The Human-Centred Business Model

Procurement Pillar

Procurement Policies and Forms of Sustainable Procurement

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Executive Summary

Procurement and supply chain practices are an essential component of any business eco-system. In order to effectively address ethical, social and environmental concerns along with the economic dimension in the corporate sector, it is necessary to adopt and spread the use of sustainable business practices across the entire supply chain, in both private and public sectors.

In line with this objective, the Human-Centred Business Model (HCBM) seeks to expand the impact of the Model beyond the HCBM entities themselves, to the upstream suppliers and downstream purchasers of products and services of the Human-Centred Enterprises (HCEs).

The research paper on the Procurement Policies Pillar collect several existing good practices of private and public sustainable procurement and provides an analysis and evaluation of possible procurement policies for HCEs.

In particular, with regard to the private sector, the proposed policies are based on the introduction of ethical/integrity, environmental and social criteria in corporate procurement policies, through:

- the adoption of the “HCBM Code of Ethics” containing a specific section on “Relations with Suppliers”;
- the adoption of the “HCBM Procurement Guidelines” to disclose the company procurement policies and mechanisms to suppliers;
- the adoption of the “HCBM Supplier Code of Conduct” that all the company’s suppliers shall adopt;
- giving weight to ethical/integrity, environmental and social considerations at various stage of the procurement process, such as the specifications, the selection or eligibility criteria, the contract award criteria, and the contract management;
- providing the final contract (the “HCBM procurement contract”) with specific clauses ensuring i) the respect of the “HCBM Obligations”, i.e., the respect of HCBM Guiding Principles, HCBM Procurement Guidelines, HCBM Supplier Code of Conduct, and the ethical, environmental and social specifications during the contract’s execution; ii) the automatic termination of the contract in case of suppliers’ breach of the HCBM Obligations; iii) the liquidated damages clause for violation of the principles which underpin the HCBM; iv) a clause to regulate relationship with Sub-suppliers/Sub-contractors; v) an express provision pursuant to which sustainable performance of suppliers shall be measured against third party standards or performance indicators selected by the HCE during the entire duration of the contract.

With regard to public procurement, the aim of this research paper is to encourage governments to use public sustainable procurement policies and to encourage governments to provide advantages in
the procurement technical specifications or award criteria for sustainable enterprises such as the HCEs.
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Acknowledgments
1. Introduction

1.1. The Human-Centred Business Model Project

This research paper is part of a series of papers developed in the framework of the Human-Centred Business Model (HCBM) Project.

The HCBM has been developed within the Global Forum on Law, Justice and Development (GFLJD), an initiative promoted and supported by the World Bank. The Project is currently coordinated by the Organisation for Economic Co-operation and Development – Development Centre (OECD-DEV), with a strong leadership of the leading partners of each of the project’s six pillars.

The Procurement pillar is co-led by LUISS University and the European Public Law Organization (EPLO).

The purpose of the Project is to elaborate and propose an alternative approach in doing business that potentially combines, on an equal level of importance, profit seeking with ethical/integrity, social and environmental sustainability.

Thus, contributing to the achievement of the Sustainable Development Goals (SDGs) and the World Bank goal of "shared prosperity".

The Human-Centred Business Model, which is based on a combined set of economic, social, environmental and ethical principles (on this issue see the respective research papers), is a new sustainable and more equitable model of doing business that will advance inter-generational and intra-generational equity, shared prosperity and inclusive economic growth.

Considering the growing public and private sector interest in improving options for doing business in a more sustainable way, the Model is structured as a tool that may be voluntarily adopted by entrepreneurs in the private sector as well as by state-owned enterprises. The Model also represents an instrument that Governments may adopt for promoting the achievement of the 2030 Agenda and the Paris Agreement.

The Human-Centred Business Model (HCBM) Project is divided into six “Pillars”, each one guided by one or more co-leaders:

1. Guiding Principles: the “minimum common denominator” of values and guiding principles that all the HCBM enterprises must include in their mission and bylaws;

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2. Legal Framework and Governance: addressing the legal and corporate governance framework coherent with the guiding principles;
3. Financial Mechanisms and Instruments: looking at the suitable forms of financial instruments that can support Human-Centred Enterprises (HCEs);
4. Fiscal Regime: envisaging a suitable fiscal regime for sustainable businesses (including the HCEs);
5. Corporate and Public Procurement Policies: the Pillar addresses mechanisms for sustainable procurement both for the public and private sector;

As the division into six “Pillars” makes apparent, the HCBM takes a holistic approach that addresses the entire context needed for a sustainable and competitive “business ecosystem” in which firms operate.

The main output of the Project is to develop a model able to address the needs of entrepreneurs sensitive to ethical, social, and environmental impacts who wish to run a for-profit business. From this perspective, the HCBM seems to be compliant with the so-called “triple bottom line” approach (TBL or 3P with regard to people, planet and profit) introduced since 1994 by John Elkington to measure a company's degree of social responsibility and environmental impact along with its economic value\(^2\).

1.2. The Procurement Policies Pillar

The purpose of HCBM Pillar 5 on *Procurement Policies and Forms of Sustainable Procurement* is to collect good practices of preferred procurement and suggest mechanisms of public and private sustainable procurement.

The identified good practices of public procurement will guide governments willing to adopt the HCBM.

The identified good practices of private procurement will guide the Human-Centred Enterprises in establishing strategic supply management driven by shared values (ethical/integrity, social and environmental sustainability):

a) Human-Centred Enterprises must adopt and apply Suppliers’ Code of Conduct in the selection of their suppliers;

b) The core guiding principles, embedded in the Human-Centred Enterprises, measured by performance indicators will make them eligible for public and private sustainable procurement policies, giving them a better access to the market.

Procurement and supply chain policies and practices are an essential component of any business eco-system. In order to effectively address social and environmental concerns along with the economic dimension in the corporate sector, it is necessary to adopt and spread the use of sustainable business practices across the entire supply chain, in both private and public sectors.

In line with this objective, the HCBM seeks to expand the impact of the Model beyond the HCBM entities themselves, to the upstream suppliers and downstream purchasers of products and services of the “Human-Centred Enterprises” (HCE).

With regard to the private sector, the aim of the mechanisms proposed will be to provide guidelines intended to assist Human-Centred Enterprises in the implementation of sustainable private procurement practice, and to prevent any procurement contracts that contradict or impede the HCBM principles.

With regard to the public sector, the ambition of the Project is to encourage governments on one side to increase the use of public sustainable procurement policies. This should have the effect of widening the use of preferred procurement practices in both public and private enterprises and strengthening the observance of ethical/integrity, social and environmental compliances standards in procurement.

1.3. The Pillar’s Co-Leadership

The Pillar on *Procurement Policies and Forms of Sustainable Procurement* is co-led by the European Public Law Organization (EPLO) and LUISS Guido Carli University.

LUISS Guido Carli joins the Project through the Department of Law, where Barbara De Donno is a Full Professor of Private Comparative Law and Livia Ventura is a Post-Doc Research Fellow in Private Comparative Law.

The European Public Law Organization (EPLO) is an International Intergovernmental Organization whose specific mandate is the creation and dissemination of knowledge in the area of public law and the promotion of European values through public law in the world. In particular, EPLO participates to the Project through Andrea De Maio, Assistant Director for Technical Cooperation, and Efstathia Liristi, Director of the Office of Legal Affairs and
General Counsel. Mrs. Liristi also serves as Legal Counsel of several Public Bodies managing the procurement procedures of the Greek State for works, goods and services.

2. **The Essential Role of Procurement Policies for the Human-Centred Business Model**

2.1. **Introduction**

The global financial crisis of the last years brought significant economic, social, and political changes and fostered the transition from the shareholders’ capitalism model to a new form of stakeholders’ capitalism, no longer based on the paradigm of shareholders’ wealth maximization but on the “triple bottom line” (TBL) approach through which it is possible to measure a company’s degree of social responsibility and environmental impact along with its economic value.

The economic, social and environmental dimensions, which characterize the “triple bottom line” approach, are also the basis for the inclusive and sustainable economic growth promoted by the Sustainable Development Goals (SDGs) and, more generally, for the sustainable development concept as recognized by the United Nations 2030 Agenda for Sustainable Development.

The adoption of the 2030 Agenda and its SDGs represents a fundamental change of paradigm of sustainable development’s international policies, which can be implemented only thorough a strong cooperation between governments, the private sector and the civil society.

The importance of the business sector as a force for social change is undisputed nowadays and the role of enterprises, in creating an equitable and sustainable economic growth, has gained traction in the past few years. Consequently, as an answer to the challenges coming from the fourth sector, the past few decades have seen the birth of several

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certifications’ systems aimed at measuring a company’s social and environmental impact\(^6\) and the proliferation of new hybrid forms of business organizations, capable of bringing together social and environmental aims with business approaches (on this issue see the paper of Pillar 2 on *Legal Framework and Corporate Governance Issues*).

Moreover, with regard to the private sector, it should also be noted the spread of Corporate Social Responsibility (CSR)\(^7\) among small and medium to multinational enterprises\(^8\). In particular, in the 21st century, corporate social responsibility in the supply chain has attracted attention. Over the past years several companies have been forced to deal with suppliers’ labour and environmental abuses, which brought the supply chain issue into the global spotlight. The numerous scandals involving the protection of the environment and the respect for human rights and workers significantly affected the reputation of companies\(^9\), leading also to substantial economic damages for the companies themselves. This prompted firms to increase the CSR activities also in their entire supply chain, introducing environmental and social criteria in their procurement policies.

With regard to the public sector, in the past few decades several Governments worldwide signed international legal instruments aiming at promoting social and

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\(^{6}\)Among them, it is worth mentioning the Global Impact Investing Rating System (GIIRS), a comprehensive and transparent system for assessing the social and environmental impact of developed and emerging market companies and funds (see [https://thegiin.org/](https://thegiin.org/)), and the “B Corp Certification” system, elaborated by the non-profit organization B Lab and based on the so-called “Benefit Impact Assessment” (BIA) (see [https://bimpactassessment.net/](https://bimpactassessment.net/)) which, will be used to assess the companies’ performance on the SDG’s starting in 2019, thanks to an agreement between B Lab and the United Nations Global Compact.

\(^{7}\) CSR can be briefly defined as a company's responsibility towards the community and environment (from both the ecological and social perspectives) in which it operates.


\(^{8}\) Several governments have pushed companies to develop sustainable corporate practices, indeed CSR has become a priority issue on governments’ agendas. For an analysis of this issue in Europe see L. Albareda, J.M. Lozano, T. Ysa, *Public Policies on Corporate Social Responsibility: The Role of Governments in Europe*, in74*Journal of Business Ethics* (2007), at 391-407.

\(^{9}\) For example, see the Apple- Foxconn scandal, see R.G. Eccles, G. Serafeim, B. Cheng, *Foxconn Technology Group*(A), Harvard Business School Case 112-002, 2011; or the 2013 Rana Plaza collapse in Bangladesh, see S. Labowitz, D. Baumann-Pauly, *Business as Usual is Not an Option - Supply Chains and Sourcing after Rana Plaza*, NYU Stern Center for Business and Human Rights (Report), New York City (April 2014), available at [https://www.stern.nyu.edu/sites/default/files/assets/documents/con_047408.pdf](https://www.stern.nyu.edu/sites/default/files/assets/documents/con_047408.pdf).
environmental sustainability (such as the 196 Parties signatories of the 2030 Agenda for Sustainable Development\textsuperscript{10}, or the Addis Ababa Action Agenda of 2015\textsuperscript{11} and the 197 Parties signatories of the Paris Agreement) on one side, and adopted statutes and policies to foster the growth of a sustainable business ecosystem on the other. Among them, it is worth mentioning the spread of different forms of public “preferred procurement”, such as the “green procurement”, “social procurement” and “sustainable procurement”, introduced in several countries (on this issue see paragraph 4).

2.2. HCBM and Procurement Policies

As already mention in paragraph 1.1. and deeply explained in the paper of Pillar 2 paper on Legal Framework and Corporate Governance Issues, the Human-Centred Business Model is a business model designed to pursue profit along with social and environmental goals, in respect with the guiding principles identified in Pillar 1.

Consequently, the combination of a well-defined set of private procurement practices inspired by ethical, social and environmental criteria, as well as sustainable public procurement policies are crucial for the development and the success of the HCBM.

2.2.1. The Essential Role of Private Procurement Policies

As mentioned above, corporate social responsibility in the supply chain has attracted attention in the past years. It is worth noting that not only public, but also private procurement is increasingly adopting policies that factor the negative or positive impact of potential suppliers in the final purchasing decisions. Private enterprises\textsuperscript{12}, starting from large multinationals, are setting and enforcing strict supply chain regulations, somehow similar to the public sector, assessing social, environmental and integrity performances of prospective suppliers.

The need to introduce environmental and social criteria in corporate procurement policies is crucial also for Human-Centred Enterprises that must comply with the guiding

\textsuperscript{10}A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development.

\textsuperscript{11}A/RES/69/313, Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

principles provided by Pillar 1 in the entirety of their business processes. In particular, enterprises who want to adopt the HCBM are required not only to drive forward the guiding principles in their own activities, but also to give consideration to the entire supply chain. Thus, HCE must proactively address the respect of the HCBM Guiding Principles by all business enterprises participating directly or indirectly in their supply chain.

In order to fulfill this goal, HCEs must adopt specific “Procurement Guidelines” (the “HCBM Procurement Guidelines”) and a “Supplier Code of Conduct” (the “HCBM Supplier Code of Conduct”), which should be provided to their suppliers, and shall prescribe for mechanisms to ascertain the HCBM Guiding Principles’ implementation by both HCEs and their suppliers and sub-suppliers. On the other side, HCEs shall include in the contracts with their suppliers special clauses, such as the express provision to comply with the HCBM’s guiding principles, the automatic termination of the contract and a liquidation damages clause in case of violation of the principles which underpin the HCBM (on these issues see in particular paragraph 6.2.).

