



## 16th BILETA Annual Conference

April 9th - 10th, 2001.

University of Edinburgh, Scotland.

### Electronic public procurement: A mountain to climb or Mission Impossible?

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#### *Abstract*

European Institutions have recognised the importance of information and communication technologies (ICT) for public procurement and the potential financial benefits from introducing such systems. However, electronic public procurement has a long way to go. A simplified, efficient, streamlined system of public procurement, as operates in private markets, appears incompatible with the existing legal and policy frameworks. The EU public procurement regime is a cumbersome set of rules designed around three principles: transparency, *equal treatment* and *accountability*. The policy which underlies this regime envisages competitive public markets, liberated from protection across the EU.

The blueprint for the way ahead clearly relies on electronic commerce infiltrating the traditional methods of delivering public procurement in the member states of the EU. Private markets have already embraced systems of electronic procurement and are reaping the financial benefits of an efficient, streamlined and rationalised process. The introduction of ICT into public procurement could achieve cost savings for both the demand and supply sides. Theoretically, an efficient and cost effective electronic procurement system for the public sector could pave the way for less regulation.

#### *Introductory remarks*

In recent years, public procurement in the European Union has received a great deal of constructive criticism and has been the subject of a structural transformation[1]. The criticism evolved around preferential public purchasing practices in the Member States, which constitute a significant non-tariff barrier (NTB) to trade, as well as a considerable obstacle for the uninhibited functioning of the common market. On the other hand, the transformation has intended to insert a regulatory system in the public markets across the European Union, which through uniform, non-discriminatory and transparent purchasing patterns can achieve substantial savings for the public sector.

Procurement in the public sector represents a sizeable proportion of the EU Gross Domestic Product (GDP)[2] and when viewed from a national budgetary perspective, it could qualify as an instrument in support of conjunctural (short-term economic policies) or even macro-economic policies relating to employment, regional development and industrial adjustment[3]. In the history of European economic integration, public procurement has been an important part of the industrial policy of individual Member States[4].

Amongst the areas identified by the European Commission as actual or potential non-tariff barriers, public procurement has been the most substantive and urgent discipline to be tackled by European

Institutions and the Member States. The European Commission formulated a strategy for eliminating discriminatory public procurement amongst Member States which could pose significant obstacles to the fundamental principles of free movement of goods, the right of establishment and the freedom to provide services. That strategy was based on a principal assumption: in order to eliminate preferential and discriminatory purchasing practices in European public markets, a great deal of *transparency* and *openness* was needed and that the award of public contracts should be made according to *objectively determined criteria*.

### **The new approach towards the regulation of public markets**

The rationale behind the whole process of the integration of public markets of the Member States has been the establishment of an effectively competitive regime, similar to that envisaged for the operation of private markets.[5] European Institutions have intellectually supported such an attempt by reference to liberal economic theories,[6] where a regime of enhanced competition in public markets could bring about beneficial effects for the supply side of the equation (the industry), by means of optimal allocation of resources within the European industries, rationalisation of production and supply, promotion of mergers and acquisitions and elimination of sub-optimal firms and creation of globally competitive industries. These effects have been also deemed to yield substantial purchasing savings for the public sector.[7]

The European Commission has claimed that the regulation of public procurement throughout the Community and the resulting elimination of non-tariff barriers arising from discriminatory and preferential purchasing patterns of Member States could bring about substantial savings of ECU 20 bn or 0.5% of GDP to the (European) public sector. Combating discrimination on grounds of nationality in public procurement and eliminating domestic preferential purchasing schemes could result in efficiency gains at European and national levels through the emergence of three major effects which would primarily influence the supply side.[8] These include a *trade effect*, a *competition effect* and a *restructuring effect*.

The trade effect is associated with the actual and potential savings that the public sector will be able to achieve through lower cost purchasing. This effect appears to have a static dimension, since it emerges as a consequence of enhanced market access in the relevant sector or industry. The trade effect emanates as a result of the principle of transparency in public markets (compulsory advertisement of public contracts above certain thresholds), a fact that constitutes an improvement from previously closed preferential regimes. However, the principle of transparency and the associated trade effect in public markets do not in themselves guarantee the establishment of competitive conditions in the relevant markets, as market access -a structural element in the process of integration of public markets in Europe - could be hindered by discriminatory behaviour of contracting authorities in the selection stages and the award stages of public procurement.

