



Regulatory and legal framework for public procurement (PP) and specifically for co-production in public-private partnerships (PPP) with agents of the social and solidarity economy, Spain

MedTOWN Project

Co-production of social policies with social and solidarity economy actors to fight poverty, inequality and social exclusion



Community of Practice:



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QUESTIONNAIRE PHASES PROJECTS AND LOCAL PARTNERS. MEDTOWN PROJECT. LOT 3.

DEMONSTRATIVE ACTION. NAME: Complementary Public Local Currency for the Channelling of Social Benefits to low income population

MUNICIPALITY, REGION AND COUNTRY ACTION: Seville, Andalusia, Spain

BRIEF DESCRIPTION OF THE CONTEXT:

This table is already fully developed in the table on PPUB and PPP as there are strong similarities. Only the aspects related to Public Procurement are developed in this table.

MATRIX TO BE FILLED IN:

NO	ASPECT TO REPORT	ACTIONS	OTHER ACTIONS/CLARIFICATIONS	OTHER CLARIFICATIONS
1 ¹	Current legislation applicable to PP and PPPs	Law 9/2017 on Public Sector Contracts	Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014	Unregulated?
2	Purpose of the regulation	The purpose of the LCSP (public sector procurement law) is to regulate public sector contracting, in	The LCSP (public sector procurement law) establishes the modalities of public procurement, such as works or service	

¹ Especially related to the Social Solidarity Economy (SSE).



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		<p>order to guarantee that it complies with the principles of freedom of access to tenders, publicity and transparency of procedures, and non-discrimination and equal treatment among bidders; and to ensure, in connection with the objective of budgetary stability and expenditure control, and the principle of integrity, the efficient use of funds earmarked for the execution of works, the acquisition of goods and the contracting of services by requiring the prior definition of the needs to be satisfied, the safeguarding of free competition and the selection of the most economically advantageous tender.</p>	<p>contracts, works or service concession contracts, the different procedures, open, negotiated, competitive dialogue, partnership, etc. for innovation, etc.</p>	
3 ²	<p>Consideration-Theoretical definition of PP (According to the regulation)</p>	<p>Article 12. Qualification of contracts. 1. Works, works concession, service concession, supply and service</p>		<p>Indicate if there is no regulatory definition</p>

² Necessary for making comparative terms of equivalent concepts



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		<p>contracts concluded by entities belonging to the public sector shall be qualified in accordance with the rules contained in this section.</p> <p>2. Other public sector contracts shall be classified according to the rules of administrative law or private law applicable to them.</p>		
4	Scope of application of PP legislation	Essentially management and operating concessions to private companies.	The application of this Act to contracts entered into by the Autonomous Communities and the entities that make up the Local Administration, or the bodies dependent on them, as well as to contracts subsidised by any of these entities, shall be carried out under the terms provided for in the first final provision of this Act relating to the titles of competence.	
5	Actors involved in CPs	<p>The following entities make up the Public Sector:</p> <p>a) The General State Administration, the Administrations of the Autonomous</p>	<p>The following entities shall be considered contracting authorities for the purposes of this Law:</p> <p>a) Public Administrations.</p>	Article 3. Subjective scope of the LCSP (public sector procurement law)



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		<p>Communities, the Autonomous Cities of Ceuta and Melilla and the Entities that make up the Local Administration.</p> <p>b) The Social Security Management Entities and Common Services.</p> <p>c) Autonomous bodies, public universities and independent administrative authorities.</p> <p>d) Consortiums with their own legal personality referred to in Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, and local government legislation, as well as consortiums regulated by customs legislation.</p> <p>e) Public foundations.</p> <p>f) Mutual Societies collaborating with the Social Security.</p> <p>g) The Public Business Entities referred to in Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, and any public law entities with their own legal personality linked to a subject</p>	<p>b) Public foundations.</p> <p>c) Mutual Societies collaborating with the Social Security.</p> <p>d) all other entities having legal personality other than those referred to in the previous points which have been set up specifically to meet needs in the general interest other than those of an industrial or commercial nature, provided that one or more entities which must be regarded as contracting authorities in accordance with the criteria of this paragraph 3, either finance their activity for the most part, or control their management, or appoint more than half of the members of their administrative, management or supervisory body.</p> <p>e) Associations formed by the entities referred to in the previous points.</p>	



