

## POSITION PAPER

#FERMAFOCUS #RISKTRANSFER

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# FERMA's Position on the Revision of the EU Public Procurement Directives

The Federation of European Risk Management Associations (FERMA) brings together 23 risk and insurance management associations in 22 European countries, representing over 6,000 risk managers active in all European economic sectors.

## Executive Summary

- Risk and insurance managers working in the public sector must comply with the EU public procurement directives (PPD) when purchasing insurance policies for their organisation.
- However, the existing EU rules for public tenders are **not adapted to the purchase of insurance by public sector companies**: the PPD are too cumbersome, inflexible and not suited to the volatile and cyclical nature of the insurance market, and moreover to the very nature of insurance products.
- Because of the complex administrative burden, PPD discourage insurers from participating in public tenders, **diminishing competition and exposing public sector entities to reduced insurance capacity, weaker coverage terms, and potentially higher premiums compared to those available to private sector businesses**.
- In an increasingly complex and fast-changing environment, the resilience of public sector companies is essential, since (i) they are more exposed to certain risks because of the nature of their activities (e.g. public transport, large infrastructure management, energy supply, etc.) and (ii) disruptions of their activities will be felt directly by citizens, who rely on the public services they provide.
- Public sector companies' access to sufficient and affordable insurance coverage is therefore critical to their resilience and is in the best interests of all citizens, who are the ones to ultimately shoulder the losses sustained by the public sector if the risks are not transferred to the market.
- FERMA therefore calls on the European Commission to **exclude insurance policies from the scope of the PPD**.
- Such an exclusion would align with the existing exclusions of loans and other financial products and would be compatible with the overall objectives of the PPD.
- Other policy options aiming to reduce the burden stemming from PPD are also considered.

# 1 Problem description

In the European Union (EU), the awarding of public tenders is governed by three directives, known as the EU Public Procurement Directives (PPD). These are:

- Directive 2014/23/EU on the award of concession contracts,
- Directive 2014/24/EU on public procurement, and
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

Their aim is to provide a level playing field for businesses across Europe to access public markets for contracts over a certain value. In the case of insurance products, the EU public procurement rules apply from either EUR 143,000 (for central government authorities), EUR 443,000 (for entities operating in water, energy, transport and postal services) or EUR 221,000 (for any sub-central authorities or bodies governed by public law) of premiums over the whole contract period.

In practice, the aforementioned thresholds mean that a large part of insurance policies contracted by public sector companies fall under the EU rules for public tenders. **However, the current EU public procurement directives are ill-suited to the needs of public sector companies purchasing insurance coverage, and generate market inefficiencies, inequalities and negative impacts.**

## 1.1 Administrative burden

**The procurement process is notably burdensome for both public sector corporate clients and (re)insurers. This complexity leads to (re)insurers being reluctant to participate in tenders launched by public companies, resulting in reduced competition and ultimately harming public companies with higher costs, lower quality of insurance coverage and, in the worst-case scenario, a lack of insurance coverage.**

**Public procurement is a long process**, which can take at least three months to complete. In comparison, a private company of similar size would be able to purchase similar coverage in a matter of weeks – although the exact amount of time may vary depending on the type of insurance policy and the specificities of the companies involved.

**This is especially problematic because the insurance market is seasonal:** insurance contracts usually last 12 months and start on 1 January, which means that a lot of activity is concentrated in Q4 of a given year, when renewals are negotiated. In this busy period, insurers often prioritise allocating their insurance capacity to private companies first. Indeed, as illustrated by one FERMA member with experience in the insurance sector, insurers could sign four workers' compensation policies with private companies in the time they would need to respond to one EU public tender.

**To ensure more consistency in the financial sector, insurance policies must be excluded from the scope of the PPD, similarly to the banking sector.** Loans provided by banks are excluded from the Public Procurement Directives notably because of the specific characteristics of a highly regulated sector requiring flexibility and rapid market responsiveness. Both financial services and insurance are subject to robust regulatory oversight, which significantly limits exposure to corruption risks. Applying the Public Procurement Directive to insurance contracts therefore adds limited value from an anti-corruption standpoint, while creating disproportionate administrative burdens. This calls into question the necessity and proportionality of maintaining insurance within the scope of the Directive.

**The extensive documentation required from insurers further disincentivises their participation in public tenders.** Insurance is a highly regulated market, which considerably reduces the likelihood that tenderers are concerned by exclusion grounds and/or do not meet essential selection criteria (i.e. suitability to pursue the professional activity, economic and financial standing, and technical and professional ability). This fact is however not reflected in the amount of data points that they are asked to provide as part of the European Single Procurement Document (ESPD). The risk of an administrative error in the process is nevertheless substantial enough to consider redirecting resources to non-PPD opportunities.

**For the above reasons, the PPD fail to foster competition between (re)insurers.** Public tenders for insurance policies routinely result in only receiving one or two offers, and frequently none at all. Reduced competition in public tenders is especially a concern for new and/or high risks (e.g. covering electric bus depots or battery energy storage systems in property insurance) and in specialized insurance lines (e.g., aviation, cyber, offshore, etc.). In such cases, the risk appetite from (re)insurers is very low, meaning that the pool of available providers is already more limited than for other risks. Adding extra administrative burden makes it even more challenging – and sometimes impossible – to find enough capacity in the (re)insurance market. Consequently, insurance managers working for public sector companies have to resort to negotiating directly with (re)insurance providers after their public tender failed. If, during negotiations, new or different conditions that depart from the original tender assumptions are identified, the company may be legally required to reopen the process and launch a new tender. As a consequence, a lot of time and money will be wasted in the purchasing process.

## 1.2 Complexity of insurance programmes

**The PPD are not flexible enough to accommodate the complexities of insurance programmes, and public sector corporate buyers could obtain better coverage through direct negotiation rather than through public tenders.**

**Insurance policies are complex products, whose value cannot be reduced to the amount of premiums paid.** Deductibles, wordings, exclusions, requirements, terms and conditions, etc. are all aspects that need to be considered to properly assess the true value of an insurance contract for a given organisation. Moreover, the (re)insurance market is a dynamic one, with new innovative products being developed on a regular basis.

