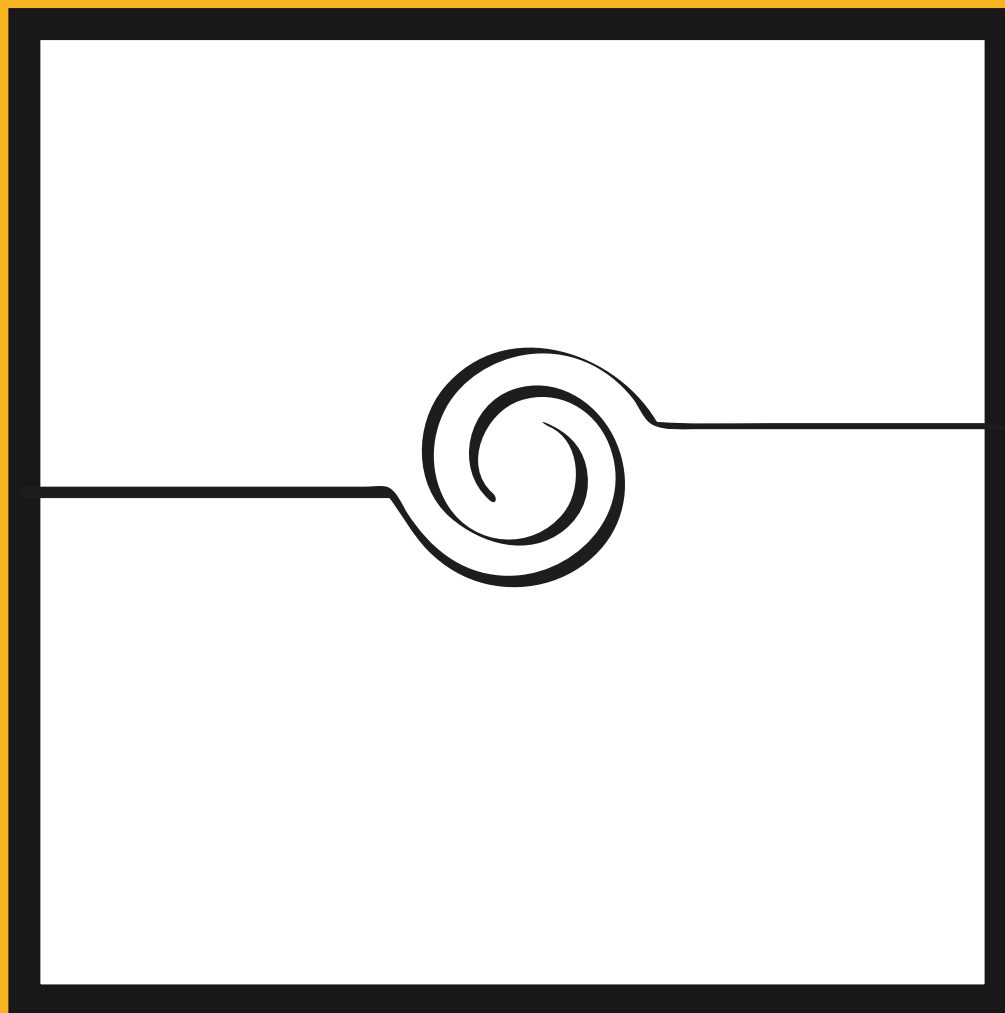


ABSTRACT

**A GUIDE FOR PUBLIC CONTRACTING
ETHICAL AND SOLIDARY FINANCIAL SERVICES**



Papers de l'Observatori de les Finances Ètiques



**OBSERVATORI
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Responsible public purchasing and contracting are a strategic management aspect of public resources which has increased its notoriety in recent years. The present report aims at analysing the role of public contracting as a tool to boost ethical financing in Catalonia. The aim is to provide those in charge of arranging public contracting within the public administrations a choice of ethical financial entities supplying financial services.

It's advisable to read both, the report results as well as the proposals therein within the current context, given transparency in public contracting within the financial scope is limited and where there are still few experiences within the area of responsible contracting of financial services.

