

Thursday 4 October 2018

P8\_TA(2018)0378

## Public procurement strategy package

European Parliament resolution of 4 October 2018 on the public procurement strategy package (2017/2278(INI))

(2020/C 11/07)

*The European Parliament,*

- having regard to the Commission communication of 3 October 2017 on Making Public Procurement work in and for Europe (COM(2017)0572),
- having regard to the Commission communication of 3 October 2017 on Helping investment through a voluntary ex-ante assessment of the procurement aspects for large infrastructure projects (COM(2017)0573),
- having regard to Commission Recommendation (EU) 2017/1805 of 3 October 2017 on the professionalisation of public procurement – Building an architecture for the professionalisation of public procurement (C(2017)6654) <sup>(1)</sup>,
- having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC <sup>(2)</sup>,
- having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC <sup>(3)</sup>,
- having regard to Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts <sup>(4)</sup>,
- having regard to the Commission report of 17 May 2017 on the review of the practical application of the European Single Procurement Document (ESPD) (COM(2017)0242),
- having regard to Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement <sup>(5)</sup>,
- having regard to the Commission report of 11 October 2017 on the Assessment of the European Standard on electronic invoicing, according to Directive 2014/55/EU (COM(2017)0590),

<sup>(1)</sup> OJ L 259, 7.10.2017, p. 28.

<sup>(2)</sup> OJ L 94, 28.3.2014, p. 65.

<sup>(3)</sup> OJ L 94, 28.3.2014, p. 243.

<sup>(4)</sup> OJ L 94, 28.3.2014, p. 1.

<sup>(5)</sup> OJ L 133, 6.5.2014, p. 1.

Thursday 4 October 2018

- having regard to the European Economic and Social Committee opinion of 14 February 2018,
  
- having regard to Rule 52 of its Rules of Procedure,
  
- having regard to the report of the Committee on the Internal Market and Consumer Protection, the opinion of the Committee on International Trade and the position in the form of amendments of the Committee on the Environment, Public Health and Food Safety (A8-0229/2018),
  
- A. whereas the full potential of public procurement in helping to build a competitive social market economy is yet to be unlocked, and whereas over 250 000 public authorities in the Union spend around 14 % of GDP, or nearly EUR 2 000 billion, each year on the purchase of services, works and supplies;
  
- B. whereas public procurement involves the spending of a considerable amount of taxpayers' money, meaning that it should be carried out in an ethical manner, with transparency and integrity and in the most efficient way, in terms of both costs and quality delivered, in order to provide quality goods and services to citizens;
  
- C. whereas correctly implemented public procurement rules are a crucial tool in the service of a stronger single market and for the growth of EU companies and jobs in the Union and whereas the intelligent use of public procurement can be a strategic tool to achieve the EU's goals of smart, sustainable and inclusive growth, accelerating the transition to more sustainable supply chains and business models;
  
- D. whereas, when it comes to the transposition of EU rules on public procurement and concessions, the full transposition and implementation of EU law is essential to make it easier and cheaper for small and medium-sized enterprises to bid for public contracts, with full respect for the EU's principles of transparency and competition;
  
- E. whereas the Commission launched a targeted consultation on the draft Guidance on Public Procurement of Innovation on 3 October 2017, and a targeted consultation on the scope and structure of a Commission guide on socially responsible public procurement on 7 December 2017;
  
- F. whereas according to a 2016 survey, as mentioned in Commission communication COM(2017)0572, only four Member States relied on digital technologies for all major steps in public procurement, such as e-notification, e-access to tender documents, e-submission, e-evaluation, e-award, e-ordering, e-invoicing and e-payment;
  
- G. whereas according to the European Semester thematic fact sheet on public procurement of November 2017, the number of tender procedures with only one bid increased from 14 % to 29 % for the period 2006-2016, and whereas, according to Commission communication COM(2017)0572, 'SMEs win only 45 % of the value of public contracts above EU thresholds, clearly below their weight in the economy';
  
- H. whereas the new rules introduced by the 2014 directives, by facilitating public procurement and imposing more controls, should contribute to the implementation of the Europe 2020 Strategy for a sustainable, more social, innovative and inclusive economy;
  