2.2.2. The Essential Role of Public Procurement Policies

Public procurement, defined as the purchase by governments (central and local) and state-owned enterprises of goods, services and works, is key for the economy and represents a strategic state policy lever for driving innovation and change down through supply chains.

Public procurement represents approximately 12% of GDP on average in OECD countries, almost 30% of total government expenditures\textsuperscript{13}, and up to 25-30 % of GDP\textsuperscript{14} in developing countries. Thus, it has a high economic impact on the economic development of a country, and it might have a high impact in promoting the inclusive and sustainable economic growth endorsed by the SDGs.

Currently, public procurement - which is generally guided by the principles of fairness, transparency, openness, and non-discrimination - is increasingly inspired at several forms of

\textsuperscript{13}See the Agenda for Public Procurement Forum for SMEs Small, Medium, Scalable, 26 October 2018, OECD Directorate for Public Governance Centre for Entrepreneurship, SMEs, Regions and Cities, available at http://www.oecd.org/gov/public-procurement/forum-agenda.pdf.

“preferred procurement” such as the “green procurement”\textsuperscript{15}, “social procurement”\textsuperscript{16} and “sustainable procurement”\textsuperscript{17} (see paragraph 4).

The same happens with regard to international organizations and institutions, whose procurement policies can also have a high impact in promoting an inclusive and sustainable economic growth. \textit{E.g.}, the United Nations (UN) are actively involved in the promotion of sustainable procurement. The overall procurement volume of UN organizations increased for a sixth consecutive year, reaching $18.6 billion in 2017. This purchasing power can be used to advance sustainable development through the incorporation of sustainability considerations into the UN entities procurement process. Thus, through well-designed procurement actions, the UN procurement can be instrumental in reaching the core goals of the organizations\textsuperscript{18}.

A state major priority is achieving value for money, but this doesn’t necessarily mean buying the cheapest option available. Price seems no longer to be the key driving factor in determining what public purchasers buy. Indeed, the public purchase decisions are no longer based on a price-only criterion (\textit{i.e.} the lowest price) but on the evaluation of tenders according to the so-called “best value for money” (BVM) approach. Thus, public procurement decisions are shifting to a multi-criteria approach where various dimensions such as the environmental and social dimensions, as well as the price are considered and expressly required in the procurement specifications.

Numerous initiatives have been developed at the international, regional and national levels in order to promote a strategic and holistic use of the “preferred” procurement techniques (see paragraph 3.2.).

\textsuperscript{15} Green procurement can be briefly defined as the purchase of products, services, or works that cause minimal adverse environmental impacts throughout their life-cycle compared to goods, services and works with the same primary function which would otherwise be procured.

\textsuperscript{16} Social procurement can be briefly defined as the process of buying goods, services or works with the purpose of pursuing a social outcome, the appropriate balance between economic, social and environmental dimensions. This can be pursued \textit{e.g.} procuring from social enterprises or requiring to successful tenderers to employ in their workforce a certain percentage of people from disadvantaged backgrounds who may have struggled to find work.

\textsuperscript{17} Sustainable procurement encompasses all the three dimensions: economic, social and environmental dimensions. The UK Sustainable Procurement Task Force defined it as “a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.”. See Procuring the Future, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69417/procuring-the-future.pdf, at 10.

Among the various forms of “preferred procurement”, the “sustainable procurement” technique seems to be the more comprehensive because it considers all the three dimensions (economic, social and environmental) necessary for sustainable development. Thus, the global challenge should be to foster the development and implementation of national public “sustainable procurement” policies, promoting the growth of the number of States, in developed and developing countries, enacting public procurement statutes based on mandatory sustainable procurement practices.

With this regard, the firms adopting the Human-Centred Business Model (HCBM), which implement a provided set of environmental and social sustainability principles, seem to perfectly comply with the requirements and specifications of “preferred” procurement and in particular “sustainable” procurement policies.

Hence, in a public procurement legal framework based on sustainable procurement policies, all the enterprises incorporating ethical, social and environmental principles in their activity, including the Human-Centred Enterprises, have a competitive advantage over traditional enterprises focusing on profit maximization only. Basically, these forms of sustainable procurement reduce the downside for all the companies which internalize sustainability costs, providing a level playing field. This might boost the adoption of a holistic business model such as the HCBM and thus, be a lever for driving social and environmental sustainability down through the supply chain, advancing the business paradigm shift (from shareholders’ capitalism to a stakeholders’ capitalism) over traditional enterprises.

3. General Legal Framework of Public and Private Procurement

3.1. Private Procurement’s Legal Framework

The development and implementation of a corporate procurement strategy, which sets out the vision and strategic aims governing a company’s procurement activities, is an internal organisational policy that should be aligned with and integrated into a company’s business model. Thus, even if rules governing procurement in the private sector comply primarily with national (or international) contract or commercial law with respect to the formation of

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contracts, it is worth noting that procurement policies of private entities are entirely governed by internal firm’s policies dictated by the objectives of the company.

Procurement is a structured procedure designed to find, agree terms, and acquire goods, services, or works from an external source, via a tendering or competitive bidding process. The purpose of a procurement procedure is to ensure that the buyer receives the desired quality goods, services, or works at the best possible price, taking into consideration aspects such as quality, quantity, time, and location.

Generally speaking, companies’ procurement policies follow standard procedures. Usually, every company has the goal:

i) to keep down procurement costs level,

ii) to dictate the ethics to embrace in procurement procedures through the use of ethical codes (which include e.g. gifts and inducements, declaration of interest, professional supplier interaction, confidentiality),

iii) to follow fair tendering process,

iv) to use standard agreements, and

v) to award contract to the most convenient bidder, according to the “lowest price” or “best value for money” parameter depending on the company procurement strategy and business purpose (e.g., the latest European Union Regulation actually foresees the “best value for money principle” as the only one applicable, but leaves it open to apply this principle based on the lowest price one).

With regard to the award of a contract, corporate procurement procedures commonly placed the emphasis on the “price” aspect, taking the easiest, the cheapest or most attractive deal. This focus on the lowest price can be linked to the goal of profit maximization (a short-term goal of financial management) or shareholder wealth maximization (i.e. the maximization of the value of the firm through the increase of the company's stock price), which in accordance with the shareholder primacy model\(^{20}\), are considered as the appropriate goals of a business firm in capitalist society.

Generally speaking, it is possible to affirm that private procurement is profit centric. Even if private companies may also seek social benefit, this is not their primary business objective. In private sector, procurement practitioners answer only to the company’s management and the procurement process is closed to public scrutiny, only shareholders may require reviews of the procurement process in order to protect their interests, which is the maximization of profits and shareholder wealth.

Currently, the push towards the transition from shareholders’ capitalism to stakeholders’ capitalism, no longer based on the paradigm of shareholders’ wealth maximization but on the “triple bottom line” approach, fostered the growth of social enterprises focused on the pursuit of long-term profits and the creation of shared value beyond the company itself to the upstream suppliers and downstream purchasers. The control over sustainability of a company’s entire supply chain can make a significant impact in promoting human rights, fair labour practices, environmental progress and anti-corruption policies.

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Moreover, due to the reputational and economic damages arising from numerous scandals which brought the supply chain issue into the spotlight as well as to the growing market value of sustainability (thanks to the attention of consumers21, especially millennials22, investors23 and qualified employees24 towards sustainable purchasing), an increasing number of companies, for a strategic or ethical purpose, has included in their CSR activities the sustainability of their entire supply chain. This led to the enhancement of preferred procurement policies according to which, the selection of the bidder and purchase decisions are no longer based on the “lowest price” criterion but on the evaluation of tenders according to the parameter of the “best value for money”, which can be defined as the most advantageous combination of cost (i.e. the consideration of the whole life cost), quality (i.e. meeting a specification which is fit for purpose and sufficient to meet the purchaser’s requirements) and sustainability (i.e. meeting economic, social and environmental benefits) to meet purchaser requirements.

In the private sector, the adherence to these sustainable procurement policies is often expressed within companies’ ethical codes and clarified into companies’ “procurement guidelines” disclosed to suppliers and to the public.


23 In the last thirty years the number of investors following sustainable and responsible investment strategies has increased significantly, this contributed to the emergence of specific stock market indexes such as the Dow Jones Sustainability Indexes or the Financial Times Stock Exchange 4Good) and dedicated financial markets (such as the Social Stock Exchange in London and the Impact Investment Exchange Asia), see among others P. TROLO, Are Social Stock Exchanges the Great Equalizer to Democratize Development Finance?, in DEVEX Impact (15 luglio 2013), available at https://www.devex.com/en/news/are-social-stock-ex-changes-the-great-equalizer-to-democratize-development-finance/81436; and the US SIF Foundation’s 2016 Report on US Sustainable, Responsible and Impact Investing Trends, Executive Summary, available at https://www.ussif.org/files/SIF_Trends_16_Executive_Summary(1).pdf, at 12-13.

On the issue of corporate procurement, it is worth mentioning the initiatives sponsored by the UN Global Compact, which encourages companies to make sustainability a priority and to drive business awareness and action in support of achieving the Sustainable Development Goals by 2030. The importance of responsible procurement practices and supply chain sustainability is crucial in the achievement of SDGs. UN Global Compact participants rank supply chain practices as the biggest challenge to improving their sustainability performance.

To assist companies in improving the sustainability of their supply chain, the UN Global Compact promoted several initiatives. It hosts a website useful for materials, initiatives and business practices on supply chain sustainability; developed guidance, such as the Guide to Traceability and the Practical Guide for Continuous Improvement, to assist companies in developing more sustainable supply chain practices; and host webinars on topics such as SME supplier engagement, gender equality and occupational health and safety in the supply chain.

In conclusion, considering the HCBM nature and features, it is clear that HCEs must adopt preferred procurement policies and the “best value for money” parameter to award contract to their suppliers. Moreover, HCEs should also implement appropriate solutions to assure the compliance with environmental and social principles by their suppliers and sub-suppliers.

3.2. Public Procurement’s Legal Framework

Public and private procurement are both designed to acquire goods, services and works but while private procurement is profit centric, public procurement should be focused primarily on social benefit. In the public sector, the main reasons for acquiring goods and services are: (i) to support government operations, and (ii) to provide public services.

Public procurement refers to the purchase by governments, public bodies, and state-owned enterprises of goods, services and works. It ranges from the purchase of routine supplies or services to formal tendering and placing contracts for large infrastructural projects.

In most countries, public procurement is governed by a complex legal and institutional framework that is sanctioned by the judicial system of the country. There are several reasons

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why States set the rules for the management of public procurement. On one side, funds used in public procurement are primarily from taxes or grants and loans obtained by the government on behalf of the country. Thus, as public procurement accounts for a substantial portion of the taxpayers’ money, governments are expected to carry it out efficiently and with high standards of conduct in order to ensure high quality of service delivery and safeguard the public interest. On the other, considering the complexity of procurement processes, the great financial turnover and the existence of conflict of interests between the personal interests of the public officials or politicians and the public interests, public procurement needs to be regulated by States in order to prevent fraud, corruption, as well as waste and local protectionism.

Public procurement rules are designed to award, in timely and cost-effective way, contracts to qualified contractors, suppliers and service providers and are based on some fundamental principles.

First of all, the function of public procurement should be carried honestly, fairly, and in a manner that secures best value for public money: public resources must be used in an effective and efficient way, safeguarding the highest standards of quality and integrity (which refers to upholding ethical standards and moral values of honesty and professionalism, and it is a cornerstone for ensuring fairness, non-discrimination and compliance in the public procurement process).

From this perspective, it must be noted that public procurement practitioners are public servants and are accountable for their actions when managing public funds. Generally, public procurement is open to public scrutiny and may be subject to the scrutiny of a specific public body in order to check that procurement procedures are managed in accordance with the objectives and principles defined in the public procurement rules.

Furthermore, procurement rules are generally guided by the principles of:
- economy (which refers to value for money, commercially reasonable price, prices paid should be acceptable and represent good value for the public funds),
- fairness (which refers to a situation fair for all the people involved in it, where each player plays by the same set of rules),

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- transparency (which promotes accountability, ensures access to information, unless there are valid and legal reasons for keeping certain information confidential, and a level playing field for businesses),

- openness (which means that public procurement opportunities should be open to all qualified firms and individuals, and the public should have access to information pertaining to it, it leads to a more effective competition in the award of public contracts),

- competition among suppliers (it helps delivering better value for money and ultimately, contributing to long-term economic development), and

- non-discrimination (entails a prohibition on discriminating against suppliers/service providers because of their nationality).

Public procurement rules (which include laws or regulations, plus policies, procedures, guidelines and standard solicitation documents and contracts) govern everything from the identification of a requirement through to the closing of a contract.

The procurement cycle begins with the identification of a need, budget allocation, and the planning of a requirement which is useful in order to identify the object of the procurement by excluding any element that does not fall within the required specific function.

Then, several procurement procedures are available, depending upon the nature of the procurement, the need (the type of goods and services being procured) and the threshold. Laws usually require the procuring authority to issue public tenders if the value of the procurement exceeds a certain threshold. However, there may be exceptions in case of certain politically or economically sensitive sectors (e.g. public health, energy supply) or in case public tendering would violate a country’s essential security interests (e.g. military acquisitions).

The contracting authority evaluates the proposals received by economic operators and awards the contract according to the solicitation’s evaluation scheme. The evaluation method depends on the nature of the procurement and the other selection criteria are set forth in the solicitation document(s). Traditionally, a public contract can be awarded on the basis of two criteria:

i) the “lowest price” criterion (permitted only in certain circumstances in some States), where the price is the only factor taken into consideration in choosing the best tender;

ii) the “most economically advantageous tender” (MEAT) criterion, or “best value for money” (BVM) criterion, which is based on aspects other than just price, specifically on the best “quality/price ratio” that takes into account both
economic and technical aspects (which include also social and environmental dimensions).