1. CLASSIFICATION OF FINANCIAL SERVICES CONTRACTING IN THE PROCESS OF PUBLIC TENDERING

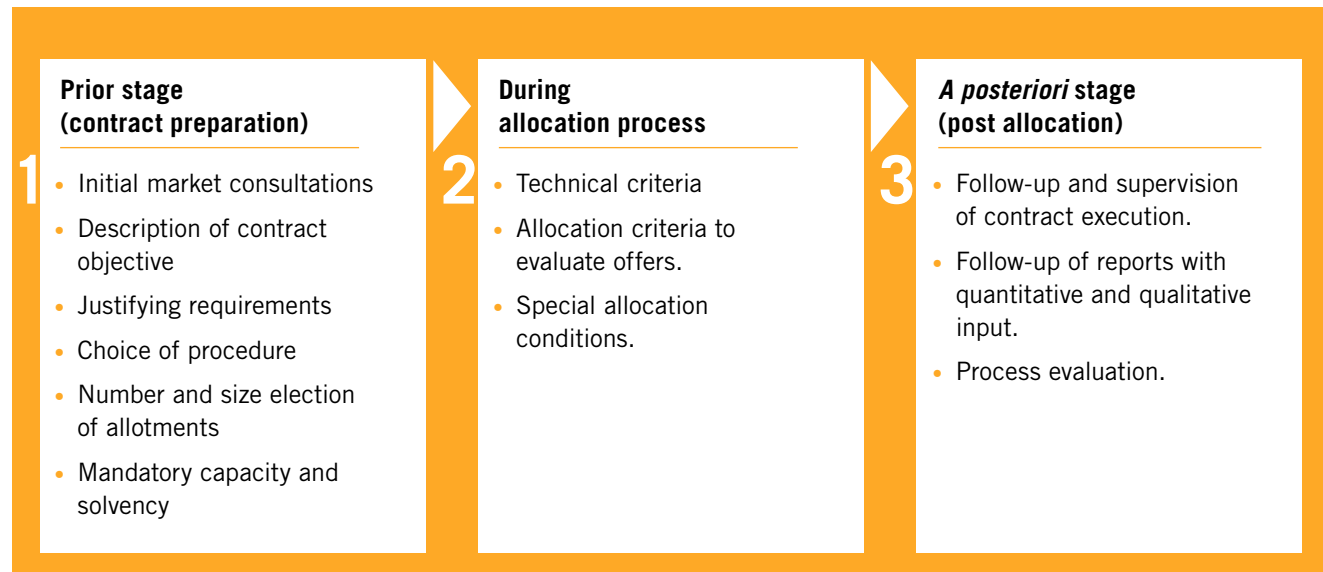
Definition of financial services

The outset of responsible public purchasing is to be found within a European framework which in Spain is covered by Law 9/2017 of the LCSP (Public Contracting Sector). As it refers to banking and financial aspects, LCSP establishes a differentiated treatment between financing and treasury, excluded from the law, and investment and insurance services, included in the law.

	FINANCIAL AND TREASURY SERVICES	INVESTMENT AND INSURANCE SERVICES
Regulation	LCSP - Article 10	LCSSP -25.1 Article
Legal category	Contracts excluded from LCSP	Contracts under LCSP of a private nature
Type of service	Loans, treasury operations, buying and selling securities or financial instruments	Deposits, bank and investment services, credit granting and microcredits, leasing
Practical application	Contracting under essential principles: solvency, advertising, concurrence and transparency. LCSP only of an interpretative and subsidiary nature. In practical terms, contracting is more flexible and limitations in this instance are no longer of a legal nature but only operative.	Prior stage is covered by LCSP (part 1 and 2 of the Law), however effects and extinction are ruled by private law. In practical terms, the <i>a priori</i> part of the process (drafting documentation, solvency and capability requisites, guarantees, granting criteria, etc.) as well as modification, whenever the contract is renewed or extended, are ruled by LCSP.

Process of tendering

The public contracting process can be split into three phases, each one contemplating certain actions into which social aspects for a more responsible contracting can be introduced. The report has taken into account the following phases:



European and international framework

In the European framework, recent legal developments affect directly or indirectly the process of public contracting.

