
Flexibility vs. Formality:
The Role of Multilateral Negotiations in EU
and U.S. Federal Procurement Practices

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Flexibility vs. Formality: The Role of Multilateral Negotiations in EU and U.S. Federal Procurement Practices

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Abstract

This article examines the persistent divergence between the United States and the European Union regarding the use of multilateral negotiations. While both systems aim to achieve the best value for money, their operational methodologies differ starkly: the U.S. federal system has normalized competitive negotiations as a primary procurement procedure, whereas EU contracting authorities remain heavily reliant on formalized open and restricted procurement procedures. Drawing on qualitative insights from semi-structured interviews with procurement professionals, this research argues that the EU's underutilization of negotiated procedures is not a result of legal barriers, but of a deeply embedded institutional culture of risk aversion. The study identifies a "quantification trap" in the EU, where an overreliance on rigid, formula-based scoring serves as a defensive mechanism against judicial challenge, often at the expense of substantive contract quality. In contrast, the U.S. system treats negotiation as a strategic extension of competition, allowing for professional discretion and risk mitigation.

The findings reveal that while the U.S. model excels in technical problem-solving, it faces challenges regarding incumbency advantages. Conversely, the EU's focus on transparency leads to over-specification, thereby excluding innovation. The paper concludes that closing the gap between these two systems requires more than legislative reform; it demands a shift in EU procurement culture toward professionalization and the reframing of negotiations as a legitimate, standard instrument for strategic governance.

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I Introduction

Public procurement systems in both the United States and the European Union share the common goal of achieving the best value for public money.¹ However, the methods relied upon to pursue this goal differ significantly between the U.S. and EU procurement systems. Multilateral negotiations are used far more frequently in U.S. federal procurement than in the European Union, where the more formalized open and restricted procurement procedures remain the dominant approach.² At the core of this divergence lies the choice of competitive procedure: whether a procurement will be conducted through an open or restricted procedure, analogous to sealed bidding in the U.S. federal context, or through a negotiated or dialogue-based procedure, where multiple suppliers compete through successive rounds of proposals to the government customer.³ The choice of procedure can impact procurement outcomes in terms of cost, efficiency, and the government’s ability to achieve the best value for money.⁴

Statistical data reveal a stark contrast in the adoption of negotiated procedures between the two jurisdictions. European contracting authorities predominantly rely on open procedures, accounting for 82 percent of awards in 2017–2024.⁵

¹ Directive 2014/24, of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC, recital 2, 2014 O.J. (L 94) 65 (EU); *Federal Acquisition Regulation* (FAR) 1.102(a), 48 C.F.R. § 1.102(a) (2024). References here are to the Federal Acquisition Regulation in effect before the Trump administration’s ongoing “Revolutionary FAR Overhaul,” which is detailed at <https://www.acquisition.gov/far-overhaul>.

² European Commission, *Commission Staff Working Document: Evaluation of Directive 2014/23/EU on Concessions, Directive 2014/24/EU on Public Procurement and Directive 2014/25/EU on Utilities*, SWD (2025) 332 final (Brussels, Oct. 14, 2025).

³ See Directive 2014/24, *supra* note 1, arts. 26(2), 29–30; FAR 6.401(a)–(b).

⁴ See Directive 2014/24, *supra* note 1, recital 2; FAR 1.102(a)–(b).

⁵ See European Commission, *Commission Staff Working*, *supra* note 2 at 15.

