



EUROCHAMBRES

Connecting **business** to Europe

Contribution Paper

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SMEs' ACCESS TO PUBLIC PROCUREMENT

**CONTRIBUTION TO THE
COMMISSION'S
CONSULTATION**

Introduction

EUROCHAMBRES welcomes this opportunity to provide input on what we consider to be an extremely important issue for businesses in the European Union: SMEs' access to public procurement.

Chambers of Commerce are a key actor in this field as contracting authorities for local tenders in the case of the public law Chambers but also as the main providers of training and assistance to SMEs in getting information and understanding the procurement procedures for local, national and European tenders.

Facilitating SMEs' participation in public procurement is one of the ten principles of the Small Business Act for Europe. As such, the EU and Member States should adapt public policy tools to overcome the obstacles faced by SMEs which prevent them from tapping into the huge public procurement market, accounting for 16% of the EU GDP.

According to the latest figures, SMEs in Europe enjoy a reasonable access to public procurement, purportedly with a 42% share in public procurement above EU thresholds compared to 23% in the US, where there are specific targets and affirmative action programmes for SMEs' access to Federal public procurement¹. EUROCHAMBRES believes that there is more a need for enhancement of existing approaches in Europe, rather than for drastic measures such as positive discrimination policies in favour of SMEs, which may lead to unintended and counter-productive consequences.

This document summarizes the comments and thoughts of EUROCHAMBRES' members on the questions raised by the questionnaire that GHK Consulting is using to gather input from the stakeholders for the update of the 2007 report on 'SMEs' access to public procurement markets in the EU' commissioned by DG Enterprise & Industry. Our contribution follows the structure of the questionnaire and is intended to give further input to the Commission based on the experiences of the Chamber network on assisting SMEs in accessing public procurement.

¹ "Evaluation of SMEs' access to public procurement markets in the EU", report coordinated by DG Enterprise, November 2007

1. What are currently the main barriers on the ground preventing SMEs from bidding or from being successful?

The main barriers identified by EUROCHAMBRES which prevent SMEs from bidding or from being successful are as follows:

- **Poor access to information:** SMEs lack knowledge about where to find advertised public contracts and have difficulties in obtaining information. According to a 2008 German study on the costs of public procurement², the efforts of the German enterprises to get the interesting information about public procurement amounts nearly 4 billion € a year.
- **Lack of understanding of the rules and tender procedures,** which discourage SMEs from bidding;
- **Large size of some public contracts:** the large size of the public contracts prevents SMEs to bid due to their limited size and scope of their products and services. In Sweden, there is a clear tendency among public buyers to increase the number of large tenders. Also, many small municipalities team up to increase capacity and competence in the tender process. As a result, tenders become larger in size and difficult for small undertakings to handle.
- **Over-emphasis on the bid price** at the expense of the quality, the innovation and the longer-term value-for-money (e.g. environmental benefits). Many companies complain about how “the business deal” is less important and the legal framework is put in front.
- **Disproportionate qualification levels and certification requirements:** contracting authorities demand too many proofs of suitability, which do not always depend on the tender. Disproportionate qualification levels and certification requirements often derive from the fact that one individual sets the qualification levels for a specific tender. This person is not always the same person managing the actual public procurement process. Hence, qualification levels easily become distorted.
- **Lack of technical knowledge from the contracting authorities:** the contracting authorities do not often have sufficient knowledge about the legal framework and the technical content of what they are procuring. The procedures are therefore less and less transparent and more and more opaque. This concerns especially the procedures below the thresholds;
- **Lack of trust in objective and fair procedures of contracting authorities:** the three points mentioned above often result in a lack of trust in objective and fair procedures of contracting authorities from the SMEs, which de facto become less interested in participating in public tenders;
- **Administrative burden:** the direct costs of preparing tenders and the required time input are high. Also, small companies with little experience in public tenders often make mistakes, such as to forget to enclose certain certificates or documents from the tax authority, which automatically disqualify them in the process.
- **Regulatory burden, especially for public procurements under the threshold:** public procurement of low value follows the same regulation as procurement above the threshold. The legal framework, which is extensive in some countries such as Sweden or Germany, is seen as a barrier by both contracting authorities and companies. In this respect, Germany is experiencing a long period of altering the legal framework since last year because the framework for public procurement below the threshold is too complicated.
- **No real take up of e-procurement in many Member States:** the issue of electronic procurement has been discussed for several years but there is no real progress in this field yet. It still lacks common standards and end-to-end procedures.
- **Language issue for cross-border public procurements:** the highest hurdle when it comes to participating in public procurement procedures in other Member States is the aspect of the foreign language. Translations are

