



Federation of European Accountants  
Fédération des Experts comptables Européens

European Commission  
DG Internal Market and Services  
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12 April 2011

Ref.: PSC/PRJ/HOL/SRO

Dear Sir or Madam,

**Re: European Commission's Consultation Paper on the modernisation of EU public procurement policy - Towards a more efficient European Procurement Market**

- (1) FEE (the Federation of European Accountants) is pleased to provide you below with its comments on the European Commission's Consultation Paper on the Green Paper on the modernisation of EU public procurement policy - Towards a more efficient European Procurement Market. FEE's ID number on the European Commission's Register of Interest Representatives is 4713568401-18<sup>1</sup>.
- (2) FEE concurs with the objectives of the EU Directives in the field of public procurement as they are identified in the introduction of the Green Paper (pages 4 and 5), which are to increase the efficiency of public spending, to allow procurers to make better use of public procurement in support of common societal goals, and to prevent and fight corruption and favouritism. Our comments to the Green Paper will be limited to some observations related to the questions identified below.

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<sup>1</sup> FEE is the Fédération des Experts comptables Européens (Federation of European Accountants). It represents 47 professional institutes of accountants and auditors from 34 European countries, including all of the 27 EU Member States. In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500.000 professional accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent and sustainable European economy.

**Question 46**

- (3) FEE supports the view that special attention needs to be paid to the access to public procurement markets by small and medium-sized enterprises as indicated under section 3.1. We recommend examining how a reference to the "European Code of Best Practices facilitating access by SMEs to public procurement contracts" could be made explicitly in a revised Directive. FEE agrees however with the Green Paper that reserving markets to specific undertakings would be in contradiction with the principle of equal treatment of tenderers.

**Question 49**

- (4) The Green paper recommends reducing administrative burdens in the selection phase. This objective is relevant for all companies and should be extended beyond SMEs. Concerning administrative information FEE would favour a "one stop shop" system, preventing public bodies from requiring any document in support of an offer which is already available to other public bodies in application of laws and regulation. As examples, we can mention the financial statements which must be filed with the registrar in compliance with the 4<sup>th</sup> EU Directive on annual accounts, filed information on the tax situation of tenderers, or filed information related to social security.

**Question 53**

- (5) FEE agrees that procurers should be aware of the structure of the markets in question. The Green Paper states rightly that "Procurement decisions which are taken without regard to market structures, even if they are fully in line with the rules of the Directives, entail the risk of consolidating or even aggravating anti-competitive structures."(section 3.2). Accordingly FEE believes that the answer to question 53 should be positive.

**Question 62/63**

- (6) The Green Paper emphasises that "addressing societal challenges should not decrease the efficiency of public procurement. Taking into account policy related considerations in public procurement should be done in a way so as to avoid creating disproportionate additional administrative burdens for contracting authorities or distorting competition in procurement markets" (section 4). However, FEE supports the objective of the Green Paper to propose solutions to allow procurers to adequately integrate considerations related to other policy objectives such as sustainability. It is indeed possible that in many cases technical specifications in terms of performance or functional requirements might enable contracting authorities to achieve their policy needs better than defining them in terms of strict detailed technical requirements.

**Question 70**

- (7) According to Article 53 of Directive 2004/18/EC of 31 March 2004, the two criteria on which the contracting authorities shall base the award of public contracts are either the lowest price only or the most economically advantageous offer from the point of view of the contracting authority. As mentioned in the Green Paper, "in order to ensure effective competition between economic operators and avoid arbitrary decisions by public authorities, the current EU public procurement rules require that award criteria must be linked to the subject-matter of the contract, may not confer an unrestricted freedom of choice on the contracting authority, and must be expressly mentioned in the tender documents." Usually, in practice, awarding contracts for the procurement of audit services is based on the system of the most economically advantageous offer.
- (8) The Green Paper raises questions on these criteria for awarding contracts when pursuing environmental or other policy objectives. It questions in particular the usefulness "to change the existing rules (for certain types of contracts/ some specific sectors/ in certain circumstances):
- 70.1.1 to eliminate the criterion of the lowest price only;
  - 70.1.2 to limit the use of the price criterion or the weight which contracting authorities can give to the price;
  - 70.1.3 to introduce a third possibility of award criteria in addition to the lowest price and the economically most advantageous offer".
- (9) FEE would like to draw the European Commission's attention to contracts including a task of monitoring or control, a specific category of services which, we believe, would deserve a specific treatment. This is relevant for instance in areas such as food security or nuclear security and - in the area of finance - to statutory audit services. A specific treatment of such contracts in the Directive would be conducive to the quality and independence of these services.
- (10) When a service provider is asked to provide compliance, monitoring or similar services, we believe that the "lowest price only" method should not be allowed as it is not the most conducive approach to achieve quality and is therefore not an appropriate use of public resources. It would be beneficial to exchange practical experiences in procurement procedures among Member States on the use of price criteria and the relative weighting against other criteria specifically with regard to understanding the impact of quality and value for money on the services procured. Financial proposals should not become, de facto, in almost all cases the criterion for the award, jeopardising the quality and efficiency of the service provided.
- (11) Furthermore, we believe that the procedures for awarding contracts in public entities using the form of a company under private law should respect the competences of the audit committee and the general assembly in the process to appoint the statutory auditor in line with Directive 2006/43/EC of 17 May 2006 on statutory audit.



For further information on this letter, please contact Henri Olivier, Secretary General, at the FEE Secretariat on +32 2 285 40 71 or via e-mail at [henri.olivier@fee.be](mailto:henri.olivier@fee.be).

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Philip Johnson', is written over the typed name. The signature is fluid and stylized, with a long horizontal stroke extending to the right.

Philip Johnson  
President