- I. whereas according to Commission communication COM(2017)0572, 55 % of public procurement procedures still use the lowest price as the only award criterion, instead of, for instance, strategic social and environmental criteria;

**Thursday 4 October 2018**

- J. whereas the European Union is committed to the United Nations Sustainable Development Goals (SDGs);
- K. whereas it is of crucial importance that suppliers trust that the Union's public procurement systems offer simple and accessible digital procedures, full transparency, integrity and security of data;

***Legislative framework and implementation***

1. Welcomes, almost four years after the extensive revision of the Union public procurement legislative framework was concluded, the set of non-legislative measures proposed by the Commission and expects that this will create impetus for better implementation;
2. Is deeply disappointed by the pace at which many Member States have transposed the 2014 directives in the area of public procurement, and by the many delays, and deplores the fact that the Commission had to initiate infringement procedures against some Member States; urges the swift completion of transposition in all Member States without any further delay;
3. Is concerned about the next round of deadlines provided by the directives regarding electronic procurement and the transition of Member States to full e-procurement, including e-invoicing; stresses the need for the Member States' digital agendas to include the promotion of full e-procurement;
4. Calls on the Commission to finalise swiftly the Guidance on Public Procurement of Innovation and the Guide on socially responsible public procurement, in order to facilitate the implementation of the respective legal provisions in the Member States;
5. Asks the Commission to better and more clearly organise the guides and other tools developed to help Member States with the implementation of the public procurement framework, in a more accessible and user-friendly way that offers a good overview to all practitioners, while also paying attention to the languages available;
6. Welcomes the new public procurement guidance for practitioners of February 2018, designed to help national, regional and local public officials ensure efficient and transparent public procurement procedures for EU-funded projects;

***Strategic and coordinated procurement***

7. Points out that the current Union legislation, more than ever, allows for public procurement to be used as a strategic instrument to promote EU policy goals, and encourages the Member States to get the most that they can out of it; recalls that public procurement is also an important tool at a regional and local level to complement local and regional strategies and encourages public hearings and consultations with the end users of products and services;
8. Calls for the extensive use of innovative procurement to achieve smart, green and inclusive growth and to strengthen the circular economy; underlines the importance of the circular economy and, in this regard, the new possibilities offered by the new public procurement directives as regards goods and services reused, repaired, remanufactured, refurbished and other sustainable and resource-efficient products and solutions;
9. Calls on the Member States to use public procurement strategically in order to promote smart, sustainable and inclusive growth, including for SMEs and social enterprises; underlines that this requires Member States to systematically signal such policies at the highest level and support, to this end, procurers and practitioners in the public administration;
10. Points out the importance of tendering conditions which are not overly burdensome, so that access to public contracts remains possible for all companies, including SMEs;
11. Welcomes the example of adopting National Public Procurement Strategies and encourages more Member States to follow this example as a means of modernising and streamlining their public procurement systems and hence enhancing their efficiency; stresses that public procurement is a cross-cutting area for the various sectors of public administration, and that it is thus essential to have, in addition to coordination, a governance structure that involves the main stakeholders so that the fundamental decisions can be taken in a more collaborative manner and accepted by all those involved;