² „Kostenmessung der Prozesse öffentlicher Liefer-, Dienstleistungs- und Bauaufträge aus Sicht der Wirtschaft und der öffentlichen Auftraggeber“, Bundesministeriums für Wirtschaft und Technologie, March 2008, <http://www.bmwi.de/BMWI/Navigation/Service/publikationen.did=254980.html>

costly and time consuming. Another difficulty is to provide certain certificates or documents that do not necessarily have equivalent in all EU Member States.

2. Has the situation changes – improved or deteriorated – in the last three years?

A EUROCHAMBRES survey on the implementation of the Small Business Act³ carried out across the EU Chamber network in October/November 2009 shows that about 70% of EU governments have undertaken actions to facilitate access by SMEs to public procurement contracts, in line with the European Code of Best Practices, yet to limited effect.

Common actions taken are:

- enhance transparency and visibility of public contracts;
- increase the availability of business support schemes;
- simplification of public procurement systems via e-procurement;
- reserve a percentage of public procurement for innovative SMEs;
- avoid asking disproportionate financial requirements from SMEs;
- public procurement technical guides;
- develop the possibility of subcontracting.

The impact of these actions is seen as “moderate” or “substantial” in a majority of the Member States. However, in nearly a quarter of the Member States, Chambers of Commerce define their impact as “poor”.

In France, the situation has improved thanks to the « loi de modernisation de l'économie⁴ » adopted in July 2008 but also thanks to the development of e-procurement and a better access to the information.

In Germany, it is too early to report about the improvement or deterioration of the situation given the recent period of new regulations which took place in the country. However, it is expected that the revised legal framework will improve SMEs' access to public procurement.

In Sweden, the contracting authorities often make efforts to split the tenders into lots to facilitate the participation of small companies but many tenders are still designed for large companies.

3. How should these problems be best addressed?

Please find below EUROCHAMBRES 'proposals to address the obstacles to SMEs' involvement in public procurement mentioned in point 1.

OBSTACLES	PROPOSALS
Poor access to information	Development of websites at national level and the creation of a pan-European website containing tenders under the current EU-threshold and promotion of these platforms.
Lack of understanding of the rules and tender procedures	Better support and training of SMEs. The role of the Enterprise Europe Network, which helps SMEs to participate in European tenders, should be strengthened.

³ EUROCHAMBRES' survey on the implementation of the Small Business Act can be downloaded from www.eurochambres.eu/content/default.asp?PageID=1&DocID=2169

⁴ LOI n° 2008-776 du 4 août 2008 de modernisation de l'économie (<http://www.modernisationeconomie.fr>)

OBSTACLES	PROPOSALS
Over-emphasis on the bid price	Adaptation of the evaluation grids so that the quality of the proposals becomes a key evaluation criterion and not only the purchase price which could put the SMEs at a disadvantage compared to the big companies.
Disproportionate qualification levels and certification requirements	Guidance and training of the contracting authorities staff on markets and the special needs of SMEs (i.e. tendering in lots, alternative bids, admittance of consortia, proportionate qualification criteria, etc.).
Lack of technical knowledge from the contracting authorities	Guidance and training of the contracting authorities staff on markets and the special needs of SMEs (i.e. tendering in lots, alternative bids, admittance of consortia, proportionate qualification criteria, etc.).
Lack of trust in objective and fair procedures of contracting authorities	Dialogue between the contracting authority and the bidders: SMEs would benefit from a more frequent dialogue with the contracting authorities.
Administrative burden	Back-up checks of the required documents carried out by the contracting authorities such as in Sweden or through an electronic system of prequalification such as in Germany.
Regulatory burden, especially for public procurements under the threshold	Simplification of the legal framework: an important way to encourage SMEs, in particular small companies, to engage in public procurement is to simplify the legal framework. Small value public procurements would benefit from less demand of regulations.
No real take up of e-procurement in many Member States	Spread and use of e-procurement applications across EU Member States in order to considerably reduce the costs and save time for SMEs. Both paper and electronic procurement applications should be used as an intermediary step.
Language issue for cross-border public procurements	Strong policy decision from the European Union in order to minimize the translation costs such as making it mandatory for public administrations to accept offers in two languages for big tenders.