**In practice, it is difficult for a public corporate insurance buyer to exactly state *ex ante* what they want out of a public tender.** Large corporates are complex in terms of risk exposure, and consequently (re)insurers' quotes are not based on pre-determined fees but are tailored to the individual needs of the clients. Experience shows that insurers tend to adapt their original offer during the negotiation phase with their corporate clients, and it is therefore imperative that an active negotiation process can take place between insurer and insured.

**However, this flexible approach stands in opposition with the requirement to define a finalized product in the beginning of the EU public procurement process.** Currently, if a public corporate buyer wants to substantially amend its initial call for tenders, they need to start the process from scratch – be it to correct mistakes, to adapt to market conditions or to include additional specifications. This adds a considerable bureaucratic burden both on the buyer and the potential providers, who must submit their offer again. Consequently, it will certainly also create a time squeeze given the length of the PPD process, meaning that the risk of (one or more) insurers not (again) participating in the tender will remain.

**Moreover, large enterprises, public and private, often use multi-layered insurance programmes to cover for their complex risk profile**, each layer being the object of its own contract – possibly concluded with different insurers and deviating terms and conditions from the underlying layer(s). Programmes with a large limit may require the use of quota share or excess of loss schemes, which require multiple (re)insurers to align and cooperate in order cover for risks that they would individually be unable or unwilling to underwrite.

**Such programmes go against the fundamental assumption that public tenders must be won by one bidder only.** Although public sector companies can manage to build multi-layered insurance programmes, the PPD make this process more difficult and cumbersome, as each layer must be the object of its own tender. Furthermore, under the current EU rules the withdrawal of an insurer covering for single layer of the programme can in some cases force public sector companies to publish a new tender for the entirety of the programme, thus penalizing not only the buyer but also every other (re)insurer involved.

## 1.3 Volatility of the insurance market

**The price of insurance capacity is volatile, and public sector companies are often at a disadvantage when negotiating with (re)insurers, leading them to pay higher premiums than their private counterparts and exposing them to the risk of not finding coverage at all.**

**The insurance market is a highly volatile and cyclical market**, with (re)insurers reassessing the price of their capacity for the next year based on the losses sustained by all their clients and the claims they paid during the previous one. This means that premiums can be low one year and increase significantly come the renewals period.

**In such a market, it is not in the best interest of public sector companies to require them to disclose what they are willing to pay at the start of the public procurement process.** Indeed, in soft market conditions, public corporate buyers might pay more than they should for a given insurance policy; in hard market conditions, they might fail to attract bidders and therefore have to start the process again, which takes time, resources and might lead them to overpay for their coverage.

**This problem is mitigated to some extent by the possibility to renew an insurance contract without having to go through a public tender.** This is especially useful in hard market conditions, as direct negotiations with the insurer can help public sector companies to obtain better terms and conditions than they would otherwise. Moreover, it is important to recognize that long-term, renewable insurance contracts offer value that cannot be quantified solely in numerical terms, as they facilitate claims processing and provide the opportunity for early renewals in increasingly rigid markets.

**However, it is currently not possible to directly renew an insurance contract beyond 4 to 6 years (i.e. three times after the conclusion of the original contract).** Depending on the market conditions at the time, the need to use a public tender may have serious consequences for the contracting company. For example, one of FERMA's members needed to insure a public works project, knowing that their current insurer was the only one able and willing to provide coverage. After 4 years, they resorted to a public tender: the same insurer automatically won and used this opportunity to increase premiums. It must be stressed that such a scenario is not the worst outcome possible, since public sector companies also risk their insurance provider stepping down, leaving them with no coverage at all.

**Additionally, public sector companies need to do a new public tender if they want to or are legally required to introduce significant changes when renewing a policy with their current insurer.** This puts them at a disadvantage compared to private companies when it comes to adapting to evolving market conditions or seizing new opportunities.

## 1.4 Why does this matter?

**Companies are confronted with an increasingly complex and volatile risk,** from natural catastrophes to geopolitical risks. In this context, the resilience of public entities in particular is a key issue, because (i) they are more exposed to certain risks (e.g., state-sponsored cyberattacks), and (ii) EU societies cannot afford to have their activities disrupted, as they often provide essential public services.

**Insurance is an essential risk transfer tool to bolster resilience, and the PPD hamper the ability of public sector companies to use it to its fullest potential.** Public enterprises should not be discriminated against by (re)insurance providers merely because they have to comply with stricter regulations than the private sector.

**Improving the insurability of public sector companies is in the best interest of EU citizens.** Public sector companies currently self-insure risk that the market is unwilling or unable to cover, either by setting aside financial reserves (when allowed under the legislation) to this end and/or by establishing captive (re)insurers. This is not cost-effective to finance risks compared to transferring them to the private insurance sector, even more so because funds that are saved to cover uninsured losses could not be used to provide public services. Furthermore, if a public sector company incurs significant losses, these losses are ultimately shouldered by public authorities, and therefore by the tax-payer – the more risks are transferred to private insurers, the less burden there is on public finances.

## 2 Policy recommendations

**It appears clearly that the PPD are not fit for purpose regarding the purchasing of insurance by public sector companies and need to allow for more flexibility.** FERMA acknowledges that some EU policymakers may nevertheless choose to treat this issue as an unfortunate side effect of the well-intentioned objectives of the directives to foster transparency in public tenders and fight against corruption.

**We consider that introducing streamlined processes for public sector companies to purchase insurance products does not contradict the overall purpose of the PPD.** Public sector companies are as a rule less politicized than other types of public entities (i.e. central or local government authorities) and have generally strict governance processes in place to avoid corruption and the mismanagement of resources.

Moreover, public sector companies remain subjected to public law, the principles of which will continue to apply to their action.

Lastly, insurance is a relatively small part of the budget of any public entity and amending the PPD for the purpose of facilitating the buying of insurance policies is unlikely to have a significant impact on other types of public tenders or on the overall behaviour of public sector companies.

