



Stakeholder Meeting on

GREEN PAPER

**On the modernisation of EU public procurement policy
Towards a more efficient European Procurement Market
COM (2011) 15 final**

Thursday February 24th 2011 16:00 – 18:00 in Room JDE 70

Rapporteur: **Henk Kool** (NL/PES)
vice-mayor of the municipality of The Hague

DISCUSSION DOCUMENT

The consultation will focus on the questions raised by the Rapporteur in the current discussion document.

Interpretation:

Language of the Chair: NL

Languages in which you can speak: FR – EN – DE – NL

Languages in which you can listen: FR – EN



1. **Clarification or simplification**

The current procurement directives are broadly formulated and the interpretation of the current legislation is done on an *ad hoc* basis by case law in order to concretise the rules. These additions through case law are extensive and they touch upon fundamental aspects of the procurement directives. Besides that, the pace in which case law evolves is high, which leads to legal uncertainty. For instance, procurement on B-services, subsidies, service concessions, public contracts with a value under the threshold and contracts on the sale of property have all been subject to legal uncertainties in past years. A solution for these legal uncertainties is to codify existing case laws into the procurement directives. Where the advantages of codification are clarification, a wider acceptance and legal certainty, codifying would lead to more rules on public procurement.

Questions

Where should the focus be in your opinion: on clarifying or on simplifying the procurement regulations?

2. **Thresholds**

Public procurement increases competition, and should therefore lead to a better offer, however, public procurement also involves cost that have to be borne by local and regional authorities as well as enterprises. These costs are especially a burden for small and middle sized enterprises (SME's), thereby making them more reluctant to participate in a call for tender. Furthermore, under the current legislative framework the benefits of public procurement only outweigh costs on contracts above a certain value. Finally, many local and regional authorities have observed that there is no interest from other EU-member states under the current thresholds.

In the Green Paper the European Commission has indicated a negative consequence in raising the current thresholds, due to international agreements.

Questions

Taking this consequence into account, do you find it desirable to raise the current thresholds?

3. **Social criteria in public procurement and socially responsible entrepreneurship**

Local and regional authorities can influence social and welfare policies of enterprises through public procurement. An example is to require enterprises to recruit unemployed and to create internships when they perform the contract.

Questions

How do you implement and stimulate socially responsible entrepreneurship?

Have you experienced problems with the current procurement directives when applying social criteria?

4. SME's friendly public procurement

SMEs are important employers and are therefore crucial in stimulating the economy. But SME's currently suffer proportionally higher costs for participating in calls for tender which is why more flexibility and cutting of red tape is needed.

One possible solution could be to introduce a procurement passport with limited time validity, and which is a compilation of certain legal documents. Current procurement rules oblige enterprises to submit a number of standard official documents relating to among other things their financial status. The passport would replace these documents and unify these documents into one passport. Instead of having to apply for these official documents for each call for tender SMEs only have to apply for all these official documents once and because of the fact that the passport is valid for a certain period of time they can use the passport over and over again. This would mean that SME's would not have to submit these documents every time they subscribe to a procurement procedure. Such a passport is now being applied by municipalities and regional authorities; but it is also feasible to introduce this on a state level.

Questions

Are you concerned about the current burdens on SME's and the negative consequence this has on the economy?

Do you agree that the European Commission should stimulate a procurement passport on Member State level?

Do you expect that the participation of SME's would increase with the introduction of a procurement passport?

Do you have any other suggestions in order to increase the participation of SME's in public procurement?

5. Past Performance

The Rapporteur would like to consider past experience of suppliers in future procurement procedures – particularly negative experiences. This could include examples of an enterprise failing to meet its contractual obligations and quality frameworks or if an enterprise in some other way does not comply with the contract. There are examples of situations where a supplier deliberately defaults because it wishes to terminate the contract, for reasons such as a bid being too low.

In the current situation, an enterprise that (deliberately) defaults can in principle submit a new bid in another procurement procedure, which in certain cases has to be accepted. But this is often undesirable due to the fact that the relation has been disrupted and trust has been damaged.

Questions

Do you support a system in which past performances can be weighed into the procurement procedure?

Do you have any suggestions on how past performances can be weighed in?

6. Contracts between authorities

The Rapporteur advocates exemptions for contracts between public authorities. This exemption does not exist in the current procurement regulations. Public authorities are responsible of making efficient use of tax money, thus bearing a responsibility of ensuring efficiency. Making use of each other's knowledge and then giving the other public authority a small compensation for their costs, without starting a procurement procedure, is a way to achieve this efficiency.

For example: two authorities hold a joint procurement in order to buy a product. After receiving the basic goods, these goods then have to be assembled into the final product. One authority cannot assemble this on its own, but the other can. This authority is willing to do the assembling, but demands compensation for the costs incurred. Depending on the value of the contract the authority that cannot assemble these goods has to start a procurement procedure for this contract and may not use the facilities given by the other authority.

Questions

Do you support an exception enabling a contract award between public authorities?

7. Procurement regulation on water, energy, transport and postal services sectors

Questions

Do you have specific dilemmas when applying the regulation on water, energy, transport and postal services sectors?

8. Innovation

Public procurement can be used to stimulate innovation and the European Commission has issued guidelines for how this can be done. However, these guidelines build on the current public procurement rules and are not always flexible enough to allow for a close and conducive cooperation between an innovative business and local and regional authorities

Questions

Do you recognise this problem?

Do you experience other problems in public procurement legislation, when stimulating innovation?
