

Marketization, Regulation, and Equality: Towards an Analytical Framework for Understanding the Equality Impact of Public Procurement

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With the rise of the regulatory welfare state, public procurement gained increasing importance as a tool for the regulation of wages and working conditions and a lever for promoting equality. Yet, despite growing attention to and understanding of public procurement's relation to equality, existing knowledge remains fragmented. An analytical framework that captures and systematizes the multifaceted interaction between public procurement and equality is still missing. Focusing on conditions of purchasing and obligations set as part of the procurement processes, this article explores the way in which public procurement processes generate equality impacts first through stipulations and practices which are not explicitly linked to equality but generate equality impacts, and second through proactive measures designed to foster equality. It argues that a holistic understanding of public procurement's equality impact needs to take account of the individual combination of features.

Introduction

Since the 1980s, policy-makers in European (and more broadly Western) welfare states have become increasingly concerned with budgetary deficits and, as a result, public spending. Stronger budgetary constraints went along with the perception that the traditional state-based delivery of services, and public administration in general, lacked efficiency and innovation (Van Slyke 2007). This gave rise to public administration reforms, which aimed at restraining public spending and increasing effectiveness and efficiency (Pollitt and Bouckaert 2011, 77; Rees 2014, 157). Particularly, but not exclusively, in countries adopting New Public Management as a reform strategy, the perception that “small government was superior and that government failure must

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be addressed in order to maximise efficiency” (O’Flynn 2007, 357) was a common notion. Based on the idea that management with its focus on delivering results and managerial responsibility achieved better outcomes, it was argued that introducing economic principles and management theory and practices in the public sector would improve its efficiency (O’Flynn 2007). More specifically, New Public Management advocated the transfer of private sector management practices to the public sector and favored introducing and/or strengthening competition in the delivery of services (O’Flynn 2007). As a result, public management reforms not only reduced the size of public administration and public services; they also changed the existing mode of delivery, promoting managerial techniques and the introduction (or the extended use) of competition and performance-based contracting (Aucoin 1990, 115).

In the wake of growing budgetary concerns and a quest to increase efficiency, different types of marketization have been introduced and/or strengthened (Bel and Fageda 2007; Bode 2009; Pollitt and Bouckaert 2011). This includes “the instigation of managed care or quasi-markets” (Bode 2009, 165). Welfare markets strongly rely on contracting out and competition-based contracting (Bode 2009; Hefetz and Warner 2021), where external providers are awarded contracts to deliver specific services. This development towards growing welfare markets included a wide range of services, from training schemes, child and youth welfare services, and services relating to integration (Jasper and Recke 2010) to job brokerage (Bruttel 2005) and cleaning (Grimshaw et al. 2014). While the specific services concerned differ between countries, “there is basic agreement that third-party entities are playing increasingly influential roles” (Heinrich et al. 2009, i5).

Welfare markets require rules to function effectively, to safeguard competition, and to regulate the behavior and practices of market participants. Regulation is crucial for establishing and sustaining welfare markets, setting rules for participation in and the functioning of markets, for promoting, safeguarding, and regulating competition, and for ensuring that economic operators abide by “the agreed rules of the game” (Majone 1994, 80). Further, delegating the delivery of public services to entities external to the public sector leads to a split between the public bodies, who delegate the task of service delivery, and those entities providing services on their behalf (Braithwaite 2008, 11; Kirkpatrick and Martínez Lucio 1996). As has been pointed out in the context of literature on the principal–agent model, which conceptualizes such relationships of delegation of tasks from one actor to another, monitoring and bonding are crucial to bind the agents to whom the task is delegated to the aims and interests of the ones delegating it (among others, Yukins 2010). Among the measures to steer marketized public service delivery is regulation. Regulation is a crucial tool for public bodies not only to direct service delivery and guide those entities delivering the services, but also to safeguard the rights of service users (Benish and Levi-Faur 2020). Marketization thereby

contributed to “a rapid growth of regulation within and outside welfare and social arenas” (Benish and Levi-Faur 2020, 17).¹

As regulation has gained growing importance (among others, Braithwaite 2008; Levi-Faur 2017; Majone 1997), it became a primary mode of governance of and in the regulatory state (Majone 1994, 1997, 1999). The shift to the regulatory state is, however, a broader shift of the mode of governance experienced by European welfare states. It does not necessarily affect whether and to what degree states pursue social goals (Benish and Levi-Faur 2020; Levi-Faur 2013, 2014) and whether they aim to promote values relating to equality, fairness, social justice and solidarity—core characteristics of welfare states.² In other words, the increasing importance of regulation as a mode of governance does not affect the very nature of welfare states as welfare states, an argument that gave rise to the concept of the regulatory welfare state (Haber 2017; Levi-Faur 2013, 2014).