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		<p>belonging to the public sector or dependent on it.</p> <p>h) Mercantile companies in whose share capital the direct or indirect participation of the entities mentioned in letters a), b), c), d), e), g) and h) of this section exceeds 50%, or in cases in which, without exceeding that percentage, they are in the situation provided for in Article 5 of the revised text of the Securities Market Act, approved by Royal Legislative Decree 4/2015, of 23 October.</p> <p>(i) Funds without legal personality.</p> <p>j) Any entities with their own legal personality that have been created specifically to meet needs of general interest that are not of an industrial or commercial nature, provided that one or more subjects belonging to the public sector finance the majority of their activity, control their</p>		



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		<p>management, or appoint more than half of the members of their administrative, management or supervisory body.</p> <p>k) Associations formed by the entities mentioned in the previous points.</p> <p>l) For the purposes of this Law, the Provincial Councils and the General Assemblies of the Historical Territories of the Basque Country are also understood to form part of the public sector as regards their procurement activity.</p>		
6	Administration - competent legislative body PP	General cuts		
7	Administration - competent executive body PP	Actors belonging to the Public Administration (see above)	In the case of public works concessions and service concessions, the administration shall designate a person to act in the general interest, to obtain and verify compliance with the concessionaire's obligations, especially	



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			with regard to the quality of the service or work provided.	
8	Measures to promote or encourage CPs and PPPs	<p>Typology of Contracts:</p> <ul style="list-style-type: none"> -Work contracts -Work and service contracts -Supply contracts -Service Contracts -Mixed contracts <p>Award typologies</p> <ul style="list-style-type: none"> -Open procedure -Restricted procedure -Procedure with negotiation -Competitive Dialogues -Innovation partnership process - Project competitions - Preliminary market consultations 	<p>Social and environmental clauses are also included, criteria that can be assessed for the awarding of contracts that are relevant for the Social Economy.</p> <p>There are also contract reservations and contract reservations for certain types of services and entities. There are contract and market reservations for two types of Social Economy entities, Special Employment Centres and Insertion Companies.</p>	Including tax benefits, social security, subsidies, etc.
9	Other legislation related to the PP and PPPs	Specific aspects with relevance for the social economy and public procurement	<p>Social and environmental clauses are also included, criteria that can be assessed for the awarding of contracts that are relevant for the Social Economy.</p> <p>There are also contract reservations and</p>	



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			contract reservations for certain types of services and entities. There are contract and market reservations for two types of Social Economy entities, Special Employment Centres and Insertion Companies.	
10	Possibility of creating new legislation on PPs and PPPs	It is under continuous development, and the whole regulatory development of the RTR Plan is currently being elaborated according to the different areas of work through the PERTEs.	The PERTE are strategic projects with a great capacity to drive economic growth, employment and competitiveness of the Spanish economy, with a high component of public-private collaboration and transversal to the different administrations. The following are currently being developed: PERTE for the development of electric and connected vehicles <ul style="list-style-type: none"> • PERTE for cutting-edge health • Renewable energy, renewable hydrogen and storage PERTS • PERTE Agri-Food • PERTE New economics of language • PERTE Circular economy 	



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			<ul style="list-style-type: none"> • PERTE for the shipbuilding industry • PERTE Aerospace • PERTE of digitisation of the water cycle • PERTE of microelectronics and semiconductors • PERTE of the social and care economy 	
11	Possibility to amend existing legislation on PPs and PPPs	The criteria and requirements of the LCSP (public sector procurement law) have been modified to integrate the proposals of the Structure, Transformation and Resilience Plan into the regulations and immediate actions. The motivation has been the COVID health crisis with the economic impact it has meant at a global level, added to the specific needs at a systemic level to work from other models and paradigms. Urgency has been the key factor.	To which territorial-administrative area does it belong?	



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12	Problems with the Identification/implementation of PP and PPP regulations	To incorporate social and environmental clauses with greater emphasis and depth in order to provide public procurement processes with a greater presence of Social Economy entities.	The development of the rules is normally in line with the needs and capacity of large companies and corporations, which are the ones that mostly access this type of figure. Currently, through the mandatory tendering of specific areas more closely linked to the social economy and the third sector in particular (welfare resources and support for vulnerable groups, for example), they are beginning to have a greater impact on public tendering. It is a process that needs to adapt to the diversity of new entities.	
13	PP, PPP and other regulations applicable to the Demonstration Action (concrete project)			
14	Concessions Regulation	Article 15. Service concession contract. 1. A service concession contract is a contract whereby one or more contracting authorities entrust for consideration to one or more natural	1. The particular administrative clauses and technical specifications shall refer at least to the following aspects: a) They shall define the object of the contract, providing for the independent performance of each of its parts by dividing it into lots,	



