

Chapter 15

Barcelona City Council Decree for Socially Responsible Public Procurement

The Barcelona City Council Decree for Socially Responsible Public Procurement was designed to tackle the city's increasing unemployment, in particular of people with the most pressing socio-economic needs. Through a participatory process, binding social clauses for public procurement contracts were developed and adopted to facilitate social enterprises' access to market. This initiative describes the Decree's objectives and rationale, as well as its features. It presents the challenges faced in developing and implementing the Decree, and the impact it has achieved so far. It also includes lessons learnt and conditions for transferring this practice to another context.

Summary

Designed and implemented by Barcelona City Council, the Municipal Decree 4043/13 for Socially Responsible Public Procurement aims to turn public procurement into an effective instrument serving the most vulnerable people in society.

The Decree, which came into force on 15 December 2013, stipulates social clauses for public procurement contracts, in compliance with European Union (EU) Public Procurement Directive 24/2014. It has the dual effect of allowing public authorities to make progress in combating social vulnerability, as well as connecting and establishing synergies between social and financial actors. It is a significant legal step affecting all public procurement in the City of Barcelona, with the result that more than EUR 500 million (euros) from the municipal budget allocated to construction work, services and supplies are now being used to advance social cohesion.

The initiative originated from the Department of Quality of Life (covering social services), but was developed across different municipal areas involving experts from various fields (e.g. legal and accounting services, social services, economic promotion and equality, and construction). The drafting and approval process involved intensive dialogue and concertation. More than 50 people from 40 different government, corporate and social organisations (e.g. employers' associations and trade unions), as well as non-state actors (e.g. non-profit entities, solidarity organisations and social enterprises) worked together within a newly constituted Mixed Commission for Socially Responsible Public Procurement to draft the legal text until a consensus was reached. The Decree had strong backing from the Mayor's Office and was unanimously ratified at the end of a year-long process by the Municipal Council, with the approval of all political parties. The Council's ability to reach a consensus represents considerable value added, and offers greater sustainability and legitimacy.

By allocating considerable economic resources, this text has great potential to create employment opportunities for the most vulnerable people in society. Indeed, in 2014 Barcelona City Council earmarked more than EUR 500 million to public-procurement contracts.

Key facts

The Municipal Decree for Socially Responsible Public Procurement was approved in November 2013 and came into force in December 2013, with the objective of enhancing social enterprises' access to market while also encouraging "traditional" enterprises to consider social criteria in their procurement contracts. The initiative is under the jurisdiction of Barcelona City Council. It affects all public contract bidding by its administrative bodies, districts, areas, public companies and foundations, as well as autonomous organisations operating in Barcelona.

With a registered population of approximately 1.6 million at 30 June 2015 (Barcelona City Council, 2016a), the City of Barcelona is the second-largest city in Spain and the eleventh-largest in Europe. It yields enormous influence on the economy and labour market of Catalonia, particularly the Barcelona metropolitan area (the sixth-largest European metropolis, with a population of 5 million).

Barcelona City Council has a budget of EUR 2.55 billion (2014 budget liquidation¹), including more than EUR 500 million² allocated to public procurement. The Decree optimises the budget by establishing a policy aiming to support people at risk of social exclusion. The initiative does not receive any subsidies from the European Union and European Social Fund, and was developed almost exclusively using City Council resources and personnel. A technical consulting firm³ specialising in responsible public procurement and social clauses provided its sole external backing, for a cost of EUR 60 000 over two years.

Objectives

The initiative aims to use the instrument of public procurement to reduce unemployment and social exclusion, while promoting employment opportunities among the most underprivileged sectors of the population.

More specifically, it aims to:

- create work opportunities for the most vulnerable people in society and people with the most pressing economic/social inclusion needs, as defined by specific criteria⁴
- facilitate social cohesion and equal opportunities for the above-mentioned individuals
- foster a developing social sector – without causing market distortions – by reserving or protecting public contracts for:

- special employment centres whose staff is made up of at least 70% disabled people
- work integration social enterprises (WISEs), i.e. companies employing at least 50% of people experiencing or at risk of social exclusion
- non-profit organisations whose goals involve employing or socially integrating people experiencing or at risk of social exclusion.
- use the municipal budget as a tool to obtain added social benefits through public procurement
- establish collaborative synergies among actors from different municipal areas (procurement, public works, economic development agency, social services, etc.) that have not co-ordinated activities until now, with the common goal of achieving the social and professional integration of the most vulnerable people in society
- dispel mistrust among different sectors (social and economic, for-profits and non-profits) working with the City Council by involving them in a common goal to foster a more inclusive society, proving that mutual collaboration and agreement are possible.