In the regulatory welfare state, social policy and welfare goals, such as a quest to foster equality, are often promoted with recourse to regulation. In this context, public procurement has gained importance as a regulatory tool and a lever for promoting equality. Despite growing attention paid to public procurement and an increased prevalence of regulatory policies linking (gender) equality and public procurement, academic research on the connection between equality and public procurement is but emerging. Further, existing research remains fragmented. Most importantly, a conceptual framework of the interaction between public procurement processes and gender equality, which integrates fragmented knowledge, is still missing. This article seeks to contribute to closing this gap by proposing a systematic assessment of the interaction between public procurement and gender equality³ that brings together existing knowledge to conceptualize the multifaceted interaction between public procurement processes and equality while focusing on the process of buying.

Public procurement impacts equality in different ways, from the shape or form (or the “design”) of publicly purchased goods, works, or services to measures that aim to proactively promote equality. Three core issues are of importance when examining public procurement, namely *what* is purchased (the shape or form or “design” of the good, works project, or service), *how* it is purchased (the conditions of buying), and *from whom* it is purchased (e.g., purposefully buying from SMEs).⁴ Focusing on the regulatory potential of public procurement, this article examines practices of buying (the second aspect), with particular emphasis on conditions of purchasing and obligations set as part of procurement processes, and proposes a conceptual framework for the analysis of equality impacts linked to public procurement practices.⁵ Systematizing existing knowledge on public procurement as a tool for the regulation of labor and a lever for promoting equality, it contributes to the development of an analytical framework for analyzing the equality implications of conditions set in the process of public purchasing. It thereby proceeds as

follows. In a first step, this article showcases the importance of public procurement as a tool of and in regulatory welfare states. It then turns to the relationship between public procurement and equality with a focus on practices of buying. Focusing on the regulatory function of public procurement practices, this article outlines two distinct (and to date largely unrelated) streams of literature, one that focuses on the regulation of wages and working conditions and one that focuses on equality; it argues for the integration of these two perspectives. It proposes to analytically distinguish two broad categories: first, stipulations and purchasing practices, which are not explicitly linked to equality and may at superficial glance appear to be “neutral” when it comes to equality but that produce gendered outcomes (“cursorily neutral stipulations and practices”); and second, measures that explicitly relate to promoting equality (“proactive measures”). Both of these can be further disintegrated. The equality impact of public procurement processes is generated, hence the argument proposed here, through the specific combination of incentives and obligations set. The conclusion summarizes the main points.

Public Procurement in the Regulatory Welfare State

Bringing together [Majone's \(1994, 1997, 1999\)](#) work on the regulatory state and social aspirations of welfare states, [Levi-Faur \(2013, 2014\)](#) stressed that the regulatory state is defined by its use of regulation and not its substantive goals. Consequently, regulatory states may follow distinct social policy and welfare goals and they may do so using regulation as a tool. Regulation does not exclusively address technical or procedural issues; it increasingly acts as a means for constituting, promoting, and regulating welfare markets and for “steering services and protecting users’ rights vis-à-vis non-state service providers” ([Benish and Levi-Faur 2020](#), 18). Regulation can also be a means to convey norms and values ([Benish and Levi-Faur 2020](#), 20) and thereby turn into a tool of welfare states. These considerations led to the concept of the regulatory welfare state ([Levi-Faur 2013, 2014](#)).

Not least due to previous trends towards marketization, public procurement is a vital feature of Western welfare states. A diverse range of public institutions, from the military and fire and rescue services to hospitals and universities, procure a variety of essential goods, works, and services, which make vital contributions to the functioning of modern (welfare) states. Public contracts are used to procure construction works (e.g., of roads, schools, and libraries), to safeguard the availability of a wide variety of goods (e.g., stationery, uniforms, and X-rays) and services (e.g., emergency medical services, catering in schools, and interpreting services in the context of asylum and international protection). Among the services procured are a range of female-dominated services, such as for instance social care ([Rubery, Grimshaw, and](#)

Hebson 2012), child and youth welfare services (Bruttel 2005), and cleaning (Grimshaw et al. 2014).