On the other hand, the competition effect relates to the changes of industrial performance as a result of changes in the price behaviour of national firms which had previously been protected from competition by means of preferential and discriminatory procurement practices. The competition effect derives also from the principle of transparency and appears to possess rather static characteristics. Transparency in public procurement breaks information and awareness barriers in public markets, and as mentioned above brings a trade effect in the relevant sectors or industries by means of price competitiveness. The competition effect comes as a natural sequence to price competitiveness and inserts an element of long-term competitiveness in the relevant industries in aspects other than price (e.g. research and development, innovation, customer care). The competition effect would materialise in the form of *price convergence* of goods, works and services destined for the public sector. Price convergence could take place both nationally and Community-wide, in as much as competition in the relevant market would equalise the prices of similar products.

Finally, the third effect (the restructuring effect) reflects the restructuring dimension in the supply

side as a result of increased competition in the relevant markets. The restructuring effect is a dynamic one and refers to the long-term industrial and sectoral adjustment of industries that supply the public sector. The restructuring effect attempts to capture the reaction of the relevant sector or industry to the competitive regime imposed upon the demand and supply sides, as a result of openness and transparency and the sequential trade and competition effects. The response of the relevant sector or industry and the restructuring effect itself would depend on the efficiency of the industry to merge, diversify, convert or abort the relevant competitive markets and would also reflect contemporary national industrial policies.[9]

The above scenario represents the model envisaged by European Institutions on a macro-perspective and depicts the orientation of policy making towards the formation of a coherent industrial policy at European level. The regulation of the purchasing behaviour of the demand side in public markets seems to constitute an effective way of introducing competitive elements to the European industries, which apparently suffer from over capacity and excessive compartmentalisation, when compared to rival industries in North America.[10] In addition, the cost of research and development in such a market structure builds up and it is reflected in pricing, particularly in high-tech products. Industrial restructuring and adjustment has been a priority for the European Commission for a long time. By the introduction of a regulatory regime for the public markets in Europe, a coherent policy towards industrial restructuring and adjustment has been put in place covering both private and public markets, with a view to establishing a more competitive interface amongst industries in the common market and vis-à-vis rivals in non-member states.[11]

### **The Mechanics of EU Public Procurement**

The European Directives on public procurement have aimed at harmonisation of national provisions for the award of supplies, works and services contracts in the public sector and the utilities (entities operating in the water, energy, transport and telecommunications sectors). The public procurement regime can be classified into the public supplies sector,[12] the public works sector,[13] the public utilities sector[14] and the public services sector.[15]

The main thrust of the Public Procurement Directives relies on the assumption that transparency and improved market information should enhance market efficiency. Three fundamental principles support the EU Directives:

- \* Community-wide advertising of public contracts above certain thresholds[16];
- \* prohibition of discriminatory technical specifications;
- \* application of objective criteria of participation in tendering and award procedures.

### **The principle mandatory advertisement and publication of public contracts**

One of the most important principles of the Public Procurement Directives is the principle of transparency. Transparency in public procurement is achieved through community-wide publicity and advertisement of public procurement contracts over certain thresholds by means of publication of three kind of notices in the Official Journal of the European Communities:

- i) Periodic Indicative Notices (PIN). Every contracting authority must notify its intentions for public procurement contracts within the forthcoming financial year.[17]
- ii) Invitations to tender. All contracts above the relevant thresholds should be tendered and the notice containing the invitation to tender must include the award procedures and the award criteria for the contract in question.[18] For certain types of award procedures (e.g. negotiated and restricted), contracting authorities may publish an expression of interest in order to identify interested candidates

or tenderes.

iii) Contract Award Notices (CAN). This is a form of notification after the award of the contract of the successful tenderer and the price of its offer, as well as the reasons for its selection by the contracting authority.[19]

All types of notices are published by the Publications Office of the European Community in the Supplement to the Official Journal which is produced in a CD-ROM format and via the TED (Tenders Electronic Daily) database. Two notices are published in full in their original language only and in summary form in the other Community languages. The Publications Office takes responsibility for the necessary translations and summaries.