In these procedures, offers are evaluated against predetermined award criteria, with only limited clarifications permitted.⁶

This overwhelming reliance on non-negotiated procedures among European contracting authorities highlights a persistent underutilization of more flexible procurement methods, such as the competitive procedure with negotiation and competitive dialogue.⁷ In contrast, competitive negotiation is the leading procurement procedure in U.S. federal procurement, accounting for approximately 39 to 60 percent of awards.⁸

The 2014 EU Public Procurement Directives sought to revise and modernize public procurement rules by providing contracting authorities with greater flexibility to select procurement procedures that allow for negotiations, including the competitive procedure with negotiation, and competitive dialogue.⁹ These procedures were intended for complex or innovative procurements where open or restricted procedures might not yield satisfactory outcomes, and were expected to enhance flexibility and cross-border participation.¹⁰

Despite these reforms, greater procedural flexibility has not translated into increased practical use of negotiated procedures.¹¹ Both institutional evaluators and stakeholder feedback point to a persistent pattern of risk aversion among contracting authorities, who continue to favor simpler, more formalized

⁶ Compare Directive 2014/24/EU, art. 26 (open procedure) with arts. 29–30 (competitive procedure with negotiation); see also arts. 18(1) and 67 on transparency and predetermined award criteria. CJEU Case C-599/10 SAG ELV Slovensko EU:C:2012:191 and Case C-336/12 *Manova* EU:C:2013:647 confirm that only limited clarifications, not negotiation, are permitted in open procedures.

⁷ In 2014, competitive dialogue and the competitive procedure with negotiation accounted for only 0.33 percent and 6.93 percent, respectively, of procedures above the EU thresholds by number. In 2017, the number of competitive dialogue procedures decreased to 0.23 percent, while the use of multilateral negotiations increased to 8.9 percent. See Giulia Buccino, Elisabeth Iossa, Biancamaria Raganelli & Mate Vincze, *Competitive dialogue: an economic and legal assessment* 20 (2) J. Pub. Proc. 163, 163–185 (2020), at 169.

⁸ A compilation of procurement procedures conducted during fiscal year 2014 showed that multilateral negotiations accounted for approximately 39 percent of awards, compared to only 2 percent of contracts being awarded through sealed bidding. The share of multilateral negotiations increases to roughly 60 percent when including awards being made through second-stage competitions under IDIQ contracts (“framework” agreements in the EU context), which often share many of the same attributes as multilateral negotiations. See Christopher R. Yukins, *The U.S. Federal Procurement System: An Introduction*, *Upphandlingsrättslig Tidskrift (UrT)* 2017 p. 69, 82 (referencing data from the Federal Procurement Data System compiled by Umer Chaudhry).

⁹ See Directive 2014/24/EU, *supra* note 1, recital 42.

¹⁰ *Id.*

¹¹ European Commission, Expert Group on Innovation Procurement, *Innovation Procurement Uptake Report*, Expert Contract No. CT-EX2016D274375-101 (Apr. 2025, updated Nov. 2025), at 6.

procedures.¹² The European Commission's 2025 evaluation confirms that the expansion of procedural options has not led to greater flexibility in practice but has instead reinforced reliance on open procedures.¹³

To gain insight into how negotiated procedures operate in practice, this research incorporates qualitative data from semi-structured interviews with procurement professionals and stakeholders in both the United States and Europe.¹⁴ These conversations aimed to uncover insights into decision-making processes that cannot be discerned from a literature review alone, specifically regarding why multilateral negotiations are used far more frequently in U.S. federal procurement than in the EU. The findings reveal that the decisive divergence between the U.S. and EU systems lies not primarily in the formal availability of negotiated procedures, but in the institutional comfort with discretion, which, in turn, shapes how flexibility, risk, and value are operationalized throughout the procurement lifecycle.

II Legislative History of Negotiated Procedures

The U.S. federal procurement system has undergone a clear statutory shift from a default reliance on sealed bidding to the “best-value continuum” under the Federal Acquisition Regulation (FAR) Part 15.¹⁵ This transition normalized multilateral negotiations as an ordinary competitive practice, effectively embedding negotiation into the definition of competitive procurement rather than treating it

¹² European Commission, Commission launched call for evidence and public consultation on the evaluation of the Public Procurement Directives, (Dec. 13, 2024), https://single-market-economy.ec.europa.eu/news/commission-launches-call-evidence-and-public-consultation-evaluation-public-procurement-directives-2024-12-13_en; For examples of relevant feedback, see ACR+, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14427-Public-procurement-directives-evaluation/F3525216_en and Utrecht University Centre for Public Procurement, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14427-Public-procurement-directives-evaluation/F3524910_en (last visited Apr. 14, 2025).