Thursday 4 October 2018

12. Welcomes the fact that many Member States have made provisions for the use of quality criteria (including the best price-quality ratio) and encourages their systematic application; encourages contracting authorities to apply criteria other than simply the lowest price or cost effectiveness, taking into account qualitative, environmental and/or social aspects;
13. While acknowledging that in some cases the low price can reflect innovative solutions and efficient management, is concerned about the excessive use of the lowest price as the primary award criterion in a number of Member States with disregard for quality, sustainability and social inclusion, and therefore calls on the Commission and the Member States to analyse and report on the reasons behind this situation and to propose suitable solutions where necessary;
14. Calls on the Member States to ensure that public procurement practices are in line with the Convention on the Rights of Persons with Disabilities; calls on the Member States to encourage consultation with persons with disabilities and their representative organisations in this respect;
15. Calls for the adoption of a European code of ethics for public procurement for the various actors in the procurement process;
16. Stresses that it is important for contracting authorities to consider the full life-cycle of products, including their impact on the environment, in their purchasing decisions, when appropriate, and calls on the Commission to assist in the development of methodologies to implement the concept of 'life-cycle costing';
17. Notes that innovative, social and environmental considerations are legitimate and essential award criteria in public procurement, and that contracting authorities can also pursue green, innovative or social goals through well-thought-out specifications and by allowing variant offers in a non-discriminatory way, provided that these characteristics are linked to the subject matter of the contract and are proportionate to its value and objectives;
18. Recalls that the Union's legislative framework on public procurement obliges Member States to ensure that contractors and subcontractors fully comply with the environmental, social and labour law provisions which apply at the place where the works are executed, services are provided or goods are produced or supplied, as set out in the applicable international conventions, in Union and national law as well as in collective agreements concluded in accordance with national law and practices; calls on the Commission to guarantee that this obligation is fulfilled by Member States in the transposition and application of the 2014 directives and to facilitate the exchange of best practices in this area;
19. Acknowledges that a qualitative assessment of bids requires skilled procurers, and calls on the Commission to assist Member States with the dissemination of evaluation methodologies and practices, particularly through the organisation of workshops and training courses; underlines that such assistance should be available at all administrative levels where procurement is carried out;
20. Points out that that socially responsible public procurement must take into account supply chains and the risks associated with modern-day slavery, social dumping and human rights violations; notes that efforts must be made to ensure that goods and services acquired through public procurement are not produced in a manner that violates human rights; calls on the Commission to include substantive provisions on ethics in supply chains in its new guide on social considerations in public procurement;
21. Welcomes the efforts of several Member States to set up authorities that are responsible for coordinating procurement, and acknowledges that this contributes to conducting strategic and efficient procurement;
22. Calls for more Member States to use the advantages of central purchasing and aggregation of public purchasing, and notes that Central Purchasing Bodies could and should speed up dissemination of expertise, of best practices and of innovation;
23. Stresses that, especially with the aim of fostering innovation, it is important that contracting authorities engage with the market and make sufficient use of the pre-procurement phase as preparation for the next steps; believes that pre-procurement is also an essential phase for supporting SME involvement;

**Thursday 4 October 2018**

24. Considers that the new partnership procedure will help to foster innovation, and encourages contracting authorities to cooperate with the market in order to develop innovative methodologies, products, works or services which do not yet exist; welcomes in this regard the fact that 17 innovation partnership procedures have been initiated to date;

25. Welcomes the voluntary ex-ante assessment of procurement aspects for large infrastructure projects, as proposed by the Commission, and calls on the Commission to swiftly implement the helpdesk, the notification mechanism and the information exchange mechanism, while fully respecting confidentiality;

#### ***Digitalisation and sound management of the procurement procedures***

26. Regrets the slow uptake of digital technologies in public procurement in the Union, and calls on the Member States to strive for a rapid digital transformation of the procedures and for the introduction of e-processes for all major stages, namely from notification, access to tenders and submission to evaluation, contract award, ordering, invoicing and payment;

27. Calls on the Commission and the Member States to put in place the eForms by the end of 2018 at the latest;

28. Recalls that e-procurement offers a range of important benefits such as significant savings for all parties, simplified and shortened processes, reductions in red tape and administrative burdens, increased transparency and greater innovation as well as improved access of SMEs to public procurement markets;

29. Agrees with the Commission that contract registers can be a cost-efficient tool for managing contracts, for improving transparency, integrity and data, and for better governance of public procurement;

30. Calls on the Commission to look into the possibility of interlinking national contract registers with Tenders Electronic Daily (TED) to remove the obligation on contracting authorities to publish the same information in two systems;

31. Draws attention to the difficulties that may arise for bidders, and especially SMEs, regarding requirements for certificates and signatures and encourages a light requirements regime in this respect, together with full application of the once-only principle in order to minimise the burden for bidders;

32. Emphasises that all Member States should be in a position to provide all necessary data on public procurement implementation, including data on tenders, procedures and contracts and statistical information, also in order to enable the Commission to assess the single market on procurement;