### **The application of standardisation in public contracts**

National technical standards, industrial product and service specifications and their harmonisation were considered priority areas for the internal market programme. The European Commission's White Paper for the Completion of the Internal Market stipulated for a number of Directives to be adopted and implemented with a view to eliminating discrimination based on the description of national standards. The rules on technical standards and specifications have been brought in line with the new policy which is based on the mutual recognition of national requirements, where the objectives of national legislation are essentially equivalent, and on the process of legislative harmonisation of technical standards through non-governmental standardisation organisations (CEPT, CEN, CENELEC)[20]. However, persistence of contracting authorities to specify their procurement requirements by reference to national standards poses obstacles in the public sector integration[21]. The European Commission has been for some time aware of the most notable examples of circumvention of the policy on standards and specifications[22]. These include the exclusive familiarity of national suppliers with technical data existing in a particular Member State, over-specification by contracting authorities in order to exclude potential bidders and finally favouritism and discrimination by contracting authorities as a result of the availability of technical standards and specifications to certain suppliers only.

Standardisation and specification can act as a non-tariff barrier in public procurement contracts in two ways: firstly, contracting authorities may use apparently different systems of standards and specifications as an excuse for disqualification of tenderers. It should be maintained here that the description of the intended supplies, works or services to be procured is made by reference to the Common Product Classification, the NACE (General Industrial Classification of Economic Activities within the European Communities) and the Common Procurement Vocabulary (CPV), however, this type of description is of generic nature and does not cover industrial specifications and standardisation requirements. Secondly, standardisation and specification requirements can be restrictively defined in order to exclude products or services of a particular origin, or narrow the field of competition amongst tenderers. National standards are not only the subject of domestic legislation, which, of course, need to be harmonised and mutually recognised across the common market. One of the most significant aspects of standardisation and specification appears to be the operation of voluntary standards, which are mainly specified at industry level. The above category is rather difficult to harmonise, as any approximation and mutual recognition relies on the willingness of the industry in question. Voluntary standards and specifications are used quite often in the Utilities sector, where the relevant procurement requirements are complex and cannot be specified solely by reference to "statutory" standards, thus leaving a considerable margin of discretion in the hands of the contracting authorities, which may abuse it during the selection and qualification stages of the procurement process.

### **The Selection and Qualification Process**

After the advertisement and publicity requirements the next phase in the public procurement process

is the selection and qualification of the tenderers. At this stage, contracting authorities vet all the responses received and determine the suitability of the candidates according to objectively defined criteria which aim at eliminating arbitrariness and discrimination.

The selection criteria are determined through two major categories of qualification requirements;

i) legal, and

ii) technical / economic.

In principle, there are automatic grounds for exclusion,[23] when a contractor, supplier or service provider; i) is bankrupt or is being wound up; ii) is the subject of proceedings for a declaration of bankruptcy or for an order for compulsory winding up; iii) has been convicted for an offence concerning his professional conduct; iv) has been guilty of grave professional misconduct; v) has not fulfilled obligations relating to social security contributions; and vi) has not fulfilled obligations relating to the payment of taxes.

#### *Legal requirements for the qualification of contractors*

The definition of a contractor wishing to submit a tender for the award of a public contract comprises any legal or natural person involved in supplies, construction or services activities. It also includes private consortia, as well as joint ventures or groupings. Contracting authorities may impose a requirement as to the form and legal status of the contractor that wins the award.[24] This requirement focuses only on the post selection stage, after the award of the contract and indicates the need for legal certainty.

#### *The technical and economic standing of tenderers*

The relevant provisions of the procurement Directives relating to the criteria of a tenderer's good technical and economic standing are directly effective.[25] They refer to the technical ability and knowledge of the contractor, where proof of them may be furnished by educational or professional qualifications, previous experience in performing public contracts and statements on the contractor's expertise. Evidence of financial and economic standing may be provided[26] by means of references including: i) appropriate statements from bankers; ii) the presentation of the firm's balance sheets or extracts from the balance sheets where these are published under company law provisions; and iii) a statement of the firm's annual turnover and the turnover on construction works for the three previous financial years. The list of references in relation to the contractors' economic and financial standing is non-exhaustive.

#### *Lists of recognised contractors*

Registration in lists of recognised contractors that exist in various Member States may be used by contractors as an alternative means of proving their suitability, also before contracting authorities of other Member States.[27] Information deduced from registration in an official list may not be questioned by contracting authorities. Nonetheless, the actual level of financial and economic standing and technical knowledge or ability required of contractors is determined by the contracting authorities. Consequently, contracting authorities are required to accept that a contractor's financial and economic standing and technical knowledge and ability are sufficient for works corresponding to his classification only in so far as that classification is based on equivalent criteria with respect to the capacities required.

