (CFIT) are pleased to co-host a structured dialogue between public buyers and their ICT hardware resellers on supply chain due diligence. The series recognises the need for improved coordination between these parties to achieve effective supply chain due diligence, and the unique challenges and opportunities that each party faces in that regard. The dialogue series creates space for mutual problem solving around known challenges, including the identification of good practices and proposed solutions.

The first of five planned meetings in the series took place on 22 October 2024. It considered how to address two specific challenges: the diversity of social requirements across public ICT hardware procurements, and the lack of timely, effective communication about those requirements to the market. This document provides a summary of the discussion, which was held virtually under the Chatham House Rule.

The following institutions<sup>1</sup> were represented among the meeting participants:

Academia, Atea, CANCOM Public GmbH, CDW, City of Copenhagen, City of Malmö, Dustin, Federal Office for the Environment (Switzerland), Flemish Agency for Facility Operations, Getech, Greater London Authority, KU Leuven, London Universities Purchasing Consortium, Ministry of Economic Affairs (Category IWR) (the Netherlands), North Eastern Universities Purchasing Consortium, North Western Universities Purchasing Consortium, Office of Government Procurement (Ireland), Protinus IT, Secretariat for Economic Affairs (Switzerland), SLTN, Stone Group, Techstep, UNOPS, XMA. Jigsaw24 Media could not attend live but provided input in advance.

### UNDERSTANDING THE CHALLENGES

#### The diversity of social requirements across public procurement procedures and its consequences

Participants mentioned several factors that contribute to the range of social requirements (i.e., tender criteria and contract performance clauses) across public procurements, including:

- the principle of proportionality, which obliges requirements to be scaled to the value of the contract,
- inconsistent social responsibility and due diligence approaches across functions and teams within large public purchasing authorities,
- limited knowledge about due diligence among those responsible for designing tenders and managing public contracts,
- differences in applicable legislation, particularly at the national level,
- the absence of good practice guidance,
- limited exchange and peer learning between public authorities,
- competition between public framework authorities, and
- the relative priority of other considerations (e.g., competition, price).

The lack of harmonization of social requirements in public procurements has several consequences for resellers and for the implementation of due diligence in the supply chain. Participants stressed two consequences in particular. First, it pulls the market in different directions by signaling competing priorities. Second, it carries an opportunity cost whereby effort and resource that could otherwise be invested in building internal knowledge and capacity to implement due diligence is diverted to drafting tailored responses to bespoke requests and participating in multiple verification schemes.

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<sup>1</sup> Listed alphabetically

## When and how new social requirements are communicated to the market

While some public purchasing authorities do conduct market engagement about new social requirements, it is more common that bidders are not informed about these until receiving the invitation to tender. From that moment, they have a very short window—usually two to four weeks—to prepare their bid. This timeline can create a high degree of business risk for resellers, particularly when their ability to comply with the new requirements is dependent upon cooperation with other market actors, like the brand companies whose products they sell. Supply chain transparency was the primary example of this type of requirement.

### IDENTIFIED BEST PRACTICES

#### Strengthening the communication

1. **Communicate new social requirements to the market as early as possible.** Having advanced notice of due diligence-related tender criteria and contract performance clauses would allow resellers to ask questions of the contracting authority, to assess their ability to meet the requirements, and to prepare to comply with them, including identifying potential compliance obstacles and means of overcoming these. Market engaged events were noted as one means of achieving this end.
2. **Signpost high-level due diligence priorities clearly.** Outside of individual procurement procedures, there are a number of ways that public authorities can indicate their due diligence priorities to the market. For individual institutions, the supplier code of conduct, standing meetings with vendors and policy statements—if made publicly available on the authority’s website—were cited as channels for such communication.

*Applicable to 1 and 2 above:* Participants expressed that other communications platforms and channels might be better suited to communicating both high-level priorities and upcoming social requirements that are applicable to multiple public purchasing authorities, although this is not yet standard practice in relation to due diligence. For example, government-wide requirements can be communicated via guidance or policy notes, newsletters and post on e-procurement platforms. One participant suggested that the European Single Procurement Document (ESPD), which can be shared via many eProcurement systems, might be appropriate to verify compliance with minimum legal requirements within the European Union.

3. **Maintain a dialogue with the awarded suppliers throughout the performance of the contract.** Learning is an important part of enabling progress toward effective implementation of supply chain due diligence. If resellers cannot immediately comply with new requirements, work with them to identify timebound steps toward compliance, including creative means of incentivizing the cooperation of other supply chain actors. Both the process and the outcomes are important. Participants noted that while sustainability is often a unique selling point for resellers during the tender phase, post-award, there may be advantages to reseller collaboration on transparency requirements.

#### Harmonising social requirements

1. **Make use of existing legislation.** Whenever possible, public authorities should try to align their requirements with legal obligations in existing legislation, which provides a common direction of travel. However, participants noted some challenges with this approach. On the one hand, because of their size and revenues, some resellers may not meet the applicable compliance thresholds for relevant legislation. In such cases, aligning social requirements to legal obligations established might be perceived as unfair to smaller businesses. On the other hand, legislation is not always commensurate with the scale of the social issues that it seeks to address. Limiting the scope of social requirements to what is legally regulated, therefore, may not promote effective due diligence implementation.

2. **Take steps to reduce the duplication of effort.** For example, public authorities should allow bidders to submit the same evidence across multiple procurement procedures to verify compliance with the minimum requirements. In some cases, this may require public authorities to mine the evidence for the specific data that they need. One participant mentioned having recently established a responsible procurement hub where bidders and suppliers can submit questionnaires and third party compliance assessments for use across procurements undertaken by their institution.
3. **Provide key functions with access to relevant expertise.** This can be achieved through a variety of measures, including human rights due diligence trainings for like tender teams and contract managers, and the establishment of shared resources, like a social responsibility adviser or due diligence helpdesk function, that can be utilized by multiple departments or authorities. Participants noted that improved understanding about the due diligence process usually results in clearer requirements that reflect best practice.
4. **Coordinate new requirements with other public procurement authorities.** Several participants mentioned examples of public buyers implementing joint requirements across their individual procurements. In one case, these were developed in consultation with the market through a reference group. A secondary benefit of this approach is the possibility to conduct joint follow-up among common suppliers. One participant explained that they are exploring the possibility of carrying out joint procurements with other public authorities. In addition to supporting the harmonisation of social requirements, this could increase their leverage with suppliers and reduce negative competition between contracting authorities (i.e., competition based solely on lowest price, rather a balance of value-for-money and social and environmental responsibility).
5. **Document and share lessons learned and best practices.** Although they are not yet widespread, there are good practices that could be replicated and adapted. Public buyers also stand to benefit from learning about innovative social requirements that have proved less impactful or difficult to verify, in order not to repeat less effective approaches. Participants noted that there is scope for both self-organised and facilitated peer learning, and an opportunity for other stakeholders to collect, document and share lessons and best practices.