

ACHIEVING WORLD-CLASS
PUBLIC PROCUREMENT
ACROSS EUROPE

THE CASE FOR WORLD- CLASS PROCUREMENT

THE CASE FOR WORLD-CLASS PROCUREMENT

There is a compelling case for achieving world-class public procurement across Europe. It includes the huge pressure on all governments to improve public services and infrastructure while keeping public spending under control. Equally, one of the most ambitious targets of the Lisbon Strategy is to make Europe the world's most competitive and innovative market by 2010. With an annual turnover or volume of 1,500 billion euros or 16% of the EU's annual GDP, public procurement clearly has a role to play in achieving this goal.

Europe's governments and citizens should not underestimate the benefits of public procurement to the economy. Its coverage includes leading-edge markets for services, goods, technologies and infrastructure. Developing dynamic European markets in these areas, as the new legislative package seeks to do, will significantly improve Europe's competitiveness in an increasingly globalising world.

CONTEXT FOR THIS STATEMENT

This vision statement is issued in the context of:

- The new European legislation on public procurement, which was agreed early in 2004. It is a step towards updating rules in key areas to reflect current and future needs. Yet it has not entirely removed all legal obstacles to world-class public procurement.
- The reality that the success of the new rules will hinge on how they are implemented. Hence it is important to build a common understanding of what the rules mean in practice, preserving both the intended flexibilities and the underlying principles of fair competition and open markets.
- A recognition that, while public procurement is now probably better than it has ever been, it will need to evolve further to meet the needs of tomorrow.

UNICE, the voice of business in Europe, is setting out this vision statement in order to underline the business interest as a "triple stakeholder" in public procurement.

Business is:

1 a **customer**, needing high-quality public services and infrastructure. These create good conditions for business to compete globally, increase economic prosperity and create jobs.

2 a **supplier**, helping to provide such public services and infrastructure - and needing competitive public procurement markets in order to make the most effective contribution.

3 a **taxpayer**, funding public expenditure and demanding value for the tax euros (pounds, kroner, etc.) it pays.

THE FOUNDATIONS OF SUCCESS

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The technicalities within public procurement policy can obscure the overall significance of the issue as a key political and economic concern. Public procurement is not a routine or simple administrative task and should not be treated as such. We call on the European institutions and member-state governments to raise their vision and provide the leadership that will achieve world-class public procurement across Europe.

Strong procurement and contract management skills are equally crucial. Public authorities as well as business must have people with first class expertise, for example, in project planning and management, communication and negotiation. Putting this

expertise in place will require a concerted effort. It requires learning and training across the public and private sectors to enhance capabilities and increase our collective capacity.

In this document we hope to offer a vision of what world-class public procurement entails, based around the key principles set out below. We recognise the inherent challenges for suppliers as well as the public-sector clients and suggest how to address these. On each principle, the task ahead entails a combination of steps to ensure that the legal framework, political commitment and procurement skills are in place across Europe.

WORLD-CLASS PUBLIC PROCUREMENT - THE KEY PRINCIPLES

In UNICE's view the key principles of public procurement should include:

- Strong and fair competition, where public authorities in each member state are open and aiming to do business with the best of industry across Europe, thus achieving one true single market;
- Quality, value for money and continuous improvement as the goals for procurement - not lowest price;
- Efficient procurement processes that keep tendering costs and timescales under control;
- Use of e-procurement as a key tool to streamline processes;
- Special efforts to ensure that public procurement markets offer fair access to SMEs;
- Recognition of the strategic importance of complex procurements - and a commitment to commercially sensible and highly skilled procurement in these areas;
- Development of public-private partnerships to improve public services and infrastructure;
- A common understanding that social and environmental criteria should be linked to the subject matter of the contract, so that they can fit within the goal of achieving high service quality and value for money;
- Fair competition between the public and private sectors as public sectors across Europe become more entrepreneurial.

STRONG AND FAIR
COMPETITION ACROSS
EUROPE AND GLOBALLY

PROMOTING GLOBALLY
COMPETITIVE EUROPEAN
INDUSTRIES IN
PROCUREMENT MARKETS

STRONG AND FAIR COMPETITION ACROSS EUROPE AND GLOBALLY

Public procurement legislation aims to achieve fair competition and a single market in public procurement across Europe. The rules helpfully differentiate between the techniques that will promote strong competition in different markets, e.g. recognising that good practice for complex procurement differs from that needed in routine purchasing. Still, their application must be kept under review with the aim of matching commercial best practice as far as possible.