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		<p>or legal persons the management of a service which they own or are responsible for providing and the consideration for which consists either in the right to exploit the services covered by the contract or in this right together with the right to receive a price.</p> <p>2. The right to operate the services shall imply the transfer to the concessionaire of the operational risk, under the terms indicated in section four of the previous article.</p>	<p>without reducing the effectiveness of the service, in accordance with the provisions of Article 99.3, with the aim of promoting free competition.</p> <p>b) They shall establish the conditions for the provision of the service and, where appropriate, set the tariffs to be paid by users, the procedures for their revision, and the fee or participation to be paid to the Administration. With regard to the revision of tariffs, the administrative specifications must comply with the provisions of Chapter II of Title III of Book One.</p> <p>c) They shall also regulate the distribution of risks between the Administration and the concessionaire according to the particular characteristics of the service, although in any case the operational risk shall correspond to the contractor.</p> <p>d) They shall define the requirements of financial, economic and technical capacity and solvency which may be required of</p>	



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			<p>tenderers, and different solvency requirements may be set depending on the different phases of the contract in accordance with the provisions of Article 86(3), for the purposes of a possible transfer under the terms established in Article 214(2)(c).</p> <p>e) They shall also provide for the possibility of the transfer of the contract in accordance with the provisions of Article 214, as well as of the shares in the concession-holding company where a special purpose vehicle is set up by the tenderers for the performance of the contract. They shall also establish criteria for determining when the transfer of shareholdings shall be deemed to constitute an effective change of control and, where justified by the characteristics of the contract, control mechanisms shall also be established for transfers of shareholdings in the concession-holding company that cannot be equated with a transfer of the contract. In any case, an effective change of control shall be</p>	



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			deemed to take place when 51 percent of the shares are transferred.	
15	Regulation of aid and subsidies	Aid and subsidies are not included in the LCSP (public sector procurement law) as a type of public procurement.	<p>In a grant, there is no exchange or consideration in favour of the administration.</p> <p>In the case of a grant, the purpose of the administration is not to satisfy a need or to make an investment, but to encourage actions or behaviour, to carry out projects, or even to maintain activities.</p> <p>In a grant there is no exchange, but there can be no profit either.</p> <p>The beneficiary of a grant cannot make money from the grant. However, this does not prevent the grant beneficiary from making a profit from the subsidised actions or projects.</p>	<p>There are only two procedures for awarding grants:</p> <ul style="list-style-type: none"> • The award procedure on a competitive basis. • The direct award procedure. <p>Of these two, the most common procedure is the competitive award procedure, a procedure that resembles and has very similar steps to the award of a public contract, such as:</p> <ul style="list-style-type: none"> • Advertising. • The availability of sufficient funds to



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				<p>cover the grant.</p> <ul style="list-style-type: none"> • The requirements to be met by applicants. • Deadlines for the submission of applications. • The existence of criteria for assessing applications. <p>Although the same principles are followed, the procedure for awarding a grant is, compared to the award of a public contract, much simpler.</p>
16	Regulation of other possible forms of PPPs	Indicate which ones and the regulations governing them.		



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17	Examples of public procurement of co-production public policies with PPP and SSE actors	Call for tenders for land for the creation of a housing cooperative for the transfer of use by EMVISESA for Social Economy organisations.	Seville City Council opens, through Emvisesa, the first call for proposals to develop a cooperative housing project for private entities with social purposes in San Jerónimo.	
18	Other issues to highlight	Issues considered relevant to the regulation of PCs and PPPs		

CHALLENGES AND RECOMMENDATIONS:

Expanding partnerships between public authorities and local social actors for the co-production of public policies with local impact, beyond major public works, public tenders and public procurement, and strategic areas linked to collaboration with large companies and corporations.

MEASURES TO BE IMPLEMENTED:

Cohesive, active, structured and creative social and institutional advocacy by the Social Economy and its agents.

OTHER INTERESTING SUGGESTIONS/NOTES:

To be completed by the local partner



CONFLICTING ASPECTS DETECTED (if any):

To be completed by the local partner

EXAMPLES OF ACTIONS DEVELOPED IN THE COUNTRY IN THIS AREA OF SSE, REFERENCES AND HOW THEY HAVE BEEN DEVELOPED (if any)

To be completed by the local partner