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“Which Public Procurement Procedures will be helpful to SMEs and which will be a hindrance?”

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Public contracts, which count for more than 16% of EU GDP, are an important market for SMEs; such contracts can drive innovation and contribute to economic stability at regional level. The accessibility of public contracts for SMEs varies significantly between Member States and Regions. Therefore, I want to put forward some good practices as regards the participation of SMEs in Public Procurement Procedures. Furthermore, I will make some comments on the legal and administrative framework for such procedures and finally, I will make some proposals for support measures helping SMEs to participate successfully in this market.

I. Good and bad practices as regards accessibility of SMEs to public contracts

1. **Volume of contracts** – due to their size, SMEs can only participate in tenders when the volume of a contract is adequate to the turnover of the company.
 - + tendering of smaller lots – lots divided by tasks, by regions
 - + use of exemption of lots below 1 Mio EUR, up to 20% of general contract in the Procurement Directive (work contracts)
 - + binding rules to force contractors to invite a minimum number of SMEs to restricted tenders and negotiation procedures
 - + use of direct purchasing of very small contracts – should be increased
 - trends to use centralised procurement agencies and general contractors, which reduce access for SMEs significantly
 - use of framework contracts and renewable contracts
 - large PPP projects and pre-financing requirements
2. **Access to information about tenders** – SMEs normally don't have the capacity to do extensive research for new tenders and need more time to prepare competitive offers.
 - + obligation for pre-notification for European and national contracts
 - + obligation to publish all contracts in a centralised and easy accessible medium
 - + internet portals for announcing tenders
 - + use of electronic means for the distribution of documents and the communication with contracting authorities
 - + standardisation of e-procurement procedures
 - + in cases of restricted tenders or negotiation procedures a minimum number of SMEs has to be invited

3. **Participation of SMEs in procurement procedures** – due to SMEs’ size and limited administrative capacities some procurement rules are currently disadvantaging the participation of smaller companies, even if they are highly competitive as regards quality and price.
 - + strict exclusion of offers with formal errors: allow SMEs to correction of formal errors, if the correction does not disrupt competition
 - use of the competitive dialogue to award contract: such procedures exclude most of SMEs and should be limited to the minimum
 - use of technical or functional description instead of technical standards: needs more preparatory work for an offer and disadvantage SMEs
4. **Qualification criteria** – public tenders very often require a wide range of professional, technical and economic qualification criteria and references from other contractors.
 - + contractors should allow and facilitate the creation of consortia and encourage their participation in public procurement – more offers will lead to better prices:
 - not every member of a consortium should have to fulfil all qualification requirements, but the consortium as a whole
 - + to allow new companies to enter the procurement market references can be replaced by qualification
 - + qualification criteria must be proportional to characteristics of a specific contract
 - large PPP projects and pre-financing requirements
5. **Procurement contracts are financially burdensome for SMEs** – public procurement authorities are not known as early and prompt payers and tend to ask for expensive financial guarantees.
 - + public contractors have to respect fully the existing late-payment regulations
 - + financial guarantees for public contracts have as limited as possible and should decrease in line with delivering
6. **Subcontracting – a growing but less attractive possibility to participate in public contracts** – the increasing use of centralised procurement authorities, general contractors and large scale PPPs makes it more and more difficult for SME to get direct awards from public contractors – they have to participate as subcontractor.
 - + rules to subcontract a minimum amount to SMEs
 - + standardised contracts for subcontracting to compensate subcontractors for the limited negotiation power

II. Legal and administrative framework

1. The European legal framework on public procurement does not discriminate against SMEs, but there is some room for improvement (pre-notification, subcontracting).
2. The existing legal framework allows a wide range of measures, which would facilitate access of SMEs to public contracts – see good practices in chapter I.
3. The main barriers for SMEs access to public contracts are created by administrative regulations and internal rules for procurement officers:
 - Controlling instruments by Courts of Auditors and others force procurement officers to buy the cheapest and most well-known standard product or service. This behaviour creates disadvantages for innovative SMEs.

- An administrative separation between entities which buy something and entities which run this investment will force the procurement officer to ignore life-cycle costs and does not allow buying the economic most advanced offer.
- Therefore, only if there is a political will to facilitate the access of SMEs to public contracts and only if there are clear signals and incentives for procurement officers to facilitate access of SMEs, the legally existing instruments (see above) will be used in practice. This is true for all administrative levels, at European, national, regional and local level.
- Furthermore, facilitating the participation of SMEs may create some additional work for procurement offices (more tenders, more precise technical descriptions, better adjusted qualification criteria, etc.). Therefore, such facilitations will only take place if they are part of the internal regulation for procurement offices.

III. Support measures for SMEs provided by public services or business associations

1. SMEs need easy access to tender information. This is especially true for countries with decentralised public procurement practices. Access to tender information can be facilitated by:
 - centralised publication of all tenders in one media;
 - creation of internet portals, which allow access to information about all tenders;
 - provision of additional services, which allow SMEs to find easily tenders in their market segment or even alert SMEs on tenders fitting in their predefined profile.
2. Business associations and chambers should:
 - provide SMEs with information about tender procedures, information channels and support services;
 - demand more SME-friendly internal procurement rules from administrations;
 - elaborate, together with public authorities, minimum standards and standard contracts for subcontracting to compensate SMEs for their limited negotiation power.

Please find more about UEAPME policy on public procurement at:

http://www.ueapme.com/EN/policy_legal_public.shtml

and contact for further information on this document

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