Although the detailed rules only apply above certain thresholds, they are underpinned by Treaty principles of fair competition and transparency that apply to all procurement, even the smallest contracts. Public authorities must recognise this and ensure competition in all their markets, particularly to give SMEs a fair chance to participate.

Industry needs to be confident about using the arrangements for tackling non-compliance. Hence we welcome the ongoing review of the Remedies Directives. We also applaud the further development

of the Public Procurement Network, bringing together senior procurement officials across member states. One of their initiatives will be particularly valuable: a new user-friendly mechanism that is capable of resolving cross-border disputes early and informally.

Finally, further momentum is needed to encourage new members to sign up to the World Trade Organisation (WTO) Government Procurement Agreement (GPA). The complicated GPA annexes, which confuse potential users, should be simplified with a view to deletion in future revisions.

Legislation is necessary but insufficient to achieve strong and fair competition across Europe, member states and procuring authorities need to increase their commitment to opening domestic markets to European competition. Public procurement must factor as a priority issue within the Lisbon agenda and strategic debates about completing the internal market.

PROMOTING GLOBALLY COMPETITIVE EUROPEAN INDUSTRIES IN PROCUREMENT MARKETS

The public sector across Europe should create, sustain and develop vibrant public procurement markets - because these will motivate the strongest players to invest, research and innovate and compete. This is crucial in key areas where the public sector is the major client and the procurements are critical to providing high-quality public services and infrastructure. There will be two benefits. Above all, public-sector clients will achieve better outcomes and continuous improvement from their own procurements. And secondly, the competitiveness of the supply base will be strengthened, so that European suppliers can participate strongly in the global economy.

Such behaviour to develop markets is absolutely in line with the European public procurement legislation. It must not be confused with counter-productive practices to purchase on local, national or even European grounds, simply to protect favoured players.

An additional challenge arises as public authorities become more entrepreneurial and themselves want to bid for contracts. UNICE opposes situations where public contracts are awarded to entities owned by public authorities without their being subject to the Directives. Such practice is irreconcilable with the aim of fully opening the market to competitive bidding.

QUALITY AND VALUE FOR
MONEY - NOT LOWEST
PRICE

KEEPING TENDERING
COSTS AND TIMESCALES
UNDER CONTROL

USING E-PROCUREMENT TO
STREAMLINE PROCESSES

QUALITY AND VALUE FOR MONEY - NOT LOWEST PRICE

European legislation allows clients to procure on the basis of either "lowest price" or "most economically advantageous tender". The stated objective for most procurements is the latter. However in practice too many of these will be awarded on lowest up-front price, which seldom delivers the best long-term result.

In order to address this deep-seated problem, procuring authorities need to develop expertise in evaluating value for money. In particular, they need

more skill in evaluating the "softer" components. These include quality, innovation, the capability and customer service of the provider and the reliability of the bid (e.g. that contracts will not be subject to frequent renegotiations post-signature through variation orders to inflate the cost). The European institutions should continuously emphasise the instruments within the legislation to evaluate the abilities of suppliers and the quality components within bids.

KEEPING TENDERING COSTS AND TIMESCALES UNDER CONTROL

One of the biggest challenges lies in reducing procurement costs and timescales. In particularly complex cases, such as public private partnerships, suppliers and the public sector spend millions of euros on bid processes. Some of this cost is necessary, but there is considerable scope for making the process more efficient.

The public sector is the ultimate loser from these inefficiencies. Inevitably, suppliers reflect their

unduly high bid costs within their tender prices. Worse still, high tendering costs limit the capacity of suppliers to bid and therefore impair competition. To cut down costs and timescales, procuring authorities need to improve their project planning - from the point when a project is first envisaged right through to managing the contract. Particular attention should go into improving the initial planning of procurements, because weaknesses at this initial phase currently cause the worst problems.