**We call for the European Commission to consider the following policy options to address the issues we previously described.**

## 2.1 Excluding insurance from the scope of the Directives

**The most efficient policy option would be to exclude insurance policies from the scope of the PPD, in line with the existing exclusions of loans and other financial services. This is the solution that FERMA calls for.**

**Insurance policies are financial instruments sharing many similarities to those currently excluded from the scope of the PPD.** Like other financial instruments, they serve as a risk financing mechanism, and they operate within a well-functioning and highly regulated market. Like loans, they are complex products that require both flexibility and specialized expertise to be tailored to the needs of a given organisation, and their dynamic nature cannot be accommodated by the rigid framework of public procurement. Insurance policies cannot be more easily misused than loans. There is therefore no reason for insurance policies to remain within the scope of the PPD where loans and other financial services are not.

**Excluding insurance policies from these directives would encourage greater participation from insurers, thereby fostering competition, and ultimately provide public sector companies with a greater level of protection at a lower cost.** The above-mentioned principles of the public tenders will be maintained in any case, as public sector companies remain subject to public law in their respective member states.

**It must be stressed that such an exclusion would lead to a substantial increase in competition and, as a consequence, lower taxpayer burdens and risks.** Although public sector entities already frequently negotiate directly with (re)insurance providers when public tenders fail due to a lack of bidders, this is performed with limited room for negotiation. Excluding insurance from the scope of the PPD would expand the scope for negotiation, save time, improve insurer participation, ease compliance, and do so without any material loss in the fight against corruption.

## 2.2 Adapting the Public Procurement Directives

**The PPD need to be adapted to fit the needs of public corporate insurance buyers, in order to simplify existing processes and introduce a greater degree of flexibility in public tenders.**

We have identified several areas where EU policymakers could improve upon the existing framework:

- Clarifying the conditions under which public tenders can be amended without starting the process all over again, notably to allow adjustments to market requirements, the corrections of mistakes made in good faith in the original tender.
- Clarifying the conditions under which an insurance contract can be renewed, to allow for the contracting company to introduce substantial change to its (re)insurance policies by negotiating directly with its current provider, so as to be able to better adapt to market conditions.
- Allowing public sector companies to directly renew their insurance contracts more than three times, preferably by setting no hard limit at all.
- Allowing each layer of a multi-layered insurance programmes to be considered separately for the purpose of calculating the value of the tender, which would also avoid jeopardizing the whole programme in the eventuality of one (re)insurance provider withdrawing coverage.
- Allowing for non-price criteria in the awarding of insurance contracts, thus acknowledging that several aspects must be considered to assess the value that an insurance policy brings to an organisation.
- Reducing the amount of documentation asked of insurers in the European Single Procurement Document (ESPD), taking into consideration that the (re)insurance market is already highly regulated.

Such amendments to the PPD would contribute to reduce the administrative burden of public sector companies and (re)insurers alike and could promote competition and allow the public sector to obtain more insurance capacity at prices closer to those enjoyed by private companies.

**However, FERMA does not favour this policy option, as it does not solve the fundamental underlying issues of the PPD regarding the purchasing of insurance policies.** Indeed, some key-issues cannot be solved without substantially altering the core dispositions of the directives: for example, allowing for the syndication of insurers (a prerequisite for quota share insurance programmes) would mean that a single contract can be awarded to multiple bidders. Moreover, simplifying the purchase of insurance for public sector companies in such a way would mean introducing exceptions across multiple articles of the directives, thus complexifying the overall legal framework and making it less understandable to most stakeholders, which in most cases need to comply with the PPD for purposes other than the buying of insurance.

## 2.3 Allowing ex-post reporting on the purchase of insurance

**A final policy option would be to allow for public sector companies to report on the reasons why they selected a given insurance policy after they purchase it.** On the one hand, public sector companies would be empowered to negotiate directly with (re)insurers rather than having to go through the regular public tendering process, which would give them the flexibility needed to obtain better coverage. On the other hand, they would have to justify their choice, which would grant a greater level of transparency to the purchasing process. The information to be provided in such an ex-post report would need to be defined by the EU policymakers in collaboration with the stakeholders involved (i.e. insurance managers and (re)insurers) to ensure a suitable balance between flexibility and transparency.

**It should however be noted that this solution would add an additional administrative burden on public sector companies – and indirectly on (re)insurers.** The extent of this burden would depend on the data points that need to be reported, but it would in any case represent a point of friction that would not exist if insurance policies were simply excluded from the scope of the PPD. It would also be unfair for insurance policies to be subjected to this requirement while loans and other financial instruments – despite being similar in nature – would not be.



The Federation of European Risk Management Associations brings together 23 risk management associations in 22 European countries, representing over 6000 risk managers active in a wide range of organisations. FERMA provides the means of coordinating risk management and optimising the impact of these associations outside their national boundaries on a European level.

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# FERMA's position on the Revision of the EU Public Procurement Directives (PPD) - Annexes

## Executive Summary

This document is an annex to FERMA position paper which aims to provide detailed and concrete business cases from several European countries where FERMA's members are operating. Altogether, they shed light on the practical issues, and direct and indirect consequences encountered by public sector companies when trying to purchase insurance through the PPD framework.

The said issues and consequences may be summarized as follows:

### Lack of Competition

- **Limited brokerage competition:** a limited number of brokerage firms are willing to or capable of running public procurement insurance tenders, significantly narrowing the options for public companies which are often bound to accept the only offer that they receive, not necessarily from EU insurers.
- **Limited competition between insurers:** many insurers are reluctant to participate in public tenders due to the complexity and administrative burden, leading to fewer options for public sector companies. This is even more exacerbated for specialized insurance covers, such as dam owners' liabilities, large energy infrastructures and aviation, which already have a limited number of available specialized insurers, making it even more difficult to procure necessary coverage.

Overall, **the lack of competition deriving from the PPD process has direct and indirect consequences**, essentially around:

### Higher Insurance Expenses

- **Higher premiums:** the lack of competition and the complexity of public procurement processes often result in higher premiums for public sector companies.
- **Administrative costs:** the extensive documentation and compliance requirements significantly increase the administrative costs for public sector companies in purchasing insurance.

### Lower Quality of Insurance Cover

- **Insufficient risk transfer:** the rigid structure of public procurement processes often leads to less favorable terms and insufficient or sub-optimal risk transfer.
- **Coverage gaps:** in more complex insurance structures (for instance syndicated or layered insurance programs) required for large or complex risks, public companies face the risk of

coverage gaps due to the complexity of the layered insurance structure and the lack of excess layer insurers.

