



"The voice of crafts and SMEs in Europe"

Public procurement: SMEs welcome simplification, warn about transparency

Increased use of "negotiation" procedure triggers risks for transparency, non-discrimination and equal treatment, warns UEAPME

Brussels, 20 December 2011 – The package of measures to modernise the EU public procurement rules unveiled by the European Commission today (Tuesday) contains some remarkable proposals and improvements to facilitate the participation of SMEs to public tenders. However, the increased recourse to the so-called "negotiation" procedure will trigger risks in terms of transparency, non-discrimination and equal treatment, according to UEAPME, the European craft and SME employers' organisation.

The association welcomed the simplification measures suggested by the Commission, such as lower turnover requirements for tender participants and the introduction of self-declaration in the initial tender stages. It also praised the Commission for promoting the division of tenders into lots, a measure that can boost SMEs' share of public contracts, and for its stance on the use of environmental and social criteria in public tenders, which as requested by UEAPME will be strictly related to the specific contract and not the company. On the other hand, the Commission suggested increasing the use of the "negotiation" procedure. This can trigger the risk of intransparent procedures to the advantage of insiders and incumbents, warned UEAPME, which also criticised the shorter deadlines introduced. These will make it more difficult for SMEs to prepare tenders, find partners and declare their interest in due time.

"Today's package of proposals shows that the European Commission has understood by and large what small companies need to access public contracts. In particular, the rules on administrative simplification and the division of tenders into lots have the potential to further boost SMEs' participation in public procurement. However, the increased use of the 'negotiation' procedure and the shorter deadlines are a concern for SMEs", said UEAPME Secretary General **Andrea Benassi**.

On the division of tenders into lots, UEAPME had suggested the introduction of the "apply or explain" principle, by which contracting authorities should separate tenders into lots as a rule, or otherwise explicitly state their reasons for not doing so. Thankfully, this solution was retained by the Commission, explained Mr Benassi: *"Many small businesses cannot face a public contract on their own, but would happily work on just one part of the project. Today's proposal to divide tenders into lots whenever feasible meets their needs and will hopefully have a positive impact on their activities."*

Several other demands made by UEAPME were also taken on board by the Commission. For instance, turnover requirements for companies participating in public tenders have been lowered to three times the contract volume, and self-declaration is now accepted in the selection process (full evidence will be requested only to the selected company). In addition, for "green procurement", "social procurement" and all cases where public tenders are used to promote other goals, any additional criteria introduced will have to be linked to the specific contract and not the company per se.

On the negative side, the time limits to prepare a tender and to express interest were significantly shortened, which will make it harder for small companies to participate. Moreover, the "negotiation" procedure by which public authorities discuss specific contractual terms with the bidders will now be allowed in an increased number of circumstances. According to UEAPME, this choice will trigger the risk of intransparent procedures to the advantage of insiders and incumbents.

"The safeguards on the 'negotiation procedure proposed by the Commission today are largely in place already. Our experience tells us that they are not sufficient to ensure transparency, non-discrimination and equal treatment in the tenders that use this method. That is why we had suggested limiting the recourse to this procedure only in a restricted number of clearly defined cases. Unfortunately, our proposal was not taken in board. This is a pity and a black spot in an otherwise impressive set of proposals", concluded Mr Benassi.

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EDITORS' NOTES: UEAPME is the employers' organisation representing exclusively crafts, trades and SMEs from the EU and accession countries at European level. UEAPME has 82 member organisations covering over 12 million enterprises with 55 million employees. UEAPME is a European Social Partner. For further information: <http://www.ueapme.com/>

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