In case the MEAT or BVM criterion is used, the economic and technical specific sub-criteria to be used in identifying the most advantageous tender should be then specified. Among them, there can be quality, price, technical merit and assistance, aesthetic and functional features, efficiency, lifecycle cost, environmental characteristics, social characteristics, and innovative characteristics. The tender solicitation document establishes all the specific features to be assessed in accordance with the nature, object and characteristics of the contract and assign to each element a specific score.

However, the flexibility of the definition of MEAT or BVM criterion permits, amongst other things, to award contracts based on lowest price. In practice, price is often an important sub-criterion for award. Indeed, contracting authorities can decide to assign the greatest value to price in the underlying sub-criteria for award, thus attributing quality criteria little actual value.

Since the early 1800s, governments have been using lowest-bid process in public auctions. From a theoretical perspective, the goal of the public procurement has always been “to obtain the most appropriate and highest quality good or service possible for the least cost”33. Thus, the focus of public procurement was intended to be the maximization of the managerial values34.

However, in modern times, the drawbacks of such process have been recognized. It does not consider the quality and the reliability of products or services provided by the lowest bidder. Moreover, the “lowest price” criterion seems to be in contrast with the development of the “triple bottom line” approach and the recognition, at national and an international level35, of the business sector as a force for social change. Thus, the “lowest price” criterion seems to be in contrast with the creation of an equitable and sustainable economic growth.

Currently, in the effort to foster the creation of a sustainable business ecosystem, also States’ public procurement policies changed and started to be inspired at “preferred procurement” policies such as the “green procurement”, “social procurement” and

35See the 2030 Agenda for Sustainable Development (A/RES/70/1, Transforming our world: the 2030 Agenda for Sustainable Development), or the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, of 2015 (A/RES/69/313); or the launch of the UN Global compact in 2000 (see https://www.unglobalcompact.org/).
“sustainable procurement”. Public procurement policies accepted the idea that achieving value for money doesn’t necessarily mean buying the cheapest option available and public purchase decisions are no longer based only on the lowest price but on the MEAT/BVM criterion.

As mentioned above, often the lowest price criterion continues to be a relevant criterion in the award of public contracts, but things are slowly changing and several initiatives have been developed at the international\(^{36}\), regional\(^{37}\) and national\(^{38}\) levels in order


to promote a strategic and holistic use of the “preferred” procurement techniques to foster sustainability.

With regard to international legal instruments, it is worth noting that Public procurement is the subject of several international agreements and guidelines, such as the Agreement on Government Procurement (GPA), a multilateral agreement under the auspices of the World Trade Organization (WTO) that entered into force in 1981; the OECD Recommendation on Public Procurement; or the OECD Recommendation on Fighting Bid Rigging in Public Procurement.

With particular regards to sustainability of the supply chain and forms of preferred procurement it is worth mentioning the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs). In particular, the SDG 12: “Ensure sustainable consumption and production patterns” and its Target 12.7, which refers to the need to “Promote public procurement practices that are sustainable, in accordance with national policies and priorities”, both point at public procurement as one of the strategies towards the achievement of the Sustainable Development Goals. Moreover, it is also worth mentioning the OECD Recommendation on Improving the Environmental Performance of Public Procurement.

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42 See https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_SUST.
Considering the HCBM’s nature and features, the challenge of this business ecosystem should be to foster the development and implementation of national public “sustainable procurement” policies in developed and developing countries.

Moreover, it is clear that all the enterprises incorporating ethical and sustainability principles in their activity, including the HCE, can have advantages in public tenders based on the “most economically advantageous tender” or “best value for money” criterion, in case the environmental and social characteristics are considered and evaluated among the award criteria.

Finally, to foster the adoption of sustainable behaviours by enterprises, States and international organizations should explicitly provide a positive discrimination to enterprises that respect sustainability principles, based on measurable performance indicators. In particular, advantages can be provided in the procurement technical specifications or award criteria, within the limits of the compliance with the general principles of fairness, transparency, openness, and non-discrimination.

3.3. Convergences and Divergences Between Procurement Policies

At the end of this excursus on public and private procurement’s legal frameworks, it is possible to highlight how, in both sectors, the role of the price as the main criterion in awarding the contract is progressively diminishing.

Private and public procurement policies are converging because they are now both increasingly oriented towards sustainability and the triple bottom line approach. Consequently, from this perspective, the “most economically advantageous tender” or “best value for money” criterion should be considered as the fundamental criterion to award contracts in public sector or in private companies committed to the implementation of CRS in their entire supply chain.

Thus, it is possible to notice the growing importance of the new forms of “preferred procurement” in both public and private procurement sectors.

4. “Preferred” Procurement Policies

Procurement is a strategic lever for driving innovation and change down through supply chains. It is a “soft” governance mechanism that can be used to encourage markets to produce sustainable products or services and to achieve resource efficiency, tackle climate
change and address social issues ranging from human rights and gender equality, to decent work and employment\textsuperscript{44}.

In order to address all these changes, several forms of “preferred procurement” have been developed in recent decades such as the green, social and sustainable procurement.

These “preferred procurement” practices can be used in both the private and public sectors procurement activities.

4.1. Green Procurement

Over the recent years, governments and civil society became increasingly concerned with the impact of human activity on the environment and such concern led governments and international organizations (such as the OECD, UN, World Bank)\textsuperscript{45} to develop policies and guidelines to improve environmental performance in both the private\textsuperscript{46} and public sector\textsuperscript{47}. Among these policies we can find the green procurement policies\textsuperscript{48}.

Green procurement can be considered as the “cornerstone of greening operations” because it “helps to improve efficiency, by looking at product characteristics, or the pollution generated by making the product”\textsuperscript{49}.

There are several definitions of green procurement\textsuperscript{50}. It can be defined as an integration of environmental considerations into purchasing policies, programs and actions\textsuperscript{51}, or, generally, as the purchase of goods, services and works with a reduced environmental impact through their life-cycle. Zsidisin and Sifred gave a holistic definition according to which environmental purchasing is the “set of purchasing policies held, action taken, and

\footnotesize{\textsuperscript{44}See \url{https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_SUST}.
\textsuperscript{45}E.g. the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992 and the Agenda 21, see \url{https://sustainabledevelopment.un.org/outcomedocuments/agenda21}.
\textsuperscript{47}For the public sector perspective see J.D. COGBURN, \textit{Achieving managerial values through green procurement}, in \textit{28 Public Performance & Management Review} (2004), at 236.
\textsuperscript{49}See A.D. DA CUNHA LEMOS, A. GIACOMUCCI, \textit{Green procurement activities: some environmental indicators and practical action taken by industry and tourism}, in \textit{1 Int. J. Environmental and Sustainable Development} (2002), at 61.
relationships formed in response to concerns associated with the natural environment.” According to the authors, such “concerns relate to the acquisition of raw materials, including supplier selection, evaluation and development; suppliers’ operations; inbound distribution; packaging; recycling; reuse; resource reduction; and final disposal of the firm’s products.”

Green procurement consists in several activities that include the reduction, reuse and recycling of materials in the process of purchasing. Thus, the green procurement process has effects on the selection of suppliers and is oriented towards the enhancement of green manufacturing (i.e. the production process that use inputs with low environmental impact), green distribution (that consist of green packaging and logistics) and reverse logistic for retrieving the product from the end consumer for the purpose of capturing value or for a proper disposal.

So, basically, “green” products, services or works employ fewer resources, are designed to last longer and minimise their impact on the environment in their entire life cycle, and have less of a negative impact on human health.

To implement green procurement policies, a life cycle assessment of the environmental impacts of products or services is required and a set of environmental criteria against which purchases and contract decisions are made has to be developed.

Green procurement policies and programs can reduce expenditure in the long-term; reduce waste and increase resource efficiency; influence production, markets, prices, available services and organisational behaviour.

4.2. Social Procurement

The rise of inequality in the last decades, increased by the global financial crisis, pushed governments to consider strategies to address the growing income or wealth disparity.

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55 See https://www.gdrc.org/sustdev/concepts/14-gproc.html.
56 See https://www.gdrc.org/sustdev/concepts/14-gproc.html.
57 See https://www.gdrc.org/sustdev/concepts/14-gproc.html.
According to the OECD, income inequality in OECD countries is at its highest level for the past half century, the average income of the richest 10% of the population is about nine times that of the poorest 10% across the OECD.\(^59\) Arresting the trend of rising inequality has become and still is a priority for policy makers in many countries. This goal can be pursued through the welfare state\(^60\) but also managing the relationship between procurement strategies and social policy.

With this regard, “social procurement”, in both public and private sectors, can help in achieving social policy creating a social impact through purchasing activities. Through CSR practices in private sector and governments strategies, which include social values into their procurement activities, social policies can be embedded across government and public bodies as well as enterprises.

Also social procurement has several definitions. It can be defined as “a mechanism for linking and integrating social and economic agendas both in public policy terms, and more broadly in societal and commercial terms”\(^61\), or as “the acquisition of a range of assets and services, with the aim of intentionally creating social outcomes (both directly and indirectly)”\(^62\).

More generally, social procurement refers to the purchase of goods, services and works from private and non-profit firms or social enterprises, with the aim of creating “social value”\(^63\) (i.e. a positive improvement in people lives, which is measurable). It can be realized also through Community benefit agreements (CBA) or Community benefit clauses (CBC), which are contractual clauses added to the request for proposal that became part of the obligation within the final contract\(^64\).

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62C. FURNEAUX, J. BARRAKET, Purchasing social good(s): a definition and typology of social procurement, in Public Money & Management (2014), at 269.
Social procurement can be used as a lever to secure employment for marginalised populations; boost training and apprenticeship opportunities; foster the growth of social enterprises and small business; strengthen local economies; increase social inclusion and move people out of poverty.\textsuperscript{65}

4.3. Sustainable Procurement

The concept of sustainable procurement is strictly linked to the one of sustainable development and it is based on three dimensions (the same of the triple bottom line approach): the economic, environmental and social dimensions.

The environmental dimension deals with reducing the company’s negative impact on the earth and its resources, the economic dimension deals with decisions that lead to company profit and increased financial power, and the social dimension deals with the company’s obligation to perform actions that benefit the community in which it operates.\textsuperscript{66}

To define sustainable development, it is useful to recall the Brundtland Commission Report to the World Commission on Environment and Development of 1987, according to which sustainable development is the development “that meets the needs of the present without compromising the ability of future generations to meet their own needs.”\textsuperscript{67}
Recognizing the leading role of UK in the field of social enterprise, it is worth mentioning the definition of sustainable procurement developed by the UK Sustainable Procurement Task Force established within the Department of Environment, Farming and Rural Affairs. According to the UK Sustainable Procurement Task Force, sustainable procurement is “a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.”

Sustainable procurement incorporates all the three sustainability dimensions, the economic, environmental and social dimensions, through the entire procurement process in order to achieve an optimal value for money in delivering developments objectives. Thus, sustainable procurement integrates requirements, specifications and criteria in favour of the protection of the environment, of social progress and in support of economic development, by seeking resource efficiency, improving the quality of products and services, and ultimately optimizing costs.

Thus, through the use of sustainable procurement practices, enterprises, public bodies or international organizations base their purchase choice on:

- **i)** economic considerations: according to the best value for money criterion, and also looking at price, quality, availability, functionality;

- **ii)** environmental considerations, evaluating the impact on the environment that the product and/or service has over its whole life-cycle;

- **iii)** social considerations: the effects of purchasing decisions on social issues such as poverty eradication, equity in the distribution of resources, labour conditions, human rights.

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71 For this definition see the UN Global Marketplace website [https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_SUST](https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_SUST).

72 See see the UN Global Marketplace website [https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_SUST](https://www.ungm.org/Shared/KnowledgeCenter/Pages/PT_SUST).
Through sustainable procurement policies, enterprises, public bodies and international organizations introduce sustainable requirements in tenders and bids, promoting sustainability in their supply chain and managing the reputational risk associated with environmental damages or social exploitation cases that could occur throughout their supply chain.

The global standard to address sustainable procurement is ISO 20400. In particular, it is important to stress the fact that ISO 20400 is not a certification standard, but it provides international accepted guidelines - not requirements - to develop and implement sustainable purchasing practices and policies into an organization’s procurement processes\textsuperscript{73}.

\textbf{ISO 20400}

- Guidance standard, rather than a certification standard: to build a global consensus on the definition of key terms used within a professional practice.
- Prescriptive, rather than performance based: prescriptive standards are usually oriented around a compliance binary or a key threshold.
- Holistic definition of sustainability: it includes environmental, social and economic sustainability.
- The standard is divided into seven sections:
  1. Scope
  2. Normative References
  3. Terms and Definitions
  4. Fundamentals — Understanding the fundamentals
  5. Integrating sustainability into the organization’s procurement policy and strategy
  6. Organizing the procurement function towards sustainability
  7. Integrating sustainability into the procurement process

\textsuperscript{73} See https://www.iso.org/standard/63026.html.
It is possible to find several studies exploring engagement with sustainability in supply chain management in both private sector (highlighting benefits in risk reduction and

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performance enhancement) and public sector (which deliver social benefit directly and influence the private sector).

4.4. Supplier Diversity Programs

Supplier diversity programs represent an interesting example of preferred procurement. They can be implemented within social and sustainable procurement policies.

A supplier diversity program ensures the creation of a diverse supplier base in the procurement of goods and services, encouraging the inclusion of groups of underrepresented social categories (such as women, disabled, or ethnical minorities) in the procurement plans of government, not-for-profits, and private industry. An example of supplier diversity program can be the purchasing of goods and services from minority-owned, women owned, veteran owned, disabled owned, or LGBT owned enterprises.

Due to the continued growth in the minority population in the coming years, also the purchasing power of minorities is expected to grow. Thus, supplier diversity has become an important part of supply chain management.

