ACCOUNTANCY EUROPE.

CONSULTATION RESPONSE

ACCOUNTANCY EUROPE FEEDBACK ON THE PUBLIC PROCUREMENT ACT (PPA)

Accountancy Europe is pleased to share its feedback on the European Commission's proposal for a Public Procurement Act (PPA). We welcome overall the PPA's objective of making public procurement more accessible for SMEs, and many of the proposed changes to the current EU framework are commendable from this perspective. We propose below two changes that, we believe, would make the PPA even stronger from a SME access perspective.

PROPOSED CHANGES

Our proposed changes relate, specifically, to Articles 100 (1) and 103 (2) of the proposed Regulation.

ARTICLE 100 (1): MAKE PUBLIC CONTRACTS MORE ACCESSIBLE FOR SMES

The Commission proposal requires public buyers to consider division into lots, but falls short of establishing an EU-wide obligation-by-default to divide qualifying contracts. Nevertheless, recital 43 of the proposal expressly recognises meaningful lot division as a principal means of facilitating SME participation and diversifying the supplier base. We therefore recommend a rebuttable obligation-by-default to divide contracts into lots, as large, bundled contracts can restrict access for smaller providers.

Our proposed obligation would remain proportionate, as non-division would still be permitted where public authorities demonstrate through objectively verifiable criteria that division would materially compromise procurement efficiency, coherence or integrity. Our main point is to simply introduce a 'comply or explain' mindset to the design of public procurement contracts falling under the PPA's scope.

OUR RECOMMENDATION

We, therefore, propose the ***following amendments*** to the wording in Article 100 (1):

"Public buyers shall ***divide contracts into lots or, where appropriate, enable joint participation by groups of economic operators, including through arrangements in which one economic operator acts as coordinator. By way of derogation, public buyers may decide not to divide a contract into lots where division would, by reference to objectively verifiable criteria, materially compromise the efficiency, coherence or integrity of the procurement. In such a case, public buyers shall publish, in the contract notice, a reasoned justification for not dividing the contract into lots, in addition to any record kept under Article 109."***

ARTICLE 103 (2): ENSURE MORE FREQUENT COMPETITIVE OPPORTUNITIES

The Commission's PPA proposes a five-year limit for multi-operator framework agreements, which would thus extend the ordinary four-year limit. However, we are concerned that such a longer framework term can prolong the period before which non-participating providers have an opportunity to compete for admission through a new framework procurement. A four-year maximum for multi-operator framework agreements would preserve the established benchmark and limit prolonged exclusion of non-participating providers.

OUR RECOMMENDATION

We propose the following amendment to the wording in Article 103 (2):

"***four*** *years for framework agreements with several economic operators."*