

# A complete perspective

Public Procurement

# A complete perspective



**Bernt Elsner**

Partner

**T** +43 1 40443 1850

**E** [bernt.elsner@cms-rrh.com](mailto:bernt.elsner@cms-rrh.com)

Public procurement is a powerful tool for governments trying to create dynamic, innovative and sustainable markets, economies and societies. It accounts for around 12% worldwide GDP and occurs in every sector. According to the European Commission, every year, over 250,000 public authorities in the EU spend around 14% of GDP on the purchase of services, works and supplies.

Whenever public money is invested – whether for large complex infrastructure projects or for cleaning services in a school – the tender procedure for the work should be carried out in a transparent, non-discriminatory manner that enables fair competition. Rules for public procurement are harmonised across the EU and similar rules apply in all countries around the globe.

As governments worldwide respond to the Covid-19 pandemic and review their priorities and spend, procurement procedures are sometimes being bypassed, although the current directives allow a couple of ways for quick and innovative procurement procedures. Bypassing the law is potentially setting a dangerous precedent which may harm the public interest and reduce confidence. Because of the demand for stimulation of economy following COVID-19 pandemic, we can expect additional public investments and procurement efforts in the coming years in many countries.

To get the best out of it, whether you are a contracting authority or tenderer, it is important to work with advisers who have a wealth of experience in – and understanding of – the sector and jurisdiction where you're operating. At CMS we have a proven track record of successful procurement projects and advise on everything from analysing the structure of a procurement process through the bidding strategy up to the project implementation.





## ***A global solution***

With procurement specialists in over 40 jurisdictions, we have an unrivalled international network of experts. This means we understand the market and sector you're working in and leverage know-how from around the world to develop tailor-made

solutions for local projects. Seamless cross-border teams mean we operate at the cutting edge of public procurement, in both mature markets and developing ones.



## ***Understanding every angle***

We act for many major contracting authorities and many international businesses that compete for contracts and concessions. So we understand procurement from both sides, at the highest level. This helps us to help you

understand the other side's concerns, anticipate problems, mitigate risks and, ultimately, secure a better outcome.



## ***Sector focused***

Our public procurement specialists are also industry experts. Different members of our international team focus on different sectors, ensuring that we have a real understanding of the various markets in which our clients operate, and the context for their commercial priorities. We have experts in many sectors,

including construction, defence, energy and climate change, infrastructure and projects, financial services, healthcare and life sciences, IT and telecommunications, transport and waste.



# Case studies

## *A new way forward*

A more practical approach and a revised methodology for EBRD's PPP Assessment to enable re-adjustments of legal transition goals.

CMS acted as the international legal consultant in EBRD's Public-Private Partnership Assessment 2017–2018 and reviewed the Laws on PPPs (including Concessions) in all 39 jurisdictions of EBRD's operations.

The assessment analysed the conformity of the legal frameworks with internationally accepted standards and best practices. There were a number of innovative aspects:



**The review in how far those local legal frameworks enhance PPP implementation from a bankability perspective, which is equally important for successful infrastructure projects.**



**A stringent evaluation criteria was applied, with a focus on ensuring objectivity throughout the process. This included assessing the usability of the laws to deal with practical challenges and new trends as they emerge.**



**An in-depth review of 12 countries that were of particular interest through visits and interviews with local stakeholders.**



## ***Transforming Germany's energy sector***

Project Suedlink is Germany's biggest energy transformation project: an underground cable system covering over 700km, built to carry energy from windfarms in northern Germany to Bavaria and Baden-Wuerttemberg in the south of the country.

Most of the contracts for the EUR 10bn project are subject to public procurement rules. We advised TransnetBW, one of the system's two transmission operators, on tenders for underground cables, project management services and planning services.

This challenging and complex project is a key part of Germany's strategy for generating 80% of its power from renewables by 2050. The most challenging legal aspect was the fact that the underground cables to be procured had not been developed at the beginning of the tender procedures. Also challenging was the sheer volume of the various tenders.



# CMS Public Procurement at a glance

» 'They are excellent – each member brings a specialist knowledge and expertise that combines to great effect in terms of client service.'

*Chambers Europe 2019*

» Most experts on  
government  
contracts

*Who's Who Legal 2020*

150+

*public procurement experts  
globally*

Contributors across  
multiple countries to  
the World Bank's  
Procuring  
Infrastructure Public-  
Private Partnerships  
Report Assessing  
Government  
Capability to  
Prepare, Procure,  
and Manage PPPs.

**EUROPE'S LARGEST PUBLIC PROCUREMENT TEAM**

RAPIDLY EXPANDING TEAMS IN ASIA, AFRICA AND LATIN AMERICA

# Our track record



## ***Infrastructure for the future***

### **Greenlink Interconnector**

On the procurement aspects of the proposed subsea and underground electricity interconnector linking the power markets in Ireland and Great Britain and planned for commissioning in 2023. As an EU Project of Common Interest, it is one of Europe's most important energy infrastructure projects.

### **Consortium of funders consisting of EIB, DEKA, DZ, KfW-Ipex, HELABA, LBBW, MEAG and MUFG**

On the financing of the largest PPP road project in Germany. The A3 motorway, Biebelried-Fürth/Erlangen, is worth EUR 1.5bn with a financing volume of EUR 1.2bn. Awarded by Autobahndirektion Nordbayern, on behalf of the Federal Ministry of Transport and Digital Infrastructure, the project includes the design, widening to six lanes, operation and maintenance and partial financing of these services.

### **Plasser & Theurer and Plasser Italiana S.r.l.**

In their participation, as a member of a Consortium, to the public tender procedure launched by Trenitalia S.p.a for the supply of new electric-powered trains for the regional commercial service.



