

## Volume 23 - Issue 1, 2023 - Successful Digitilisation Pathways

### New Public Procurement Specifications and Flows with Public-Private Collaboration



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The future goes through the incorporation of innovative procedures in contracting, which through new specifications, achieve great solutions for the needs of citizens in management, technology, health, etc.

#### Key Points

- Replacing an aging health care infrastructure demands careful planning after
- Realizing that an aging population, new and better therapies and new financials are only going to be more common
- Government and private sector need to collaborate on all levels

#### Introduction

We do not discover anything new if we point out the great effort made by EU countries to maintain the welfare state, but when we talk about spending on health, we see that these figures do not stop increasing year after year, due to the aging of the population through an increase in life expectancy (Spain is the country with the second highest life expectancy in the EU), the longer survival of pathologies, as well as the development of new and more effective drugs. Proof of this is that there has been an increase in per capita health budgets, compared to 2022, by an average of more than 7%, reaching an average of € 1,808 / inhabitant.

That is why the value-added of technology to address these challenges of the present and, also of the future, at the healthcare level, allowing for a much more personalised medicine, as well as sustainability of the system, is undeniable.

This is also why Europe needs to modernise public services, boost the EU's industrial competitiveness and contribute to the development of new technologies in order to tackle the most pressing societal challenges. This, among other measures, requires the involvement of Member States by developing national strategies and policies to boost public procurement of funds for innovation.

Europe is aware of the need for innovation to turn research results into new and better services and products, thereby achieving a direct effect on the Community economy and, therefore, on improving our quality of life. That is why, within Directive 2014/24/EU on public procurement, the strategic use of public procurement is highlighted to promote innovation by making it the key to improving the efficiency and quality of services to citizens.

This European message is endorsed in Spain with Law 9/2017 on Public Sector Contracts (hereinafter PSCL), pointing out the need for use of public procurement as an instrument to implement innovation policies.

In this line of thought, and with the idea of favoring the most innovative companies, the PSCL introduces the new partnership procedure for innovation, which is regulated for those cases in which it is necessary to carry out research and development activities regarding innovative works, services, and products, for their subsequent acquisition by the Administration?.

To all this, the PSCL adds the possibility of promoting innovation when designing the award criteria or the special conditions of execution with the warning that its inclusion in the specifications must scrupulously respect the object of the contract to be conducted.

As far as the incorporation of technological innovations is concerned through the PSCL, an analysis of what is the existing need at all times must be previously established, after which, the doubt may arise as to whether the market has options, or not, to satisfy them. Fortunately, the PSCL has the mechanism of preliminary market consultations, which allow us to collect the necessary information to prepare the tenders, as well as to inform private operators about the contracting plans giving them time to prepare the projects that will be offered later.

In addition to all this, a thorough review of the scheme regarding how the public procurement of technology is being carried out must be undertaken, losing the fear of changes and being aware of the multiple options offered by the current regulations on public procurement, which, as opposed to being considered an obstacle, can be a very useful tool, if used properly.

This implies being aware of the existence and possibilities offered by the public purchase of innovation, through its different modalities that, succinctly, we can summarise in:

- **The Pre-Commercial Public Procurement:** Research and Development Services of nonexistent solutions in the market, whose contracting is excluded from the PSCL, being necessary a new tender to acquire the result of all this.
- **The Innovation Partnership:** Research and Development Services of nonexistent solutions in the market in a first phase to then acquire in the same procedure their result, provided that it corresponds to the levels of performance and costs that would have been previously agreed.
- **The Public Procurement of Innovative Technology:** Acquisition of what, at the time of bidding, exists at the prototype level, or that may involve having to undertake the impulse of a new or improved technology, which must be feasible to have it in a not too long time.

All of this, without forgetting the possibility of carrying out a more ordinary purchase of innovation through its development in the tender specifications, positively valuing innovation, through the award criteria and leaving open the specifications of the object of the purchase, so that the bidder can provide its innovative solution.

Likewise, the path of change referenced here can also happen through exploring some of the following avenues:

- Firstly, at the level of procedures, one can also innovate by abandoning the traditional "open procedure" and exploring the advantages that can offer, for example, in the bidding procedure with negotiation (negotiating those extremes that allow obtaining the best offer) or the competitive dialogue (to develop one or more solutions capable of satisfying the needs and that will serve as a basis for the successful candidates to submit a tender) or, even, according to each specific case, implementing systems for the rationalisation of contracting such as the Framework Agreement or Dynamic Procurement Systems.
- Secondly, it is essential, through the tools offered by current regulations on procurement, to promote, when possible, efficient contracts for the purchase of technology based on the value it can generate for the Public Sector. This makes it important to control all the information that this type of contracts generates by in advance designing of indicators, digitalisation, professionalisation in new technologies, etc. This is a challenging task, but likely rewarding due to enormous benefits that can end up being obtained.

As to maintaining control of the process, this can also be done through innovative solutions, through what is known in the health field as a "command center", that is, information centers focused on simplifying hospital processes and reducing duplications in terms of technology management.

- Thirdly, a solution such as the comprehensive approach to certain processes or pathologies is essential so as not to contract, with hardly any strategy and in an isolated and independent way, as we exhaust contracts and their extensions. please explain?
- Fourthly, the existing technological obsolescence in Spain, especially striking in the health sector, requires the search for new formulas for the purchase of technology, depending on the needs and funding capacity of the public sector such as leases, with or without purchase option, or services related to the availability of equipment.
- Fifthly, there are public-private partnership agreements which can serve, through their different modalities, to help address some of the shortcomings related to the public procurement of technology, for example, the often-existing underfinancing.

## Conclusion

In conclusion, the above contains some reflections on the scope that public procurement can have, which, through the eyes of those of us who are habitual actors in this area, we observe and will continue observing and, for which, it is imperative to have an ecosystem in which both manufacturers and consumers?, as well as good practice and transparency have a place.

Therefore, it is necessary to continue innovating and exploring new methods, with which the interests of the Public Sector and private operators are perfectly aligned. All this, without forgetting that in this process of search and change, it is necessary both to be aware of the novelties in public procurement and the new contracting formulas, as well as the adaptation of the existing needs, in each case, to the legal requirements that each of these new contracting formulas may have associated.

**Conflict of Interest**

None.

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