USING E-PROCUREMENT TO STREAMLINE PROCESSES

Electronic procurement provides scope to cut transaction costs and timescales enormously, particularly for more routine purchasing. Moreover, its introduction is important for the EU to remain competitive in the markets of the future.

The EU needs to adopt the legal, organisational and technical measures that will enable e-procurement to develop. This includes developing technical standards that are compatible with commercial practices and organisational procedures that protect the process from abuse. Priority should be therefore

given to the Action Plan on e-procurement, currently being prepared by the Commission. It should identify all the necessary non-legal measures, e.g. standardisation, as well as the legal instruments required to complement the new legislative package on public procurement.

Public authorities need to take care in using new freedoms for reverse electronic auctions, avoiding the temptation to misuse this facility to squeeze prices below viable levels.

ENSURING MARKETS ARE
ACCESSIBLE TO SMES

ADOPTING COMMERCIAL
BEST PRACTICE IN
HANDLING COMPLEX
PROCUREMENTS

ENSURING MARKETS ARE ACCESSIBLE TO SMES

SMEs have significant capacity to bring innovation into public procurement markets. Although global competitiveness usually brings to mind large multinationals, a strong infrastructure of smaller specialised companies with world-class capabilities is vital to Europe's economic strength.

In order that public procurement markets are accessible to SMEs, both as direct suppliers and as sub-contractors, procuring authorities need to ensure

their processes are workable and accessible. This includes: advertising opportunities in places where SMEs are likely to see them; being clear about what is required; not asking for unnecessary or duplicated information; excellent project planning so that procurement exercises move forward to time and cost-effectively; respecting the cash-flow and bank-credit constraints on SMEs, for example by paying them on time.

ADOPTING COMMERCIAL BEST PRACTICE IN HANDLING COMPLEX PROCUREMENTS

Public authorities are involving the private sector increasingly as partners in providing mission-critical public services and infrastructure. The new legislative package recognises this evolution in procurement since the early days of the legislation when authorities were largely procuring commodities.

In particular, the new package introduces Competitive Dialogue: a structured process for handling complex procurements. This is extremely valuable. It should encourage public authorities to set out their requirements in terms of the outputs and outcomes they want - knowing there is sufficient scope for dialogue to test out with bidders which solutions will best meet the requirements. Thus bidders will be encouraged to use their knowledge and innovation to improve quality and value for money.

Public authorities should be confident about using Competitive Dialogue for complex procurements. The European Commission and Member States need to promote it. The Commission has said that Competitive Dialogue will be used relatively infrequently. This is certainly true in that a relatively small percentage of public contracts will be complex. But complex contracting will become increasingly important and commonplace across Europe, as authorities look to develop markets across a wide range of public-private partnerships.

Understandably, there have been fears about misuse of Competitive Dialogue. The answer here is to ensure that public authorities have all the expertise required to handle such procurements well.

DEVELOPING PUBLIC-
PRIVATE PARTNERSHIPS TO
IMPROVE PUBLIC SERVICES
AND INFRASTRUCTURE

UNDERSTANDING HOW SOCIAL
AND ENVIRONMENTAL
CRITERIA RELATE TO SERVICE
QUALITY AND VALUE FOR
MONEY

DEVELOPING PUBLIC-PRIVATE PARTNERSHIPS TO IMPROVE PUBLIC SERVICES AND INFRASTRUCTURE

It takes top-level commitment and great skill from the public and private sectors to handle Public-Private Partnerships (PPP) well. Given the growing role of PPPs across Europe to improve public services and infrastructure, both the public and private sectors urgently need to build on progress to date and increase their capacity.

The debate about how best to do this must recognise two things. First, PPPs are diverse and include different types of relationship between the public sector, the private sector and the citizen or service user. Secondly, they will and should evolve over time. These considerations make it inappropriate to introduce new legislation - as some are suggesting. At least for now, the regulations in the existing directive, which offer distinctive approaches to different types of PPP, are sufficient.

The case for PPPs needs to be more widely understood. They are vital because it is inherently

beneficial to have a mix of public, private and voluntary-sector organisations providing public services. The mix brings diversity of approaches and achieves the healthy competitive pressure on all providers to innovate and improve over time.