Notwithstanding the apparent contradiction with the trend of the consolidation and streamlining of the supply base as part of overall supply chain rationalization, studies and researches demonstrates that an efficient supplier diversity program can be a source of competitive advantage. For example, supplier diversity programs can bolster diversification


78 E.g., according to the U.S. Census Bureau, in the United States, minorities are expected to grow from 33% of the U.S. population in 2010 to over 47% of the population by 2050, see United States Census Bureau. (2000). Annual Projections of the Resident Population by Age, Sex, Race, and Hispanic Origin: Lowest, Middle, Highest, and Zero International Migration Series. Retrieved from https://www.census.gov/population/projections/data/national/np-d1.html.

79 See, among others, H. ADOBOR, R. MCMULLEN, Supplier diversity and supply chain management: A strategic approach, in 50 Business Horizons (2007), at 220–222. Moreover, for a study on the effectiveness of supplier
and competition\textsuperscript{80}, promote innovation by the entrance of new products, services and solutions, and expands businesses’ positive reputation. In addition, supplier diversity programs benefit society by encouraging the participation and the development of minorities and disadvantaged communities.

These programs are well developed in the United State\textsuperscript{81}, were most Fortune 500 companies employ supplier diversity initiatives \textsuperscript{82} and a National Minority Supplier Development Council has been established in 1972 to certify and connect certified minority business enterprises (firms at least 51% owned, managed, and controlled by minorities) to corporate members of the network\textsuperscript{83}.

\textbf{4.5. Final remarks on “Preferred” Procurement Policies}

For sustainable development to take place, strategy formulation and implementation need to extend along an organization’s supply chain\textsuperscript{84}.

As mentioned in paragraph 2.2.2., among the various forms of preferred procurement analysed above, the sustainable procurement\textsuperscript{85} policy seems to be the more comprehensive to achieve the Sustainable Development Goals (SDGs). Indeed, the key challenge for sustainable development is the effective implementation of social and environmental standards along with the economic standard in all stages of the procurement cycle.

From this perspective, sustainable procurement is the only procurement policy that considers all the three dimensions - the economic, social and environmental dimension - necessary for sustainable development.

\textsuperscript{80}See F. ROSEBURGH, What is supplier diversity and why is it important, Jan 9, 2015, retrieved from http://blog.,cvmsolutions.com/what-is-supplier-diversity.


\textsuperscript{82}H. ADOBOR, R. McMULLEN, Supplier diversity and supply chain management: A strategic approach, in 50 Business Horizons (2007), at 219.


\textsuperscript{84}K. GREEN, B. MORTON, S. NEW, Purchasing and environmental management: interactions, policies and opportunities, in 5 Business Strategy and the Environment (1996), at 188-197.

To fully implement a sustainable procurement policy, it is necessary to combine i) the product-based approach, which takes into consideration the products movement along the supply chain, assessing environmental impact of products and suppliers, and ii) the supplier-based approach, which takes into consideration the CSR management systems of suppliers verifying that their practices comply with the buyer’s standards and assessing the risks impose upon the buyer by suppliers.

In a legal framework based on sustainable procurement in both private and public sectors, Human-Centred Enterprises have a competitive advantage over traditional enterprises focused only on profit maximization. This competitive advantage could encourage and incentivize other enterprises to follow the HCBM and in general sustainable business practices, and therefore provide a lever for extending social and environmental sustainability down through the supply chain, advancing the business paradigm shift from shareholders’ capitalism to stakeholders’ capitalism.

4.5. “Preferred” Procurement Policies and Fair Competition, Transparency, Non-discrimination and Equal Treatment

Preferred procurement policies can be used by enterprises, public bodies and international organizations to conduct business with responsible suppliers, i.e. enterprises that respect the rule of law and human rights, understand the nature of the products and materials they are supplying, and recognized their responsibility to protect the environment.

But the use of preferred procurement policies, in particular in the sector of public procurement, must always be in compliance with the general principles of transparency, fair competition, equal treatment, and non-discrimination. However, preferred procurement policies as positive action to reward sustainable suppliers are conceivable.

The concept of positive action within procurement procedures has a relevant history in public procurement. In order to be lawful, a preferred procurement procedure must comply with the main principles regulating worldwide procurement, such as the above-mentioned principles of transparency, equal treatment, non-discrimination and fair competition.

To ensure transparency, any criterion applicable to the procurement procedure must be made known to all potential bidders from the beginning of the tendering procedure. A clear framework of the sustainable procurement practice, with understandable definitions, targets and priorities should be provided. The applicable economic, environmental and social
standards must be disclosed in the technical specifications, in the procurement selection and award criteria, as well as in contract performance clauses.

Sustainable procurement policies must guarantee that all bidders are treated equally. Equal treatment of all tenderers or potential tenderers includes the prohibition of an unfair negotiation with the candidates or tenderers during the tendering procedure. Moreover, according to the non-discrimination principle, no direct or indirect discrimination on ground of race, sex, religion or nationality is possible.

Transparency of the criteria applicable to the procurement procedure, access to information pertaining to the procedure and openness of the procedure to all qualified firms and individuals, leads to an effective competition among economic operators in the award of public contracts.

Nonetheless, a lawful preferred procurement policy shall observe the principle of proportionality, meaning that special measures that favour suppliers complying with high social and environmental standards shall serve a lawful purpose, they shall be appropriate and necessary for the attainment of the goals of environmental and social sustainability related to the object of the contract, and they must not go beyond what is necessary to attain it.

5. Preferred Procurement Policies in Practice: Existing Experiences in Private and Public Sectors

This paragraph provides for examples of preferred public and private procurement policies that can be useful to elaborate specific procurement policies for the HCBM.

The existing examples are briefly mentioned in the following sections while the links and references contained in footnotes provide materials for a deeper analysis.

5.1. Examples of Preferred Private Procurement Policies

Private enterprises have a purchasing power that can influence the market. Acquisition of goods and services account for over 50% of the company's expenses and may exceed 80% in sectors such as in retailing, electronic and automotive industries.\(^{86}\)

Social pressure and entrepreneur’s awareness foster enterprises to value the social and environmental impact of their activities and to manage social and environmental issues in their supply chain. This led to a shift in supply chain management practices towards sustainability.

Sustainable supply chain management has been defined as “the management of material, information and capital flows as well as cooperation among companies along the supply chain while taking goals from all three dimensions of sustainable development, i.e., economic, environmental and social, into account which are derived from customer and stakeholder requirements.”

From this perspective, preferred procurement policies are useful tools to connect the procurement of private enterprises with the social and environmental dimensions of sustainable development.

As a matter of fact, an increasing number of private companies is implementing policies to include ethical and integrity principles in their procurement practices and to perform green, social or sustainable procurement.

For example, green supply chain management in electronic industry in Asia is well developed. Among several examples, we can refer to the Japanese multinational information technology FUJITSU Ltd. (public company), which includes in its corporate value the mission to strive to "protect the environment and contribute to society". Contributing to global sustainability is one of the Fujitsu Group’s social responsibilities. Based on this belief, the Fujitsu Group is promoting green purchasing activity to reduce the environmental burden in

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90 See S. SEURING, M. MÜLLER, From a literature review to a conceptual framework for sustainable supply chain management, in Journal of Cleaner Production (2008), at 1699–1710.


supply chains, buying environmentally friendly parts, materials, and products with the support of business partners. Environmental considerations include the avoidance of toxic substance during production and disposal; the resource and energy conservation; recyclability; and ease of disassembly for processing and disposal.93

But sustainable procurement policies, which consider both social and environmental issues, are the most comprehensive and helpful form the HCBM perspective. Below several examples of sustainable procurement practices.

With regard to the electronic industry, it could be interesting to mention Apple and Samsung procurement policies.

After the Foxconn scandal and the controversy about the real sustainability of its supply chain, Apple Inc. (a California public corporation) declares to be committed to ensuring the highest standards of social responsibility, human rights, environmental protections, and responsible business practices in its supply chain. Apple requires to its suppliers to meet the highest quality standards for all goods and services as well as the commitment to the highest standards of social and environmental responsibility. According to the company’s Supplier Code of Conduct, Apple’s suppliers must respect human rights, ensure safe working conditions, treat their employees with respect and dignity, and establish and maintain environmentally responsible manufacturing processes.94

Samsung Electronics Co., Ltd., a South Korean multinational electronics company, publishes an annual sustainability report to transparently communicate its achievements in creating economic, social and environmental values to a wide array of stakeholders. The report spans all Samsung’s worksites and supply chains in domestic and global sites. Samsung operates with approximately 2,500 suppliers across the globe and assists all its suppliers in complying with the ‘Samsung Supplier Code of Conduct’95 and operating in accordance with relevant local regulations and international standards. The company assesses its suppliers through annual self-assessment procedures, on-site audit for critical suppliers and third-party audit on suppliers selected randomly, thus managing supply chain risks in terms of sustainability aspects.96

In the furniture industry it is worth to mentioning the strategy of IKEA, the Swedish-founded multinational group that designs and sells furniture and home accessories. IKEA (a Netherlands private company) expressly recognises that its business has an impact on social and environmental issues, in particular on people’s working conditions, as well as the environment, both locally and globally. IKEA recognizes that its “business shall have an overall positive impact on people and the environment”. This is considered as a pre-condition to the future growth of the company that must be achieved along with suppliers that share the same vision and ambition. For this purpose, since 2000, IKEA implemented the IKEA Way on Purchasing Products, Materials and Services (IWAY), which is the IKEA supplier Code of Conduct. IWAY is based, among others, on the Fundamental Principles of Rights at Work, ILO declaration of June 1998, the Rio Declaration on Sustainable Development of 1992, The UN Johannesburg Summit on Sustainable Development and the Ten Principles of the UN Global Compact of 2000, fundamental principles of Human Rights, as defined by the “Universal Declaration of Human Rights” (United Nations 1948), and the UN decisions regarding trade boycotts and embargoes. The Code of Conduct specifies the requirements placed on suppliers of products and services and details what they can expect in return from IKEA. In addition to the main document, there are several industry-specific supplements and a special code of conduct for child labour. IKEA suppliers are responsible for communicating the content of the IKEA code of conduct to their employees and sub-suppliers97.

The analysis of procurement policies in the fashion industry is interesting considering that fashion is one of the major polluting industries in the world98 and a system characterized by a multi-dimensional and international supply chain, which had been exploiting developing countries for many years.

Sustainability excellences in apparel and footwear industries are Patagonia and The North Face.

Patagonia Inc. is a private California benefit corporation specialized in the production and sale of outdoor clothing. Patagonia, in accordance with its corporate purpose, implemented several articulated and detailed policies to build a sustainable supply chain99.

Patagonia engages in a range of due diligence activities to promote and sustain fair labor practices, safe working conditions and environmental responsibility in the finished-goods factories that make its products. The cornerstone of Patagonia Social and Environmental Responsibility program is the Supplier Workplace Code of Conduct\textsuperscript{100} and the Benchmark document\textsuperscript{101}, which are applicable to every level of the supply chain from farm to garment factory, including all subcontractors and sub-suppliers. The Code is based on International Labor Organization standards and requires compliance with all laws in each of the countries in which Patagonia’s factories operate. Moreover, Patagonia engages in other activities, such as \textit{i}) implementing the “4-fold” process to pre-screen factories before placing orders, screening potential new suppliers for the ability to meet sourcing, quality, social and environmental standards and to comply with local laws and union contracts, as well as the Patagonia Supplier Workplace Code of Conduct and the Benchmark document; \textit{ii}) being a founding member of the Fair Labor Association\textsuperscript{102}; \textit{iii}) developing the Chemical and Environmental Impacts Program\textsuperscript{103} to manage the use of chemicals and environmental impacts in its global supply chain; \textit{iv}) publishing the Footprint Chronicles\textsuperscript{104} to trace social and environmental impacts of products and processes; \textit{v}) adhering to the Migrant Worker Employment Standards\textsuperscript{105}.

The North Face Inc, a California private corporation that manufactures and supplies outdoor exploration apparel, is a wholly owned subsidiary of VF Corporation, a North Carolina public corporation\textsuperscript{106}. With regard to supply chain, The North Face is included in the parent company procurement policy based on a robust set of social, environmental and ethical standards throughout the entire supply chain\textsuperscript{107}, supported and enforced by a team of SAI Certified Compliance Auditors\textsuperscript{108}. To ensure compliance, The North Face conducts annual audits to verify that its contractors are adhering to VF’s Policies & Standards\textsuperscript{109}. Moreover, the

\textsuperscript{100} Available at \url{https://www.patagonia.com/static/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dw63489f7b/PDF-US/Patagonia_COC_English_02_13.pdf}.

\textsuperscript{101} See \url{https://www.patagonia.com/static/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dw5df9c3e/PDF-US/Patagonia_Benchmarks_12-27-12_English.pdf}.

\textsuperscript{102} See \url{http://www.fairlabor.org/}.

\textsuperscript{103} See \url{https://www.patagonia.com/working-with-mills.html}.

\textsuperscript{104} See \url{https://www.patagonia.com/footprint.html}.

\textsuperscript{105} See \url{https://www.patagonia.com/static/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dw604fc14d/PDF-US/Migrant_Worker_Employment_Standards.pdf}.


\textsuperscript{107} See the SAO Global website at \url{https://www.saiglobal.com/assurance/assessments-auditing/}.