- **Unresponsive insurers:** public companies may struggle with unresponsive insurers and brokers, leading once again to inadequate coverage and the risk of uninsured projects.
- **Inflexible contracts:** the formalized tender process prevents flexible negotiations, resulting in contracts that may not fit the public companies' needs during their execution.

These points highlight the significant challenges public sector companies face when procuring insurance through the current PPD. The lack of competition leading to higher insurance price and sometimes inappropriate quality of insurance coverage are recurring themes that need to be addressed to improve the overall effectiveness and efficiency of the procurement process.

We detail hereafter real-life business cases communicated by FERMA members across different European countries as well as detailing challenges and issues that they have encountered in the procurement of insurance.

Nota bene: all the names of the companies and insurers/brokers mentioned in this document are anonymised.

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# 1 NORWAY

## 1.1 Business case 1: Company A

### Industry

Company A's business is to acquire, own and manage rolling stock, which is preferably to be used for passenger transport as part of a public service obligation.

### Burdens faced during the public procurement process

#### Property Damage Insurance Procurement Process

- **Structure:** The program follows a traditional property insurance placement, but the process is complicated by public procurement requirements.
- **Limited competition and market access:** The tender attracted only two local direct insurers, with no interest coming from other European insurers, thus limiting opportunities to access broader capacity and competitive pricing.

#### D&O (Directors & Officers - specialized liability insurance that protects company leaders from personal financial losses resulting from lawsuits) Process

- **Structure:** The D&O program consists of a primary layer providing base coverage and multiple excess layers to build the total insured limit. This layered structure, inevitable for obtaining the necessary amount of insurance coverage, is not well suited for public tender processes.
- **Limited competition and market access:** The tender has attracted only enough participants to cover the number of layers, creating less competition and a real risk that the program cannot be fully placed if any insurer withdraws. Several interested insurers have chosen not to submit an offer or generally stated that they avoid participating in public tenders.
- **Code of Conduct concerns:** Multiple insurers have raised issues with compliance requirements, delaying revised offers and creating uncertainty about their willingness to participate.
- **Risk of layer drop-out:** If one excess layer insurer withdraws, the entire structure is at risk of not being completed. This can result in coverage gaps, forcing urgent renegotiation under time pressure and potentially leading to higher costs. In some cases, the withdrawal of a single participant can jeopardize the possibility of placing the full program in time for renewal, leaving the company without sufficient risk coverage.

### Negative outcome due to current PPD requirements

#### Property Damage Insurance procurement: Premium development

- Current multi-year agreement runs until the end of 2026.
- The insurer has signalled a **substantial increase at next renewal of almost 60 %**, citing high loss ratios and market conditions.
- Internal actuarial calculations indicate that pricing could remain at the previous level, suggesting the proposed increase is not strictly risk driven.
- **Since 2020, premiums have grown by approximately 129 %, while insured values have increased only about 5 %**, underscoring a significant imbalance between risk exposure and cost.

**Re-tendering is not a solution:** Launching a new tender would likely attract the same one or two providers, offering no improvement in competition or pricing dynamics.

**Pricing and coverage impact:** Lack of competition and constrained negotiation has led to less favourable pricing and limited coverage options.

### **D&O process: Pricing and coverage impact**

- Competition for excess layers is already limited, and when insurers hesitate or withdraw, pricing can increase disproportionately compared to the primary layer.
- The rigid tender process prevents flexible negotiations to rebalance layers or adjust terms, leaving the buyer with fewer options and higher overall program costs.

## 1.2 Business case 2: Company B

### **Industry**

Company B operates a nationwide network of airports for civil sector and a comprehensive air navigation service for both civil and military sectors.

### **Burden faced during the public procurement process**

**Cyber insurance tender.** Company B had to go through a cyber insurance procurement in 2021. Despite facing a hardening cyber insurance market and receiving advice from their brokers to avoid a public tender, they proceeded with a public procurement process after consulting both in-house and external legal advisors, who recommended this approach. The tender was widely advertised with the assistance of company B's brokers, but as anticipated, it failed to attract significant interest. **In fact, company B received almost no responses and ended up with no formal offers. Following the unsuccessful tender, it reached out directly to the market through its brokers later that year.**

### **Negative outcomes due to current PPD requirements**

**The requirement to exhaust the PPD process before resorting to a direct approach resulted in substantial delays and higher costs.** Direct engagement with the insurance market garnered interest from insurers who had not participated in the initial public tender. Ultimately, this led to two formal offers and the ability to transfer some of the risk to insurers.

## 1.3 Business case 3: Company C

### **Industry**

Company C is responsible for owning, constructing/maintaining and operating the transmission grid in Norway.

### **Burdens faced during the Public Procurement process**

Company C have had tenders where **the price difference was MNOK 30 (€2,542,500) between companies able to offer capacity via a public tender and insurance companies that were not interested in participating in a public tender.** The final premium on that risk reached MNOK 25M (€2.12 million) thanks to the use of a financial vehicle only available for large organisations (namely a captive (re)insurance company). The "normal" quotation received from insurers offering through the public tender process reached MNOK 55 (€4.66 million).

Company C is currently running a public procurement process for cyber insurance during what is generally considered a soft market, yet only a small number of insurers are able or willing to participate. **In 2020, although 17 insurers initially expressed interest, only 4 ultimately submitted quotes.** While some insurers declined due to Company C's role in critical infrastructure, many opted out because the public-procurement procedure required time and resources they did not consider worthwhile.

### **Negative outcomes due to current PPD requirements**

Company C's cyber program is set up with 100MNOK (€8,5 million) layers, and the intention was to purchase a total limit of MNOK 300 (€25,5 million). Company C experienced very little competition, as each insurer could only offer between MNOK 50 to MNOK 100 (€4,25 million to €8,5 million) in capacity. **After intensive and costly negotiations with three of the companies, company C was able to secure the MNOK 300 (€25,5 million) capacity required at a cost well above expected premium levels.**

## 1.4 Business case 4: Company D

### Industry

Company D is responsible for planning, developing, operating, and maintaining the highway sections in its portfolio, as designated through its agreement with the Norwegian State.