- On the one hand, the [SFDR Directive](#) (*Sustainable Finance Disclosure Regulation*) introduces new definitions and transparency demands. Officially applicable since March 2021, SFDR allows public administrations (at a practical level) to request a percentage of investments geared to activities with ASG considerations and a follow-up of its evolution, as well as giving legal support, aspects to be included in the clauses of the legal documentation.
- On the other hand, the 2014 European directive about public contracting (*Directive 2014/24/EU*), offers public administrations the possibility to demand a label, criterion or specific label.

2. PREVIOUS EXPERIENCES

Since the application of responsible public contracting directives, there have been few cases of public contracting from ethical banking and financial entities, due on the one hand to the fact that it is a sector with little tradition of working in that scope and also because most of the information related to financing services, excluding LCSO, it is not public.

Catalan and State framework

Concerning contracting financial and treasury services:

- **Barcelona Town Hall:** inclusion of social character aspects in the annual financing rounds, including clauses with social character remarks.
- **Castellón Town Hall:** credit with inclusion of criteria relating to housing policy of the financial entities.
- **San Sebastián Town Hall:** opening a current bank account from which to channel subsidies regarding cooperation, equality, participation, environment and cultural diversity.

As far as contracting insurance and investment services is concerned, there are few experiences within the Catalan framework. Also, Arç Cooperativa presented an analysis report in 2019 about public contracting of insurance services of the Barcelona Town Hall which discloses the obstacles and opportunities in public contracting within the ethical insurance services. Point 2.1 of the report provides a résumé of opportunities and limitations.

European and international framework

There are, within the European framework, several associations of a second level or federations which integrate various entities of the ethical financial world and are acknowledged at a European level. They can serve to establish regulations, minimum principles or clauses:

- **European Federation of Ethical and Alternative Banks and Financiers (FEBEA)**
- **Global Alliance for Banking on Values (GABV)**
- **Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE)**

At an international level, no nomenclature or seals appear to exist for ethical financing. Rather more geared towards the financial sector with ASG incorporation are:

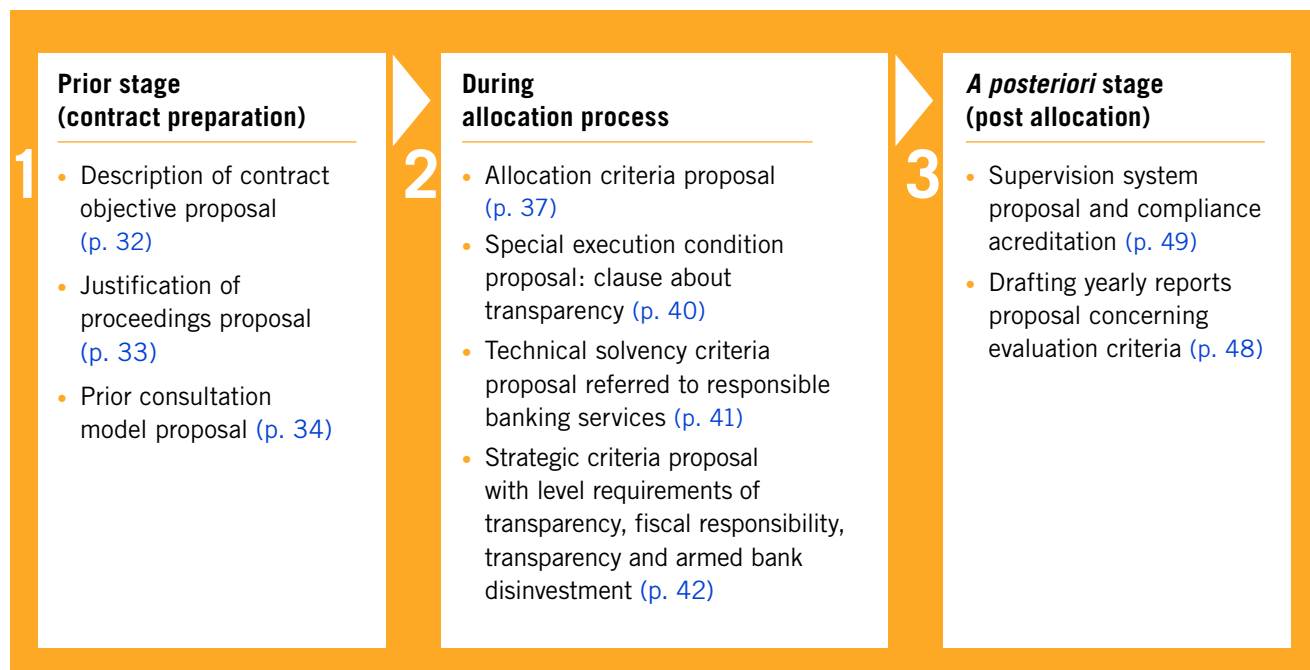
- **Principles for Responsible Investment (PRI – Principles for Responsible Investment)**
- **ISO norms: ISO 26000** and **ISO 20400** standardising responsibility and social purchasing defining a series of fundamental matters.