### **The Award of Public Contracts**

#### *Tendering procedures*

Participation in tendering procedures is channeled through open, negotiated or restricted procedures.

\* Open procedures are those where every interested supplier, contractor or service provider may submit an offer.[28]

\* Negotiated procedures[29] are such procedures for the award of public contracts whereby contracting authorities consult contractors of their choice and negotiate the terms of the contract with one or more of them. There are two different kinds of negotiated procedures: i) negotiated procedures with prior notification and ii) negotiated procedures without prior notification.

\* Finally, Restricted procedures[30] are those procedures for the award of public contracts whereby only those contractors invited by the contracting authority may submit tenders. The selection of the winning tender usually takes place in two rounds. In the first round, all interested contractors may submit their interest and the contracting authority selects, from the candidates, those who will be invited to tender. In principle, the minimum number of candidates to be selected is five. In the second round, bids are submitted and the successful tender is selected.

### *The Award Criteria*

There are two criteria laid down in the Public Procurement Directives for awarding public contracts:

\* the lowest price

\* the most economically advantageous offer

The lowest price criterion is self-explanatory.[31] The tenderer who submits the cheapest offer must be awarded the contract. Subject to the qualitative criteria and financial and economic standing, contracting authorities do not rely on any other factor than the price quoted to complete the contract. The reasons for utilising the lowest price criterion are: simplicity, speed, less qualitative consideration during the evaluation of tenders.

The understanding of what is the most economically advantageous tender offer[32] is to be made on a series of factors and determinants chosen by the contracting entity for the particular contract in question. These factors include: price, delivery or completion date, running costs, cost-effectiveness, profitability, technical merit, product or work quality, aesthetic and functional characteristics, after-sales service and technical assistance, commitments with regard to spare parts and components and maintenance costs, security of supplies. The above list is not exhaustive and the factors listed there in serve as a guideline for contracting authorities in the weighted evaluation process of the contract award. The order of appearance of these factors in the invitation to tender or in the contract documents is of paramount importance for the whole process of evaluation of the tenders and award of the contract. The most economically advantageous factors must be in hierarchical or descending sequence so tenderers and interested parties can clearly ascertain the relative weight of factors other than price for the evaluation process.

### **Introducing ICT to EU public procurement**

The limited exposure of the EU public procurement regime to information and communication technologies has served the purpose of assisting the principle of mandatory advertisement of public contracts by improving the transparency ratios of contracting authorities. The creation of the Tenders Electronic Daily (TED) Data Bank, the introduction of an electronic format (CD-ROM) of the Supplement of Official Journal of the European Community, the establishment of a the SIMAP (Système d'Information pour les Marchés Publics) project and the introduction of the Common Procurement Vocabulary (CPV) should be

regarded as a means to facilitate the supply side (the industry) in determining the purchasing intentions of the demand side and not as a stride to introduce a fully-fledged electronic procurement in the public markets of the European Union.

The Tenders Electronic Daily (TED) is a data bank operated by the Publications Office of the European Community. It is based in Luxembourg and publishes the full version of tender notices or their summary in all languages. Companies may subscribe to TED to receive the relevant information on-line. TED information may be also accessed through the network of the "Euro-Info Centres" based on European Documentation Centres across the Member States. The paper version of the Supplement of the OJEC has been replaced by a CD-ROM version since July 1998, which is distributed to individual companies through subscription and is available in European Documentation Centres across the Member States.

The SIMAP is an information awareness project set up by the European Commission and funded through the Commission's IDA (Interchange of Data between Administrations) project. The SIMAP intends to improve accessibility to public procurement law and policy to companies and contracting authorities across the European Community by encouraging suppliers and contracting entities to adopt best practice in public procurement and the use of electronic commerce and information technology. SIMAP also provides a discussion forum on recent developments on public procurement and up-to-date guidance on legal and policy matters.