¹³ *Commission Staff Working Document, Evaluation of Directives 2014/23–25/EU, SWD (2025) 332 final.*, at 22.

¹⁴ Semi-structured interviews with anonymized U.S. and European procurement professionals and a global technology contractor were conducted in November–December 2025 and are cited below. The European interviewees include experts from an EFTA country (the European Free Trade Association). While EFTA countries are not members of the European Union, their public procurement regimes are governed by the same EU procurement directives through the European Economic Area (EEA). Further information on those interviews is available in the thesis referenced at the outset of this article.

¹⁵ See Federal Acquisition Regulation Sections 6.401 and 15.101 (establishing sealed bidding and negotiated procurement as alternative methods and introducing the best-value framework); John Cibinic, Jr., Ralph C. Nash, Jr., Christopher R. Yukins & Nathaniel E. Castellano, *Formation of Government Contracts* § 6.01 (2023) (describing the evolution from sealed bidding toward negotiated procurement); William S. Cohen, *The Competition in Contracting Act*, 14 Pub. Cont. L.J. 1, 6–8 (1983) (discussing the decline of sealed bidding as the dominant procurement method).

as an exception.¹⁶ Consequently, the U.S. legal system now views negotiation as a legitimate choice that enhances the government's ability to achieve best value, moving away from an earlier era that equated competition almost exclusively with rigid, sealed bidding procedures.

In contrast, the EU framework retains a perception of negotiated procedures as exceptions to the "main rule" of open tendering.¹⁷ While the regulatory framework has undergone gradual liberalization to make the competitive procedure with negotiation more accessible, empirical evidence reveals an incomplete normalization of the competitive negotiation procedure. Practitioners observe that even when legal thresholds are lowered, the current framework is still perceived as framing negotiations as exceptions (not the norm) to safeguard integrity, reflecting a lack of trust in contracting authorities.¹⁸ However, the experience under the EU utilities regime, where contracting authorities have a free choice of procedure, demonstrates that greater procedural discretion leads to more commercial, dialogue-oriented practices without undermining transparency or competition.¹⁹ This contrast challenges the classical EU assumption that negotiated procedures must be treated as exceptional to safeguard integrity and prevent corruption.

While the EU framework has moved toward greater flexibility, the cultural and institutional perception of negotiated procedures in the EU remains closely tied to the history of European exceptionalism, hindering its full, routine adoption. The divergence in practice is rooted in conflicting policy goals: the U.S. system prioritizes best-value outcomes and efficiency, whereas the EU system prioritizes transparency and equal treatment.²⁰

These priorities shape the operational realities of both systems, where U.S. practices leverage high discretion and flexible trade-offs to achieve best value, while EU practices rely on high formalism and quantification in tender evaluations to ensure transparency and compliance.²¹ This thematic divergence in goals is the most critical finding, as it shapes all operational differences in the procurement lifecycle.

¹⁶ Interview with U.S. Procurement Expert A (November 2025). This expert described a decisive structural shift over the last 30 to 40 years, noting that negotiated procurement was previously understood primarily as a single-party process. IDIQ (Indefinite Delivery, Indefinite Quantity) vehicles, which share attributes with framework agreements, have further normalized this trend.

¹⁷ See Directive 2014/24/EU, recitals 42 and 45 (recognizing the need to expand the use of flexible procedures, including the competitive procedure with negotiation, particularly for complex procurements, while emphasizing that such procedures must be subject to safeguards to ensure compliance with the principles of equal treatment and transparency).

¹⁸ Interview with EU Procurement Expert B (November 2025); Interview with EU Procurement Expert C (December 2025).

¹⁹ Interview with Procurement Expert A (November 2025).

²⁰ Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, 11 Pub. Procurement L. Rev. 103 (2002), at 2-3; Directive 2014/24/EU recital 1.

²¹ Interview with U.S. Procurement Expert A (November 2025); Interview with EU Procurement Expert B (November 2025).