3. RECOMENDATIONS FOR A MORE ETHICAL, RESPONSIBLE CONTRACTING

Draft proposals

Regarding the three stages for the public tendering process, a series of proposals to incorporate social aspects to the documentation are herein defined. They can be copied directly to the documentation after having adapted them to suit the type of service and/or conditions therein.

The following graph includes links to the proposals of the corresponding section of the report:



Note: the links refer to pages of the *Guide for public contracting of ethical and solidary financial services*.

The proposals are based on those aspects with a larger transformation potential (transparency, armed banking disinvestment, etc.). Furthermore, a proposal for drafting demands at three different levels (low, medium and high) is suggested so as to adapt them to the particular strategies of each public administration.

As an example, the following criterion of technical solvency could be included so as to promote responsible banking services, with the corresponding changes of appropriate batch numbers and choosing the contracted service from the list*.

TECHNICAL SOLVENCY CRITERIA: RESPONSIBLE BANKING SERVICES

Batch N: ..a.service*.. with ethical criteria as well as social, fiscal and environmental responsibility.

Technical solvency. Considering the special characteristics of Batch N as previously defined, the need arises to guarantee that tendering enterprises have adequate technical and professional solvency to provide their services according to social, fiscal, ethical and environmental responsibility criteria.

To this end, consistent with the right of requesting accreditations (art. 76 LCSP), tendering enterprises shall guarantee and give proof of belonging to the Federación Europea de Bancos Éticos y Alternativos (FEBEA), the Global Alliance for Banking on Values (GABV), or any other ethical banking federation or association or bank of an equivalent nature, or have the seals appropriate to the service or product tendered, such as the EthSI or equivalent, or prove somehow they comply with all the compulsory requisites.


→ * List of financial and banking services contracted:

- Banking service
- Credit
- Loan
- Bank deposit
- Distribution of treasury surplus
- Current account
- Investment fund
- Pension plan
- Insurance service
- etc.

BEYOND PUBLIC CONTRACTING: ALTERNATIVE THINKING

A public contracting tool is only one of many that a public administration can deploy to enhance a more ethical, solidary outlook to the banking and financial sectors. For instance:

- Work on transparency related to contracting financial services.
- Legislate favourably through fiscal incentives, social clauses, in public contracting.
- Joint creation and boost financial instruments such as collective credit funds or guarantee and financing funds.
- Promote and boost matchfunding processes with collaborative financing entities (commons).
- Make society at large aware of ethical, solidary financing and work towards an economics education more critical and plural.
- Adopt the protocol of municipalities free from armed banks, with ethical financing practices such as those of the campaign against armed banks.

 1. TO ANNOUNCE The will to become a "municipality free from armed banking, favouring ethical financing." 	 2. TO APPROVE a resolution either banning or else advancing towards the explicit prohibition of investing in firms involved in the manufacturing, development, maintenance or trading of weapons while also encouraging ethical financing within the public administration.	 3. TO ANALYSE Whether relationships with the current financial sector deal with controversial entities and are quoted in armed banking reports.	 4. TO APPLY Measures establishing selection criteria to ensure that no weapon manufacturer is included in any municipal portfolio nor financial institutions related to the weapon industry which supply the administration. At the same time, introduce financial suppliers of the ethical financing ecosystem.	 5. TO DIVULGE Promotion and complementary efforts geared to disinvestment, specifying measures taken to this effect and new financial policies adopted.
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MUNICIPALITY FREE FROM ARMED BANKING

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