### Burdens faced during the Public Procurement process

Company D's Pension Plan and Employee Benefit Program were both tendered this year. The Norwegian pension market is small and dominated by four main carriers, limiting effective competition. In Company D's pension tender, only three carriers submitted offers; no new entrants participated, and one major carrier declined altogether, stating it would not bid through a Public-Procurement process. The same pattern occurred in the Employee Benefit Program tender.

### Negative outcomes due to current PPD requirements

Only the large carriers quoted resulting in very limited competition. Smaller and more specialized insurance carriers did not offer due to the extra costs associated with PP procedure.

### Common negative outcomes due to current PPD requirements common to all these business cases

Insurance is not a standard service contract but a risk-transfer mechanism whose value lies in protection against future uncertainties, not in predefined deliverables. Therefore, **rigid public procurement rules are poorly suited to insurance**. NORIMA's (FERMA's Norwegian member) experience shows that public tendering often undermines effective risk transfer, frequently producing worse outcomes than direct purchasing.

**Reduced broker competition** - Norwegian public companies depend heavily on brokers for insurance through the PPD, yet only a handful are truly qualified to run such tenders. While many claim expertise, only three brokers genuinely master PP tendering, compared to around ten qualified for non-PP processes. As a result, the PPD significantly restrict broker choice—an unintended and detrimental side-effect.

**Higher procurement costs** - Public tendering increases broker fees. For example, **Company C incurs an additional ~NOK 100,000 (€8,500) per public tender due to the extensive extra work required**. The PPD therefore drives up the total cost of purchasing insurance.

**Discouraging formalities for insurers** - Many insurers avoid public tenders because of burdensome formalities, complex procurement rules, and rigid tender structures. They prefer clients who can purchase directly. This often leads to higher premiums, weaker terms, or insufficient risk transfer, especially in hard markets, where insurers' appetite is already reduced.

**Poor fit for bespoke or complex insurance** - Large, complex, or highly specialized risks such as layered programs, quota shares, major property and BI, aviation liability, or cyber require bespoke solutions. Many insurers capable of writing such risks simply do not participate in public tenders, making coverage harder to secure through PPs.

**Heavy administrative burden** - Public tenders demand extensive documentation and rely on complex procurement systems. This increases the workload for insureds, brokers, and insurers alike, ultimately consuming more time and public resources.

**One-winner limitation** - Public tenders are incompatible with syndicated programs (quota share or excess-of-loss) that rely on multiple insurers. Layered programs require tendering each layer separately, adding cost, reducing flexibility, and limiting access to optimal capacity.

**Costly replacement of insurers in large programs** - When an insurer withdraws from a layered or quota-share structure, public sector insureds must source replacement capacity. **Strict PPD compliance would require a full new tender, incurring legal, compliance, and evaluation costs that often reach NOK 200,000 to 500,000 (€16,900 to €43,000).**

**Poor alignment with market cycles** - Public tenders typically run for 2+1+1 years, a rigid structure mismatched with volatile insurance markets. If market conditions harden near the end of the PPD period, renewing directly with the incumbent may be more cost-effective—yet the PPD requires a full tender.

This can result in significantly higher premiums than a flexible renewal aligned with market timing.

**Capacity challenges under strict timelines** - Rigid tender schedules often conflict with insurers' underwriting cycles. Some insurers fail to deliver offers on time due to procedural complexity, reducing market participation and available capacity.

**Limited carrier options for specialized covers** - Certain risks—such as dam-owners' liability or aviation—have very few potential insurers. If these carriers hesitate or decline to engage through a public tender, the insured may be left without any available coverage.

## 2 FRANCE

### 2.1 Business case 5: Company E

#### **Industry**

Company E is a program agency, technical centre, and space operator supporting the French government in shaping and executing its space strategy, as well as delivering public policies that rely on space capabilities such as land management, agriculture, health, telecommunications, disaster response, and defence.

#### **Burdens faced during the public procurement process**

A FERMA member who served as Company E's Risk Manager for three years noted that the Public Procurement Directives created the company's most significant insurance challenges. These issues fell into two categories:

- (1) difficulty securing coverage and
- (2) being stuck with an unresponsive insurer.

The impact differed for long-term versus short-term insurance. Long-term policies like D&O, medical trials liability, environmental liability, vehicle fleet coverage, goods in transit (up to €7 million per shipment), property insurance, and third-party liability were particularly affected. For these policies, two major problems emerged:

- (A) strained communication with selected bidders and
- (B) procedural complexity.

**Company E faced significant difficulties in two key areas—both with the insurer and with the broker appointed to support the process.**

#### **Property damage insurance**

The insurer won the tender by offering the lowest price and accepting Company E's technical documents without questions. However, due to staffing gaps on both sides (no Risk Manager at contract signing in 2020 and the broker team later dismissed), it became clear by 2022 that the insurer did not understand Company E's activities, risks, or even the scope of coverage requested.

When the issue was raised with the broker, the insurer demanded an additional premium for risks they had ostensibly accepted, forcing Company E to consider mediation or legal action to secure the originally agreed coverage. This path was avoided to prevent antagonizing both insurer and broker (who are critical players in a market where few candidates participate in public tenders). A dispute would also risk damaging Company E's reputation and reducing future bidder interest.

Company E ultimately avoided losses in misunderstood risk areas and opted for mediation only in the event of major damage. It could not replace the insurer due to the absence of a direct contract with the broker and lack of a clear procedural path under public procurement rules.

#### **Construction projects program**

Company E regularly renovates or constructs buildings—typically two to five projects per year. In 2020, it set up a framework agreement with pre-negotiated rates for eligible projects. By 2021, however, the framework had become ineffective: the appointed insurer, likely for financial reasons, consistently failed to respond properly to Company E's requests.

Although the insurer never issued a formal refusal, it repeatedly demanded new documentation, leaving some construction sites without coverage during the works. Because these insurances were non-mandatory, the gaps went unresolved, rendering the framework agreement practically unusable.

### **Shipment insurance (short-term insurance)**

This challenge is particular to shipment insurance, where premiums cannot be reliably estimated without first providing the broker with comprehensive contextual information. Only on that basis can the broker obtain accurate quotations; simple forecasts are essentially unfeasible. Given that, premiums can fluctuate significantly and often require swift confirmation, this process places considerable time pressure on all parties involved.