In the regulatory welfare state, public procurement is more than a mere means for securing the availability of essential works, goods, and services; it increasingly acts as a tool for promoting social goals (Hartlapp 2020). The importance of public procurement does not stem from its importance for steering public services alone; it is also linked to the fact that by using public procurement, regulation can have an impact beyond the immediate realm of the state (Hartlapp 2020, 70). In the context of tight public budgets and a quest for efficiency, public procurement's "potential to render a market more social for equal levels of spending" (Hartlapp 2020, 69) has contributed to its growing importance. Used strategically, public procurement can act as a lever for promoting social goals without incurring further (major) direct costs for public bodies or containing the costs compared to public spending necessary to achieve the same goals in another way. Some obligations, such as for instance imposing quotas for the employment of women in the delivery of a service or construction project, do not impose any additional costs on the public bodies other than those that may be related to monitoring. While raising no direct costs, other obligations may indirectly incur costs for the public body: obligations that raise personnel costs on the side of the provider may raise the price paid for a service, thereby indirectly raising costs for the buyer (the public body). In some cases, the costs incurred on the side of the public agency may be less than costs of achieving the same aim in a different way (e.g., the costs incurred by requiring bidders to provide childcare may be lower than providing publicly subsidized childcare services). At the same time, measures that open employment opportunities and increase equality may have tangible effects in promoting access to employment, reducing costs in other areas and generating "substantial macroeconomic gains in increasing labour market inclusion and promoting equality" (OECD 2022, 14). In a context where public bodies are bound by tight budgetary constraints, the fact that using public procurement as a tool for regulation incurs limited costs for public bodies is an important feature for the increasing use of regulation, also but not exclusively, in public procurement.

The Growing Importance of Equality

Over the past few decades, the equality impact of public procurement has received growing attention. Equality organizations such as the European Institute for Gender Equality (EIGE) or the UK Women's Budget Group, are taking a growing interest in public procurement's "great potential to promote gender equality" (European Institute for Gender Equality 2019) and call for gender equality to "become a core component of procurement strategy" (Women's Budget Group 2019). Using public procurement to enhance equality has also found a widening traction among policy-makers. Since the 1980s,

when the European Parliament advocated that equality should be a concern in public procurement (European Parliament 1987), regulation coupling equality considerations and public procurement emerged in a growing number of countries, including but not limited to Germany, the United Kingdom, and Spain (McCrudden 2007; Medina Arnáiz 2010; Sarter 2016, 2020).

Yet, academic research on the connection between equality and public procurement, particularly research that analyses public procurement as one tool in the toolbox of the regulatory welfare state, is only just emerging. Research started to explore the linkage between public procurement and equality in law and policy (among others McCrudden 2007; Medina Arnáiz 2010; Nyeck 2015). Individual case studies analyzed the implementation of equality considerations (Callerstig 2014; Sarter 2020; Wright 2014, 2015; Wright and Conley 2020) and shed first light on the impact that equality considerations in public procurement have on company policies (Sarter and Thomson 2020). While the literature on equality considerations in public procurement highlights public procurement's potential as a driver for promoting gender equality (McCrudden 2011; Wright 2014, 2015; Wright and Conley 2020), studies also point to important implementation gaps (Nyeck 2015; Sarter 2020). Most importantly, despite a growing body of knowledge on the use of public procurement as a tool for the regulation of labor (Donaghey et al. 2014; Holley 2014; Howe and Landau 2009; Ravenswood and Kaine 2015; Sack and Sarter 2018; Sarter and Karamanidou 2019) and an emerging body of literature on the use of public procurement as a lever for promoting gender equality (Benjamin 2016; Callerstig 2014; McCrudden 2007, 2011; Nyeck 2015; Sarter 2016, 2020; Sarter and Thomson 2020; Wright 2014, 2015; Wright and Conley 2020), a conceptual framework that brings these considerations together is still missing. This article aims to contribute to closing this gap by, first, bringing together two streams of literature, and second, proposing a conceptual framework for systematic assessments of the interaction between public procurement practices relating to the process of public buying and gender equality.