The CPV is a detailed standard nomenclature and numbered reference system for identifying products and services in notices published in the Official Journal and in statistical reports dispatched by Member States to the European Commission. The CPV was created in 1993 and was described as a tool for improving transparency and efficiency in processing information relating to public contracts. The use of standard terms in the CPV allows potential tenderers to identify the contracts in which they are most interested. The CPV also facilitates fast and accurate translation of contract notices for publication in the OJEC and makes it easier to establish procurement statistics. The CPV is based on the UN Classification of Products by Activity (CPA), as the latter is a comprehensive industrial nomenclature with which the European industrial base is well familiar. The CPA is a supplier-oriented system and in order to accommodate the needs of public procurement contracts some changes were made. CPA codes have six digits. For the CPV two more digits were added in order to make codes more accurate and a ninth digit was added, in order to check the correctness of the other eight ones. These codes and the definitions of products (goods and services) in all the languages of the European Union constitute the main vocabulary. A supplementary vocabulary is also designed to help contracting entities describe the subject matter of contracts comprehensively. It includes a letter that defines the general field concerned and four digits, the fourth one being a check digit.

The CPV has undergone several revisions since its inception. As a codified nomenclature of industrial activities, it will continuously be revised and developed in order to embrace the needs of the demand and supply side of public procurement and the technological advances available. The European Commission urged contracting authorities to use the CPV when drafting public procurement notices. However, its use remains optional. The CPV use may be also valuable in monitoring the award of public contracts below the thresholds of the public procurement Directives.

## **The road to e-public procurement**

### *The Commission's proposals*

The European Commission plays a central role in the application of public procurement law and

policy. However, in its 1998

Communication<sup>[33]</sup>, it admits that the development of fully-fledged electronic procurement systems is not its direct

responsibility. The Commission rather sees Member States as the appropriate initiator of electronic procurement systems and

attempts to induce them in developing such systems by highlighting the savings potential, particularly for large volume - low value

"off-the-self" procurement. However, the mutual compatibility and interoperability of electronic procurement systems which

Member States might set up must be guaranteed. The Commission has expressed its wish to see 25 per cent of all procurement

transactions electronically concluded by 2003. The Commission has identified some pilot projects, including projects under the WTO Government Procurement Agreement, where the use of electronic mail, electronic data interchange and Internet technology, electronic catalogues, virtual procurement networks to conduct procurement activities has been put to test. Operational concerns aside

(accessibility, interoperability, security), the biggest issue is the compatibility of such technology with the current legal regime, including proposals for standards and legislation on digital signatures.

The Commission will need to modify the Directives, develop relevant standards or specifications and also establish a regulatory e-procurement framework stipulating the right and obligations of purchasers and suppliers.

### *Modifying the legal regime*

The legal regime on public procurement in the EU is totally unfamiliar with electronic procurement in the form that the latter is taking place in the private sector. "On-line procurement", as it is frequently referred to represents a credible, streamlined method of procuring goods and services amongst private sector operators. Its benefits include efficiency gains and elimination of wastage. Electronic procurement has the potential of achieving savings for both the supply and demand sides.

The existing structure of the legal framework of EU public procurement merely accommodates information and communication technologies. Any relevant developments have served the principle of transparency which is prescribed by the mandatory publication and advertisement of contract notices and should not be seen as the prelude of the application of electronic commerce principles in public purchasing. The Directives, and the national laws that have subsequently implemented them are drafted in a way that cannot embrace electronic commerce as a method of delivering public procurement.

There are two main obstacles in the existing public procurement framework which could render any e-public procurement system inoperative:

- i) the tendering process and
- ii) the award procedures for public contracts.

The tendering process follows unnecessarily repetitive patterns, especially during the selection and qualification stages. It is sequential, a stop-and-go process, where long-term contractual relations are the exception. On the other hand, the award procedures are rigid, inflexible and are calibrated to serve the tendering process. In principle, for every contract public authorities award, there is a litany of processes and procedures which must be followed in the name of transparency, accountability and equality. However, the end results reveal a different picture.

### *Is tendering a thing of the past?*

Traditional public procurement has been delivered through competitive tendering. Policy makers supported the view that competitive tendering is the only safeguard of the principles of transparency,

accountability and savings to the public purse. However, competitive tendering, as a procurement method, has attracted widespread dissatisfaction from the industry as well as the public sector. The criticism has been primarily directed towards four elements of the process:

- i) adversarial contractual relations
- ii) inefficient risk allocation between the parties
- iii) poor contractual performances with delays and over-budget completions.

Competitive tendering in public procurement has been blamed for creating a confrontational environment, where the antagonising relations of the tendering and contract award processes are often reflected in the performance stage of a contract. Procurement procedures which are not based upon a *win-to-win* process have been deemed to deprive significant elements one can expect in the delivery of public services. For example, competitive tendering has been dissociated with innovation and quality, because the contract award is based upon the lowest price. Also, as a result of inefficiently written specifications upon which the tender should be constructed, the deliverables often differ dramatically from contractual expectations.