\textsuperscript{108} See \url{https://sustainability.vfc.com/resources/policies-standards/vf-terms-of-engagement}.
North Face is committed to the protection of the environment adhering to specific programs and initiatives to address climate change.\textsuperscript{110}

Among luxury fashion brands, Stella McCartney Ltd., a U.K. private limited company controlled by Kering SA (an international luxury goods group based in Paris, France), represents a great example of ethical and socially responsible fashion company. The company carefully selects its suppliers through different types of audits (including unannounced audits), useful to understand how manufacturing suppliers work and identify potential risk. Moreover, the company provides training to suppliers on the specific company requirements as well as common social sustainability challenges.\textsuperscript{111} The company is a member of the Ethical Trading Initiative (ETI),\textsuperscript{112} adhere to the ETI Base Code and report on the base of the U.K. Modern Slavery Act.\textsuperscript{113} Moreover, it uses a decision-making tool called the Environmental Profit and Loss (EP&L) to measure and understand the company’s impact on the environment. The EP&L is used to measure the impact of every part of the business, from the raw materials used, to the production of clothes and the sale in the stores.\textsuperscript{114}

Finally, a sustainable procurement example from the food industry: The Coca-Cola Company is a Georgia public corporation engaged in a wide sustainability program that includes also attention to the sustainability and diversity of the supply chain. Indeed, The Coca-Cola company is engaged in a relevant supplier diversity program aimed at maximizing procurement opportunities and building partnerships with diverse suppliers.\textsuperscript{116} Furthermore, The Coca-Cola Supplier Guiding Principles (SGP) emphasizes the importance of responsible workplace policies and practices that comply, at a minimum, with applicable environmental laws and with local labor laws and regulations.\textsuperscript{117} Suppliers should develop and implement appropriate internal business processes to ensure compliance with the Supplier Guiding Principles and must be able to demonstrate compliance with the SGP at the request of the Coca-Cola Company. The Company uses independent third-parties to assess suppliers’ compliance with the SGP. The assessments include confidential interviews with employees and on-site contract workers. In case a supplier fails to uphold any aspect of the SGP

\begin{footnotes}
\item[\textsuperscript{110}] See https://www.thenorthface.com/about-us/responsibility/operations/climate-change.html.
\item[\textsuperscript{111}] See https://www.stellamccartney.com/experience/en/sustainability/social-sustainability/.
\item[\textsuperscript{112}] See https://www.ethicaltrade.org/.
\item[\textsuperscript{114}] See https://www.stellamccartney.com/experience/en/sustainability/measuring-our-impact/.
\item[\textsuperscript{115}] See https://www.coca-colacompany.com/sustainability.
\item[\textsuperscript{116}] See https://www.coca-colacompany.com/supplier-diversity.
\item[\textsuperscript{117}] See https://www.coca-colacompany.com/stories/supplier-guidelines.
\end{footnotes}
requirements, the supplier is expected to implement corrective actions. The Company reserves the right to terminate an agreement with any supplier that cannot demonstrate that they are upholding the SGP requirements.

In conclusion, it is worth noting that the companies here analysed basically ground their procurement policies on:

- the Supplier Code of Conduct, which specifies the requirements placed on suppliers and includes references to the respect human rights, safe working conditions, employee treatment, environmentally manufacturing processes;
- *ex-ante or ex-post* audit and assessment of their suppliers through self-assessment procedure or third-party audit.

5.2. Examples of Preferred Public Procurement Policies

Public procurement represents an important policy tool that can help to achieve outcomes in society consistent with policy goals. There is a convergence and a high political commitment across countries on the use of preferred procurement procedures to pursue policy objectives.

Countries have taken a variety of approaches to the greening of public procurement. Considering that it is impossible to account for all the existing legislation on the subject enacted worldwide, below there are some significant examples.

5.2.1. The European Union

Europe's public authorities are major consumers. A substantial part of public investment in European economy is spent through public procurement, representing 14% of the EU GDP, making it a fundamental element of the investment ecosystem. Thus, public procurement policies are often considered as key leverage points for achieving wider policy objectives.


authorities can use their purchasing power to choose environmentally and socially friendly goods, services and works, to make an important contribution to sustainable consumption and production. Public authorities can use this lever in a more strategic manner, to obtain better value for public money and to contribute to a more innovative, sustainable, inclusive and competitive economy\textsuperscript{120}.

Since its inception, following the path traced by the Green Paper - \textit{Public Procurement in The European Union: Exploring The Way Forward of 1996} (COM/1996/0583)\textsuperscript{121} and the Communication from the Commission - \textit{Public procurement in the European Union} of 1998 (COM/98/0143) \textsuperscript{122}, the European Union started to require Member States to take environmental aspects into account when making public procurement contracts.

At the beginning of the 21th century, the European Union intensified its efforts to become a more resource-efficient economy. A fundamental step has been the Interpretative Communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement (COM/2001/0566) \textsuperscript{123}, which for the first time allowed public authority to include environmental considerations in their procurement policy to contribute to the sustainable development. Another important step has been the publication by the European Commission of the first edition of \textit{Buying green! A handbook on green public procurement}, in 2005\textsuperscript{124}.

The most recent Commission’s strategy for promoting green public procurement (GPP) was outlined in its Communication on \textit{Public procurement for a better environment} (COM/2008/0400)\textsuperscript{125}. The commitment of the EU to a sustainable development, and thus the relevance of green procurement, has been highlighted also through other initiatives. Several other legal and soft law instruments have been enacted and shaped the current EU

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\textsuperscript{121} Available at https://publications.europa.eu/it/publication-detail/-/publication/f49ef575-c032-44de-a7ff-4e21c0b0da28/language-en.

\textsuperscript{122} Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51998DC0143&qid=1549133396772&from=EN.

\textsuperscript{123} Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52001DC0566.


\textsuperscript{125} Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0400.

The current EU public procurement legal framework is based on three directives of 2014, which provide new opportunities to promote social and environmental inclusion through the public procurement process. In particular, the Directive 2014/23/EU on the award of concession contracts Text with EEA relevance\(^\text{131}\); the Directive 2014/24/EU on public procurement\(^\text{132}\); and the Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal sectors\(^\text{133}\).


\(^{130}\) Available at http://www.sustainable-procurement.org/fileadmin/user_upload/layout/homepage/featured_resources/cellar_8a8e5e8-99a0-11e5-b3b7-01aa75ed7f1a1.0012.02_DOC_1.pdf.


According to the new directives\textsuperscript{134}, concession contracts and public procurement moved from the lowest price to the best value for money criterion. According to Directive 2014/24/EU (but similar provisions and concepts are provided also in Directive 2014/23/EU and Directive 2014/25/EU), contracting authorities shall base the award of public contracts on the “most economically advantageous tender”, which shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as “life-cycle costing”\textsuperscript{135}, and may include the “best price-quality ratio”, which shall be assessed on the basis of criteria, including qualitative, environmental and social aspects, linked to the subject-matter of the public contract in question. Such assessment could also be carried out on the basis of either price or cost effectiveness only, but in order to encourage a greater quality orientation of public procurement, Member States may provide that contracting authorities may not use price only or cost only as the sole award criterion, or restrict their use to certain categories of contracting authorities or certain types of contracts\textsuperscript{136}.

Moreover, to ensure compliance with the principle of equal treatment in the award of contracts, contracting authorities shall create the necessary transparency to enable all tenderers to be reasonably informed of the criteria and arrangements which will be applied in the contract award decision. Thus, contracting authorities shall indicate the contract award criteria and shall specify, in the procurement documents, the relative weighting given to each of the criteria chosen to determine the most economically advantageous tender (except where this is identified on the basis of price alone). Those weightings may be expressed by providing for a


\textsuperscript{135} See definition contained in article 68 of the Directive 2014/24/EU, according to which “Life-cycle costing shall to the extent relevant cover parts or all of the following costs over the life cycle of a product, service or works:

(a) costs, borne by the contracting authority or other users, such as: (i) costs relating to acquisition, (ii) costs of use, such as consumption of energy and other resources, (iii) maintenance costs, (iv) end of life costs, such as collection and recycling costs.

(b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs. …”.

\textsuperscript{136} See Directive 2014/24/EU, Whereas 98 and 90 and articles 67 and 68.
range with an appropriate maximum spread or, if not possible for objective reasons, indicating the criteria in decreasing order of importance\(^{137}\).

Through all these documents and thanks to the 2014 directives, the European Union restates its commitment to green\(^ {138}\) and sustainable (SPP)\(^ {139}\) public procurement and many public authorities in the EU, leading by example, are implementing GPP and SPP as part of a broader approach to sustainability in their purchasing\(^ {140}\).

The objective of the 2014 Directives was to obtain better value for public money, delivering better outcomes for societal and other public policy objectives, while increasing efficiency of public spending. Hence, notwithstanding the new European procurement system which fosters the use of the cost-effectiveness approach to evaluate the most economically advantageous tender, according to the Communication from the Commission on Making Public Procurement work in and for Europe (COM/2017/0572), 55% of procurement procedures in Europe still use the lowest price as the only award criterion. The public procurement directives leave public buyers free to opt for purchases based on cost-effectiveness, quality-based criteria, but most economically advantageous tenders on the basis of a cost effectiveness approach which may include social, environmental, innovative, accessibility or other qualitative criteria, are still underused\(^ {141}\). For this reason, the Commission is still raising awareness and promoting good procurement practice because the use of public procurement can help tackling global challenges such as climate change or

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137 See Directive 2014/24/EU, Whereas 98 and 90 and articles 67 and 68.
138 According to the EU, Green Public Procurement (GPP) means that public authorities seek to purchase goods, services and works with a reduced environmental impact throughout their life-cycle compared to goods, services and works with the same primary function which would otherwise be procured, see http://ec.europa.eu/environment/gpp/versus_en.htm.
139 According to the EU, Sustainable Public Procurement (SPP) is a process by which public authorities seek to achieve the appropriate balance between the three pillars of sustainable development - economic, social and environmental - when procuring goods, services or works at all stages of the project, see http://ec.europa.eu/environment/gpp/versus_en.htm. On this issue see M. ANDRECKA, K.P. MITKIDIS, Sustainability requirements in EU public and private procurement – a right or an obligation?, University of Copenhagen Faculty of Law Research Paper, 2017, available at https://ssrn.com/abstract=3060429.
140 Further information on socially responsible public procurement in the EU context is available on the website of DG Employment, Social Affairs and Inclusion, see https://ec.europa.eu/social/home.jsp?langId=en.
resource scarcity, it supports social policies and accelerates the transition to more sustainable supply-chains and business models.\textsuperscript{142}

5.2.2. Australia

At federal level, in Australia public procurement is governed by the latest version of the “Commonwealth Procurement Rules (CPRs) - Achieving value for money”, in force since January 2019.\textsuperscript{143} As well as in the EU, the aim of the CPRs is to achieve value for money in public contracting, encouraging competition and ensuring transparency and an ethical procurement process.\textsuperscript{144} In particular, in both systems value for money “should not be understood as the lowest price, but rather as a combination of whole-life cost and quality to meet the users’ needs.”\textsuperscript{145}

According to the Australian Minister for Finance and the Public Service, “The Commonwealth Procurement Rules are the keystone of the Government’s procurement policy framework. … Achieving value for money is the core rule of the Commonwealth Procurement Rules as it is critical to ensuring that public resources are used in the most efficient, effective, ethical and economic manner. However, it is important to remember that price is not the only factor when assessing value for money, and officials are required to consider all relevant financial and non-financial costs and benefits associated with a procurement. … The framework reflects officials’ responsibilities, including … Australia’s international obligations, and factors that must be considered in meeting the core rule of achieving value for money.”\textsuperscript{146}

Thus, achieving value for money is the core rule of the CPRs and officials conducting a procurement must consider (follow rules provided in Division1, paragraph 4.4. 4.5.) the relevant financial and non-financial costs and benefits of each submission, including e.g.: the quality of the goods and services; innovation and adaptability over the lifecycle of the procurement; environmental sustainability of the proposed goods and services (such as energy

\textsuperscript{146} Australian Government, Commonwealth Procurement Rules (CPRs). Achieving for money, cit., at 3.
efficiency, environmental impact and use of recycled products); and whole-of-life costs (as described in paragraph 4.6)\textsuperscript{147}.

Moreover, it is worth mentioning the Australian Government Sustainable Procurement Guide published in 2013, which defined the concept of sustainable procurement, the general principles underpinning it and options for including sustainability in procurement decisions\textsuperscript{148}.

At the State level, there are several policies, plans and guidelines on procurement, which differ among States. In particular, the State of Victoria is very active in sustainable procurement policies.

On April 2018 Victoria State Government enacted the \textit{Victoria’s social procurement framework - Building a fair, inclusive and sustainable Victoria through procurement}\textsuperscript{149}, which guides buyers and suppliers to deliver social, economic and environmental outcomes that benefit the Victorian community, the economy and the environment. According to the Minister for Finance, as a major procurer delivering public services and infrastructure, one of the Government’s major priorities is achieving value for money, but this doesn’t necessarily mean buying the cheapest option available. Indeed, using its buying power, government can enter into procurement contracts that make a real difference to Victorians, creating job opportunities for under-represented groups, or skills-based training in areas of disadvantage, providing support for businesses that prioritize social impact alongside the delivery of competitively priced and high-quality product or services, addressing structural and systemic inequalities, or delivering environmental benefits for local communities. Government procurement can add value that all Victorians can share in\textsuperscript{150}.

The \textit{Victoria’s social procurement framework} sets the objectives for leveraging maximum value from the Victorian Government’s significant buying power. It provides the

\textsuperscript{147} According to paragraph 4.6 of the \textit{Commonwealth Procurement Rules CPRs. Achieving value for money}, the “whole-of-life” costs could include:
\begin{itemize}
\item a. the initial purchase price of the goods and services;
\item b. maintenance and operating costs;
\item c. transition out costs;
\item d. licensing costs (when applicable);
\item e. the cost of additional features procured after the initial procurement;
\item f. consumable costs; and
\item g. disposal costs.
\end{itemize}


guidance to embed social and sustainable procurement into existing processes for buyers and informs suppliers of the methods to deliver Government objectives, while continuing to grow their business by participating in government procurement. The framework applies to all of Victoria’s procurement activity and covers goods, services, and construction.

Additionally, the Victorian State Government requires its suppliers to adhere to the Supplier Code of Conduct that outlines the minimum ethical standards in behavior that suppliers have to meet when conducting business with, or on behalf of, the State.