III Current Approaches to Negotiations: Strategic Competition vs. Procedural Rigidity

Negotiation is a flexible tool for resolving complex technical problems.²² Negotiated procurements allow vendors to present potentially disparate solutions in response to a broad statement of government requirements. However, negotiation's potential remains largely untapped in the EU.²³ While competitive negotiation is used for complex procurements (e.g., construction and IT), the process frequently devolves into price negotiation alone, failing to leverage its potential for dialogue on design or technical solutions.²⁴

This underutilization is driven by procurement documents drafted with the same level of rigidity as open-procedure tenders, which constrains the scope for creative dialogue on design or technical solutions. Consequently, the flexibility intended by the EU Directives is rarely fully exploited in practice, as the room for negotiation is often pre-defined by rigid, non-negotiable specifications. The European underutilization of procedural flexibility is primarily a product of over-specification and contracting authorities' lack of courage. Over-specified procurement documents, driven by insufficient market knowledge and internal assumptions, effectively constrain the scope for creative negotiation.²⁵ In the absence of early market dialogue, contracting authorities compensate by prescribing detailed technical solutions, thereby foreclosing the very innovation and problem-solving that negotiated procedures are designed to facilitate. This cultural deficiency suggests that the lack of professional confidence to use discretion is more restrictive than the procurement regulations themselves.

This dynamic is particularly acute in technology procurement, where absolute demands for data sovereignty and requests for "one-stop-shop" solutions result in rigid technical requirements rather than negotiable objectives. Such requirements have been described as creating "impossible positions" for suppliers because they are frequently incompatible with the commercial architecture of global service providers.²⁶ When such demands are labeled as non-negotiable, the process is effectively hollowed out before it begins. Instead of using negotiations to find middle-ground security protocols or hybrid architectures, suppliers are forced either to assume unmanageable legal risk or decline to bid, thereby stifling competition.

²² See e.g. Patrick Bajari, Robert McMillan & Steven S. Tadelis, *Auctions Versus Negotiations in Procurement: An Empirical Analysis*, J.L. Econ. & Org. 25 (2), 372–399 (2009).

²³ Interview with EU Procurement Expert A (November 2025); Interview with EU Procurement Expert B (November 2025).

²⁴ *Id.*

²⁵ Interview with EU Procurement Expert A (November 2025).

²⁶ Interview with Global Technology Contractor (December 2025).

In contrast, the U.S. federal system treats the entire negotiation phase as a strategic extension of competition.²⁷ Although negotiations are conducted individually with each offeror, the competitive pressure is maintained because all parties are aware they remain in competition until the moment of contract award.²⁸ Even in single-offer situations, the negotiation ritual is maintained to preserve the government's leverage and extract maximum value.²⁹

The U.S. approach reinforces the policy goal of securing the best outcome by leveraging market dynamics, in contrast with the EU context, where negotiation is often conducted cautiously and within narrowly defined parameters.

IV Evaluation Methodologies and the “Quantification Trap”

The tension between discretionary professional judgment in U.S. federal procurement and mechanical quantification in EU tender evaluation is a central point of contention between the two systems.

The U.S. best-value approach permits a substantive trade-off between price and non-price factors, granting the contracting officer discretion to avoid the misleading appearance of absolute objectivity.³⁰ Achieving full quantification is often viewed by U.S. practitioners as a risk in itself, potentially leading to flawed decisions that lack validation by the procurement team.³¹ In this context, discretion is not a liability to be minimized, but a necessary condition for intelligent, value-driven procurement.³²

²⁷ Interview with U.S. Procurement Expert A (November 2025). This expert emphasized that the submission of final revised proposals by all offerors is the mechanism that sustains competitive pressure.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See FAR 15.304, allowing agencies to indicate whether non-price factors are significantly more important, approximately equal, or significantly less important than cost or price, giving contracting officers substantial discretion in the final award decision. Point-based evaluations are considered merely as tools, and qualitative considerations may justify selecting a higher-priced offer, see John Cibinic, Jr., Ralph C. Nash, Jr., Christopher R. Yukins & Nathaniel E. Castellano, *Formation of Government Contracts* § 6.07 (5th ed. 2023).