Public Procurement and Gender Equality

Before examining public procurement as a tool for the regulation of labor and a lever for promoting equality, it seems crucial to revisit the public procurement process as such. At a basic level, public procurement—or the act of public purchasing—constitutes a series of choices, from decisions on the specifications for a specific object of purchase and whether to include (which) service standards (Benish and Levi-Faur 2020; Epstein 2013; Lahat and Talit 2015) to decisions on how to evaluate different options put forth by different providers and whether to set specific requirements that the provider has to abide by (for instance, stipulations on minimum wages or working conditions

or measures to promote equality). These conditions and obligations, which are part of the process or purchasing, are the focus of this article.

Wages, Working Conditions, and the Price

Since the mid-twentieth century, female labor market integration has risen considerably across the Western world more broadly and in Europe more specifically. Labor market participation is characterized by horizontal and vertical segregation. Women are underrepresented in higher positions and jobs with high career and income perspectives; they are also more likely to be in atypical and precarious employment and low-wage work (among others, [Kreimer 2004](#); [Rubery and Grimshaw 2011](#)). Further, women are concentrated in certain sectors of the economy (among others, [Kreimer 2004](#)). Domestic and related help, personal care, cleaning and laundering (all of which have been subject to contracting out), for example, range among the top six occupations for women, while the top six occupations for men comprise a very different set of occupations, including drivers and building-related occupations ([European Commission's Expert Group on Gender and Employment 2009](#)).

Against the background of gendered labor market participation and segregated labor markets, it has been widely highlighted that in a world shaped by gendered realities, regulations and practices that are not explicitly linked to sex or gender (and may be perceived as unrelated because their wording does not explicitly reference either) often have gendered outcomes (among others, [Himmelweit 2002](#); [Lombardo 2003](#); [Pateman 1989](#)). This also holds true for regulations and practices relating to employment. Minimum wages, for instance, affect women disproportionately because women are overrepresented in low-wage employment ([Rubery and Grimshaw 2011](#)). Contracting out has a disproportionate impact on women ([Corby 2011](#), 110). It affects the public sector, which is a major source for the employment of women ([Rubery 2013](#)), and public services in particular, and detaches the provision of contracted-out services from regulation relating to the public sector, which oftentimes is more favorable than that pertaining to the private sector (for example, [European Commission's Expert Group on Gender and Employment 2009](#); [Lewalter 2013](#)).

Further, contracting out is embedded in a quest to decrease public spending, limiting available resources and the willingness to spend. As a result, in practice, the price often remains a primary (and sometimes the only) criterion in public procurement processes ([Rönnenbäck 2012](#), 448; [Roodhooft and Van den Abbeele 2006](#), 493f). The price paid can have important implications for wages and working conditions, which are linked to the costs of producing a service, particularly in services where a considerable amount of the costs stems from personnel costs. As wages and employment conditions (and thereby the related costs) can be influenced by the provider, public procurement practices that have a strong focus on the price are likely to contribute to attempts to cut

labor costs (among others, [Kozek, Radzka, and Hermann 2012](#), 124; [Schulten and Brandt 2012](#)). Against this background, it comes as no surprise that the literature on marketization (and contracting out more specifically) has linked contracting out to labor cost cutting, increasing work schedules and workloads, lower wages, and deteriorating working conditions (among others [Campbell and Peeters 2008](#); [Dube and Kaplan 2010](#); [Flecker and Hermann 2011](#); [Vrangbæk, Petersen, and Hjelmar 2015](#)). Contracting out has furthermore been argued to increase perceived insecurity and frustration ([Engström and Axelsson 2010](#)) and to “exacerbate the vulnerable position of workers employed in . . . low-wage service segments” ([Grimshaw et al. 2014](#), 1), oftentimes women ([Rubery and Grimshaw 2011](#)).

As a high pressure on the price creates incentives to reduce costs by lowering wages (particularly in services where a high percentage of running costs results from wages) it may also incentivize providers to employ less qualified personnel on a lower wage, particularly when cost-pressures are combined with a lack of stipulations relating to qualifications. This can lead a spiraling development, where services are increasingly underfunded, making the employment of adequately trained staff with professional qualifications unlikely or impossible, which can in turn contribute to an undervaluation of the necessary knowledge and the need for professional training ([Benjamin 2016](#)). At the same time, low wages can provide a disincentive for highly qualified individuals to consider a specific job, further exacerbating the concentration of lowly qualified personnel (among others, [Benjamin 2016](#)). This can lead to a vicious circle, where lowering expectations regarding qualifications and skills contribute to lower resources and lower resources increase the likelihood that a service is delivered by less or not (formally) qualified staff. Thus, de-skilling may have important implications for those working more broadly in the job and the sector. If processes of de-skilling affect female-dominated occupations, they may have a tangible impact not only on individual workers but also on the service as a whole, which may in turn reinforce gendered labor market outcomes and pay differentials.

