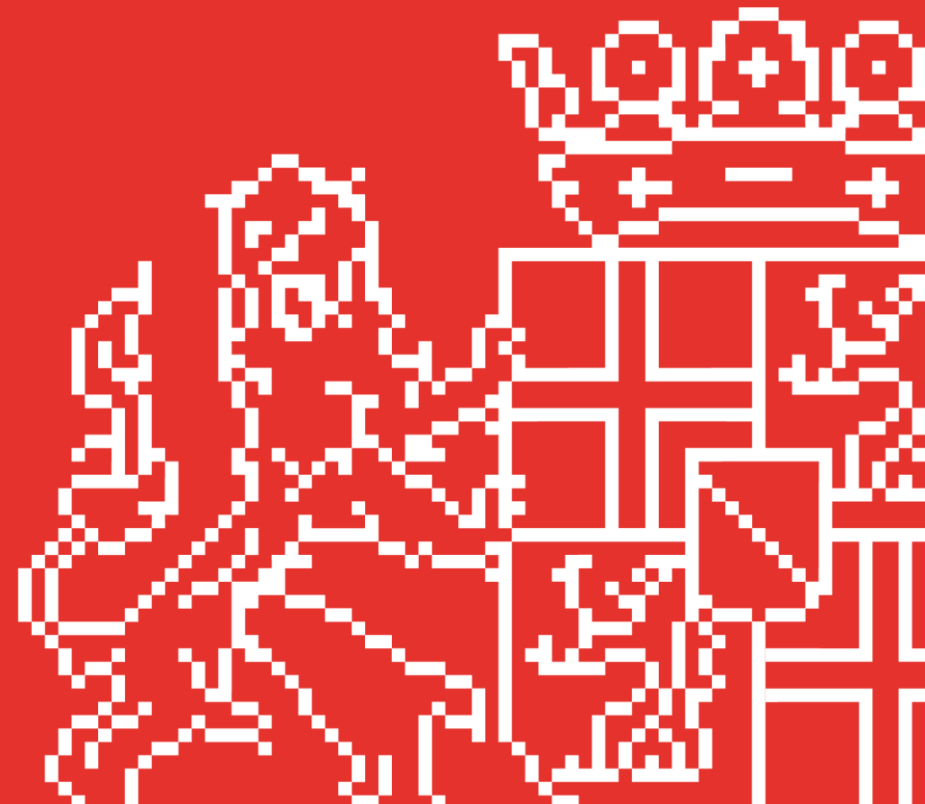




PROVINCIE  UTRECHT

GOING THE EXTRA MILE: USING ADVANCED CRITERIA AND VERIFICATION FOR MORE EFFECTIVE OUTCOMES

Don't make change to
complicated: just begin!





**The
Guardian**



CAPACITY BUILDING SESSION 1

12:00 – 13:00

- Introduction: Joan, Sandra, Maarten and program of the workshop
- Group introduction
- Presentation: view on circular procurement, model of the province of Utrecht
- Discussion round: What is circularity for you?
- Presentation: legal aspects of circular procurement
- Explanation of coloured cards: pressure cooking tender session 14:30- 16:30
- Lunch break



CAPACITY BUILDING SESSION 2

14:30 – 15:00

Start pressure cooking session

- Contracting authority out
- Presentation: Joan on the Green Deal Circular Procurement and his vision on circular procurement
- Presentation: The province of Utrecht and circular procurement policy



CAPACITY BUILDING SESSION 2

15:00 – 15:30

- Tenderers out
- Presentation: Joan on the Green Deal Circular Procurement and his vision on circular procurement
- Presentation: The province of Utrecht and circular procurement policy



CAPACITY BUILDING SESSION 2

15:30– 16:00

- Contracting authority out for assessment of the tenders
- Evaluation of generating of tender offers