An example of Victoria procurement regulation in the field of renewable energy could be interesting. The Victorian Renewable Energy Auction Scheme (VREAS) has been established in 2017 to support the achievement of the Victorian Renewable Energy Targets (VRET). According to the VREAS, all potential proponents in the auction must meet certain mandatory criteria to participate and enter into a contract with the State of Victoria. Then, the economics of individual projects and proposals should be assessed for ‘value for money’. Auction bids should be evaluated according with criteria specified in the formal Request for Proposal (RFP) published by the Victoria Department of Environment, Land, Water and Planning in November 2017.

In particular, the RFP exposes the detailed terms of participating in the auction, the “value for money” criterion according to which proposals should be considered, and the overall governance framework. All the proposals must be evaluated in accordance with the specification described in Part B of the RFP.

Among the Eligibility Criteria, the RFP requires that the proponent must “not have had a judicial decision relating to employee entitlements made against it and not have paid the claim” (paragraph 5.3 - EL4); must “demonstrate local community support by satisfying the standards of the “involve” spectrum level of engagement as described in the Community Engagement and Benefit Sharing Guide” (paragraph 5.3 - EL13); and must not have been named as an organisation that has not complied with the Workplace Gender Equality Act 2012 (Cth) (paragraph 6.2 – EL5). To demonstrate the local community support (paragraph 6.3 -

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EL13), the proponent must submit several documents such as: 1) the social risk analysis; 2) the community engagement strategy; 3) the benefit sharing program; 4) the reporting, monitoring and evaluation plan; 5) the letters of support, including community support.

With regard to the Evaluation Criteria and their weightings, the RFP provides that all offers must be evaluated in the light of five main evaluation criteria:

i) financial capacity and commercial viability (25%),

ii) technical capability and viability (25%),

iii) economic development (25%),

iv) community engagement and shared benefits (15%),

v) impact on existing electrical network infrastructure (10%).

The evaluation of the economic development includes, among others, measuring the project’s contribution to regional economic development, including jobs, supply chains, manufacturing and service industries. While the community engagement should be assessed evaluating the project’s approach to community engagement during planning, construction and operation, over and above the eligibility criteria. It should be assessed against a best-practice approach that builds relationships with local communities and meaningfully empowers communities to participate in and shape a project’s development, construction and operation. Shared benefits will be assessed on the project’s approach to the distribution of financial benefits, on how financial benefits will be shared with local and regional communities.

Finally, bids must be evaluated against the Evaluation Criteria, awarding the contract to the proponent offering the best “value for money” for the State.

5.2.3. Other references

Having analysed in detail the European and Australian legal framework, below are provided some references to research papers and studies on the use of sustainable public procurement.

For a review on the implementation of sustainable public procurement practices in governments of low-income countries, such as Ghana, Kenya, and Bangladesh see the study of Rita Roos on Sustainable Public Procurement in LICs - Implications for the Ongoing World Bank Procurement Review (2013)\textsuperscript{154}.

\textsuperscript{154} See R. Roos, Sustainable Public Procurement in LICs - Implications for the Ongoing World Bank Procurement Review, April 2013, a study commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ) and conducted in cooperation with the World Bank, available at \url{https://consultations.worldbank.org/Data/hub/files/meetings/Procurement_Policies/SPP_in_LICs.pdf}.
For an overview of the state of play in SPP in industrialized countries and developing countries see the study of Rita Roos on *Sustainable Public Procurement - Mainstreaming sustainability criteria in public procurement in developing countries* (2012).\(^\text{155}\)

For a global review of Sustainable Public Procurement (SPP) policies initiatives see the study of the Innovation Fund of the International Institute for Sustainable Development (IISD) published in 2007.\(^\text{156}\)

For an overview of government initiatives on sustainable procurement in EU Member States see the Final Report to the EU High-Level Group on CSR.\(^\text{157}\)

The 2017 *Global Review of Sustainable Public Procurement* (United Nations Environment Programme, 2017) provides an up-to-date overview of the scale and type of sustainable procurement activities undertaken worldwide in the past three years.\(^\text{158}\)

For a deeper analysis of the activities of the Marrakech Task Force on Sustainable Public Procurement in promoting sustainable public procurement in developing and developed countries see the Activity report of 2011 produced by the Swiss Federal Office for the Environment (FOEN).\(^\text{159}\)

On the implementation of public procurement policies as a strategic tool and existing example see the G20 Development Working Group on Inclusive Business of March 2018.\(^\text{160}\)

For an overview on the implementation of sustainable public procurement in Canada see the 2017 *Annual Report on the State of Sustainable Public Procurement in Canada*.\(^\text{161}\)

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\(^{155}\) R. Roos, *Sustainable Public Procurement - Mainstreaming sustainability criteria in public procurement in developing countries*, June 2012, Centre for Sustainability Management (CSM), Leuphana University of Lueneburg, available at [http://www2.leuphana.de/umanagement/csm/content/nama/downloads/download_publikationen/Roos_SustainablePublicProcurement.pdf](http://www2.leuphana.de/umanagement/csm/content/nama/downloads/download_publikationen/Roos_SustainablePublicProcurement.pdf).


\(^{159}\) The program has been launched by the government of Switzerland in 2005 under the Marrakech Process on Sustainable Consumption and Production led by the United Nations Environment Programme (UNEP) and the United Nations Department of Economic and Social Affairs (UNDESA). Information about the Marrakech Process are available at [http://www.unep.fr/scp/marrakech/](http://www.unep.fr/scp/marrakech/).


Information about the implementation of green procurement regulations in Hong Kong can be found on the official web-page of the Environmental Protection Department\(^\text{163}\).

For the implementation of sustainable procurement in Italy see Legislative Decree 18 April 2016, n. 50 - so-called “Codice degli appalti pubblici” (see in particular art. 3, 4, 30, 34, 50, 68, 80, 95, 96, 97, 100) and the so-called “Piano d’azione per il Green public procurement” enacted by the Italian Ministry of the Environment in 2013\(^\text{164}\).

For an overview of the sustainable procurement policy in UK see the Coal authority information page\(^\text{165}\).

5.3. A brief Comment

As described in this paragraph, the use of preferred procurement policies, and in particular of sustainable procurement, has spread in both public and private sectors. All the examples here analysed can be useful to develop specific procurement policies for the HCBM both as public procurement policies and Human-Centred Enterprises’ guidelines.

6. A proposal for the Human-Centred Business Model’s Procurement Policy

6.1. Introduction:

As mentioned at the beginning of this paper, the aim of Pillar 5 is to suggest mechanisms for granting preferential forms of public and private procurement to those entities meeting HCBM standards.

Procurement policies and supply chain management are essential to effectively address ethical (integrity) social and environmental concerns along with the economic dimension.

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They are also fundamental to expand the impact of the HCBM beyond HCEs themselves, to the upstream suppliers and downstream purchasers of products and services. Thus, the existence of a well-defined set of private procurement practices inspired to social and environmental criteria as well as preferred public procurement policies are crucial for the integrity and the development of the HCBM.

In order to draw up procurement practices for the HCBM, a comparative law approach has been necessary. Indeed, the aim of this research paper is to offer a uniform model of preferred procurement policy for the HCBM (the “HCBM procurement policy model”), which should be capable of being adopted by small and medium to multinational enterprises belonging to different economic and social environments, as well as to different legal traditions, such as common law, civil law, or other major legal traditions.

For this reason, the study focuses only on the main features of the HCBM procurement policy model, considering that the flexibility of the model is fundamental to increase its use. Indeed, with the exception of the fundamental clauses here indicated, each government, or company, must have the chance to adapt the procurement policy model here proposed to its specific needs and the social, environmental, legal, political and economic characteristics of the State of incorporation. Moreover, as a fall-back rule, each domestic law shall be generally applicable in case of matters not expressly regulated by the model.

It is necessary to specify that among the various forms of preferred procurement previously analysed, sustainable procurement seems to be the more comprehensive because it considers all the sustainable development’s dimensions - the economic, social and environmental dimensions - and thus is the most suitable to contribute to the achievement of the SDGs. The HCBM Guiding Principles and performance indicators will position HC Enterprises to be eligible to sustainable procurement giving a competitive advantage versus other enterprises that do not set and pursue these values.

In the following paragraphs, the ideal HCBM procurement policy model for the private sector and the public sector will be exposed. The solutions presented for the private sector can also be adopted - within certain limits - by the public sector and vice versa.

6.2. Private Procurement Policy for the HCBM

[166] On the importance of applying sustainability throughout the value chain is one of the main challenges that companies face in realizing the commitment to the Global Compact Principles, see Un Global Compact Progress Report 2018, available at https://www.unglobalcompact.org/docs/publications/UN-Global-Compact-Progress-Report-2018.pdf, at 18.
With regard to the private sector, the aim of the HCBM procurement policy pillar is to ensure the adoption of sustainable procurement practices by HCEs and to discourage potential suppliers from using any procurement contracts that conflict with the HCBM Guiding Principles.

As mentioned above, corporate social responsibility in the supply chain has attracted attention in the last years and corporate procurement is increasingly adopting policies that factor the negative or positive impact of potential suppliers in the final purchasing decisions, assessing their ethical/integrity, social and environmental performances.

The need to introduce ethical/integrity, environmental and social criteria in corporate procurement policies is crucial for HCEs as compliance with the guiding principles. In particular, enterprises who want to adopt the HCBM are required not only to drive forward the guiding principles in their own activities but also to give consideration to their suppliers’ activity and ask to their suppliers to do the same to their suppliers too (sub-suppliers). Thus, HCEs must proactively address the respect of ethical, social and environmental principles by all business enterprises participating directly or indirectly in their supply chain.

In order to shape a comprehensive procurement policy model, HCEs must:
1. provide a specific section on “Relations with Suppliers” in the company’s Code of Ethics (the “HCBM Code of Ethics”), in which there are references to the company’s sustainable procurement policy;
2. provide Procurement Guidelines (the “HCBM Procurement Guidelines”) to disclose their procurement policies and mechanisms to suppliers;
3. provide a Supplier Code of Conduct (the “HCBM Supplier Code of Conduct”) that suppliers shall adopt;
4. give weight to ethical/integrity, environmental and social considerations at various stage of the procurement process, such as the specifications, the selection or eligibility criteria, the contract award criteria, and the contract management;
5. provide the final contract with specific clauses ensuring the respect of HCBM Guiding Principles, HCBM Procurement Guidelines, HCBM Supplier Code of Conduct, and the environmental and social specifications during the contract’s execution.

6.2.1. Code of Ethics: “Relations with Suppliers”
The HCEs’ Code of Ethics shall outline the mission and values of the company, describing the company's obligation to its stakeholders. It must include details of how the company plans to implement its values and vision, as well as guidance to staff on ethical standards and how to achieve them. The code must be publicly available.

In particular, the HCEs’ Code of Ethics (the “HCBM Code of Ethics”) shall contain a section on the “Relations with Suppliers” that highlights how the company’s purchases are based on sustainable procurement practices.

Below, a model clause for the section “Relations with Suppliers” (the “HCBM Code of Ethics – Suppliers Section”) of the HCBM Code of Ethics167:

[name of the HCE] considers its suppliers a key component of competitive success; therefore, it seeks to establish relationships based on principles of sustainability, integrity and confidentiality and manage its relations with suppliers, both actual and potential, according to principles of lawfulness, transparency, propriety and loyalty.

[name of the HCE] believes that behaviour based on listening and sharing ideas with suppliers fosters the ongoing improvement of those relationships, reinforcing them and generating reciprocal value through:

- attitudes based on trust that involve the suppliers in an active role and that lead them to promptly report problems that require the identification of a common solution;
- measuring the level of satisfaction of suppliers and determining the areas that need improvement, particularly regarding transparency, communication and compliance with terms of payment.

[name of the HCE] believes that a clear and transparent attitude contributes to maintaining enduring relationships with suppliers. [name of the HCE] strongly believes that integrity is a fundamental premise of these relationships and therefore:

• ensure that the choice of suppliers is based on clear and proven criteria through an objective and transparent procedure;
• should avoid business partners (suppliers, contractors, intermediaries, agents, subsidiaries, affiliates, joint ventures) involved in corruption practices;
• is committed to publishing its policies on supplier relations in the [name of the HCE] Procurement Guidelines and Supplier Code of Conduct;
• searches for commercial agreements with suppliers that demonstrate their sensitivity to issues of corporate social responsibility.
• Ensure adequate traceability of the choices adopted;
• Keep documents in accordance with the regulations in force and internal procedures.

[name of the HCE] requests its suppliers to adhere to the Guiding Principles of the HCBM (Pillar 1), which are contained in the [name of the HCE] Code of Ethics, and Supplier Code of Conduct, including with reference to relations with any sub-suppliers.

In accordance with the aforementioned principles, [name of the HCE], in its management of the processes for acquiring and carrying out the contractual services, request its suppliers to:
• manage their business dealings correctly and ethically. In particular, all actions, transactions, negotiations and behaviour in general employed during the conducting of business, must be characterised by the utmost integrity, free from any corruption or favouritism, complete and transparent information, and legitimacy (both formal and substantial), based on the regulations in force and internal procedures;
• establish and encourage monitoring of the quality of goods and services acquired and delivery times;
• adhere to the Guiding Principles of the HCBM and to the Supplier Code of Conduct;
• adhere to all regulations that may be specifically relevant from time to time, with particular reference to safety and environmental protection;
• adhere to all regulations on anti-corruption/bribery;
• respect the rights of employees, with particular attention to the principles of equal opportunities and the application of the remuneration conditions laid down in the employment contracts;
extend, as far as possible, checks on workers’ conditions and the respect of environmental standards to the supply chain;

communicate the content of the HCBM Guiding Principles and the HCBM Supplier Code of Conduct to their employees and sub-suppliers;

adhere to the principles of the Code of Ethics and notify to the [name of the HCE]’s [Procurement Manager/or board of directors] of any conduct which appears to infringe them.

