



European Commission
Attn Ms Kerstin Jorna
Director General DG GROW

7 March 2025

PwC response to EC consultation on the revision of the EU public procurement directives

Dear Ms Jorna,

PricewaterhouseCoopers International Limited (PwCIL) on behalf of the PwC network and PwC EU Services EEIG, on behalf of the PwC network and all PwC firms in the 27 EU member states, welcome the opportunity to respond to the public consultation and call for evidence on the effectiveness of the EU public procurement directives. In this letter, we have provided some further insights into certain key topics covered by the consultation questionnaire.

Who we are / our locally-owned nature

- PwC is a global network of separate firms, operating locally in 149 countries around the world. We are proud of the locally-owned nature of our partnerships: each of the PwC firms in 27 EU member states are controlled and managed by partners or individual shareholders based in those member states, the large majority of whom are nationals of EU Member States. Collectively these firms employ 85,970 people in the EU (in 2024).
- The member firms in the PwC network are separate and autonomous legal entities. The PwC network is not one partnership, and each member firm is financially independent. Indeed, this structure is also important since in many parts of the world (and in each of the EU member states), the right to practise audit and accountancy is granted only to firms that are majority-owned by locally qualified professionals. PwCIL does not practise accountancy or provide services to clients. Rather its purpose is to facilitate coordination between member firms in the PwC network and it is in this capacity that we write to you on behalf of our EU members firms who are EU owned and controlled.
- PwC firms are members of PwCIL, a UK private company limited by guarantee that facilitates coordination between firms. PwCIL does not practise accountancy or provide services to clients. It works specifically to develop and implement policies and initiatives to create a common and coordinated approach for firms in key areas such as strategy, brand, risk and quality. PwC firms have the right to use the PwC name, and the resources and methodologies of the PwC network are made available to them. In return, firms agree to abide by common policies and standards. The firms in our network are committed to

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working together to provide high-quality services on a global scale to international and local clients, while remaining local businesses with deep knowledge of local laws, regulations, and standards.

Renewed focus on EU competitiveness

We recognise the changing geopolitical landscape and the need for the EU to focus on building a more resilient and competitive Europe, with increased focus on defense and competitiveness. This also includes external advice through procurement activities in various areas that need to be objective-driven, transparent and fast - with minimal bureaucratic overhead.

Overall effectiveness of the EU public procurement directives

We believe that overall, the EU public procurement directives are modern, forward-looking, and have created a transparent and competitive landscape in the EU. They also rank quite highly compared to other regions in the world.

Resilience and relevance

- It would be helpful to include sustainability as an objective in the procurement directives. Some authorities already ask for carbon footprint information from service providers. Such a requirement would also assist in achieving the objectives of the Green Deal more generally.
- In our view, the directives are fit for purpose to ensure that security considerations are properly addressed by contracting authorities.
- In recent years we have observed an expansive and discretionary interpretation of the concept of 'control' of networks of firms such as ours in certain EU funded projects, which has led to the exclusion of certain PwC firms established and owned in the EU from participating in these tenders. We believe that an overly restrictive interpretation of the concept of 'control' may lead to unintended consequences and could even risk weakening rather than reinforcing the European strategic autonomy in areas such as cybersecurity. We do not believe that it is in the public interest for authorities to be deprived of access to the full range of EU resources available within PwC firms established and owned in the EU.
- In line with the announced Omnibus initiatives to reduce "red tape" for companies across the EU, we call on EU policymakers to review the ownership and control mechanism, including the use of article 12.5 and 12.6 of the DEP regulation. Our recommendation would be to remove article 12.5 and maintain 12.6 which in our view provides the same level of security guarantees as those sought under article 12.5, whilst significantly reducing the administrative burden on companies seeking access to EU tender procedures.

Simplicity, flexibility, value for money, transparency, integrity

- Requests for proposals (RFPs) are sometimes very prescriptive and focused on input. There is little flexibility to update the scope/approach in a way that does not undermine the initial selection or award criteria. This can limit service providers from coming up with innovative solutions. We recommend creating more room to focus on the objectives and outcome of a project, as is already common practice in certain member states.

- The tendering process can be bureaucratic and require many documents to be provided to the authorities. This could be improved by allowing documents to be certified and uploaded once with a central body – with renewal/revision of documents requested on an annual basis.
- The lead time for a tender is often 9 months or even a year. It would be helpful to consider whether and how this could be shortened.
- The directives include a possibility for the contracting authority to have a 'competitive dialogue' with potential service providers, however we find that this concept is rarely used, possibly because of the risk of non-compliance with the principles of fair and equal access. In our view, such a dialogue could lead to more innovative solutions, and thus better value for money.

Market access, SMEs and cross-border participation

- Cross-border procurement has improved as a result of the directives, especially for large contracts. In certain cases, language can be a barrier to procure cross-border.
- We observe mixed results with regard to SME inclusion in public procurement contracts as it varies significantly from country to country. Some have suggested making it mandatory for consortia to include SME(s) in the bid, however for some contracts this may not be an appropriate solution.
- In some instances for some EU tenders, the thresholds seem abnormally low and would benefit from adjustment.
- The two-step bidding process for framework contracts is costly and we believe may create a market barrier for smaller entrants.

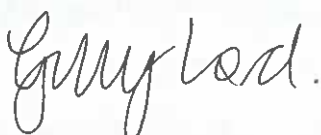
Competition

- Cascading framework contracts drive prices down, but the downside is that the contractors which are second and third on the list rarely win any specific contracts. Although it is possible for a contractor that is ranked in first position to activate the cascade and pass down work, often SLAs (service level agreements) imposed by the contracting authority penalise the first contractor for not responding to a specific request. An alternative could be to award 50% to the first contractor on the list, 30% to the second and 20% to the third (subject to determination that the other contractors have the requisite experience and capacity and are strategically aligned). The strict penalties enshrined in SLAs for not responding to specific requests could also be modified in such a way as to leave more room for cascading work to second and third ranked contractors.
- We recommend that a more balanced weighting of quality vs price is considered to ensure a good use of taxpayers' money. The purchase of goods and services should ensure the spending of public funds on items of quality, with less focus on price. The focus on price may result in a lack of quality provided by competitors, as there is no balance nor differentiation between the problem that needs to be solved and the resources with appropriate capabilities. This unfavourable equation is being observed in many countries (e.g. Germany). The downside of this approach is ultimately for the public institution that requested the services.

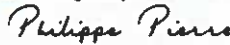
- In the interest of clarity and fair competition, contracting authorities should always provide for a maximum budget under a tendering procedure. This is fair to all and transparent.
- It would be helpful if a clear definition of price dumping could be included in the directives, detailing how a contracting authority can detect such activity and how competing bidders can seek redress, without going to court, when such dumping is observed. The absence of a clear definition of price dumping and how it can be detected and measured continues to be highly problematic, leaving the door open to excessively low prices that are not in line with market and economic realities, allowing companies to "buy a market" with distorted pricing pushing out companies that are unable to compete at these rates. Contracting authorities could also impose/define minimum day rates to ensure that bidders are not undercutting and distorting real market conditions.

If you would like to discuss any point that we have raised in this letter, please do not hesitate to contact Gilly Lord (gillian.lord@pwc.com) or Philippe Pierre (philippe.pierre@pwc.lu).

Yours sincerely,



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Global Leader for Public Policy and
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