³¹ Interview with U.S. Procurement Expert A (November 2025).

³² LL.M. Graduate in Government Procurement Law, George Washington University Law School, Washington DC, USA. This article is based on a longer thesis submitted in partial satisfaction of the requirements for the LL.M. degree in Government Procurement Law at The George Washington University Law School. Special thanks to Professor Christopher R. Yukins for his guidance on the U.S. procurement framework and the development of the original thesis. I am also grateful to Assoc. Professor Andrea Sundstrand for her editorial support in bringing this work to a European audience. The full thesis is available here: <https://www.proquest.com/docview/3346794506/FE2D-571D936A4D25PQ/1?sourcetype=Dissertations%20&%20Theses..>

In contrast, the EU's emphasis on transparency and equal treatment has fostered an overwhelming preference for formula-based scoring and rigid quantification.³³ This “quantification trap” serves as an institutional protective mechanism, shielding evaluators from accusations of subjectivity rather than serving as a tool for identifying the most capable supplier.³⁴

While this formalism ensures procedural compliance, it often leads to a focus on the process rather than the final contract outcome, resulting in mechanical scoring errors and technical rigidity. This over-quantification is largely a defensive response to judicial practice. Because courts scrutinize strict compliance with pre-stated methodologies, contracting authorities react by embedding excessive detail into evaluation models, thereby constraining discretion beyond what the legal framework strictly requires.³⁵

V Negotiations as a Risk Management Tool

The use of pre-procurement market dialogue helps clarify and define complex requirements, ultimately functioning as a risk management tool.³⁶ This is not only identified as a best practice but a prerequisite for effective negotiations.³⁷ The primary purpose of conducting negotiations is to mitigate risk (i.e., identify and resolve ambiguity) and to clarify uncertainties that lead suppliers to impose risk premiums.³⁸

The value of early dialogue helps explain the EU's over-specification problem. Where dialogue is absent, internal assumptions and rigid, risk-averse requirements

³³ See Directive 2014/24/EU Art. 67 (requiring contracts to be awarded on the basis of the most economically advantageous tender and specifying that award criteria and their relative weightings be pre-disclosed to ensure transparency and equal treatment); Recital 90 (emphasizing that award criteria must be objective, allow comparison of tenders, and prevent unrestricted discretion by contracting authorities). While contracting authorities retain discretion to determine the evaluation method within this framework, the EU system offers less flexibility than the U.S. best-value approach.

³⁴ Interview with EU Procurement Expert B (November 2025).

³⁵ Interview with EU Procurement Expert A (November 2025).

³⁶ See FAR 7.102, 7.104–7.105 (requiring acquisition planning and market research to fulfill agency needs efficiently); FAR 2.101 (2025) (defining acquisition planning as a coordinated process including strategy development, source identification, and contract structuring); FAR 15.201(b) (noting that exchanges with industry improve understanding of government requirements and capabilities). By contrast, Directive 2014/24/EU, Art. 40 allows but does not mandate pre-procurement market dialogue, leaving such dialogue to the contracting authority's discretion; see also European Commission, Expert Group on Innovation Procurement, *Innovation Procurement Uptake Report*, Expert Contract No. CT-EX2016D274375-101 (Apr. 2025, updated Nov. 2025), at 66.

³⁷ Interview with U.S. Procurement Expert B (December 2025); Interview with EU Procurement Expert C (December 2025).

³⁸ Interview with EU Procurement Expert C (December 2025).

take their place.³⁹ The EU's prohibition on negotiating minimum requirements and award criteria is also identified as a source of ambiguity and legal risk aversion, prompting contracting authorities to avoid necessary dialogue in critical areas.⁴⁰ This creates a cycle of over-specification, in which contracting authorities prescribe detailed solutions to compensate for a lack of market engagement, thereby precluding the very innovation the negotiated procedure was intended to foster.