A deterioration of wages and working conditions and processes of de-skilling can furthermore negatively affect the quality of the service, which in turn impacts service users ([Apostolou 2012](#); [Epstein 2013](#); [Grimshaw et al. 2014](#)). A lack of qualifications and increased workloads coupled with low remuneration leads to suboptimal quality outcomes (among others, [Apostolou 2012](#); [Benjamin 2016](#)). This is particularly the case for soft (or person-centered) services, which are “partly produced and consumed simultaneously in a process in which both the service provider and the client are involved” ([Roodhooft and van den Abbeele 2006](#), 492), making it impossible to separate the production, delivery, and consumption of these services ([Corcoran and McLean 1998](#), 39; [Rönnebäck 2012](#), 448). As a result, the person delivering the service, their qualifications, skills, and “the way in which the service suppliers act and how they treat the customers” ([Rönnebäck 2012](#), 449) are of

paramount importance. The impact of working conditions, processes of de-skilling, and the level of qualifications and skills of staff is hence not limited to the staff delivering a service and those working in the service more broadly; they also have important implications for the quality of the service and thereby for the users of these services. As the importance and the impact of certain services differ, *inter alia*, by gender (among others, [Cheung and Phillimore 2017](#); [dell’Olio, Ibeas, and Cecin 2011](#); [McLean, Campbell, and Cornish 2003](#); [Memon et al. 2016](#)), service quality and how the quality of services may affect different users are also of concern when considering equality implications.

Public procurement practices have become important factors that shape the conditions of work in contracted services. Take the example of social care. In England, the provision of social care is mainly contracted from (primarily private) providers ([Rubery, Grimshaw, and Hebson 2012](#), 420). Research indicates that procurement and commissioning practices of contracting authorities influence pay and working conditions in these services ([Cunningham and James 2009](#); [Grimshaw et al. 2014](#); [Rubery et al. 2015](#)). Procurement and commissioning practices, and cost considerations in particular, are key factors for shaping “the strategic scope for IDPs [independent-sector providers of domiciliary care, EKS]” which “is narrow and close to being determined by the external environment” ([Rubery et al. 2015](#), 768). Thus, cost considerations oftentimes present the overall framework within which quality considerations (also in relation to employment) are integrated in procurement and commissioning strategies so that “quality was sought within an environment where cost factors still dominated” ([Rubery, Grimshaw, and Hebson 2012](#), 425).

While public procurement practices can contribute to a lowering of wages and a deterioration of working conditions, they can also actively seek to mitigate negative implications of competition-based contracting by imposing minimum standards. Over the past few years, requirements that relate to working conditions and wages (e.g., minimum requirements for wages and working conditions of those employed in the delivery of public contracts) have gained importance in public procurement ([Holley 2014](#); [Howe and Landau 2009](#); [Ravenswood and Kaine 2015](#); [Sack and Sarter 2018](#)). With working conditions increasingly “regulated through the combination of traditional labor law mechanisms and lesser understood contract law mechanisms” ([Holley 2014](#), 672), public contracts increasingly become a tool for regulating wages and working conditions.

In brief, against the background of segregated labor markets and gendered implications of contracting out, whether public procurement practices aim to mitigate price pressures and uphold wages and working standards is—while perhaps cursorily unrelated to gender—a gendered concern. Given the above-mentioned considerations, the regulatory potential of stipulations on wages and working conditions includes, first, stipulations relating to minimum requirements, and second, the importance attached to cost considerations and

the price. Minimum requirements can, for instance, relate to minimum wages for those involved in the delivery of the contract. Attempts to prevent a “race to the bottom” include, for instance, stipulations relating to “abnormally low tenders” (which allow for the exclusion of particularly low offers that may be linked to breaches of workers’ rights and minimum conditions) or minimum prices. Therefore, it is important to acknowledge that while a strong focus on the price can exacerbate pressure on wage levels, higher prices may not necessarily translate into a proportionate rise of wages (Rubery, Grimshaw, and Hebson 2012, 431). While analytically distinct, working conditions and the price may interact. Upholding wage standards and decent working conditions are likely to increase the costs of production or delivery (particularly if labor costs account for a high percentage of total costs) and subsequently the price. In contrast, price-focused procurement practices may exacerbate cost pressures and contribute to deteriorating labor conditions.