On the other hand, risk allocation is probably the most crucial element in contractual relations that affects pricing as well as the overall contractual framework. Risk represents the level of financial exposure of a party prior to, after the conclusion of a contract or during its performance. In traditional public procurement, the risk allocation tends to favour the supply side, which mainly assumes the risks related to the tendering process. During the performance stage of the contract and up to its completion, the demand side could, usually, shift a considerable amount of risk by requesting from the supply side performance or defects bonds or other means of financial guarantees.

Finally, traditional procurement methods have often revealed a picture of poor contracts management as a result of inefficient control systems operated by public authorities. Poor contracts management have resulted in abysmally out-of-control contractual performances with all the financial consequences attributed to the delayed completions of the projects. Tendering, amongst other things, has been deemed responsible for cyclical demand structures in public purchasing, a situation where the supply side (the industry) responds to the demand side (public authorities) through cycles of institutionalised bureaucracy (advertisement, expression of interest, tender submission, evaluation, selection, qualification, tender, contract award). The tendering procedures follow unnecessarily repetitive patterns which deprive the demand and supply sides from long-term contractual relations that can give rise to economies of scale.

#### *The award procedures*

The participation of the supply side of the public procurement equation in the tendering process is channelled through open, negotiated or restricted procedures. The Utilities Directives have introduced a new selection and tendering procedure, namely framework agreements, which is influenced to a large extent by the benefits of chain supply management and partnership schemes. The Supplies, Works and Services Directives do not refer to framework agreements. A framework agreement is an agreement between a contracting authority and one or more suppliers, contractors or service-providers the purpose of which is to establish the terms, in particular with regard to prices and, where appropriate, the quantity envisaged, which govern the contracts to be awarded during a given period.<sup>[34]</sup> Utilities claim that the utilisation of framework agreements or lists of approved vendors has resulted in cost-efficiency gains of administrative costs relating to the evaluation of tenders.

The Public Procurement Directives stipulate that open procedures, where possible should constitute the norm. Open procedures increase competition without doubt and can achieve better prices for the

contracting authorities when the latter purchase goods in large volumes. Price reduction based on economies of scale can bring about substantial cost savings for the public sector. Open procedures are mostly utilised when the procurement process is relatively straightforward and are combined with the lowest price award criterion.

Restricted and negotiated procedures are utilised in relation with the most economically advantageous offer award criterion and suited for more complex procurement schemes. Although contracting authorities can freely opt for open or restricted procedures, the latter should be justified by reference to the nature of the products or services to be procured and the balance between contract value and administrative costs associated with tender evaluation.

A more rigorous set of conditions apply for the use of negotiated procedures. Negotiated procedures may constitute an element of non-tariff protection and may encourage practices which appear to run counter to effective competition. If they are being employed as a non-tariff barrier, negotiated procedures may give rise to discrimination on grounds of nationality, preference and support of domestic uncompetitive suppliers, all of which would or could be detrimental to the position of foreign firms which will be placed at a competitive disadvantage. However, negotiated procedures may have certain positive effects in public procurement, as it may reduce the economic costs of the contracting entities, particularly in cases where product complexity which requires negotiations for the quality of procurement, or a large number of tenderers makes tender evaluation relatively expensive.

### Concluding remarks

The introduction of information and communication technologies has revealed an angle in public procurement that serves the transparency principle. So far, the majority of developments are purely "organisational", in the sense that they try to amplify traditional methods and processes in public purchasing.

Electronic procurement requires more than organisational changes to the current framework. It necessitates structural amendments to the legal regime, substantial investment from both the private and public sectors and a convergence in policy perceptions. A fully-fledged electronic procurement can positively benefit the supply side, the demand side and finally the policy makers (European and national)

Supply side	Demand Side	Policy Makers
improve transparency	speed-up selection and qualification of tenderers	assist compliance and enforcement
promote SMEs	replace certain types of award procedures for certain products	Improve statistical information
increase awareness	reduce costs	detect anti-competitive practices
promote globalised procurement		
reduce costs		

The most challenging milestone, in my opinion, will be the departure from the constraints of traditional procurement. If the *modus operandi* of public sector buyers does not change, any e-commerce application to public purchasing would be futile.