## ***Compliance***

### **Resalta**

Redrafting terms and conditions in Serbia, Croatia, Slovenia and Montenegro. Our advisory work also included advising on various public procurement aspects of energy efficiency services.

### **Petroperu**

On new rules governing the public procurement process in Peru.



## ***Procurement litigation***

### **Bombardier Transportation**

In a hearing before the Polish National Chamber of Appeal regarding the technical ability of a competitor of Bombardier, who based its ability on references in a public procurement tender on experience gained in Czech Republic.

### **T-Systems Hungary**

Representing the bidder in major litigation related to unlawful contract modification and the imposition of a fine, including an ECJ preliminary ruling procedure.

### **Moma Group and Shellona**

On the third successful litigation of the irregular award of a beach concession in Ramatuelle, a process including a presentation to the Conseil d'Etat.



## ***Major infrastructure projects***

### **Brenner Base Tunnel Project**

Advising an Austrian-Italian consortium on the tender for the biggest lot (EUR 1bn) of one of the largest tunnel projects in Europe.

### **nÖGIG**

Advising the government of the federal state of Lower Austria i.e. in public procurement and state aid aspects for the selection of an investor in the EUR 350m / 135.000 households glass fibre network.

### **SNCF Gares & Connexions**

On a project to transform the Paris North railway station, which includes the incorporation of a semi-public single operation company with one or more private operators.

### **A defence industry company**

On the joint German-French project for the development of a main ground combat system (MGCS) in form of a battle tank, including contract, procurement, tax and competition law advice.



# The smart revolution

The CMS public procurement team combines in-depth sector knowledge and vast technical experience with the ability to join the needs of state authorities to those of private entities offering sustainable and effective solutions. Our depth of resource and quality client base means we are constantly thinking ahead, anticipating the changes being introduced. We think ahead of changes being introduced by digitisation and the drive for increased sustainability to anticipate what lies ahead.

## E-procurement

To facilitate and streamline the public procurement process, CMS offers access to e-platforms for contracting authorities (federal, regional and local) and tenderers. We provide a full service that includes publication, preparing all tender documents, handling the full tender process and accompanying the award decision, and assisting in any remedial procedure. Our solutions are easy to use, online, secure, efficient, and compliant with all applicable regulations.

## Mobilising global expertise

CMS public procurement lawyers based around the world regularly meet and exchange experience and knowledge and discuss the future. That makes it possible for us to act in an organised way and provide a co-ordinated response to various market developments across jurisdictions and influence the legal landscape. Just one example of this is our comment on the public procurement standard forms for procurement notices. You can view it here: <https://cms.law/en/int/publication/comment-to-the-public-procurement-standard-forms-for-procurement-notices>.

## Smart cities

We are committed and well positioned to advise and support our clients in a way that adds value to all work and services concerning the improvement of services and life in cities through the use of information and communication technologies, making them more efficient and sustainable.



# Knowledge sharing

As the world of public procurement is changing fast, responding to the Covid-19 spending priorities of governments, we are strongly committed to helping our clients keep ahead of the curve. There are a range of ways we keep our clients up to date.

## CMS Public Procurement Expert Guide



This guide sets out the key rules, thresholds, and procedures for contracting authorities and suppliers across 17 jurisdictions. You can access it here: <https://cms.law/en/int/expert-guides/cms-expert-guide-to-public-procurement>

## Law-Now



Keeping up to date with rules and regulations for your business can be a challenge. Law-Now is CMS's award-winning subscription service. You can receive relevant updates on current topics you are interested in as they happen, including public procurement. Visit [cms-lawnow.com](https://cms-lawnow.com) to subscribe and view our public procurement content.

## CMS Public Procurement Toolbox of Remedies



Public procurement laws provide for short procedures and quick decisions to enable projects being realised within a short timeframe, but still allow each step of the tender procedure to be reviewed. Our Toolbox of Remedies outlines the key remedies and time limits that apply in over 30 jurisdictions. You can access it here: <https://cms.law/en/int/publication/cms-public-procurement-toolbox-of-remedies>

## CMS guide to e-procurement



This guide provides a snapshot of how 25 countries are implementing e-procurement. It outlines the main characteristics of the national e-public procurement systems. You can access it here: <https://cms.law/en/int/publication/e-public-procurement>

## Annual CMS Public Procurement Forum

The annual CMS Public Procurement Forum brings together experts and professionals from contracting authorities, bidders, review institutions, consultancies and universities in over 20 countries. The forum provides an opportunity to discuss important developments and issues in the world of public procurement, and to debate and develop potential solutions to problems in the field. The next CMS Public Procurement Forum will be focused on smart cities and will be held in March 2021 in Paris.

# CMS

*Staff*

**> 8,000**

*Lawyers*

**> 5,000**

*Partners*

**> 1,100**

**52 new partners in 2021**, taking the total to over 1,100

*Operating in*

**73** cities

*Across*

**44** countries

**EUR**

**1.475bn**

turnover for 2020

*19 Practice and Sector Groups working across offices*

**Top rankings in M&A league tables by deal count**

*(Bloomberg, Mergermarket and Thomson Reuters)*

**» #1 Germany, DACH, Austria**

**» #2 Europe, UK, Switzerland, Benelux**





## **CMS** Law-Now™

**Your free online legal information service.**

A subscription service for legal articles on a variety of topics delivered by email.

**[cms-lawnow.com](https://cms-lawnow.com)**

-----  
The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice. It was prepared in co-operation with local attorneys.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices; details can be found under "legal information" in the footer of [cms.law](https://cms.law).

### **CMS locations:**

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Beirut, Belgrade, Bergen, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Oslo, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Shanghai, Sheffield, Singapore, Skopje, Sofia, Stavanger, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

-----  
**[cms.law](https://cms.law)**