The initiative was driven by a multifaceted policy approach, involving:

- locally developed regulations
- regulatory implementation, deployment and application
- comprehensive support (initially by all municipal groups, and subsequently by the Department of Quality of Life, Equality and Sports) during all phases of the initiative, from design and development to goal-setting, methodology and monitoring
- protecting or reserving markets for special employment centres and WISEs
- fostering and prioritising social responsibility criteria, and promoting a public procurement market actively seeking the involvement of social purpose companies.

The Decree is coherent with the terms and spirit of Directive 2014/24/EU of the European Parliament and of the Council, dated 26 February 2014, on public-procurement contracts:

Public procurement contracts play a key role in the strategy established in the European Commission Communication of 3 March 2010 titled 'Europe 2020, a strategy for smart, sustainable and inclusive growth', as they are market-based instruments that must be used to achieve smart, sustainable and inclusive growth while ensuring more efficient use of public funds. For that purpose, current public procurement regulations must be reviewed and modernised in order to improve the efficiency of public spending, especially facilitating access to public procurement of small and medium-sized companies (SMEs) and enabling contracting parties to better use public procurement to further common social goals.

Rationale

The initiative arose from major concern over Barcelona's unemployment figures, which soared from 6.7% in 2007 to 18.1% in 2013 (Barcelona City Council, 2016b). It also focuses on the most disadvantaged members of society: unemployed individuals who receive unemployment benefits, or belong to households with some form of income or employment, are not in the same situation as people who receive no income whatsoever, are long-term unemployed or live in situations of extreme poverty. As a result, the Decree focuses on facilitating employment among these vulnerable sectors, specifically unemployed people receiving no form of income (half of all unemployed), unemployed youth (43.6%⁵) and the population below the poverty line (18.3%⁶).

Barcelona City Council has allocated considerable budgetary provisions (e.g. training and employability programmes, employment guidance, intermediation and professional retraining) to this population segment. It also provides social care (e.g. social assistance, scholarships, soup kitchens, subsistence allowances, emergency relief, aid for homeless people) to people lacking financial resources. Though the Decree did not aim explicitly to reduce the overall municipal money spent on such resources, it stands to reason that at least a portion of such spending would be unnecessary if the beneficiaries were gainfully employed.

Six months before the adoption of the Decree, a Mixed Commission for Socially Responsible Public Procurement (Mixed Commission onwards) was constituted, including more than 50 members from the non-profit, corporate and third sectors (associations, foundations, special employment centres, WISEs, the employers' association and labour union agents), as well as municipal agents, ensuring the Decree's technical viability. Bringing together the interests and sensibilities of this diverse group of actors proved complex, and involved extensive discussions over more than a year. All stakeholders contributed by sharing their points of view and providing inputs to the final text, which was finally unanimously passed.

Activities

The Decree sets compulsory measures to be included in all municipal contracts, and features a series of tools to promote and facilitate employment among people struggling to enter the labour market.

1. Contracts are reserved for special employment centres and WISEs. Barcelona City Council sets a total amount, to be allocated annually through its social reserve fund; the average annual budgetary allocation for these institutions amounts to EUR 8 million.
2. Bidding organisations must meet three conditions:
 - Bidders with 50 or more employees must prove that at least 2% of their workers experience at least 33% disability.
 - At least 5% of the awarded companies' staff connected with the contract in question must be people struggling to enter the job market.
 - At least 5% of the awarded company's contract budget must be used to subcontract the services of special employment centres and WISEs.
3. Adjudication and scoring: companies that exceed the minimum percentages specified above with regard to hiring and subcontracting are awarded scores between 10% and 20%.
4. More generally, the Decree establishes environmental criteria for all aspects of bidding organisations' operations and purchasing (e.g. food products, electricity, communications and computer equipment, wood products, furniture, construction work, events, paper and cleaning products, textiles and vehicles).

Innovative aspects

The Decree is the first mandatory and legally binding decree for socially responsible procurement passed by a local administration in Spain. It applies to all administrative bodies of the City of Barcelona.