CAPACITY BUILDING SESSION 2

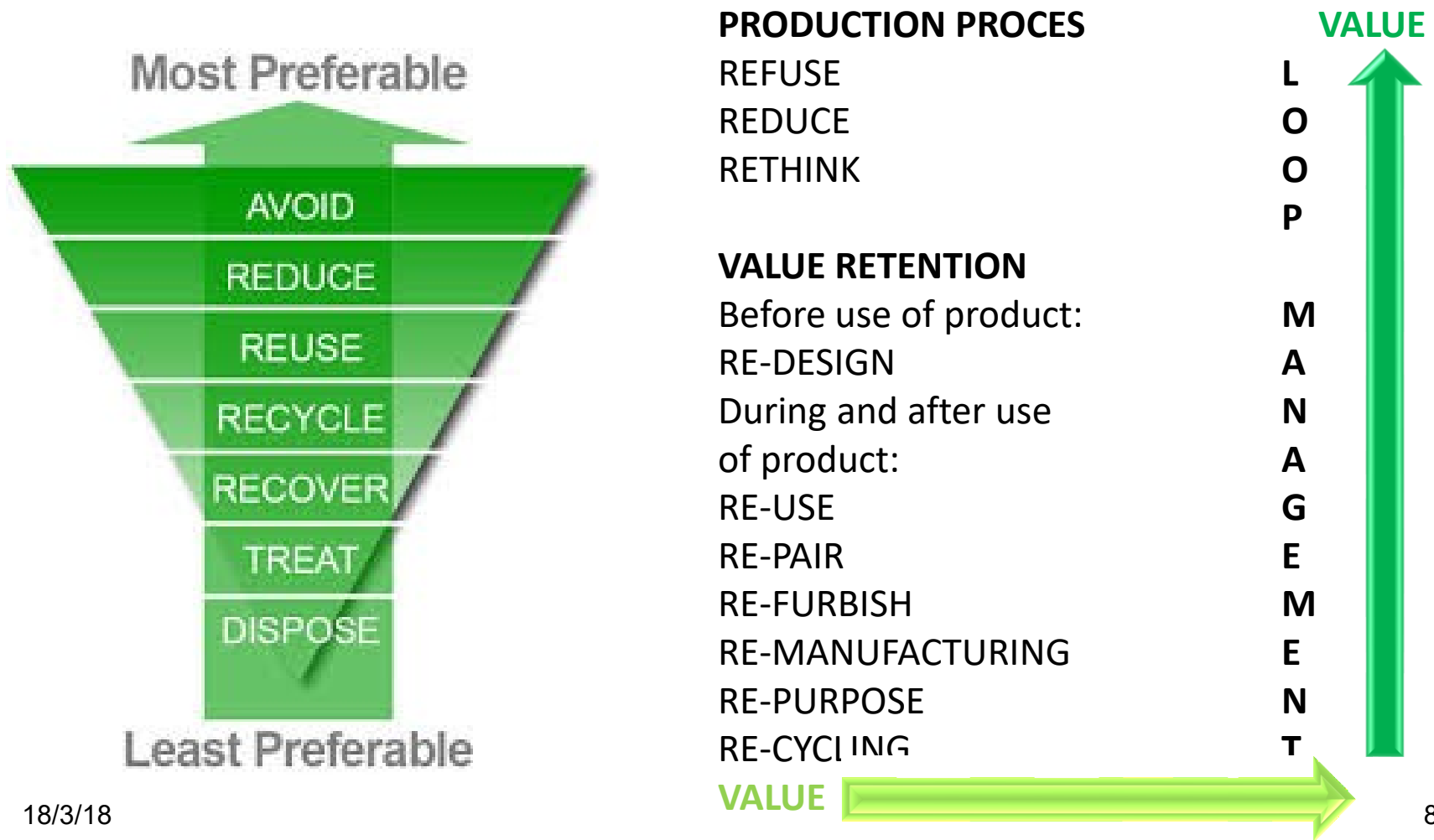
16:00– 16:30

- Return of the contracting authority and announcing the winner of the tender
- Group evaluation of the assessment of the tenders
- Questions
- Look to the future



VIEW ON CIRCULAR PROCUREMENT

MODEL OF THE PROVINCE OF UTRECHT 1





VIEW ON CIRCULAR PROCUREMENT

MODEL OF THE PROVINCE OF UTRECHT 2

- Circular procurement is the acquisition of works, supplies or services by means of a public contract, that is based as much as possible on the main principles of the circular economy, namely:
 - 1) during production, use and processing of the product minimal environmental burden takes place;
 - 2) maximized value retention of existing products;
 - 3) management of the loop and contract forms



VIEW ON CIRCULAR PROCUREMENT MODEL OF THE PROVINCE OF UTRECHT 3

1. During production, use and processing of the product minimal environmental burden takes place

- **reduce the exhaustion of natural resources**
- **no, or as little as possible, use of and emission of harmful / toxic substances**



VIEW ON CIRCULAR PROCUREMENT

MODEL OF THE PROVINCE OF UTRECHT 4

2. Maximized value retention of existing products

- RE-USE: use and lifetime of the existing product is extended for the same purpose. There are no changes to the product itself.
- RE-PAIR: use and lifetime of the existing product is extended by means of repair;
- RE-FURBISH: Renovating and / or modernizing the product;
- RE-MANUFACTURING: New products are made from (parts of) old products;
- REPURPOSE: Reuse a product for a different purpose;
- RE-CYCLING: Recovery and making materials and raw materials from discarded products and materials suitable for reuse. The province distinguishes:
 - a. Upcycling: Recycling where the inherent value of a material increases;
 - b. Recycling: Recycling where the inherent value of the product remains the same;
 - c. Downcycling: Recycling that reduces the inherent value of a material.