In the U.S. system, FAR Part 15 provides the strategic flexibility to conduct targeted, one-on-one negotiations that address contractor-specific technical weaknesses without diluting competitive tension.⁴¹ This is considered strategically superior to the open question-and-answer ("Q&A") sessions common in the EU, where suppliers are often unwilling to raise company-specific problems in a public forum.⁴²

While the U.S. system treats market dialogue as a necessary pathway toward the best contract, the EU system seems to prioritize procedural safety over substantive contract improvement.

VI Institutional Impediments and the Decision to Negotiate

Reluctance to negotiate in the EU does not primarily stem from perceptions that the procedures are legally inaccessible, but rather from cultural, procedural, and institutional habits.⁴³ This hesitation cannot be attributed to a fear of corruption, as European contracting authorities typically operate in jurisdictions with a low risk of corruption.⁴⁴ The legal risk of selecting competitive procedures with negotiation remains relatively low, as suppliers rarely challenge the initial choice of procedure.⁴⁵ Despite this low legal risk, the cultural fear of complaints and litigation, and a formalistic mindset, drive authorities to default to the safer open procedure.⁴⁶

This institutional conservatism is exacerbated by a structural lack of professionalization and the absence of centralized procurement in the EU, particularly

³⁹ Interview with EU Procurement Expert A (November 2025).

⁴⁰ *Id.*

⁴¹ Interview with U.S. Procurement Expert A (November 2025).

⁴² *Id.*

⁴³ Interview with EU Procurement Expert B (November 2025).

⁴⁴ This hesitation is particularly notable in Northern European jurisdictions, which, according to the 2025 Corruption Perceptions Index, rank among the highest globally for public sector integrity. See <https://www.transparency.org/en/cpi/2025>. This stands in contrast to many jurisdictions outside Europe that shun negotiations in public procurement for fear that the process is more susceptible to corruption.

⁴⁵ Interview with EU Procurement Expert B (November 2025).

⁴⁶ *Id.*

among smaller municipal authorities.⁴⁷ Without the confidence or specialized training to lead complex negotiations, these authorities retreat into the mechanical safety of open procedures.⁴⁸

Ultimately, the findings suggest that the most impactful reforms in the EU must be non-legislative. While the legal framework provides the necessary flexibility, the institutional culture of risk aversion and the “quantification trap” prevent its utilization. Enhancing professional capacity and shifting the cultural mindset from clerical compliance to strategic management are the essential prerequisites for closing the gap between U.S. and EU procurement outcomes.

VII The Limits of Flexibility: Competition vs. Incumbency

The weight of evidence suggests that negotiation is superior for improving quality, reducing risk, and supporting sustainable performance.⁴⁹ The costs and effort associated with negotiation are often offset by the eventual costs of fixing problems in rigid procedures (including cancellations and restarts).⁵⁰

However, a critical counterbalance emerges: the inherent flexibility of negotiated procedures can inadvertently limit competition by favoring those with existing institutional knowledge.⁵¹ In a system where procurement documents are less specified, a common feature of negotiated procurement in U.S. federal procurement, incumbent contractors possess a distinct advantage. Their implicit knowledge of agency expectations and “unwritten” requirements allows them to respond more effectively than new market entrants.⁵² This informational advantage creates a barrier to market entry that mirrors the very rigidity that negotiated procedures are designed to solve. Furthermore, in certain sectors such as information technology, a bias against “intermediaries” or resellers can further restrict market access, centralizing power among a few large systems integrators.⁵³

⁴⁷ Interview with EU Procurement Expert A (November 2025); Interview with EU Procurement Expert C (December 2025).

⁴⁸ *Id.*; See also Organization for Economic Co-operation and Development (OECD), *Professionalising the Public Procurement Workforce* (2023), Professionalising the public procurement workforce (EN). The OECD noted that public procurement is increasingly recognized as a strategic instrument for achieving policy goals, thereby becoming more complex. This, in turn, creates a need for expertise, not only regarding the regulatory framework but also in project management and negotiation.

