



The EC Public Procurement Strategy: improving quality and access

ACE General Assembly

“The impact of the Single Market Strategy on Architects”

2.12.2016

Giuseppe Manganaro

European Commission

Directorate General Internal Market, Industry, Entrepreneurship and SMEs

Directorate G – Single Market for Public Administrations

Overview

- I. Context: a) the 2014 legislative reform and b) the 2015 strategies

- II. Some elements of a) and b) aimed at improving quality and access (in particular for SMEs)

NB:

PP stands for Public Procurement

MSs stands for Member States



The 2014 Public Procurement Directives and the 2015 Strategies

The **Single Market Strategy** (COM(2015) 550) mentions the need for a more transparent, efficient and accountable public procurement (more and better data, professionalisation, stronger remedies, SMEs).

The Commission services have developed a specific **Public Procurement Strategy**.

The Strategies focus on the implementation of some major aspects of the **2014 Public Procurement Directives**, but go beyond what is necessary from a strictly legal viewpoint.

Some objectives

The objectives pursued by the 2014 Directives and/or by the 2015 Strategies include:

- **Focus on quality criteria**
- **Support for SMEs**
- **Remedies**
- **Professionalisation**
- **eProcurement**
- **More and better data**



Focusing on quality

MEAT as award criterion

Art.67 Dir.2014/24: *"Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, **contracting authorities shall base the award of public contracts on the most economically advantageous tender**".*

The **Most Economically Advantageous Tender (MEAT)** consists in the tender presenting

- a) the lowest price or**
- b) the lowest cost** (calculated by using a cost-effectiveness approach such as life-cycle costing) **or**
- c) the best price-quality ratio (BPQR)** to be assessed on the basis of **criteria linked to the subject-matter of the contract.**

Best Price-Quality Ratio (BPQR)

Price or cost + "criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question".

Non-exhaustive list of **BPQR criteria**:

- "quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics...";
- "organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract".

BPQR: a concrete example

A public authority wants to buy printers. It decides to identify the MEAT according to the following weights:

a) 35% acquisition price, 5% cost of consumables (ink), 5% electricity consumption, 5% cost of dismantling/recycling (i.e. cost)

plus

b) 10% user-friendliness

c) 5% noise emissions

d) 5% length of warranty

e) 10% aftersales service

f) 10% use of recycled materials to produce the printers

g) 10% involvement of disadvantaged persons to produce the printers.

The criteria under **b) to g)** must specifically relate to the printers being bought.

BPQR: the Tallinn conference

On 19/5/2016 the Commission organised the conference "Getting the award criteria right in public procurement" opened by Commissioner Bieńkowska.

Focus on the advantages stemming from BPQR and the prerequisites for its successful use.

50 representatives directly appointed by the MSs + 100 participants representing a variety of contracting authorities and economic operators.

Recommendations made at the Tallinn conference

- PP staff should be **specialised**
- Public buyers should have a thorough **knowledge** of the market and supply chains
- Not only buyers, but also bidders need **training**
- Specific training modules should be designed
- Data on **best practices should be compiled and shared**



Supporting SMEs

Facilitating SMEs' access to PP

The 2014 **Directives**:



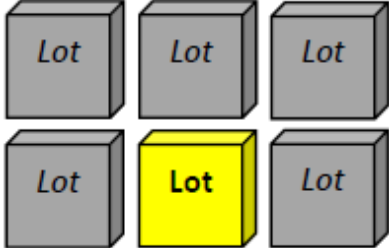

- Division of contracts into lots
- Turnover cap
- Reduction of administrative burden

The 2015 strategies:

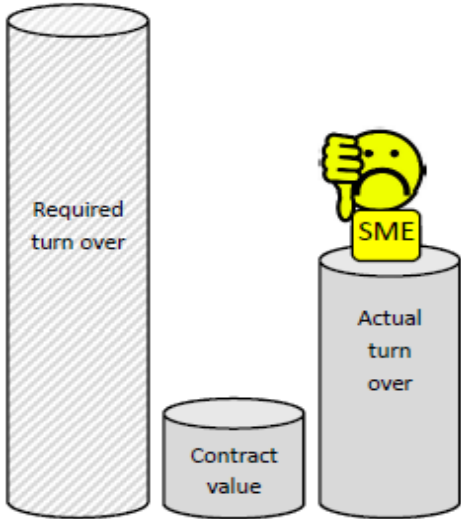
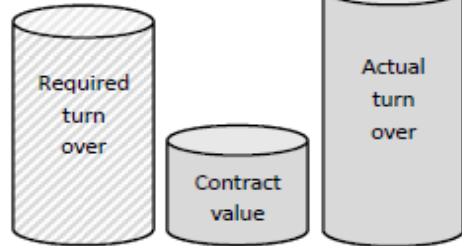
- **COSME** support