VIEW ON CIRCULAR PROCUREMENT MODEL OF THE PROVINCE OF UTRECHT 5

3. Management of the loop and contractforms

- Chain cooperation
- Contractforms
 - Buy and sell back
 - Product as a service (pay per use)
 - Buy and resale



LEGAL ASPECTS OF CIRCULAR PROCUREMENT

1. Preparation

- Preliminary market consultations

2. Tenderdocument

- Specification of the contract and transparency
- Variants
- Award criteria
- Verification
- Optional: Contract management
- Optional: Justifying the award decision; providing the relevant reasons



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: PREPARATION

- Directive 2014/14/EU, art. 40 **Preliminary market consultations:** Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements. For this purpose, contracting authorities may for example seek or accept advice from independent experts or authorities or from market participants. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: SPECIFICATION AND TRANSPARENCY

- Consider specifying functional; recital nr. 74 Directive 2014/24/EU
- Are specifications and requirements clear?
Socchi di frutta standard, CJEU, 29 April 2004 C-496/99, Socchi di Frutta, ov. 111
- CJEU 10 may 2012, C-368/10
Commission/ Netherlands



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: VARIANTS

- Recital nr. 48 Directive 2014/24 / EC: "Given the importance of innovation, contracting authorities should be encouraged to admit variants as often as possible."
- Art. 45 directive 2014/24/EU:
 - Only with best price-quality ratio
 - State in contract notice
 - State minimum requirements to be met by the variants and any specific requirements for their presentation,
 - ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders
 - Do not refuse variants only because the award leads to a contract for services instead of delivery or vice versa.



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: TRANSPARENCY, ASSESSMENT AND AWARD CRITERIA

- The principle of transparency requires that all award criteria, with their relative weights be announced in advance.
- Make known the complete assessment model with the scoring of points and formulas in the tender documents.
- See to it the best offer wins, not the best/smartest offer writer



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: AWARD CRITERIA 1

- Distinctive: a criterion that makes no distinction is meaningless.
- To distinctive? ECJ case C-513/99, Concordia Bus Finland



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: AWARD CRITERIA 2

- Clarity, CJEU Commission v Netherlands, Case C-368/10 (Max Havelaar).
- Lack of clarity of award criteria leaves the contracting authority with an almost unconditional freedom of choice. (see also ECJ Beentjes, 31/87, directive 2014/24/EU, Art. 67 par. 4 and recital 92.
- Criteria that are aimed at specific and objectively determinable environmental requirements, ECJ case C-513/99 (Condordia Bus Finland)



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: AWARD CRITERIA 3

- Criteria must be linked to the subject matter of the public contract (art. 67 par. 2, recital 97); and are of specific importance (but not essential) for the CA.
- When is this condition met? See art. 67 par. 3 of the Directive.



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: AWARD CRITERIA 4

Price

- Note, among other things, the leveling effect of quality, particularly in relation to a price system in which the lowest bidder receives all the points for the price criterion. 60/40 quality price ratio means 50/50. Leveling also takes place when quality is divided in various aspects and price is not.
- It would be a shame if a sustainable and innovative tender is ultimately won on price, and not sustainability and quality. Do extensive trial calculations beforehand and see what happens.



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: VERIFICATION

- One of the most difficult issues concerning CP for which I am sorry to say do not have a 'easy' solution
- Tender fees (very partial cost reimbursement) as a contribution towards the tender offer costs?
- Methods:
 - PRP and ReNtry-method (focus on raw materials and audits)
 - Circular IQ – an online software application for collaboration, data monitoring and analysis.
 - Circular LCA? Circular measuring unit?
 - Circular label (art. 43/44 Directive)



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: CONTRACT MANAGEMENT

- Contractmanagement; supervision of compliance of the tender of the winning tenderer
- The principle of equality requires that both the content of the tender offer and the possibilities for verification thereof be included in the final contract. See recital 94 Directive 2014/24/EU. See also CJEU, 29 April 2004 C-496/99, *Succhi di Frutta*, 115.
- Non-compliance of contract can under circumstances qualify as forbidden substantial modification, especially if the subject of non-compliance played a role in the final choice for this supplier.



LEGAL ASPECTS OF CIRCULAR PROCUREMENT: JUSTIFYING THE AWARD DECISION; PROVIDING THE RELEVANT REASONS

■ Relevant reasons:

- publication of the final scores of both the unsuccessful tenderer and the selected entrepreneur;
- the unsuccessful tenderer's scores for specific characteristics, and the reasons that for those specific characteristics he has not been awarded the maximum score;
- clarification of the application of the criteria used when awarding according to the criterion most economically advantageous tender.