[name of the HCE] employees, in adhering to the acquisition procedures and processes, which must be managed with loyalty and impartiality and with the goal of ensuring the greatest competitive advantage for the company, along with a guarantee that the best level of quality of the products on offer will be respected, must:

• check that suppliers possess all the means, capacities, expertise, quality systems and resources necessary for satisfying the needs of the company and consistent with its image, including from an ethical perspective;

• not arbitrarily exclude from tender procedures or requests for supplies in general, potential suppliers who possess the necessary requirements, as regards professionalism, efficiency and reliability;

• insist on compliance with the HCBM Guiding Principles, Supplier Code of Conduct, contractual conditions, with particular reference to human rights, health and safety and the environment;

• ensure proper handling of any cases of non-compliance of goods and/or services received with respect to contractual standards;

• avoid using suppliers with whom they have family relationships or affinity;

• adopt all possible safeguards to avoid using suppliers whose conduct is not based on the same principles that inspire [name of the HCE], especially as regards human rights, health and safety and the environment and corruption;

• ensure the assessment criteria adopted and the reasons for the choices made are clearly and transparently documented;

• ensure that contracts stipulated with suppliers are based on fairness, especially regarding terms of payment and administrative compliance.
No employee may directly or indirectly offer or grant unjustified advantages to others in connection with business dealings, neither in monetary form nor as some other advantage.

In accordance with the principles laid down here, in the **HCBM Guiding Principles, the Procurement Guidelines, and the Supplier Code of Conduct**, [name of the HCE] periodically reviews its ‘register of suppliers’ in order to verify suppliers’ compliance with the said principles and criteria of ethical/social and environmental responsibility which inspire [name of the HCE] activities.

### 6.2.2. Procurement Guidelines

HCEs must adopt specific “Procurement Guidelines” (the “HCBM Procurement Guidelines”) to establish the procedures and arrangements to be made for procuring goods, services, and works. The Guidelines define the procedures for selecting, contracting, and monitoring the HCEs’ suppliers. In particular, the HCBM Procurement Guidelines shall provide for mechanisms to ascertain that the HCBM’s Guiding Principles are implemented by their suppliers and sub-supplier. Guidelines should be publicly available and provided to current or potential suppliers.

Procurement Guidelines must contain all the details related to the procurement procedures such as:

a) Procurement guiding principles;

b) Company’s procurement organization;

c) Criteria (including social and environmental criteria) for suppliers’ registration in the “List of Suppliers”;

d) Supplier management, monitors, and reviews;

e) Sourcing of suppliers;

f) Procurement methods and thresholds;

g) Solicitation process;

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h) Management of submissions;
i) Evaluation of submissions;
j) Awards;
k) Contractual instrument;
l) Contract management.

The following paragraphs provide an analysis of letter a) Procurement guiding principles, and letter d) Supplier management, monitors, and reviews.

6.2.2.1. Procurement Guiding Principles

The HCBM Procurement Guidelines’ section on “Procurement Guiding Principles” shall include reference to the main principles applicable to the procurement process.

Here below is a model clause for this section:

**General Considerations**\(^{169}\)

*Procurement Guidelines of [name of the HCE] govern the procurement process of all goods, works and services, setting out the [name of the HCE] objective, principles and approach to purchasing goods, works and services.*

* [name of the HCE] is committed to the highest levels of legal, ethical and moral standards, and to the HCBM Guiding Principles as set out in the company’s Code of Ethics. [name of the HCE] requires all those involved in procurement activities to uphold the aforementioned standards and principles in their dealings with suppliers. Our suppliers shall adhere to the HCBM Guiding Principles, the Suppliers Code of Conduct, as well as good ethical business practices, and meet appropriate standards in respect of local law concerning human rights, anti-corruption/bribery, health and safety and environmental stewardship. To uphold these commitments [name of the HCE] requires adherence to the procurement procedures prescribed in this Procurement Guidelines.*

The procurement activities of [name of the HCE] shall be conducted in a timely, effective and efficient manner in accordance with the following principles:\(^\text{170}\):

- **Best Value for Money**: intended as the optimal combination of technical, environmental, social, and financial factors that shall be taken into consideration when conducting procurement.
- **Effective Competition**: an open and effective competition that allows for the direct comparison of different proposals.
- **Fairness, Integrity and Transparency**: equal opportunities must be offered to all suppliers through a fair process free from favouritism, self-interest or preference in judgment, impartial and incorruptible, open and transparent.
- **Sustainability**: [name of the HCE] purchase shall be based on sustainable procurement, the social and environmental responsibility is to be sought after by integrating requirements, specifications and criteria that are compatible and that favour the protection of the environment, promote social progress and support economic development, namely by seeking resource efficiency, improving the quality of products and services and ultimately optimizing costs.

The procurement activities of [name of the HCE] shall be conducted in accordance with the following standards:

- Any person involved in carrying out procurement activities must ensure compliance with all relevant rules, policies and procedures here described and will exercise his/her duties with the utmost care and competency, fairness, integrity and efficiency, and must ensure adherence to the HCBM Guiding Principles, the HCBM Procurement Guidelines, and all applicable organizational rules, regulations and procedures.
- Any person involved in procurement activities, who breaches provisions of these Guidelines shall be subject to disciplinary action in accordance with the relevant procedures.

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To prevent fraud and corruption in its activities and operations, [name of the HCE] applies a zero-tolerance policy and will pursue all allegations of fraud and corruption, applying the appropriate sanctions in case those allegations are substantiated.

[name of the HCE] requires that its own staff, and all its suppliers and sub-suppliers, contractors and sub-contractors, and consultants to observe the highest standard of ethics and integrity during the procurement and execution of such contracts.

Staff members should avoid assisting public or private bodies or persons in their dealings with the company where this might lead to actual or perceived preferential treatment; and should avoid any situation that is liable to give rise to a conflict of interest. Any person that becomes aware of a procurement-related conflict of interest should report that information to the [Procurement Manager / or board of directors].

[name of the HCE] suppliers shall communicate to the company the name, contact details and legal representatives of its sub-suppliers and shall ensure through appropriate measures that its sub-suppliers respect the HCBM Guiding Principles, and social and environmental standards required by [name of the HCE]. Moreover, the main supplier replaces a sub-supplier in respect of which the verification has shown that such sub-supplier has breached the above-mentioned principles and standards.

6.2.2.2. Supplier management, monitors and reviews

As mentioned above, the HCBM Procurement Guidelines shall provide for mechanisms to ascertain that the HCBM Guiding Principles as well as the HCBM Suppliers Code of Conduct, are implemented by their suppliers and sub-supplier.

To that end, the Guidelines can also reproduce the following provisions in the section dedicated to “Supplier management, monitors and reviews”.

[name of the HCE] shall be engaged in a range of due diligence\textsuperscript{171} activities to assess its suppliers’ ability to meet sourcing, quality, social ethical, and environmental standards.

\textsuperscript{171} With regard to due diligence it is worth mentioning the OECD Due Diligence Guidance for Responsible Business Conduct (2018), available at http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-
and to comply with local laws, regulations, and union contracts, as well as the HCBM Guiding Principles and HCBM Suppliers Code of Conduct.

[name of the HCE] [shall] be engaged in due diligence activities to directly assess its Sub-suppliers’ ability to meet sourcing, quality, social, ethical, and environmental standards and to comply with local laws, regulations, and union contracts, as well as the HCBM Guiding Principles and HCBM Suppliers Code of Conduct.

[name of the HCE] shall assess its suppliers and sub-suppliers also through [annual] i) self-assessment procedures, ii) on-site audit (including unannounced audits), or iii) independent third-party audit, including unannounced audits(e.g. through the use of SAI Certified Compliance Auditors172, EcoVadis Audit173, or other specific audit mechanisms available on the market).

Suppliers shall develop and implement appropriate internal business processes to ensure compliance with the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct and must be able to demonstrate such compliance at the request of [name of the HCE]. In case a supplier fails to uphold any aspect of the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct, the Supplier is expected to implement corrective actions. The [name of the HCE] reserves the right to terminate an agreement with any supplier that cannot demonstrate that they are upholding the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct requirements.

Responsible-Business-Conduct.pdf, which are designed to help enterprises in developing and strengthening their own tailored due diligence systems and processes. On managing human rights issues in supply chains see the study conducted by Norton Rose Fulbright and the British Institute of International and Comparative Law, Making sense of managing human rights issues in supply chains - 2018 Report and Analysis, available at https://human-rights-due-diligence.nortonrosefulbright.online/. For reporting on supply chain impacts see the GRI Standards (https://www.globalreporting.org/standards/), according to which companies are expected to report the boundary of each material topic, which is based on the expectation that organizations should disclose, and take responsibility not only for impacts they cause directly, but also those they are contributing to or are directly linked to – for example through relationships with suppliers or customers, see https://www.globalreporting.org/information/news-and-press-center/Pages/Supply-chain-transparency-A-change-tool-for-successful-global-businesses.aspx.

172 See https://www.saiglobal.com/assurance/assessments-auditing/.
Suppliers shall develop and implement appropriate internal business processes to ensure the compliance of their sub-suppliers with the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct. Suppliers must be able to demonstrate the existence of such internal process and the sub-suppliers’ compliance at the request of [name of the HCE]. In case a supplier fails to implement such internal business processes and to demonstrate that its Sub-supplier upholds any aspect of the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct, the Supplier is expected to implement corrective actions. [name of the HCE] reserves the right to terminate an agreement with any supplier that cannot demonstrate that its sub-suppliers are upholding the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct requirements.

6.2.3. Supplier Code of Conduct

HCEs’ suppliers must respect human rights, ensure safe working conditions, treat their employees with respect and dignity, and establish and maintain environmentally responsible manufacturing processes.

All HCEs’ suppliers shall comply with the HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Suppliers Code of Conduct, and operate in accordance with relevant local law and international standards.

HCEs shall adopt the HCBM Supplier Code of Conduct to ensure that company’s suppliers put into place safe working conditions, their employees are treated with respect, their production processes are responsible and environmentally friendly. The Code specifies the requirements placed on suppliers of products and services and details what they can expect in return from the HCE. In addition to the HCBM Supplier Code of Conduct, HCEs’ suppliers are required to adopt one or more of the applicable industry-specific supplements to the Code (the “industry-specific supplement”).

The HCBM Supplier Code of Conduct shall include:

- Labor practice and standards: including safeguards against child labour, non-discrimination, health and safety working conditions, working hours, compensation, right to association;

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175 The following points are analysed by EcoVadis, see https://www.ecovadis.com/supplier-code-of-conduct/.
• Environmental policy: comprises of product and materials use and technology of transport system;
• Social Policy: including measures to deliver social outcomes that benefit the community;
• Ethics: establishing anti-corruption measures, and adhering to fair business practices with regard to business, employees and managing partner relationships (e.g. ‘upstream’ in the supply chain);
• Review and documentation policy: indication on how the Code and the industry-specific supplement will be monitored and reviewed.

The HCBM Supplier Code of Conduct shall establish [standards/mechanisms/processes] for suppliers to ensure compliance with all the aforementioned HCBM requirements.

Suppliers are responsible for communicating the content of the HCBM Supplier Code of Conduct and its industry-specific supplements to their employees and their sub-suppliers.176 Sub-suppliers shall adopt themselves the HCBM Supplier Code of Conduct and its industry-specific supplements.

6.2.4. Environmental and social considerations in the procurement process

HCEs shall include sustainability priorities (environmental and social dimension) in the entire procurement process from the identification of a requirement through to the closing of a contract. This paragraph will identify how sustainability priorities can be considered at each stage.

The procurement process starts with i) the identification of requirements or needs, then continues with ii) the planning and preparation of the specifications, iii) the selection, iv) the contract award, and v) the contract management.177 Sustainability considerations can occur at various stages of the procurement process.

First of all, it is worth mentioning that several procurement procedures are available, depending upon the nature of the procurement, the need and the threshold. For example, procurement can be based \( \text{e.g. on}^{178} \):

- Request for Quotes (RFQ), in case of law to medium value procurement, which is simple to specify or off-the-shelf standard product or service, and there is a ready market with many suppliers;
- Request for Bids (RFB), in case the market has a proven ability to deliver the needed good or service and buying authority need to retain tight control over the design, specification and delivery (conformance-based specifications);
- Request for Proposal (RFP), in case of complex procurement, with high costs, alternative sustainability solutions, and possible customized solutions the market.

Usually, a public tender will be issue if the value of the procurement exceeds a certain threshold.

The starting point of the procurement process is the **identification of a need**. A sustainable procurement cycle begins with the identification of a need and the sustainability priorities. Accordingly, the procurement department/manager questions the need for the product or service, decides the performance and the sustainability of the end product or service, the budget allocation, and elaborates a requirement, which must be clearly defined to identify the object of the procurement and its sustainability characteristics by excluding any elements that does not fall within the required specific function. This also improves communication with potential suppliers and reduces timelines. At this time, a clear determination of the terms of reference and technical specifications should be possible. Moreover, the most appropriate procurement method suitable for such a requirement and the procurement lead time can be identified.

Then, sustainability priorities must be included in the specifications and the evaluation method. With this regard, the second step of a procurement process is the preparation of the **specifications**, which must comply with local laws and regulations. Moreover, in a sustainable procurement process, sustainability priorities must be transparently and effectively communicated to potential suppliers in the specifications\(^{179}\).

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Specifications can be conformance-based or performance-based. Conformance-based specifications describe in detail the technical and sustainability requirements such as the physical characteristics of the product, the design, the production method and the delivery (e.g. specifying the materials to be used or the packaging). Specifications must be directly linked to the subject matter of the contract. These specifications are evaluated against qualifying criteria, so bids can meet or not the requirements. Performance-based specifications describe the outcomes or results in terms of business, functional and sustainable performance requirements of products or services. These kinds of specifications are assessed by scoring against rated criteria, thus bids can be ranked based on the quality and the best fit with regard to value for money solutions. It is also possible to use a mix of both conformance-based and performance-based specifications.

