

Ref.: ENT&SME/2006/12

31May 2006

IMPROVING SME ACCESS TO PUBLIC PROCUREMENT

Since the early nineteen-seventies, the aim of EU policy has been to open up national public procurement to competition from other Member States, based on transparent and competitive purchasing rules. These rules aim to ensure value for money for taxpayers and the efficient allocation of resources, thereby enhancing the quality of public services and improving economic growth, competitiveness and job creation.

Recent estimates from the European Commission show that public procurement accounts for around 16% of the European Union's GDP and for 1,500 billion euros¹.

Facilitating SME access to procurement opportunities can allow them to strengthen their competitiveness and enable them to contribute more towards growth, employment and competitiveness in the European economy.

At national level, some Member States have already taken actions to improve SME access to public procurement.

However, SMEs are still facing several barriers, including:

- Insufficient information in the invitation to tender
- Excessive administrative burden
- Unclear wording in the invitation to tender
- Short time to draw up tender
- Too many competitors invited to bid.

On 31 March 2004 the European Community adopted a new legislative package aiming to simplify and modernise the previous public procurement directives and adapt them to modern administrative needs.

It is UNICE's opinion that there is not yet sufficient practical implementation and use of the new legal framework to justify legislative modifications. Nevertheless, we are of the strong opinion that contracting authorities must follow the recommendations developed below to facilitate SMEs access to public procurement.

1. Contracting authorities should promote an SME Strategy:

Encourage small and medium-sized enterprises to bid for contracts:

Size of contracts

The size of contracts is very relevant for SME access to public procurement. Small contracts which are more accessible to SMEs than larger contracts

¹ European Commission Study "SMEs access to public procurement contracts", 2004, available at: <http://europa.eu.int/comm/enterprise/entrepreneurship/craft/craft-studies/documents/public-procurement-summary.pdf>

should be considered by contracting authorities (but recognising that contract size should be based on value for money and effectiveness considerations).

- *Market dialogue*
Public purchasers should promote dialogue with their supply base about their own upcoming needs and supplier capabilities. Purchasers should also seek to understand their supply base at a regional and sub-regional level.
- *Multisupplier framework agreements*
Using the possibility to conclude framework agreements with several SME suppliers and not only with one single supplier.
- *Simplify prequalification*
SMEs lack the resources to put together all the pre-qualification and tendering information in the numerous ways in which it is asked for. Therefore the prequalification questionnaire should be shortened and simplified.
- *Financial checks*
Looking at what the company has available by way of information to prove financial capability rather than insisting on three years of audited accounts.

2. Market survey in order to find particularly capable SMEs

Contracting authorities should investigate the market before actually calling for tenders in order to identify competent SMEs.

3. Prime contracting and subcontracting

As subcontracting is a way to organize the work and a way to optimize resources, a company engaged in a public procurement contract should be encouraged to work with subcontractors, most of which are SMEs. But subcontractors usually have no impact on the project design; thus, SMEs should have increased opportunities to be prime contractors rather than merely subcontractors.

Subcontractors/suppliers should be treated on terms at least as good as those enjoyed by main contractors. Main contractors must refrain from dealing with SMEs on less favourable, unequal terms.

4. Payment on time

Contracting authorities are urged not only to pay on time but UNICE strongly insists that SMEs be paid within a reasonable timeframe, kept as short as possible. Failure to do so puts SMEs under undue financial pressure, particularly damaging to their cash flow.

5. Financial guarantees

Financial guarantees asked for by contracting authorities should be restricted.

6. Advertising of all small public procurement contracts on a national centralised website

For competition to work effectively, all interested suppliers must be able to obtain information about the tender, if they are to be guaranteed effective market access.

If small businesses are to be able to compete for contracts, it is essential for them to be aware of the opportunities of submitting a tender. Therefore, contracting authorities should for example:

- include clear and well-considered information in the invitations to tender,
- encourage potential bidders to ask questions and create easily accessible means to do so,
- use the huge opportunities offered by information technology to provide information.