Division of contracts into lots

	Old rules	New rules
Awarding contracts in small portions (lots)	<p>Free choice for contracting authorities whether to split contracts into lots or not</p>  	<p>Splitting into lots becomes the rule</p>   <p>Deviation from this rule requires an explanation</p>

Limitation of the turnover required to participate in a tender procedure

	Old rules	New rules
Financial situation of bidders	<p>No strict limits for turnover requirements</p>  <p>Required turn over</p> <p>Contract value</p> <p>Actual turn over</p> <p>SME</p>	<p>Annual turnover of bidders must not be higher than twice the contract value.</p>  <p>Required turn over</p> <p>Contract value</p> <p>Actual turn over</p> <p>SME</p> <p>Deviation from this rule requires explanations</p>

Reduction of administrative burden

	Old rules	New rules
<u>At the start</u> of a procurement procedure	<u>All bidders</u> : full documentary evidence Overall burden: high 	<u>All bidders</u> : European Single Procurement document (standard self-declaration form) Overall burden: low 
<u>At the end</u> of a procurement procedure	---	<u>Winning bidder</u> : full documentary evidence or link to national databases Overall burden: low 



COSME

COSME is the EU programme for the Competitiveness of enterprises and SMEs.

It supports SMEs i.a. by:

- Facilitating access to finance
- **Promoting internationalisation and access to markets** ⇒ **Action "Improving SMEs' access to cross-border PP"**
- Encouraging entrepreneurship.

Improving SMEs' access to cross-border PP (COSME)

Cofinancing specific projects run by intermediate organisations.

Example of actions to be covered:

- ✓ exchange of information on procurement between Member States
- ✓ training and advisory services to SMEs
- ✓ business-to-procurers events
- ✓ partner-finding support.

Cross-border dimension

Improving SMEs' access to cross-border PP (COSME)

- Call for proposals – Q2 2016
- End of selection – Q4 2016
- Total budget – 800 000 EUR
- Max. rate of co-financing – 75%

Each project must cover at least 3 Member States



Remedies

The Remedies Directives

Directives coordinating review procedures and remedies in relation to public procurement:

- Directive 89/665/EEC, which covers the public sector
 - Directive 92/13/EEC, which covers the utilities sector
- Directive 2007/66/EC, amending both the above Directives.

Review procedures must be available in all the Member States.

The above review procedures must ensure:

- pre-contractual remedies: right to interim measures; compulsory standstill period to avoid the "race to signature"
- post-contractual remedies: declaring a contract ineffective and/or granting compensation.

Making remedies more effective

The Remedies Directives foresee that the Commission **monitors** their implementation and reports to the European Parliament and Council on their **effectiveness**.

The 2015 Strategies foresee that the Commission encourages the MSs to:

- create or strengthen **specialised first instance administrative review bodies**
- network first instance review bodies
- improve the monitoring of the effectiveness of national review systems.

What has been done so far?

- The **study** "*Economic efficiency and legal effectiveness of review and remedies procedures for public contracts*", available on the Commission's website
 - **Report:**
<http://ec.europa.eu/DocsRoom/documents/10087/attachments/1/translations/en/renditions/native>
 - **Country fiches:**
<http://ec.europa.eu/DocsRoom/documents/10087/attachments/3/translations/en/renditions/native>
- A **public consultation** on remedies in 2015 which yielded 170 responses coming from all EU Member States
- **Targeted consultations** (first instance specialised administrative review bodies, judges, lawyers, experts, Member States)
- Review of national legislations, academic literature and case law

Main findings

Widespread **stakeholders' positive perception** of the relevance of the Remedies Directives and of their impact in improving the openness and transparency of public procurement.

The Commission has identified the following problems (differences between the MSs):

- **length of procedures**
- **number of cases**
- **fees and litigation costs.**



Follow-up

In 2017 the Commission shall **report** to the European Parliament and Council on the effectiveness of the Remedies Directives.

The Commission will continue to advocate for

- creating specialised first instance administrative review bodies
- networking first instance review bodies
- improved monitoring of national review systems.

The Commission could publish **guidance documents** on specific issues (e. g. the sanction of ineffectiveness, acceptable/proportionate court fees).



Professionalisation

Professionalisation of public buyers - why

- In the EU, at least 82% of waste in public procurement is due to lack of the appropriate competence, market analyses and contract enforcement.
- Around € 50 billion of public expenditure in the EU could be saved by more professionalised procurement.
- A sufficient level of professionalisation is a pre-condition to use more advanced purchasing methods (e.g. BPQR, green procurement).