Using Public Procurement to Proactively Promote Equality

Public procurement is not only a tool for mitigating the impact of competition by regulating working conditions, wages, and the price. It also has a rather long history of being strategically used to promote social goals (McCrudden 2007). Over the past decades, equality considerations progressively gained importance. Public procurement increasingly integrates requirements that oblige providers to take actions, which are assumed to foster (gender) equality. A distinct stream of the literature (which to date remains largely unrelated to the analysis of public procurement as a tool for the regulation of labor outlined above) has explored this trend. To date, this growing body of literature is strongly empirically focused and centers on case studies. It has identified a range of barriers and enablers for effectively using public procurement as a tool for promoting gender equality, such as, for example, the impact of the legal framework, and the importance of pressure from civil society organizations (Wright and Conley 2020). Being largely empirically oriented, the literature on proactive measures for promoting equality pointed to a range of different measures in public procurement, albeit without systematizing, categorizing, or conceptualizing different types of measures.

Analytically, these can be grouped in two categories. First, proactive measures can focus on fostering equality within the workforce. Measures that take this aim include, *inter alia*, quotas for the employment of women, particularly in male-dominated areas (for an example, see Wright 2015) or the obligation to adopt measures to ease the double burden induced by caring responsibilities, to provide further trainings, to ensure preferential promotion of women, or to prevent that downsizing affects women disproportionately (Sack et al. 2016, 44). Proactive measures that aim to turn public procurement into an active lever for promoting gender equality can furthermore relate to aspects external to the workforce. This includes, for example, requirements to provide

awareness-raising sessions or specific training to increase the equality impact of a service or obliging the bidder to suggest (and if successful adopt) measures to promote more equal outcomes of services (for an example of this, see [Equality and Human Rights Commission 2013](#), 19).

It seems obvious that proactive measures focusing on the workforce impact those working in a particular public contract and that proactive measures which take an aim beyond the workforce have an impact beyond the workforce. Yet, like cursorily neutral stipulations and practices, which have gendered implications despite being cursorily unrelated to gender or sex, workforce-related proactive measures (can) have broader equality implications and societal effects. Quotas for the employment of women in a male-dominated area of activity can, for instance, be one tile in a mosaic of measures to tackle the gender segregation of the labor market. If this approach of stipulating quotas is not limited to one single project but adopted more broadly, it could have an effect that is broader than the specific workforce in a number of given public contracts. By opening employment opportunities, giving women better access to training and work experience in the field and creating positive experiences with the inclusion of women on the side of employers, such projects could contribute to bringing more women into a male-dominated sector and thereby tackling segregation (for an example, in the construction sector, see [Wright 2014](#)). If the sector or service in question is characterized by rather high pay and career prospects, this can furthermore have important implications for the gender pay gap more broadly.

Focusing on services in particular, the sex or gender of the person delivering the service (and consequently quotas as a way to safeguard that workers of different sexes or genders are available to deliver the service) may have further implications. For some services, such as, for instance, interpreting services in the context of asylum, it has been shown that congruence of specifically the sex between the person delivering the service and the user has positive implications for service outcomes ([Bögner, Brewin, and Herlihy 2010](#); [Maryns 2013](#)). In these cases, ensuring an adequate proportion of staff to deliver services to users of the same sex and/or gender can be regarded as an essential component of safeguarding equal service outcomes. Against this background, it becomes clear that proactive workforce-related measures, even though they may cursorily seem limited by their reference to the workforce, have implications for gender equality that go well beyond the workforce itself.