4. Are there any good practices at national or regional level to mention?

Please find below some best practices identified by the Chamber network:

France

The French government published a guide of good practices for public contracting authorities (JO du 31 December 2009)⁵. It is the first time in France that such a complete and practical document is published by the legislator. It

⁵ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021570204>

provides thorough guidelines to the contracting authorities, focusing notably on reducing the obligations put on the shoulders of the enterprises.

Germany

The Chambers of Industry and Commerce – sometimes in cooperation with the Chambers of Crafts – finance special institutions called Auftragsberatungsstellen (www.abst.de) whose mission is to inform, consult and support both the enterprises and the contracting authorities about public procurement practices and procedures.

Austria

The Austrian Economic Chamber organises many training programmes for contracting authorities and companies at federal, regional and even local levels. Especially smaller contracting authorities such as municipalities like to participate in round tables organised by the Chambers District Offices with procurement experts (e.g. lawyers, economists, engineers, etc.) to discuss their procurement problems and learn from best practices.

5. Are there any good examples of e-procurement solutions introduced at national or regional level which may help SMEs to participate in public tenders?

Please find below some best practices in e-procurement identified by the Chamber network:

Austria

Austria has a couple of pilots in e-procurement under PEPPOL, namely:

- Auftragnehmerkataster Österreich (www.ankoe.at), a ten year-old success story: ANKOE is an electronic list of tenderer's qualification criteria. ANKOE helps companies to save time and money, as there is no longer the need to submit all necessary qualification data for every single contract award procedure when they are registered. The annual registration fee is between €62 – 265 depending on the size of the company.
- Wiener Zeitung offers e-procurement solutions.

Europe

ChamberSign is an association of Chambers of Commerce that aims at improving the interoperability of eSignatures. Its activities range from event organisation to project development. At the moment, ChamberSign is working on the implementation of an eSignature validation platform that could be integrated in any e-Procurement platform. That tool would check the validity and quality of the certificate used to sign bids, contracts or any other document that has legal value. Further information about ChamberSign can be found at www.chambersign.com

France

The French government set up an online platform for public tenders on 4 November 2008 (www.marches-publics.gouv.fr/). This virtual interministerial market-place includes the following features:

- Search and screening of the calls for tenders and award decisions;
- Download of the specifications and additional documents related to a call ;
- Electronic submission of a response to a call;
- Receiving an automatic notification of the publication of new calls and award decisions, on a daily or weekly basis.

The French Chambers of Commerce are partners of this initiative.

Germany

With the aim to reduce the costs of getting information about public procurements below the thresholds, the German new regulation now requires that all contracting authorities, independent from the federal level, publish the contract notices on a single online platform (www.bund.de) if they are electronically published on the homepage of the contracting authority.

Sweden

In the Swedish large business regions, approximately 30-40% of the contracting authorities have e-procurement systems. Companies state a clear advantage of using e-procurement. Instead of spending an average of 50 hours on making a bid they only spend 35 hours, according to a 2008 report from the Swedish Agency for Economic and regional Growth⁶. However, half of the Swedish contracting authorities do not exploit the full potential of the system, using it simply for advertising public procurement. This has been confirmed by a recent study from the Stockholm Chamber of Commerce⁷. The lack of common standards in this area of e-procurement also hampers the development of the system.

6. What are the main benefits to SMEs from the use of e-procurement systems?

EUROCHAMBRES strongly believes that using electronic means in the tendering processes increases security, transparency and speed while significantly reducing the related costs and time for SMEs.

a. Transparency.

E-procurement reinforces transparency at various levels: awareness of new tender opportunities, transactional transparency as well as archival transparency.

Information transparency

Transparency is strengthened through the possibility of real time notification of new business opportunities. In practice, it secures valuable time for entrepreneurs to evaluate and assess the cost-benefits of tender calls instantaneously just as they have been published and made available for online consultation. Real time notification of the tendering process enhances SMEs' confidence in the public procurement process.