⁴⁹ Interview with U.S. Procurement Expert A; Interview with EU Procurement Expert C (December 2025).

⁵⁰ Interview with EU Procurement Expert B; Interview with EU Procurement Expert C (December 2025).

⁵¹ Interview with U.S. Procurement Expert B (December 2025).

⁵² *Id.*

⁵³ Interview with Global Technology Contractor (December 2025).

Ultimately, the analysis suggests that the risk is not inherent in the negotiation process itself but in the governance structures surrounding the use of discretion. While U.S. procedures excel at maximizing competitive tension during the dialogue phase, the solicitation's initial design and reliance on existing relationships may create structural impediments. Mitigating these risks requires more than procedural rules; it necessitates institutional safeguards, such as the periodic rotation of procurement roles or the functional separation of evaluation and negotiation teams, to ensure that flexibility does not devolve into favoritism.⁵⁴

VIII Conclusion

The divergence in negotiation practices between the United States and the European Union is not merely the result of different legal frameworks, but reflects deeper differences in legal philosophy, institutional trust, and procurement culture. While both systems pursue the objective of achieving the best value for public money, they operationalize this goal in fundamentally different ways.

U.S. federal procurement has evolved toward a model that prioritizes operational flexibility, treating multilateral negotiations as a standard and legitimate method of competition. Through the best-value continuum, contracting officers are entrusted with professional discretion to conduct qualitative trade-offs and engage in iterative dialogue with suppliers. As confirmed by practitioner interviews, this discretion is not perceived as a legal risk, but as an essential tool for achieving optimal procurement outcomes, particularly in complex and innovative acquisitions.

In contrast, the EU procurement framework remains dominated by a formalized, paper-based approach centered on the open procedure. Rooted in the objective of safeguarding transparency and preventing discrimination in the internal market, this model emphasizes predefined criteria and limited post-tender interaction. However, this emphasis has contributed to what this paper identifies as a “quantification trap”: an overreliance on formula-based evaluation systems that create an illusion of objectivity while potentially excluding the most capable suppliers for minor formal deficiencies. Rather than fostering innovation, the expansion of procedural options in the 2014 Directives has, in practice, reinforced a culture of risk aversion and procedural compliance.

The findings of this study demonstrate that the underutilization of negotiated procedures in the EU cannot be explained by legal constraints alone. Instead, it reflects a combination of cultural factors, including fear of challenges, lack of

⁵⁴ U.S. Procurement Expert B (December 2025) suggested that periodic role rotation or institutional separation of functions could mitigate these risks, noting that concerns about undue influence are not inherently linked to negotiated procedures but to the governance structures surrounding them.

institutional confidence, and limited professional capacity. This is further compounded by operational practices such as over-specification of requirements, which reduce the scope for meaningful negotiation and limit dialogue primarily to price.

These insights suggest that future reform efforts in the EU should move beyond further procedural proliferation and instead focus on strengthening institutional capacity and reshaping procurement culture. This includes promoting greater professionalization and centralization of procurement functions, reframing negotiated procedures as an equal and legitimate choice rather than an exception, and enabling more practical forms of transparency that support, rather than hinder, dialogue. Incremental legal adjustments, such as clarifying the permissible scope of negotiations, may support this shift but are unlikely to be effective in isolation.

The comparative perspective highlights that while negotiation is a superior tool for risk mitigation, it creates a structural tension between flexibility and market access. Further research is needed to determine how “unwritten” institutional knowledge and reliance on existing relationships in negotiation-based systems can be balanced against the need for a level playing field, particularly in high-barrier sectors such as technology.

Ultimately, public procurement should not be understood as a purely rule-bound administrative function, but as a strategic policy instrument. The U.S. experience illustrates that flexibility, when supported by appropriate safeguards and professional competence, can enhance rather than undermine competition. For the European Union, the central challenge is therefore not to further refine procedural rules, but to create a system in which contracting authorities are both capable and willing to use the flexibility that already exists.