

# *Sense and nonsense of (tender) regulations*

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Het afbeeldingonderdeel met relatie-id r162 is niet aangetroffen in het bestand.

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# Wouter Stolwijk: position

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“You cannot effectively operate on the market with (public) administrative principles, as much as you cannot run the government as a company.”

Wouter Stolwijk

**Comparison  
B2B and  
Public  
Procurement**

<b>PRIVATE PROCUREMENT</b>	<b>PUBLIC PROCUREMENT</b>
Dynamic	Static
Customer is king	Supplier is king
Focus on rights of the customer	Focus on rights of the supplier
Negotiate	Take it or leave it
Freedom of contract	Endless right of appeal
Focus on chosen supplier	Focus on rejected suppliers
Foreknowledge is an advantage for buyer and seller	Foreknowledge is corrupt
By what you need	Buy what is offered

## CONCLUSIONS

Principle of equal treatment frustrates competition

Remedies are contradictory to freedom of contract

Abolish procurement Law. Private law is sufficient.

# Does 'public' procurement work?

- Is there a market?
  - Too much emphasis on the ideal of '*perfect competitive* markets
  - In non-competitive markets: from *procurement* to *negotiation*
- Why is the meaning of '*public*'?
  - *Transparency* and *accountability* (in other words: decisions can be 'motivated' and 'defended')
  - No fraud/no favoritism

# ‘Hitting two flies with one stone?’

- Adding more goals to public procurement
  - sustainability/innovation/support small SMEs
  - Insight from Jansen (2018): procurement as ‘rocket science’
  - *Problem*: Often inconsistent and conflicting criteria
  - *Lesson*: Tinbergen’s one instrument per goal
- Return to ‘classic’ goals of price and quality
  - Lowest pricing is not the only objective regulator of markets
  - *Our perspective*: ‘requirements’ are not ‘goals’
  - *Need of professionalism*: normative logic about how to apply these criteria and rules

# Our position: statements

1. Rules **define** (public) procurement
2. **Public** procurement must be based on 'transparency' and 'accountability'
3. Improving **professionalism** leads to better public procurement, not by less rules
4. **No** working markets, **no** effective public procurement but simply **negotiation...**