CIRCULAR PROCUREMENT POLICY IN THE PROVINCE OF UTRECHT

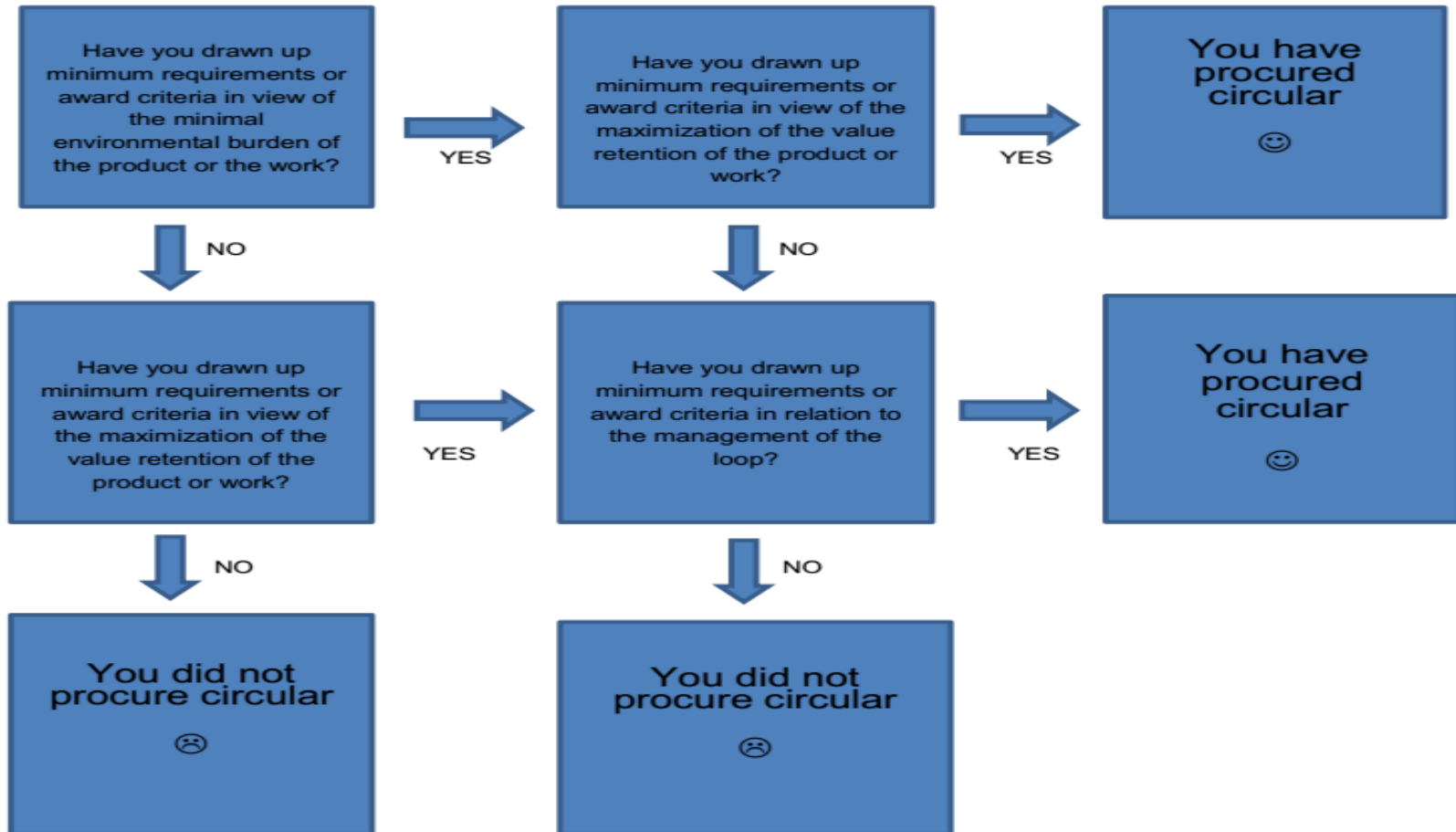
- 2013 Green Deal Circular Procurement
- 2014 Circular Procurement Utrecht cooperation agreement between initially the province of Utrecht and 3 municipalities (Utrecht, Amersfoort en Woerden):
 - In 2020 at least 10% of our total procurement spend is procured circularly.



CIRCULAR PROCUREMENT POLICY IN THE PROVINCE OF UTRECHT

- **Comply-or-explain principle for circular procurement (and criteria documents, and SROI)**
- **Circular procurement only obligatory for contracts for Works of Supplies**
- **When is a tender circular?**

Flow chart circular procurement



■ Questions?





LOOK TO THE FUTURE



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change too
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