



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
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Facilitating the access of SMEs and crafts to public tenders

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Background:

European SMEs and crafts do need a better access to public tenders. The public procurement market is a very important one, accounting for around 16% of the European Union's GDP and for 1,500 billion €. SMEs are the “motor” of the European economy – they contribute to up to 60% of EU-GDP and count for 99.8% of the total number of EU enterprises. Facilitating SME access to public procurement will contribute to competitiveness, job creation and innovation.

Public demand should become an important driver for innovation. The access to procurement markets could become a decisive innovation factor for SMEs, because it creates demand-driven innovation.

Facilitating the access of SMEs to public tenders, and therefore putting more players on the market, will help to promote fair and effective competition and innovative solutions. This, in turn, would benefit public authorities.

Concerning the SME access to public tenders, there are still big differences between the various Member States: Member States with strong regional structures have a higher percentage of SME participation than those with centralised structures. Another concern in some Member States is that the use of general contractors becomes more and more common, especially in the construction sector (e.g. in the building service sectors), which discriminates against SMEs. It is also becoming more and more common to use centralized procurement agencies, which is generally not in the interest of SMEs. SMEs would profit a lot if these huge differences could be reduced. UEAPME urges to make SME participation in public procurement a matter of concern in every Member State.

At a time where PPPs (Public-Private-Partnerships) are the subject of a European debate, UEAPME wants to raise the potential threat for SMEs, especially in the construction sector. The significant contract size of most PPP projects and their pre-financing requirements prevent SMEs from applying as direct private partner in the vast majority of cases. A part of the construction works is likely to be moved away from traditional “SMEs public markets” to PPP markets dominated by large companies.

UEAPME strongly recommends the use of instruments which support and simplify the participation of SMEs in the public procurement markets on the national, European and international level:

1. National level:

Within the existing European and international legal framework, contracting authorities must create favourable conditions for the participation of SMEs in public tenders:

- There must be easier rules for building consortia in the different Member States, e.g. by accepting that not all members of a consortium must fulfil all requirements as regards economical and financial standing or technical and professional ability. This is a good way to enhance the participation of SMEs in public tenders.
- UEAPME urges Member States to divide tenders into smaller lots, without prejudice to Directives 2004/18/EC and 2004/17/EC. Contracting authorities should be motivated to separate special technical parts of a project and award them separately. Authorities should also take into consideration that under current EU-rules it is possible to exempt up to 20% of a contract which otherwise need to be put out to tender.
- Public procurement can be an important driver for innovation in the SME sector. Therefore, public contractors should use smart procurement procedures (e.g. pre-commercial procurement) which allow finding new innovative solutions where it is appropriate.
- The decentralisation of public tenders, that is to say the use of regional and local structures for public procurement, would support participation of SMEs.
- Contracts should be awarded to the economically most advantageous tender (EMAT) instead of the lowest price. Award to the EMAT allow SMEs better to sell their high technical expertise.
- The complex EU-procedures should only be used with regard to public contracts exceeding the current thresholds. However, sufficiently long advertisement periods should also be observed for tenders below the threshold fixed by the Public Procurement Directive 2004/18/EC. Furthermore, UEAPME would welcome a prior publication obligation of public tenders below the EU-thresholds, in order to make it easier for SMEs to participate.
- Centralized procurement agencies should only be used where economically necessary and most profitable.

2. EU-level:

- UEAPME invites the Commission and the Council for Competitiveness to promote better access of SMEs to public contracts. SMEs ask the Commission to elaborate a Communication about the importance and possibilities of SME participation in public tenders, which should be accompanied by Council recommendations.
- UEAPME invites the Commission to start a “best practice project”. The Commission should analyse the current situation in the 25 Member States, track down best practices and make recommendations.

- UEAPME thinks that it is also very important to consider the needs of SMEs in the field of technical and quality standardisation, being closely connected to public tenders.
- The next revision of the PPP (Public-Private-Partnership) should be used to impose the award to the EMAT. The lowest price should only be allowed when duly justified.
- Forthcoming legislation on PPP (concessions and maybe institutionalised PPP) must therefore facilitate the participation of SMEs and guarantee transparency in the award process.
- UEAPME supports the Commission's view that the competitive dialogue procedure, as provided for by the Directive on Public Procurement 2004/18/EC, should be applied to purely contractual PPPs (act of award designated as a "public contract").

3. International level

Concerning the Government Procurement Agreement (GPA) of the WTO, there is a big asymmetry between Europe and its most important trading partners.

Indeed, most of the signatory states asked and obtained the exclusion of SMEs from the scope of the GPA. Hence, they are allowed to implement various measures strengthening SMEs' access to public procurement.

- To clear this asymmetry, the European Union should either obtain an abolition of the exemption of the other countries concerned or a similar exclusion (within the framework of the revision of the GPA).
- Another solution for the EU to clear this asymmetry could be the negotiation of bilateral agreements with its major trading partners.
- If this asymmetry cannot be cleared through multilateral (GPA) or bilateral agreements, UEAPME expects the EU to make a "reciprocity declaration", stating that only those countries that give European SMEs access to their tenders will be granted access to EU-tenders.

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