Its implementation and enforcement have resulted in an innovative, transferable method of participation, consisting of a comprehensive process (from design and drafting to implementation and assessment) involving continuous dialogue and resolution of issues.

The Decree has established a space for collaboration and co-production between seemingly opposed sectors and interests (e.g. employer associations, trade unions and non-profits).

Finally, the Decree has implemented a cross-sectoral approach in order to reach consensus. Until now, internal municipal departments had been accustomed to working in silos, rather than seeking to establish mutually beneficial synergies, setting common objectives and optimising resources.

Changes and adjustments

Putting aside minor technical issues, one major adjustment to the initial plan was the decision – upon the approval of the Decree in 2013 – to keep the highly effective and participative Mixed Commission active, in light of its success in establishing relationships and reaching consensus. Since then, the Commission has met regularly to assess the Decree's implementation and propose improvements.

As a result of this continuation, the City Council has drafted and adopted a set of guidelines to improve the quality of procurement in social services, healthcare and general personal care. Since their entry into force on 13 May 2015, these guidelines (which include measures relating to labour rights; quality of provision; contractual obligations; compliance monitoring; and the weighting of price, technical quality and social proposals) have been applied to all public procurement contracts.

Challenges and impact

Table 15.1. presents a strengths, weaknesses, opportunities and threats (SWOT) analysis of the Decree.

Table 15.1. **SWOT analysis of the Municipal Decree for Socially Responsible Public Procurement**

Strengths	Weaknesses
<ul style="list-style-type: none"> ● Participation and consensus of all parties, offering greater political and public legitimacy and sustainability ● Demonstrable results (see quantitative analysis below) ● Solid legality 	<ul style="list-style-type: none"> ● Reduced public procurement budget owing to spending constraints ● Administrative inertia and resistance to change ● Complexity and size of Barcelona City Council¹
Opportunities	Threats
<ul style="list-style-type: none"> ● Zero-cost policy for City Council ● Social direction of new public procurement directives ● Creates a political and public climate favouring social policies ● Similar clauses can be used in future to promote other social causes (e.g. gender equality) ● Shared social responsibility of all actors involved 	<ul style="list-style-type: none"> ● Socio-economic crisis ● Resistance from some lobbies and bidders ● Current lack of a municipal majority government, hindering political consensus and passing reforms

1. The City Council consists of 41 councillors from 6 different political parties, only 14 of whom belonged to the same party as the mayor. This made the negotiations for approving the decree particularly complex.

Challenges

The Barcelona City Council comprised 6 different political parties and 41 councillors (only 14 of whom belonged to the same party as the mayor), rendering the negotiations particularly complex. The Council is also decentralised, and comprises representatives from a large number of public companies, districts, areas, foundations and independent bodies, making it difficult to reach a consensus and convince the various entities' technical and political heads.

The initiative's design and implementation were hampered by a few roadblocks: accustomed to using the same template contracts and clauses, public employees were initially resistant to change; the Department of Public Works questioned whether social criteria could yield a better price-quality ratio, and worried that they would distort a tender's transparency and objectivity; the regulation's mandatory nature was questioned from a technical standpoint; some political groups suspected ideological interests, believing that the Decree violated free-market principles; and the corporate sector worried about non-voluntary social commitments, added costs and reduced entrepreneurial freedoms.

Finally, the Mixed Commission had to ensure that both large corporations and smaller entities had equal voice and representation.

Thanks to a participatory strategy involving numerous meetings and discussions, the Council was able to overcome these obstacles and convince all the parties involved of the need for a paradigm shift in favour of the public interest.

Although the Decree has been implemented only recently, the Council has already analysed and assessed its application during the first year, and is now addressing three of the main challenges identified:

1. establishing a uniform system to verify compliance with social clauses and facilitate oversight of all the procurement bodies, with full guarantees of equality and free competition
2. perfecting the impact measurement system, thereby allowing the procurement body to immediately calculate the impact of each tender, and the City Council to automatically calculate results based on different parameters (e.g. department, procurement body, type of contract, dates)
3. including other social criteria (e.g. gender equality, fair trade, labour rights, ethics and fiscal transparency) in responsible public procurement.

Impact

The initiative has resulted in the creation of a vast network of public administrations, trade unions, business associations and social organisations, fostering social responsibility among all parties involved.