The success of PPP contracts lies in the way they incentivise good performance. Financial incentives and penalties are designed to ensure that projects are delivered on time and to budget - and that service quality is maintained throughout the life of the contract. Performance management frameworks based on "payment for results" can achieve value for money gains by creating a sharper focus on risk management and accountability. Private financiers, who tend to be risk-averse, can add additional pressure and discipline on the public and private sectors to ensure that projects are robust when signed and then to ensure that contractors deliver against the agreed targets.

UNDERSTANDING HOW SOCIAL AND ENVIRONMENTAL CRITERIA RELATE TO SERVICE QUALITY AND VALUE FOR MONEY

Competition for the most economically advantageous bid must be the yardstick for public procurement. This principle still allows for social and environmentally related criteria to be taken in to account - but these must always be directly linked to the object of the contract. There will be instances where social and environmental criteria are directly relevant, given that public procurement is used increasingly to provide and support key public services. In these cases, it will be essential that such criteria are appropriately integrated into the specification of the contract and that bidders' proposals to meet these objectives are then carefully scrutinised.

Equally though, European institutions, member-state governments and individual client authorities should take care to ensure a balanced and focused approach. They must avoid distorting public procurement away from the goal of the most economically advantageous tender - which combines good-quality service with good value for money. Procurement policy should not be used for other purposes than those inherently connected with the work, supply or service itself.

FAIR COMPETITION BETWEEN THE PUBLIC AND PRIVATE SECTORS

RESPONSIBILITIES FOR ALL
PARTNERS IN ACHIEVING
WORLD-CLASS
PROCUREMENT

FAIR COMPETITION BETWEEN THE PUBLIC AND PRIVATE SECTORS

Models of public service delivery across Europe are evolving and many public authorities are becoming increasingly entrepreneurial. In this context, ensuring fair competition between the public, private and voluntary sectors becomes increasingly relevant. Alongside the new legislative package on public procurement, the Commission's Green Papers on PPP and on the provision of Services of General Interest (SGI) are also significant.

Various annual Commission evaluation reports on SGI provide good evidence of the considerable benefits that can arise from fostering competitive supply markets for the provision of SGI, such as value for money savings, a net positive impact on employment and no evidence of a negative impact from liberalisation.

It is essential to maintain and develop these competitive benefits, while also ensuring that models

of public service delivery can continue to evolve. These requirements led UNICE to reach the firm conclusion that no new framework legislation is now needed on SGI.

The Community already has appropriate competence and no further regulatory powers are needed. It has an essential role in ensuring the smooth functioning of the single market, in overseeing fair competition, and in encouraging greater EU competitiveness. In particular, existing public procurement legislation already provides the detailed rules in procurement markets. A new framework directive on SGI would duplicate measures already in place and risk counteracting single market creation through greater protectionism. Instead, the focus now should be on implementing world-class practice, both in public procurement and in delivering public services more generally.

RESPONSIBILITIES FOR ALL PARTNERS IN ACHIEVING WORLD-CLASS PROCUREMENT

The agenda is challenging for all, though the prize is worth the effort. It will be won if legislation and policies reflect the best modern commercial practice while remaining true to this constant principle: that public authorities must not limit or distort competition in their procurement.

Success also requires all those involved in public procurement to recognise the full extent of professional expertise required. The Commission has a role alongside member states in encouraging the development of procurement skills.

But above all, public procurement must be recognised as a major European market, crucial to the economic and social well-being of Europe, thereby guaranteeing the impetus for creating world-class market conditions in line with the Lisbon strategy.

WHAT IS UNICE?

UNICE is the official voice of more than 20 million small, medium, and large companies.

Active in European affairs since 1958, UNICE's members are 36 central industrial and employers federations from 30 countries, working together to achieve growth and competitiveness in Europe

UNICE

THE VOICE OF BUSINESS IN EUROPE



Austria



Belgium



Cyprus



Czech Republic



Denmark



Denmark



Finland



France



Germany



Germany



Greece



Iceland



Iceland



Ireland



Italy



Luxembourg



Malta



Norway



Poland



Portugal



Portugal



Spain



Sweedn



Switzerland



Switzerland



The Netherlands



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Turkey



United Kingdom



Bulgaria



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Hungary



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