33. Calls on the Member States to promote the innovative use of open-format data, as such data are essential for any government to manage its public administration, and at the same time, to enable the economic potential of such data to be harnessed by companies, while also encouraging transparency and responsibility within institutions and bodies dealing with public procurement; points out that such data must always be published with due regard for the principle of proportionality and in accordance with the EU *acquis* on data protection and business secrecy;

#### ***Single market and improved access to procurement***

34. Points out that competitive bidding is vital in public procurement, and notes with regret a decrease in the intensity of competition in public procurement in the Union in recent years; urges the Member States recording a high percentage of notices with only one bidder to address the problem;

35. Urges the Member States to increase joint procurement procedures, including cross-border, as facilitated by the revised EU rules, and calls on the Commission to provide in-depth support in this field; considers that such procedures should not however result in contracts of such size that SMEs are effectively excluded from consideration at the earliest stage of the process;

36. Regrets that SMEs and social economy enterprises are still facing difficulties in accessing public procurement, and calls on the Commission to assess the effectiveness of the measures provided by the 2014 directives and to come forward with new solutions if necessary;

Thursday 4 October 2018

37. Asks the Commission to report to Parliament on the implementation on the ground of the 'apply or explain' principle in Article 46 of Directive 2014/24/EU, which requires contracting authorities to provide an indication of the main reasons for their decision not to subdivide into lots, which must be systematically explained in the procurement documents or the individual report;

38. Calls on the Member States to support SMEs' participation in tenders, for example by mandatory division into lots when possible or by placing a limit on the turnover required to participate in a tender procedure; highlights that division of public procurement contracts into lots fosters competition in the market as well as avoiding the risk of single-supplier dependency; calls on the Commission and the Member States to develop advisory services and training for SMEs to improve their participation in tendering processes;

39. Calls on the Commission to analyse in particular the impediments to cross-border public procurement resulting from language, administrative, legal or any other barriers, and to propose solutions or intervene in order to guarantee functional cross-border procurement;

40. Underlines the importance of ensuring interoperability in purchased goods and services and of avoiding vendor lock-in, and calls on the Commission to propose measures in this field;

41. Regrets the lack of clear and consolidated public procurement data in the EU and notes that reliable data on access to public procurement are necessary to verify the accountability of public authorities, and are a means of combating fraud and corruption;

42. Accepts the evaluation outcome of the Remedies Directive and the Commission's decision not to propose a legislative revision, but calls for continuation of the cooperation of national review bodies and for more guidance from the Commission on the directives;

43. Regrets that the Defence Procurement Directive has not yet delivered the desired results, in particular with regard to transnational infrastructure projects, and urges the Commission and the Member States to intensify their efforts to better implement the currently applicable rules;

44. Highlights the importance of transparency and the non-discriminatory nature of public procurement procedures; recalls the importance of having proper appeal procedures in place and the importance of access to guidance on how to launch an appeal;

### ***International public procurement***

45. Calls for Union action to improve the access of EU suppliers to third-country public procurement markets, as the Union's public procurement market is one of the most open in the world;

46. Expresses concern over unfair competition within public procurement procedures as a result of state interference with third-country competitors, in particular, but not limited, to the market for electric vehicles and batteries; considers that there is a need to link trade defence instruments and public procurement practices;

47. Stresses that public procurement markets are of major economic importance, given that procurement expenditure is estimated to account for 20 % of global GDP, and stresses that improving access to public procurement markets in third countries, as well as levelling the playing field for European businesses, can therefore be a major driver of growth in trade of goods and services, and also leads to greater choice and better value for tax payers' money, both in the EU and in third countries;

**Thursday 4 October 2018**

48. Points out that public procurement markets in third countries are often de jure and/or de facto closed to EU bidders; encourages the Commission to collect and provide better data on international public procurement procedures; recalls that the Commission estimates that more than half of the global procurement market is currently closed to free international competition owing to protectionist measures, which are on the rise globally, while approximately EUR 352 billion in value of EU public procurement is open to bidders from member countries of the WTO Agreement on Government Procurement; stresses the need for the EU to address this imbalance without resorting to protectionist measures; asks the Commission to ensure that European companies get similar market access to that enjoyed by our foreign competitors in the EU market and notes that the proposed so-called international procurement instrument (IPI) could under certain conditions be a means to create leverage for increasing market access;