Company E had to cover a €27 million shipment with an expected premium above €221,000 and was therefore required to launch a public tender—even though key details, such as whether the equipment would travel by air or sea, were still unknown. To comply, Company E had to design a tender structure allowing insurers to submit conditional offers for either transport mode, despite the fact that these conditions could not be altered once the tender was published.

### **Automobile Liability (AL)**

In France, public-sector companies are finding it increasingly difficult to insure AL risks in the public transportation sector. Today, only one insurer is willing to respond. If that insurer withdraws, the only fallback is the *Bureau Central de Tarification* (BCT) which could result in premiums tripling. Through working outside the public procurement framework, companies can work simultaneously with alternative insurance and reinsurance markets to construct viable alternative solutions.

### **Negative outcomes due to current PPD requirements**

#### **Property damage insurance**

Because of the heavy obligations imposed by the PPD, Company E was effectively locked into a single insurer for several years and was unable to secure coverage that matched its actual risk profile.

**For a risk exposure exceeding €400 million, Company E received only two offers: €500000 and €1M per year.** The company needed at least three additional bids to negotiate effectively and to understand the true market level. With only two proposals—representing increases from +100% to +200% over the previous premiums—it was complex to justify to senior management that such an increase was foreseeable, even with the past program already misaligned with its insurer.

In 2025, the tender process became even more complex and time-consuming. Company E ran the first round to shortlist candidates, presented its activities in June, and then proceeded to a second round for offers. It received one candidate for three programs, three for one program, and two for the remaining ones. After the June presentation, one candidate withdrew. **Ultimately, the only brokers submitting offers were those already working with Company E**, leaving the company unable to change insurers for most programs and retaining its existing broker on all but one line where a new contender existed.

#### **Construction projects**

#### **Four construction projects representing €10.6 million in total works ended up without insurance.**

Because of PPD constraints, Company E could neither approach another broker/insurer under its framework agreement nor launch new tenders for each project due to timing pressures. After three years of unanswered requests and uninsurable situations, the company had no choice but to appoint a broker to seek quotes project-by-project, resulting in higher overall costs.

#### **Shipment insurance**

In practice, only two bidders participated, leaving no opportunity to secure at least a third offer from a new broker or insurer and severely limiting competitiveness between insurers.

#### **Automobile liability**

Beyond rising premiums, PPD requirements impose significant internal workload, effectively amounting to a full-time staffing cost. The rigid rules also prevent public entities from capitalizing

quickly on soft market conditions when they arise, creating financial exposure and distorting competitiveness.

## 2.2 Business case 6: Company F

### Industry

Company F is a French public industrial and commercial entity responsible for operating part of the public transport network in a major city and its suburbs. The table below highlights the key challenges it faces under the PPD.

Burdens faced during the PP process	Negative outcome due to PPD requirements
Complex drafting of specifications due to the hybrid nature of insurance in public procurement (interaction between insurance codes, public procurement codes, and the European principle of freedom to provide services).	Risk of errors, disputes, or overly rigid specifications.
Rejection of candidates because of the current PPD requirements (form, deadlines, missing documents, etc.) resulting in the non-selection of competent insurers/brokers.	Depletion of the panel and loss of long-standing, high-quality partners.
High risk of litigation during the award process (pre-contractual, contractual, etc.).	Blockage or delay in placement, legal costs.
Adverse selection: some insurers systematically refuse to answer to public insurance tenders.	Reduced panel, loss of capacity or technical expertise.
No parallel or alternative markets in the event of subscription difficulties or unsatisfactory results.	Forced placement on poor terms or lack of coverage.
Restricted markets (auto liability insurance, commercial liability insurance, cables, medical risks, etc.) limiting competition and customized structuring (fronting and reinsurance, captives, etc.).	Less favourable conditions, inability to optimize setups.
Risk of abuse of dominant position in a quasi-monopoly situation.	Multiples extra costs
Bad planning in the specs or changes in the company (scope, new activities, etc.) that make the contract not fit for purpose during execution.	Risky investment, lack of flexibility (unlike traditional negotiation trading).
Significant time spent by internal insurance teams on PP procedures.	High human cost, lower added value on pure risk analysis. High human cost, lower added value on pure risk analysis.
Difficulty in pooling risks between the Group and private subsidiaries (over-the-counter tolerance for certain entities) involving different insurers and brokers.	Loss of financial competitiveness (lack of pooling) and a coherent strategic approach.
Long-term loss of vision with long-standing partners (premium capitalization, better post-claim management).	Less flexible pricing policy after a major claim with a new player.

Risk of losing a specialized and effective broker in favour of a less competent broker for our Public Transportation risks.	Degradation of service quality and placement.
Administrative burdens and lengthy procedures, particularly for multi-line/co-insurance programs and international programs.	Delays in placement, excessive administrative burden.
Unsuccessful tender led to subsequent private consultation which resulted in overall waste of time.	Double procedure, delay in coverage. Risk of non-coverage in the event of a claim. <b>Potentially +€10 million of claim without insurance coverage.</b>
International program: change of insurer/master broker led to questioning of the entire local network.	Severe disruption to the international insurance structuring & network. Negative operational impact.
Multiple "public service delegation" contracts with highly variable customer requirements led to risk of contractual non-compliance.	Penalties, termination of public service delegation contracts.
Hard market led to fixed coverage for the entire duration of the market; impossible to take advantage of a reversal in a soft market.	Additional costs implied
Strong dissatisfaction with the broker during trading led to the inability to replace them (unlike in over-the-counter trading).	Relationship deteriorated over several years. Over-mobilization of internal teams.

## 3 DENMARK

### 3.1 Business case 7: Company G

#### Industry

Company G had to handle a project consisting in removing three old 400 kV oil sea cables and installing new land-based cables, including new end-terminations at substations in Denmark and Sweden. Insurance costs amounted to 491 MDKK (€65.74 million).