Since Barcelona adopted the Decree, more than 50 Spanish public administrations (many of them autonomous communities – e.g. the Balearic Islands and Extremadura – as well as many of the country's biggest municipalities – e.g. Madrid, Seville, Valencia, Girona, San Sebastian and Vitoria) have passed similar agreements. All have reproduced to some extent the text of the Mayoral Decree, and have taken advantage of the knowledge, and technical and legal expertise, developed.

The Decree has drawn interest from the largest national networks and federations working in the field of exclusion and disability.⁷ The City Council has presented its application to regional parliaments and the Spanish Congress. It relates its experience at more than 40 conferences annually, and has signed a dissemination and transfer agreement with the government of Catalonia.

The Decree has not yet reached its full expected impact: many multi-annual city administration contracts will only incorporate the social criteria when they come up for renewal. In addition, the information technology system does not yet allow comprehensive and accurate impact measurement, so the quantitative results are obtained by manually calculating the results for each procurement body.

According to an oversight report by the Quality of Life department (Barcelona City Council, 2016d) on the Decree's impact, 75% of all contracts published and 1 200 of Barcelona City Council's public contracts incorporated the stipulated social clauses in 2014. Further, 770 people in situations of social exclusion, or at risk of social exclusion, benefited from the Decree in its first year of implementation, when the administrative apparatus was not yet fully operational.

Lessons learnt and conditions for potential replicability

Lessons learnt

Work in the Mixed Commission has allowed the City Council to generate collective knowledge on responsible procurement, and allowed the involved entities – and the administration itself – to accept proposals beyond the Council's initial positions. It has fostered relationships among the different members, and enabled the City Council to clarify the legal concepts and mechanisms featured in the Decree.

The following techniques were helpful in designing the Decree:

- aligning the City Council's social departments with the mayor's political will, working to overcome internal differences
- creating a specific forum (the Mixed Commission) to discuss issues
- developing a shared language and terminology
- The head of the Department of Quality of Life, Equality, and Sport assisted by the director of the consultancy firm repeatedly explained to each party how their position could be improved by the Decree.
- demonstrated leadership and support on the part of the mayor regarding the objectives of the Decree
- quick resolution of any incidents during negotiation
- above all, listening and empathising with all parties.

Conditions for potential replicability

Before Barcelona City Council passed the Municipal Decree on Socially Responsible Public Procurement in December 2013, only two similar initiatives with lesser scope existed in Spain (Avilés City Council in 2009 and Castellón City Council in 2010). The Decree was therefore uncharted territory, which public administrations had until then not dared to address.

Given Barcelona City Council's position as a national reference and model, the Decree was conceived with a view to replication by other public administrations, both in the Barcelona metropolitan area and throughout Catalonia and Spain. One basic objective of the City Council has been to exercise leadership and support similar processes, by disseminating and transferring its experience and know-how.

The City Council feels it has achieved this goal, offering improved technical, legal and practical applications in the area of socially responsible public procurement. This model continues to be studied and replicated by other administrations, and Barcelona is collaborating in this respect with interested municipalities, regional councils and autonomous communities.

Notes

1. For further information, please refer to the Barcelona City Council: <http://w28.bcn.cat/pressupostos2014/es/>.
2. For further information, please refer to the Barcelona City Council: <http://w28.bcn.cat/pressupostos2014/es/docs/Pressupost-Ciutada-PL2014.pdf>.
3. For further information, please refer to De Par en Par Consultoria: <http://www.deparenpar.org/>.
4. People receiving minimum subsistence income; people with at least 33% recognised disability; women who are victims of gender violence (physical or psychological), as well as victims of domestic violence; people aged 16 to 30 having spent time in child protection or penitentiary institutions whose situation allows them to access the labour market; people on parole and former inmates during the 12 months following their release; people with drug or alcohol-abuse problems undergoing rehabilitation and social-reintegration programmes; people without access to minimum subsistence income, but whom public services believe to be at risk of social exclusion.
5. Youth unemployment reached 43.6% in the third quarter of 2014 (Barcelona City Council 2016c).
6. Population below the poverty line reached 18.3% according the study carried out by the Barcelona Institute of Regional and Metropolitan Studies of the Statistical Institute of Catalonia (Idescat/IERMB, 2011).
7. Federación de Asociaciones Empresariales de Empresas de Inserción; Confederación Empresarial Española de la Economía Social; Portal de Economía Solidaria; Asociación Española de Recuperadores de Economía Social y Solidaria; ONCE Foundation; Comité Español de Representantes de Personas con Discapacidad.

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