Towards a Framework for the Analysis of Public Procurement

To briefly summarize, two distinct streams of literature provide important, yet partial, insights into implications that public procurement practices can have for gender equality. These two bodies of knowledge examine the

relationship between public procurement and labor, which against the background of gendered labor market sheds gendered implications, and the use of public procurement to proactively foster gender equality, respectively. Thereby, these two bodies of literature remain fragmented as each of these closes in on one particular aspect of the multifaceted relationship between public procurement and (gender) equality. The literature on contracting out, public procurement, and labor highlights the importance that public procurement practices have for wages and working conditions in contracted services (and, at least partially, beyond), which given gendered labor market participation and the importance of contracting out for female-dominated services, may have highly gendered impacts. A second stream of literature highlights the use of public procurement as a tool for promoting (gender) equality. While this emerging stream of literature has provided important insights into the conditions under which proactive measures to foster equality are incorporated and have a positive impact, it is strongly empirically orientated and focuses on conditions under which proactive measures can be successfully implemented and generate positive outcomes, rather than the conceptualization of different types of proactive measures or their intersection with other features of public procurement practices. With these two streams of literature standing in isolation from each other, the examination of public procurement risks remaining restricted by a limited perspective. Yet, without accounting for the different ways that public procurement interacts with equality, an exploration of public procurement's impact can shed only limited insights. Having explored different features of public procurement processes that have an equality impact, the question arises what this means for the holistic analysis of public procurement's impact for equality, a question that will be examined in the following.

Focusing on choices made while purchasing, this article proposes to distinguish between cursorily neutral stipulations and practices, which produce gendered outcomes, on the one hand, and proactive measures to promote equality on the other. Both cursorily neutral stipulations and practices and proactive measures can be further disintegrated (see [table 1](#)). Analytically, two major types of cursorily neutral practices can be distinguished, first the (neglect or) regulation of labor standards, and second, price-related practices. In addition, proactive measures can be distinguished further. Analytically, two types of proactive measures can be distinguished, workforce-related measures and those whose focal point reaches beyond the workforce. The equality impact of public procurement processes stems from the combination of cursorily neutral stipulations and practices and proactive measures.

To capture the equality impact of a specific procurement process, it is important to assess the implications of cursorily neutral stipulations and practices (namely stipulations on labor standards and price-related practices) and proactive measures (namely proactive workforce-related measures and those that relate to aspects beyond the workforce). Thus, it is conceivable that a specific

Table 1. Features and impacts

Category	Subcategory	Scope	May affect	Primary beneficiary	Secondary beneficiaries
Seemingly neutral regulations and practices	Regulation of labor	Specific contract	Standards in field of activity	Employees delivering public contract	Workers in service more broadly; service users
	Price-related practices	Specific contract	Standards in field of activity	Employees delivering public contract	Workers in service more broadly; service users
Proactive measures	Workforce-related	Specific contract	Broader societal inequalities (e.g., segregation)	Employees delivering public contract	Users
	Not workforce-related	Societal inequalities		Users	

Source: Author's own compilation.

procurement process integrates features that have divergent implications, which may not necessarily be coherent. For instance, a specific public procurement project can see a lack of stipulations relating to labor standards and a strong price pressure (both of which may contribute to a deterioration of wages and working conditions), which, given the horizontal and vertical segregation of the labor market, may affect women disproportionately. Focusing on cursorily neutral stipulations and practices, this hypothetical project would generate negative rather than positive effects. Imagine now that the same project included proactive measures, for instance quotas for the employment of women in a male-dominated area of the work carried out in the fulfilment of the contract. If implemented successfully, these obligations, which aim to promote equality, could generate positive effects by opening up employment opportunities for women and could help to tackle labor market segregation. Taken together, this project would hence combine negative impacts resulting from cursorily neutral features and positive impacts, which stem from proactively chosen obligations placed on the successful bidder.⁶

Any combination of incentives is conceivable. Cursorily neutral stipulations of wages and working conditions may set incentives that align with or contradict those set by price-related practices; these can be complemented by either no proactive measures or by measures which pertain to one or both type(s) of proactive measures (workforce-related or not). If complemented by different proactive measures (including either measures relating to one type or both, that is workforce-related measures and those that aim beyond), these can have additional implications for equality. The combination of features that is most likely to achieve an optimal impact would be the result of coherent incentives to uphold and promote decent wages and working conditions, limit price pressures, promote equality within the workforce, and foster equality beyond the workforce. In contrast, public procurement processes that do not integrate any stipulations regarding wages and working conditions, generate a strong price pressure, and do not integrate any proactive measures are most likely to have the least positive impact.

Conclusion

Public procurement is an important part of modern Western welfare states. With the rise of the regulatory welfare state (Haber 2017; Levi-Faur 2013, 2014), public procurement has become an increasingly important tool for promoting social policy goals (Hartlapp 2020). Against this background, the social impact of public procurement, among others its equality impact, have gained increasing attention. Yet, existing knowledge on the linkage between equality and public procurement processes remains fragmented. Focusing on conditions and obligations set in the process of buying, this article argued that to account for the equality impact of public procurement a range of different

features interact and proposed an analytical conceptual framework for assessing the equality impact of public procurement projects.