#### Burdens faced during the public procurement process

Company G is subject to the Utilities Directive and the value for Construction All Risk (CAR) insurance for the project was assessed by Company G's insurance broker to exceed the threshold of DKK 3,296,171. Based on experience from the past two years, the tender was long anticipated to ensure sufficient time under Article 50 of the procurement rules in case full capacity was not achieved at first, which involves two stand-still periods. However, this early announcement meant that some essential risk details, such as finalized working methods with suppliers, were not yet available. As a result, the insurer, broker, and Company G had to dedicate significant resources later in the process to address questions and clarify requirements.

Considerable effort was made to structure the offer in separate lots - for example, presenting CPL and Terror insurances independently to align with each insurer's expertise. Despite this, the expected outcome was not achieved: five insurers applied for pre-qualification, but only one submitted a final proposal.

Historically, this insurer has typically offered 45-50% of capacity, **yet full coverage (100%) was provided under this policy**. Notably, when Company G subsequently announced a project tender, it again attracted interest from the same insurer only, resulting in limited competition and no alternatives in available pricing.

The tender also included fourteen schedule changes of varying significance. Due to the tender format, these conditions could only be clarified with the insurance company, not negotiated.

#### Negative outcome due to the PPD requirements

The final premium amounted to DKK 12.319.543,93 (€1,650 million) and finally negotiated to DKK 12,026,307 – **a cost deemed to be very high due to the lack of competition between insurers**.

Eventually, this situation resulted in an extensive and resource-intensive tender process conducted without competitive bidding.

### 3.2 Business case 8: Company H

#### Industry

Company H has a construction project with a value of approximately **€260m planned to start in January 2026**.

#### Burdens faced during the public procurement process

Announcement of tenders (four lots) on the EU procurement portal was done on 22 August 2025. The prequalification period was from 25 August to 29 September 2025, and there were three insurance companies that were prequalified:

- Insurer 1 (CAR insurance – all LOTS)
- Insurer 2 (CAR insurance – all LOTS)
- Insurer 3 (Terror insurance, LOT3)
- No insurance company bid on LOT4, the Contractors Pollution Liability insurance.

The bids received were as follows:

- Insurer 1 bid with 50% capacity, which has subsequently been raised to 60%.
- Insurer 2 bid with 25% capacity.

This means that **company H still lacks 15% capacity to have full coverage in place.**

Company H's insurance broker is working on getting the companies to bid 100% together. Should it fail, it will activate Article 50 (in accordance with the Public Procurement Directive) and go into the open market.

The challenge with activating Article 50 is that **company H will be under enormous time pressure** – the alternative is that if this becomes a 'normal' procedure, and that company H is not offered 100% capacity in an EU tender, then company H will have to start the tender process earlier, which might happen without full risk information and thus weaken their position as a customer.

### **Negative outcomes due to PPD requirements**

Overall, based on the Danish market experience, the challenges arising out of the PPD process may be summarized as follows:

- **Limited participation from Danish insurers:** usually only 2/3 companies, or in some worst cases only one, submit bids.
- **Low or no competition from other EU insurers:** many EU-based companies do not participate, resulting in minimal competitive pressure.
- **Complexity of EU tender portals:** insurers unfamiliar with the portals require significant time to navigate the systems, which discourages participation and leads them to focus on standard tenders instead.
- **Requirement to divide tenders into lots:** Danish public sector companies must segment tenders; otherwise, there is a high risk that no bids at all will be received.
- **Scarce CPL coverage:** insurers rarely offer Contractors Pollution Liability coverage, meaning Danish public sector entities cannot secure full coverage through EU tenders for this risk.

## 4 GERMANY

### Industry

This section does not illustrate a concrete business case but rather summarizes conclusions based on FERMA's members experience across the German market. It is worth noting that the EU tender process may have positive outcomes in respect of transparency, fair competition, accountability, legal certainty and market access. However, within this highly formalized framework, several drawbacks arise that do not reflect the dynamics of a fast-moving and highly specialized insurance market. Insurance products for large organizations are non-standard and provided by only a limited number of insurers. To illustrate this, several examples are provided below.

### Burdens faced during the public procurement process

#### Insurers' Perspective

Even during the pre-qualification phase, it became evident that the tender attracted only a small number of insurers. **Several providers indicated that they do not participate in EU procurement procedures due to the significantly higher administrative burden.**

This often leads to a **noticeable market contraction**:

- Some insurers generally do not participate in EU tenders because the administrative workload is too high; they prefer to focus on other clients.
- Others fail to meet the formal participation requirements. For instance, smaller insurers rarely take part in EU tenders and therefore lack the expertise needed to qualify.
- The process is highly formalized, and a small mistake or failure to meet a deadline can be critical. For example, regardless of the attractiveness of an insurer's offer, a cheaper offer cannot be accepted if it is submitted only "one second" after the deadline.

#### Insureds' Perspective

From the insured's perspective, the process also **generates substantial additional administrative workload (formal requirements, involvement of procurement and legal departments, etc.).** In addition, the already limited underwriting appetite in the market coincides with a partially unattractive risk portfolio.

For example, if a large insurance program cannot be completed within an EU tender, the insured may renegotiate only with insurers who previously qualified in the process. It is not possible to involve non-qualified insurers at a later stage. **As a result, the tender must be reopened and/or restarted from the beginning.**

**It is virtually impossible to create the desired level of competition for terms and conditions, which are sometimes more important to the quality of insurance cover than the price.** Complex rating schemes for individual clauses would be required and would create opportunities for formal complaints against the tender decision. Therefore, clauses are usually pre-set based on the "least common denominator."

**The quality of insurance services cannot be assessed properly.** As the EU tender is always future driven, it is almost impossible to disqualify insurers based on poor performance in previous contracts. While it is possible to include quality-related topics, it is not possible to prove that an insurer will be unable to deliver in the future. As insurers generally do not accept contract with penalties, they can make extensive promises to achieve better tender results and subsequently underperform.

For complex, new placements such as cyber, no “final wording” is available at the beginning of the process for insurers to qualify against. It remains unclear how such a process can be managed effectively. The same applies to challenging coverage topics such as PFAS. It is extremely difficult in an EU tender to take into account insurers’ rapidly changing positions; no standard exists to support negotiations in a market that changes daily.