Specifications must be technically accurate and need to: identify the sustainability priorities and sustainable risks to be managed; clearly state the sustainable standard, performance, or outcomes to be achieved; include a timeline; take a whole life approach identifying recurring costs, maintenance costs and sustainable disposal; support diversity and equal opportunities.

Sustainability requirements are generally based on verifiable standards and technical competencies, they can be evaluated on existing social-labels or eco-labels criteria or certification systems and must be identified in the specifications. Certifying authorities are responsible for the verification of suppliers’ compliance with sustainability standards (e.g. ISO standards). Criteria and standards can be mandatorily required or optional.

It could be useful for HCEs to have a list of suppliers already evaluated on sustainability criteria and meeting certain standards, creating the “List of Suppliers” that shall be annually review.

The third step of the procurement process is the selection of the supplier. The compliance with certain mandatory criteria is necessary to participate and enter into a contract with a HCE. Eligibility criteria and evaluation criteria to award the contract, included the

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sustainability priorities, must be clearly described in procurement documents because suppliers must know how their proposal will be evaluated. Auction bids should be evaluated according with the criteria specified in formal procurement documents published by the HCE.

A HCE shall include both environmental and social considerations among the eligibility Criteria. Below some examples of eligibility criteria that HCEs may consider in their procurement process:

- the proponent must not have had a judicial decision that has become final relating to employee entitlements made against it;
- the proponent must demonstrate local community support by satisfying certain standards indicated by the HCE (e.g. requiring several documents such as: the social risk analysis; the community engagement strategy; the benefit sharing program; the reporting, monitoring and evaluation plan; letters of support, including community support);
- the proponent must demonstrate commitment to environmental protection by satisfying certain standards indicated by the HCE (e.g. through social-labels, eco-labels criteria, certification);
- the proponent must not have been named as an organisation that has not complied with [name of the Act/Law/Regulation].

With regard to the evaluation of the bids, it shall be based on the best value for money criterion and may be grounded on183:

- qualifying criteria: which set all mandatory requirements that must be met by suppliers;
- rated criteria: that are weighted and allow bids or proposals to be scored and ranked in order of merit;
- monetary quantifiable criteria: calculations applied to prices to establish comparative evaluative costs such as life-cycle costing (assessing sustainability impacts associated with key stages of a product’s life cycle, such as raw material extraction, materials processing, manufacturing, distribution, use, repair and maintenance, disposal or recycling, and environmental impacts) and energy consumption, CO2 emissions or waste for sustainability priorities.

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With regard to the evaluation criteria weightings, the procurement documents shall provide that all offers must be evaluated in the light of several criteria among which there must be include: the economic development (which may include, among others, measuring the project’s contribution to regional economic development, including jobs, supply chains, manufacturing and service industries); environmental considerations; and social considerations. The weight given to economic development shall not be less than [20%]; the weight given to environmental criteria shall not be less than [10%]; and the weight given to social criteria shall not be less than [10%].

The fourth step of the procurement process is the contract award. Sustainability commitments must be written into the contract between a HCE and its suppliers to ensure that the latter are contractually bound to them. To that end, specific clauses must be included in the contract (see paragraph 6.2.5.) and sustainable performance of suppliers shall be measured against third party standards and performance indicators selected by the HCE.

Finally, the last step of the procurement process is the contract management. The contract should be monitored and managed for its entire duration to ensure that suppliers continues to deliver the technical as well as the sustainability priorities in accordance with the specifications and contract terms.

To manage contract implementation, HCEs may develop a comprehensive contract management plan that includes performance targets and measures sustainability outcomes.

The contract management may be based on:
- review meetings at agreed intervals;
- periodic audits of suppliers to verify that sustainability claims and work practices meet the agreed requirements;
- review of disposal options to minimize environmental impacts, maximize recycling and reuse and minimize landfill and pollution.

After the end of the contract a check and review by the HCE on the delivering of the sustainability outcomes may be considered.

6.2.5. Contract Clauses

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As already mentioned, sustainability commitments must be expressly included into the contract between a HCE and its suppliers (the “HCBM procurement contract”).

To that end, special clauses (the “HCBM special clauses”) are necessary. In particular, HCBM procurement contract shall contain:

a) An express provision pursuant to which the supplier shall comply with the HCBM’s Guiding Principles, the HCBM Procurement Guidelines, and the HCBM Supplier Code of Conduct. Below a model clause:

**HCBM Obligations**

[name of the Supplier] undertakes to comply with the HCBM’s Guiding Principles, the HCBM Procurement Guidelines, and the HCBM Supplier Code of Conduct.

b) The automatic termination of the contract in case of suppliers’ breach of the HCBM Obligations. Below a model clause that shall be added to the section related to the termination of the contract and that, however, should be drafted in accordance with applicable national laws and relevant case-law:

**Automatic Termination**

[name of the HCE] may terminate this agreement immediately, at any time and upon giving written notice to the supplier, if the supplier commits a material breach of this agreement and in particular of the HCBM Obligations provided in article [number of the article], and failed to rectify the said breach within a period of [30 days] from being notified by the [name of the HCE] of the occurrence of such breach.

c) The liquidated damages clause, in case of violation of the principles which underpin the HCBM. Below a model clause, which, in any case, should be drafted in accordance with applicable national statutes and relevant case-law:

**Damages**
In case of the Supplier’s material breach of the HCBM Obligations, the Supplier shall, in addition to any other legal or other relief available to the [name of the HCE], pay to the [name of the HCE], as liquidated damages and not as penalty, the amount of $ [***].

d) A clause to regulate relationship with Sub-suppliers/Sub-contractors. Below a model clause, which however should be drafted in accordance with applicable national statutes and relevant case-law:

Sub-suppliers
The Supplier shall indicate to the [name of the HCE] the name, contact details and legal representatives of its Sub-suppliers involved in the works or services which are the object of this agreement.

The Supplier shall adopt appropriate measures to ensure that the Sub-supplier comply with the ethical, social and environmental standards required by the [name of the HCE] and specified in the procurement documents, procurement specifications, HCBM Guiding Principles, HCBM Procurement Guidelines, and HCBM Supplier Code of Conduct.

The Supplier and the Sub-supplier have joint liability with regard to the Sub-supplier’s material breach of the HCBM Obligations. In case of the Sub-supplier’s material breach of the HCBM Obligations, the Supplier and the Sub-supplier shall, in addition to any other legal or other relief available to the [name of the HCE], reimburse the [name of the HCE], as liquidated damages and not as penalty, with the amount of $ [***].

In case of a Sub-supplier’s material breach of the HCBM Obligations, the [name of the HCE] may require the Supplier to replace the Sub-supplier.

e) An express provision pursuant to which sustainable performance of suppliers shall be measured against third party standards or performance indicators selected by the HCE during the entire duration of the contract. Below a model clause:

Monitoring
During the entire duration of the contract, [name of the HCE] has the right to measure [every ***** days/months/years] the Supplier’s performance and in particular the achievement of the prescribed sustainability outcomes through [a selected third-party standard /a selected performance indicator].

At the end of this paragraph it is important to remember that the HCBM special clauses above provided are only examples useful to give an idea of the mandatory content of the HCBM procurement contract and that such clauses shall be drafted in accordance with applicable national statutes and relevant case-law.

6.3. Public Procurement Policy for Sustainable Procurement

Public procurement is governed by a national complex legal and institutional framework; thus, the ambition of the Project could be:

1) to encourage governments to use public sustainable procurement policies, and
2) to encourage governments to provide advantages to sustainable enterprises in the procurement technical specifications or award criteria.

With regard to the first issue, the global challenge should be to foster the development and implementation of national public sustainable procurement policies. In particular, the HCBM Project should promote the growth of the number of States, in developed and developing countries, enacting public procurement statutes based on mandatory sustainable procurement practices. The incorporation of the economic, social and environmental dimensions throughout the entire public procurement process would lead to the achievement of an optimal value for money for public authorities and would result in a sustainable economic development. To that end, it would be useful for public authorities to organise periodic courses to train public procurement practitioners in sustainable procurement.

According to sustainable procurement policies, public purchase decisions should no longer be based on the lowest price criterion but on the best value for money approach, in which the environmental and social dimensions, as well as the price are considered. Sustainability priorities should be expressly and clearly indicated in the solicitation documents’ specifications along with the economic and technical aspects. Sustainability priorities can be required in eligibility criteria and award criteria. Moreover, they should be integrated in contract clauses and assessed during the management of the contract.
In particular, environmental and social requirements can be provided in different stages of the public procurement process:

- **Technical Specifications**: specifications set out in the procurement documents can include environmental and social characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and afford equal access of economic operators to the procurement procedure. In case environmental, social or other characteristics are required, contracting authorities may in the technical specifications, the award criteria, or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics; or may require economic operators to provide a report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

- **Selection criteria (or eligibility criteria)**: economic operators may be required to meet certain mandatory criteria to participate and enter into a contract with the contracting authority. First of all, they must comply with applicable obligations in the fields of environmental, social and labour national law, collective agreements, and international environmental, social and labour law provisions.Contracting authorities may also require specific label or the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management standards or quality assurance standards.

**Case Study: The Italian company system**

Article 83, paragraph 10 and art. 95 paragraph 13 of the Italian Code of Public Contracts, respectively assigns to ANAC (the National Anti-Corruption Authority) and the AGCM (Italian Anti-Trust Authority) the management of the “company rating” system and of the “legality rating” system.

The company rating is an indicator of the conduct that the company has had in the context of public contracts. The legality rating indicates the ethical value of the company and enhance its reputation. The latter, it is generally applicable, and it is aimed at rewarding and promoting the ethical behavior of companies. The legality rating contributes to the determination of the company rating and not vice

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versa (see art. 213 of the Italian Procurement Code). The nature of both ratings is optional, and they have a “reward-based” nature.

In the evaluation of the tenders, both the ratings offer a preference in the ranking given the same score or the allocation of an additional score compared to competitors without a rating as well as a 30% reduction compared to the value of the offered guarantee.

The identification of the company rating criteria was conducted through a participatory process, ANAC submitted its rating guidelines to public consultation187. Moreover, the authority provided for a long trial period.

The ANAC guidelines provides a general framework for the requirements, awards and penalties, such as:

1) failure to use the preliminary aid;
2) application of the provisions on mandatory reporting of extortion and corruption requests;
3) compliance with deadlines and costs during the execution of contracts as well as with the incidence and outcomes of disputes, both when participating in tender procedures and during the execution of the contract;
4) mandatory reporting of extortion and bribery requests by companies holding public contracts (including subcontractors and companies supplying works, services and materials), with sanctions for cases of omitted or delayed reporting.

• Contract award criteria: contracting authorities shall base the award of public contracts on the best value for money criterion, which shall be identified using a cost-effectiveness approach, such as life-cycle costing188, and the best price-quality ratio assessed on the basis of criteria that include qualitative, environmental and/or social aspects, linked to the subject-matter of the contract in question. Contracting authorities shall indicate the contract award criteria and shall specify the relative weighting given to each of the criteria chosen to determine the most economically advantageous tender in the procurement documents.

• Conditions for performance of contracts: contracting authorities may lay down special conditions, including environmental, social or employment-related considerations, relating to the performance of a contract, provided that they are linked to the subject-matter of the contract and indicated in the procurement documents.

188 The “life-cycle” or “whole-of-life” costs includes, among others: costs relating to acquisition, maintenance and operating costs, end of life costs, costs imputed to environmental externalities.
Firms adopting the HCBM, which implement a provided set of ethical/integrity, environmental and social sustainability principles, seem to perfectly comply with the requirements and specifications of sustainable procurement policies. Thus, HCEs can have advantages in public tenders based on the best value for money criterion, in case the environmental and social characteristics are considered and evaluated among the award criteria.

With regard to the second goal of the HCBM Project, States, in their commitment to sustainable development, the pursue of SDGs and the goals set by the Paris Agreement, should adapt their procurement policies and practices adopting forms of sustainable procurement. In particular, advantages can be provided in the procurement technical specifications, eligibility criteria, or award criteria, providing for a higher score for enterprises based on ethical/integrity, environmental and social performances. Of course, this form of preferred procurement must be pursued within the limits of the general principles of fairness, transparency, openness, and non-discrimination.

In conclusion, a public procurement legal framework based on sustainable procurement policies provides a market incentive to sustainable business conducts, including to the Human-Centred Enterprises. Sustainable procurement gives a competitive advantage to sustainable businesses and could be a lever for driving social and environmental sustainability down through the supply chain, advancing the business paradigm shift (from shareholders’ capitalism to stakeholders’ capitalism) over traditional enterprises.

But in order to be lawful, such preferred procurement procedures must comply with the above-mentioned principles of transparency, equal treatment, non-discrimination and fair competition.

Thus, to ensure transparency and an effective competition among economic operators, any economic, environmental and social criterion applicable to the procurement procedure must be made known to all potential bidders, through procurement documents, from the beginning of the tendering procedure. It should be disclosed in the technical specifications, in the procurement selection and award criteria, as well as in contract performance clauses.

The preferred procurement procedure must guarantee equal treatment of all tenderers; thus, no direct or indirect discrimination is possible and special measures that favour suppliers complying with high social and environmental standards shall be appropriate and necessary for the attainment of the goals of environmental and social sustainability related to the object of the contract.
Finally, all the requirements provided for the supplier/contractor must be fulfilled by the sub-supplier/subcontractor. To that end, the main supplier/contractor shall indicate to the contracting authority the name, contact details and legal representatives of its sub-supplier/subcontractors involved in such works, procurement of goods or services. Appropriate measures should be taken to ensure that the sub-supplier/subcontractor respect the social and environmental standards required by the contracting authority and specified in the procurement documents, such as contractual mechanism of joint liability between subcontractors and the main contractor, and different types of audits (including unannounced audits) to understand how subcontractors work.
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