Transactional transparency

E-procurement enables to follow and verify all the transactions in the process of procuring. The transactions are verified, recorded and completed over a network that is accessible to the buyer and the seller, and both parties can verify what has taken place. Transactional transparency afforded by e-procurement provides smaller companies with more accountability and transparency in the tenders' adjudication processes.

Archival transparency

The possibility of returning to old procurement processes and evaluating them is important in order to evaluate the efficiency and potential corruption of the procurement function in both a company and the public sector. By recording all procurement bids, choices and evaluations – and e-procurement makes this possible – the procurement process can be independently verified and reviewed by other parties – both public and private – to look for indications that a procurement process that should be a rational, economic decision is not affected by other factors such as favoured buying or bribery.

b. Easier access to information on public procurement

Gathering information on tender opportunities on a single website greatly facilitates SMEs' access to public procurement since it saves them time and reduces the costs.

c. Elimination of mistakes

Many factors that eliminate companies from the bidding process for public contracts are due to trivial mistakes made by inexperienced bidders. Small and medium-sized companies especially have great difficulty in understanding and applying the often-complicated rules of public procurement. E-procurement provides a possible solution to this problem by eliminating some of those mistakes before bids are submitted. This can be done by

⁶ Electronic Public Procurement, The Swedish Agency for Economic and Regional Growth, 2008

⁷ The use of e-procurement in Stockholm and Uppsala Region, The Stockholm Chamber of Commerce, 2009

designing simple safeguards in the interface and bidding system used, ranging from online FAQs to more elaborate online content-error notifications alerting the user of his keyed-in mistakes.

d. Expansion of the market

E-procurement enhances bidding opportunities for potentially more lucrative tenders or specialised business requests. It should also entice companies to seek orders from abroad, and thus increasing the cross-border participation in public procurement – the value of which is quite low today.

7. What are the potential negative effects of e-procurement systems on SMEs?

E-procurement has a slow acceptance rate among SMEs compared to other Internet-based solutions as many of these companies are not familiar with e-procurement solutions, especially small firms. They often struggle to participate in public procurement and participating in e-procurement is a reality far away from their day-to-day business activities.

One negative effect would be to implement e-procurement systems too fast as it might penalise companies which for manifold reasons still do not have an optimal access to the Internet. E-procurement should be introduced concurrently to the phasing out of the conventional public tendering system.

In this regard, wide information campaigns at national levels should be launched to inform SMEs about what e-procurement is, outlining in particular the benefits and opportunities available for them.

Furthermore, electronic auctions or dynamic procurement procedures might lead to a concentration of the market. It is thus feared that SMEs lose opportunities to bid because the contracts are too big for them.

The coexistence of different e-procurement across the Member States makes it more difficult for SMEs to benefit from the advantages inherent of the electronic tendering system. Interoperability is an important issue which must be solved at the EU level.

8. Are there any good examples of innovative solutions introduced in public tenders at national or regional level?

9. Do such practices benefit SMEs in accessing public tenders?

Below are some good examples of innovative solutions introduced in public tenders at national/regional level which have been identified by the Chamber network.

Austria

- **Life-cycle costing** can be seen as a clear advantage for SMEs. Life-cycle costing and Total Cost of Ownership (TCO) do not only focus on the production price, but also include repair/maintenance /disposal costs. It could be favourable for certain SMEs.
- **Ecological criteria** might be seen as an advantage for innovative SMEs as long as no costly external certifications are needed.

France

The French « Loi de Modernisation de l'Economie »⁴ gives the possibility to the contracting authorities to favour innovative SMEs or to devote a share of their public procurement market to them. This option is on a trial basis for a period of 5 years. Other positive discriminations are accepted, in particular if they favour the environment.

Germany

Since last September, the German Chambers of Industry and Commerce and the Auftragsberatungsstellen offer an electronic procedure of prequalification for enterprises concerning goods and services (www.pg-vol.de). Especially SMEs should profit from this new system. They have now a good and cheap mean to prevent their bid from being rejected because of formal faults. Even the contracting authorities get more legal certainty by accepting the prequalification.

Sweden

The Swedish Institute for Research and Innovation (www.vinnova.se/en/) is conducting a pilot project on innovating procurement. Two projects were initiated on (i) food for eldercare and (ii) toxic free plastic bags for blood for use at hospitals. The outcomes of the projects are pending. Other projects concern clean technologies and environment friendly products.

10. What are the potential negative effects of such innovative solutions on SMEs?

None

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