49. Welcomes the fact that one of the six priority areas for the Commission's action in the field of public procurement is the improvement of access to procurement markets; stresses that improving access to public procurement markets in third countries, including at sub-national level, constitutes a strong offensive interest for the EU in trade negotiations, given that many EU companies are highly competitive in various sectors; stresses that government procurement should be included in each future trade agreement with a view to maximising the participation of European companies in foreign tenders; calls on the Commission to ensure compliance with and proper implementation of the provisions concerning public procurement markets contained in the EU's free trade agreements; recalls that trade agreements should be used to improve access to third countries' public procurement markets and that improved market access to third-country procurement markets, and enhanced rules for modern, efficient and transparent procurement procedures, which are crucial to obtaining better value for public money, should be key elements of any trade agreement to be concluded by the EU, while fully respecting the legitimate public policy objectives enshrined in the Union's public procurement directives; stresses that third-country economic operators must comply with European social and environmental criteria in order to qualify for public procurement contracts, as laid out in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, and encourages, in line with this, the use of MEAT (most economically advantageous tenders) criteria for the award of such contracts; notes that bilateral and sub-regional free trade agreements do not always guarantee full access to procurement markets; asks the Commission to negotiate the greatest possible access to public procurement markets in third countries;

50. Emphasises that any strategy to open up public procurement markets in third countries must concretely address the obstacles to and specific needs of SMEs to facilitate their access to markets, as they are particularly disadvantaged when it comes to penetrating third-country public procurement markets, while the effects on SMEs of exposure to new competitors from third countries must also be given due consideration; calls on the Commission to encourage the inclusion of SME-friendly procurement procedures (including cross-border initiatives and the division of tenders into lots) in trade agreements; stresses the benefits to be gained, by SMEs in particular, through digitalisation and the use of e-procurement in all public procurement processes with third countries;

51. Points out that major emerging economies, such as Brazil, China, India and Russia, are not yet part of the GPA, while China and Russia are officially in the process of acceding, and asks the Commission to encourage and promote third countries in their efforts to join the GPA, as multilateral and plurilateral agreements are the best way to establish a level playing field in the long term; stresses that bilateral trade agreements with ambitious procurement provisions that respect the underlying principles of the GPA can be a stepping stone for enhanced multilateral cooperation;

52. Highlights the importance of the GPA not only for providing de jure access to procurement markets in third countries, but also for enhancing the transparency and predictability of procurement procedures; encourages the Commission to promote the development of global and convergent standards for transparent procurement as an important tool for combating corruption; more specifically, asks the Commission to strive for the inclusion in trade agreements of provisions on joint rules for public procurement which enable reporting of corruption, simplify procedures and strengthen integrity and transparency for bidders;

**Professionalisation**

53. Welcomes the Commission's recommendations on professionalisation and calls on the Member States to develop national plans as a priority; suggests that each plan should differentiate between types of procurement, in particular as SME access to procurement in services and digital infrastructure may be facilitated in a different way to procurement access in the case of large infrastructure contracts;

54. Calls on the Commission to propose the means for financial support from Union funds to support relevant actions on professionalisation in the Member States;

Thursday 4 October 2018

55. Regrets the low level of professionalisation among those responsible for public purchasing and calls on the Member States to improve the skills of everyone involved in all stages of the public procurement process;

56. Underlines that both procurers and suppliers need to be adequately trained in order to work efficiently at all procurement stages, and that attention must be given to all levels of public administration and to quality criteria, including social and environmental criteria, regarding professionalisation; believes that better results can be achieved by improving how public authorities consider what they will procure as well as how they procure it; without prejudice to the negotiated procedure, regrets that public procurement can often be captured by more experienced firms, which assist in the design phase of a procurement contract and as a consequence are better placed to win the contract;

57. Asks Member States to encourage universities to further develop university courses in European public procurement law and to improve the training and career management of procurement practitioners, including those working in SMEs, including concerning the development and uptake of accessible IT tools; supports the creation of a common European framework of relevant technical and computer skills;

o

o o

58. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

---