Advertising of all small public contracts on a centralised website will guarantee open and straightforward competition and real market access for small and medium-sized businesses. Where different websites are used, contracting authorities should be encouraged to adopt a compatible format to encourage ease of access.

An advertised format should be simple so as to ensure that the maximum number of contracting authorities find the process of advertising easy and straightforward.

7. Formation of working groups/tendering groups

By cooperating with other enterprises, SMEs can participate in public procurement contracts that are inaccessible for a single SME, because the contract sizes are too large or the SME may lack certain knowledge or experience.

In order to participate in major projects, SMEs should be encouraged to form consortia and working groups. Such entities are likely to be more capable of providing the capacities required to fulfil the contract

8. An advice and training service for small and medium-sized enterprises

Within the context of SME business support, an “SME business service” should provide advice and training for SMEs on how to do business with central government and local authorities.

SMEs should also be advised on how to make entering the public procurement market part of their business strategy,

9. Standardisation of documents

The public sector should develop a common information document for all contracts. In doing this, businesses will not have to put together the same information in different formats prior to moving past the expression of interest stage.

10. Adequate debriefing

The final stage of the procurement process for those firms that have not been successful should include debriefing. If SMEs are to be able to compete effectively

for public sector contracts, they need to know where they are going wrong in order to improve their chances in future competitions, learning from past failures.

11. Publishing of procurement strategies

Contracting authorities should be encouraged to set out in their procurement strategies the steps they are taking to engage SMEs, and publish this information in their annual report. For instance, they should be encouraged:

- to set out their contractor profiles on their website;
- to urgently address the need for training to provide a capable, professional contracting service;
- to exchange experience and best practice with and between SMEs.

12. Indicative notices

Encourage contracting authorities to publish preliminary indicative notices available below the thresholds as well as above.

13. Declaration on selection criteria

To lower administrative burdens, contracting authorities should be encouraged or obliged to accept compliance schedule from suppliers. In such a schedule, a supplier points out which selection criteria he meets – and where there may be differences – without producing the evidence. Then, shortly before the award of the contract, the supplier most likely to get the contract could be obliged to produce evidence to back up the claims made in the self-declaration.

14. Forbid disproportionate selection criteria

Contracting authorities should be discouraged from applying excessive turnover requirements or subjective selection criteria. Proposals which stipulate non-contract-related criteria should be avoided. Such proposals are not only contrary to the principle of choosing the economically most advantageous tender, but they also give a certain potential for abuse by the contracting authorities.

15. Ensure application of EC Treaty Law

The basic principles of the Treaty on the European Community, non-discrimination, fair competition, transparency and the fundamental freedoms, apply to all procurement, even the smallest contracts. Public authorities must recognise this and ensure their applicability in order to give SMEs a fair chance of participating.

16. Remedies

Member States and contracting authorities have to ensure that adequate remedies are available, also below the thresholds. Providing clear and effective remedies in cases where bidders consider contracts have been unfairly awarded is crucial to ensure that contracts ultimately go to the company which has made the best offer, The availability of such remedies should be indicated in the tender publications.

17. SME e-Procurement

The underlying rationale behind the introduction of e-Procurement is to function as a means to improve the functioning of the internal market and thereby make a contribution to the realisation of the Lisbon objectives. Indeed using the Internet in procurement procedures can reduce administrative burdens and improve transparency, which would lead to easier access for SMEs to public procurement.

However there are a number of reasons why SMEs are hesitant towards e-Procurement: high cost of e-Procurement procedures; lack of Information Technology competence; etc.

Successful implementation of e-Procurement is not possible without supplier participation. Special attention must be paid to the introduction of electronic catalogues. It should not be mandatory to have electronic catalogues in order to take part in electronic procurement.

Contracting authorities must devote time and effort to make their websites more accessible and user friendly for all.

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