**D&O placements are almost impossible to tender.** Nearly all D&O insurers in Germany participate on panels for large corporate clients, and some appear in multiple layers (e.g., Insurer A provides €15 million capacity, placing €10 million in the first layer and €5 million in the fifth). Defining award criteria upfront becomes essentially unworkable, and exchanging insurers within the program creates massive disruption in the event of a major claim when trying to distinguish liabilities between layers and insurance periods.

**Timing is also a key concern.** Insurance markets are dynamic, and this is poorly reflected by the PPD framework. For example, in 2025 Germany experienced a soft market. Nonetheless, **because EU tenders are lengthy, they typically begin long before the renewal date. Therefore, it becomes nearly impossible to respond to changing market conditions during the tender process.** For some lines, one could observe premium reduction of 20–30% within weeks—the closer to year-end, the more premiums decreased. There is no mechanism for the insured to benefit from such developments. **Consequently, the insured cannot leverage market competition in their favour.**

**When EU requirements oblige an insured company to tender in a particular year, the company must launch a new tender even in a hard market - contrary to best practice, which would normally imply staying with the current market.** The same applies to major claims: it is not best practice to tender or change insurers when a major claim has just been settled or is still being handled. This makes EU-tendered companies **less reliable** compared to companies without such requirements.

### **Negative outcomes due to PPD requirements**

The PPD requirements are not aligned with the specific characteristics of a regulated insurance market. Leading insurers - as well as the market in general - show very limited interest in participating in such procedures. This is detrimental to both the insurer and the insured and results in several costs for both:

- Significant administrative efforts.
- Various legal uncertainties.
- A substantial reduction in the potential supplier market for the contracting entity leading to higher premiums or (at least potential) lack of coverage.

## 5 NETHERLANDS

### 5.1 Business case 9: Company I

#### Industry

Company I, alongside two partners, is involved in the construction of a €1 billion LNG terminal in northern Germany. Due to the project's scale and anticipated insurance premiums, the PPD framework was applicable.

#### Burdens faced during the public procurement process

Broker 1 provided an overview of market expectations, highlighting potential insurer participation under both non-EU and EU tender procedures (see table below). The analysis indicated significant reluctance among German insurers: **out of 35 potential participants, only 16 were expected to engage in an EU tender.**

In response, a meeting was organized in December 2023 to attract as many insurers as possible to the project. Invited insurers were asked to indicate their intentions using three options:

- Option 1: We will participate.
- Option 2: We will not participate now but intend to join the EU tender.
- Option 3: We will not participate and do not intend to join the EU tender.

Ultimately, 12 insurers attended the presentation, and a total of 18 indicated their intention to participate in the EU tender.

Following the meeting, the PPD procedure commenced, ultimately qualifying 11 insurers. The next stage involved receiving proposals for the different lots. For the first and most critical lot (Combined Construction Insurance) eight proposals were submitted, collectively covering nearly 100% of the risk. One insurer subsequently withdrew due to an invalid offer, leaving all remaining eight proposals to be accepted and **preventing any competition from forming a full insurer consortium with a 100% quota share.**

For the three remaining lots, the number of proposals was limited—six for the second lot, four for the third, and five for the fourth. Despite the smaller pool of offers, some competition was achievable based on the quoted shares. However, it remains uncertain whether the accepted pricing would have been similar under a more competitive environment.

#### Negative outcomes due to PPD requirements

The current PPD rules led to a very low level of competition between insurers, **several of them even indicating that they would not participate in an(y) EU PPD procedure.**

It seems obvious to both the insured and its broker that substantially better results could have been achieved should the following requirements be met:

- **Broader engagement:** approaching insurers through traditional methods could have attracted a larger number of proposals.
- **EU tender limitations:** the bureaucratic requirements and high risk of disqualification in EU tender procedures discourage insurer participation, reflecting a perception that public tenders are no longer profitable.
- **Flexibility in the process for terms and conditions:** during the tender, it would have been possible to adjust coverage without restarting the entire process.
- **Managing deviations:** any deviations from the original request for proposal could have been discussed and agreed with insurers without triggering material changes or procedural failure.

Type of insurance	Bidding group participants' answers	
<b>Combined project insurance CAR/EAR &amp; LIAB// PI/Environmental</b>		
Underwriting insurers	Public tenders through the PPD	Open tender
<b>Insurer 1</b>	Yes	Yes
<b>Insurer 2</b>	No	Yes
<b>Insurer 3</b>	No	Yes
<b>Insurer 4</b>	No	Yes
<b>Insurer 5</b>	No	Yes
<b>Insurer 6</b>	No	Yes
<b>Insurer 7</b>	Yes	Yes
<b>Insurer 8</b>	No	Yes
<b>Insurer 9</b>	No	Yes
<b>Insurer 10</b>	Yes	Yes
<b>Insurer 11</b>	Yes	Yes
<b>Insurer 12</b>	No	Yes
<b>Insurer 13</b>	No	Yes
<b>Insurer 14</b>	Yes	Yes
<b>Insurer 15</b>	No	Yes
<b>Insurer 16</b>	No	Yes
<b>Insurer 17</b>	Yes	Yes
<b>Insurer 18</b>	Yes	Yes
<b>Insurer 19</b>	Yes	Yes
<b>Insurer 20</b>	in clarification	Yes
<b>Insurer 21</b>	Yes	Yes
<b>Insurer 22</b>	Yes	Yes
<b>Insurer 23</b>	Yes	Yes
<b>Insurer 24</b>	Yes	Yes
<b>Insurer 25</b>	No	Yes
<b>Insurer 26</b>	Yes	Yes
<b>Insurer 27</b>	No	Yes
<b>Insurer 28</b>	No	Yes
<b>Insurer 29</b>	No	Yes
<b>Insurer 30</b>	No	Yes
<b>Insurer 31</b>	Yes	Yes
<b>Insurer 32</b>	Yes	Yes
<b>Insurer 33</b>	No	Yes
<b>Insurer 34</b>	No	Yes
<b>Insurer 35</b>	No	Yes

Explanatory note: all the insurers' names were anonymised.



The Federation of European Risk Management Associations brings together 23 risk management associations in 22 European countries, representing over 6000 risk managers active in a wide range of organisations. FERMA provides the means of co-ordinating risk management and optimising the impact of these associations outside their national boundaries on a European level.

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