The Modernisation
of EU public procurement Directives

Proposals of the Commission
EU procurement Directives
(replacing Directives 2004/18/EC and 2004/17/EC)
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Preparatory works

• Comprehensive **evaluation** of the impact and effectiveness of EU public procurement legislation (published 24.06.2011)

• Public **consultation** by Green Paper on the modernisation of EU public procurement policy, (synthesis of replies published 24.06.2011)

• **Conference** on the modernisation of EU public procurement policy (30.06.2011)
Results of preparatory works

- Insufficient cost-efficiency of procedures – need for less administrative burden and more flexibility

- Room for improvement of possibilities for contracting authorities to pursue other policy goals

- Room for improvement for access to public contracts (SMEs, cross-border)

- Integrity of procedures and application of the rules to be enhanced (REGIO funding and IAS, notably)
Trade-offs

- Simpler/ more flexible procedures
- Better access (SMEs, cross-border trade)
- Strategic use
- Sound procedures
- Governance / professionalization of procurement
Scope of proposal

- Proposal replaces Directive 2004/18/EC
- No changes to the Directives on Defence procurement (2009/81/EC) nor on Remedies (89/665/EEC as amended by 2007/66/EC)
- Other parallel proposals
  - Proposal on utilities procurement replacing Directive 2004/17/EC
  - Proposal on concessions
Main objectives of the reform

1. Simplification
2. Strategic use of public procurement
3. Better access to SMEs
4. Sound Procedures
5. Better Governance
1st objective: Simplification
Simplification - Green Paper replies

- Increase thresholds
- Allow more negotiation
- Simplify evidence for qualification of bidders
- Clarify public-public exemption
- Clarify rules on substantial modifications

Member States
Businesses
Public authorities
Civil society
Average
1st objective: simplification
More flexible procedures

- Possibility of increased use of competitive procedure with negotiation (art. 27)
- Publication alleviations for regional and local authorities (PIN) (art. 24.2.b)
- Reduce documentation: self-declarations
- Simplification of Dynamic Purchasing Systems (no more indicative tenders) (art. 32)
Simplification (2)

Step up e-procurement

• Step-up e-procurement: full electronic…
  – transmission of notices;
  – availability of procurement documents online from beginning of procedure;
  – communication in procedures of Central Purchasing Bodies (art. 35.4);
  – communication = mandatory 2 years after transposition deadline (art. 19.7)

• Large choice of modern electronic tools: simplified DPS, more exhaustive rules on e-catalogues and e-signatures (art. 6, 34, 19.5)
2nd objective:
Strategic use of public procurement
Strategic use – Green Paper replies

Introducing "what to buy" obligations
Abandoning link with subject-matter
Specific regime for social services
Promote innovation
Specific problems for cross border joint procurement

Member States | Businesses | Public authorities | Civil society | Average
2nd objective: Strategic use

- No “what to buy” obligations

- No abandoning of link with the subject matter, but softening (production process, externalities – Art. 66, 67)

- Facilitate handling of societal requirements through labels (Art. 41)
  - Specific label may be requested if requirements linked to the subject-matter of the product
  - Equivalent labels must be accepted as well
  - Possibility for economic operators to provide alternative evidence where no access to the label in due time

- Violation of EU social and environmental standards as exclusion ground (Art. 54.2; Art. 55.3.a; Art. 69.4, 2nd subparagraph; Annex XI)
« Strategic use »
Social aspects (1)

• Allow production process:
  – as award criterion (Art. 66)
  – criteria related to:
    • protection of health of staff or
    • social integration of disadvantaged persons (Rec. 41)
« Strategic use »
Social aspects (2)

• Sheltered workshops (Art. 17)
  – Exception extended to economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers;
  – Reduction from 50% to 30% of the minimum required percentage of disabled or disadvantaged workers
Specific regime for Social services

- Simplified rules:
  - Higher threshold – EUR 500 000 (Art. 4 d)
  - Below threshold: typically no-cross-border interest (recital 11)
  - Above threshold: Member States free to decide on procedures, only requirement: ex-ante (+ ex-post) OJ publication (Art. 75) + non-discrimination (Art. 76 (1))

- Member States must allow contracting authorities to take into account quality criteria (Art. 76 (2))
« Strategic use »
Environment

• Allow production process (e.g. paper bleach) in:
  – technical specifications (Art. 40) and
  – as award criterion (Art. 66)

• Clarify concept of life-cycle costing, allowing to take into account externalities if verifiable and monetisable (Art. 67.1 b)

• Existing common EU methodology = mandatory (Art. 67.3)
« Strategic use »

Innovation

• Innovation partnership: new procedure for developing products and services not yet available on the market

• Joint procurement
Better access for SMEs
SMEs - Green Paper replies

- Mandatory division into lots
- Introduction of a turnover cap

*Member States*, *Businesses*, *Public authorities*, *Civil society*, *Average*
3rd objective: Better access - SMEs

- Simplification of documentation
- Turnover cap (art. 56.3)
- Splitting into lots: “apply or explain” (art. 44)
- Possibility for Member States to foresee direct payment to subcontractors (art. 71)
Sound procedures
4th objective: Sound procedures

- Minimum safeguards against conflicts of interest and other illicit behaviour (art. 21, 22)
- Avoid unfair advantages because of prior association (art. 39)
- Strengthen exclusion grounds, past performance
- Strengthen rules on abnormally low tenders (art. 69)
- Clear rules for contract modifications during execution (art. 72)
5th objective: Better Governance
Professionalization of procurement
5th objective: Better Governance

• National oversight body: monitoring of structural problems, legal advice and guidance, complaints, annual report ...(art. 84)

• « Knowledge centres » : assistance to contracting authorities and business, especially for cross-border tendering (art. 87)

• Reinforce mutual assistance and information exchange amongst Member States, using the Internal Market Information system (art. 88)
Further information

http://ec.europa.eu/internal_market/publicprocurement/
modernising_rules/reform_proposals_en.htm