Professionalisation of public buyers – how

Commission action for professionalisation in public procurement:

- 1. Raising awareness about and incentivising professionalisation** in the Member States, through exchange of best practice and possibly a Recommendation.
- 2. Offering guidance on problematic aspects** (e.g. moving from "lowest price" to "best price-quality ratio") through conferences and guidelines.
- 3. Creating a European Competence Framework for PP** listing competences and skills necessary to carry out PP.
- 4. Creating targeted training schemes for auditing institutions and judges.**



eProcurement

eProcurement – why

- **Economic savings**

World Bank estimates that eProcurement can trigger savings of 6 to 13.5% of the total public procurement expenditure. The Commission estimates that the adoption of eInvoicing in public procurement across the EU could generate savings of up to 2.3 bn €.

- **Shortened procedures and reduced administrative burden**

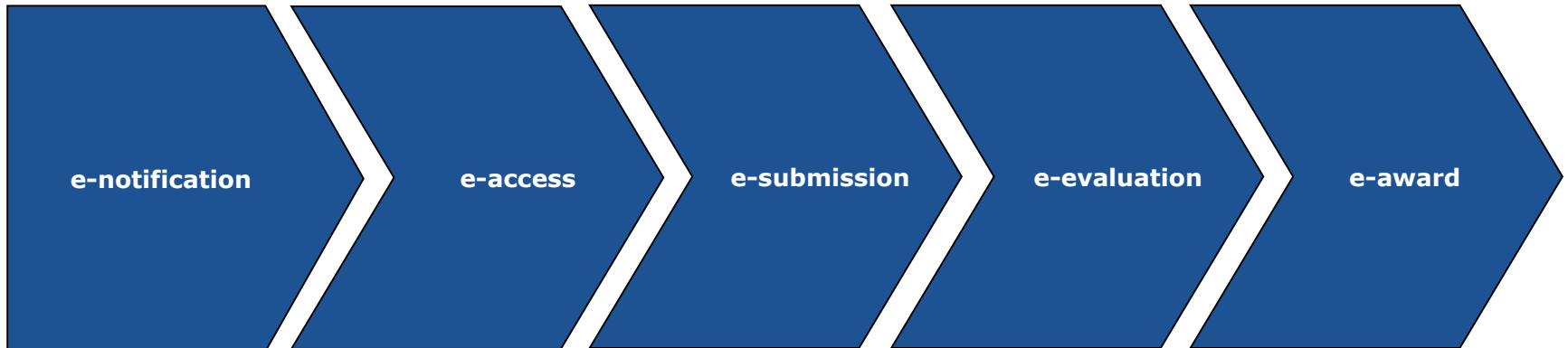
The Lombardy Central Purchasing Body assessed in 2009 that the introduction of eProcurement reduced the duration of procurement procedures by 26% and litigation by 88%.

- **Increased SMEs participation in procurement**

In South Korea, the participation of SMEs in public procurement increased by 20% between 2003 (when eProcurement was introduced) and 2010.

- **Better data** collection about procurement for evidence-based policy making.

The 2014 Directives foresee the gradual transition to mandatory eProcurement



Transposition (April 2016)

Centralised Purchasing Bodies (April 2017)

All public buyers (October 2018)

Benefits of eProcurement

The introduction of mandatory eProcurement will increase transparency of and access to PP.

eProcurement will also contribute to implementing the "**once only principle**" = citizens need to provide information to the public administration only one time.

eProcurement implies the digitisation of the **European Single Procurement Document (ESPD)**.

ESPD is a self-declaration form that will reduce administrative burden: the economic operator will need to provide the required evidence (e.g. proof of having paid all social contributions) only in case it is selected in the public procurement procedure.



More and better data

Improving the collection and use of data

This strand covers several actions, including:

Improving data from procurement notices
("eForms")

Supporting the establishment of contract registers

Supporting the establishment of irregularity
databases

Improving data from procurement notices

Procurement notices ("eForms") are electronic documents used to inform the public about procurement procedures and awarded contracts.

The Commission wants to make eForms:

- easier to use (clearer, simpler, more electronic-friendly)
- more useful for data analysis
- more relevant for businesses.



Public consultation on eForms

Published on: 22/11/2016 – Deadline:16/01/2017

http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8997

The Commission welcomes comments from a wide variety of stakeholders, including economic operators, academics, associations, other interested parties.

The feedback received will be taken into account when drafting the implementing regulation to be approved by the MSs in 2017.



Thank you for your attention!