This article advocated to analytically distinguish between stipulations and practices which do not explicitly relate to sex or gender but may generate gendered outcomes (“cursorily neutral stipulations and practices”), on the one hand, and proactive measures for promoting equality, on the other. Cursorily neutral stipulations and practices encompass, first, stipulations relating to wages and working conditions, and second, price-related practices, which shape employment and working conditions. Against the background of persisting labor market segregation, these are likely to have gendered implications and contribute to gendered outcomes. Taking the awareness of inequality as a starting point, proactive measures are purposefully conceived measures to promote equality by setting requirements that explicitly relate to sex or gender. Proactive measures can be workforce-related measures (that is, they can refer to the workforce delivering a public contract) or take a focus beyond the workforce.

The equality impact of any public procurement process is, according to the argument put forth in this article, generated by the individual combination of the impacts generated by the specific mixture of measures. Therefore, the different aspects may not necessarily contribute to a coherent incentive; it is, for instance, conceivable that a particular procurement process includes proactive measures relating to broader equality aspects, which have a positive equality impact, while at the same time neglecting proactive workforce-related measures. The same project could display a likely negative impact resulting from cursorily neutral stipulations relating to wages and employment conditions and a more positive impact from price-related practices that aim at restricting price pressures. Consequently, understanding the overall equality impact of any public procurement process means assessing the equality impact of the individual combination of these core features.

By bringing together different, hitherto separated aspects, which have been highlighted in the literature, and conceptualizing the interaction of public procurement processes and equality in a more holistic way, this article hopes to contribute to furthering the development of research on the strategic use of public procurement as a regulatory tool and the relationship between (gender) equality and public procurement. At the same time, it is hoped that the outlined conceptual framework can provide a possible starting point for efficient planning and design of public procurement practices that enhance the promotion of equality.

Notes

1. While deregulation has been a prominent topic, it has been shown rather widely and succinctly that processes of seeming “deregulation” are not

the end of regulation. Rather, processes of so-called deregulation can be conceived as a change of the mode and content of regulation, a re-regulation of some sort (among others, [Braithwaite 2008](#), 26–27; [Levi-Faur 2017](#), 290–91; [2009](#), 182), “as when command-and-control methods are replaced by economic incentives” ([Majone 1994](#), 80). Among the tools that gain importance is public procurement.

2. Welfare states can be characterized as states which aim to foster a range of goals and aims (e.g., solidarity, fairness, and equality) and the institutions that exist to promote them ([Leisering 2011](#)).
3. While this article focuses on gender equality specifically, similar considerations may hold true at a more general level. It is hoped that this article may inspire further research within and beyond the study of gender equality.
4. The first point, what is purchased, relates to the specific features or technical specifications of the object of purchase, its specific form or “design,” and whether they render it equally suitable for a wide range of users. The second point, the how, relates to decisions made in relation to the processes of buying; this includes, inter alia, stipulations relating to minimum standards and social aspects. Third, from whom a specific service, good, or works project is purchased can have important implications. For instance, third-sector organizations have been credited with a particular potential to engage with hard-to-reach groups. Purchasing from women- or minority-owned businesses has been advocated to empower women and minorities, respectively, economically.
5. This focus implies that the design of the service or preferential treatment of women-owned enterprises may contribute to the overall equality impact, but this is not comprehensively explored here.
6. In addition to the impacts outlined above, it has been argued, particularly in the literature on corporate social responsibility (CSR), that public authorities can create a business case that promotes the adoption of measures and/or upholding specific standards beyond the scope of companies that participate in public contracts, thus using “their significant purchasing power as an economic incentive for CSR” ([Steurer et al. 2012](#), 213). Yet, the evidence on whether integrating considerations relating to equality in public procurement sheds a boarder impact remains scarce and inconclusive. While [Wright \(2015\)](#) seems to indicate a positive impact, [Sarter and Thomson \(2020\)](#) raise doubts about the extent to which equality considerations can, as a stand-alone tool, incentivize companies to adopt action promoting equality. Further research is needed to explore the impact of inducing an effective business case by including equality requirements.

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