[1] See European Commission, *White Paper for the Completion of the Internal Market*, (COM) 85

310 fin., 1985; Commission of the European Communities, *The Cost of Non-Europe, Basic Findings, Vol.5, Part.A; The Cost of Non-Europe in Public Sector Procurement*, Official Publications of the European Communities, Luxembourg, 1988; the Cechinni Report 1992 *The European Challenge*, Aldershot, Wildwood House, 1988.

[2] Approximately 15% (at 1988 prices) and 11% (at 1996 prices) of the Community's Gross Domestic Product (GDP) respectively. See *The Cost of Non-Europe, Basic Findings, Vol.5, Part.A; The Cost of Non-Europe in Public Sector Procurement*, Official Publications of the European Communities, Luxembourg, 1988. Also the Green Paper on *Public Procurement in the European Union: Exploring the Wayforward*, European Commission 1996.

[3] See European Commission: Public Procurement: Regional and Social Aspects (COM(89) 400).

[4] See C. Bovis, *The Regulation Public Procurement as an Instrument of Industrial Policy in the Common Market* in T. Lawton (ed) *European Industrial Policy and Competitiveness: Concepts and Instruments*, Macmillan Publishers, 1998. S. Arrowsmith, "The Legality of Secondary Procurement Policies under the Treaty of Rome and the Works Directive", *Public Procurement Law Review*, 1992, Vol. 1. p. 410.

[5] The adverse effects of concerted practices in tendering procedures on competition in the common market were recognised by the the European Court of Justice in case *Cooperative Vereniging "SuikerUnie" UA v. Commission*, [1975] ECR 1663.

[6] See the Cechinni Report 1992 *The European Challenge*, Aldershot, Wildwood House, 1988.

[7] See European Commission, *The Cost of Non-Europe, Basic Findings, Vol.5, Part.A; The Cost of Non-Europe in Public Sector Procurement*, Official Publications of the European Communities, Luxembourg, 1988.

[8] *ibid.*

[9] See European Commission, *The Opening-up of Public Procurement to Foreign Direct Investment in the European Community*, CC 93/79, 1995.

[10] See P. Nicolaidis (ed), *Industrial Policy in the European Community: A Necessary Response to Economic Integration*, Martinus Nijhoff, 1993.

[11] See C. Bovis, *The Liberalisation of Public Procurement in the European Union and its Effects on the Common Market, Chapter 2*, Ashgate, 1998.

[12] Public Supplies contracts: EC Directive 70/32, 77/62 as amended by Directive 80/767 and 88/295 and consolidated by Directive 93/36, O.J. 1993, L 199.

[13] Public Works contracts: EC Directive 71/304, 71/305 as amended by Directive 89/440, and consolidated by Directive 93/37, O.J. 1993, L 199.

[14] Public Utilities contracts: EC Directive 90/531, as amended by Directive 93/38, O.J. 1993, L 199.

[15] Public Services contracts: EC Directive 92/50 of 18/6/92, O.J. 1992 L 209.

[16] EURO 5 m for all work and construction projects

EURO 200,000 for supplies contracts within the European Union and EURO 136,000 for supplies

contracts from third countries which participate in the WTO Government Procurement Agreement.

EURO 600,000 for supplies of telecommunication equipment under the Utilities Directive and EURO 400,000 for all other supplies contracts awarded by public utilities.

EURO 200,000 for services contracts.

[17] Article 9(1) of Directive 93/36; Article 11(1) to (3) of Directive 93/37; Article 22(1)(a) to (c) of Directive 93/38; Article 15(1) of Directive 92/50.

[18] Article 9(2) of Directive 93/36; Article 11(2) of Directive 93/37; Article 21 of Directive 93/38; Article 15(2) of Directive 92/50.

[19] Article 9(3) of Directive 93/36; Article 11(5) of Directive 93/37; Article 24 of Directive 93/38; Article 16(1) of Directive 92/50.

[20] Article 7 of Directive 88/295. See the White Paper on Completing the Internal Market, paras.61-79; also Council Resolution of 7 May 1985, O.J.1985, C 136, on a new approach in the field of technical harmonization and standards.

[21] See the Documents of the Advisory Committee for the Opening up of Public Procurement, *Policy Guidelines on the Obligation to refer to European Standards*, CCO/91/67 final.;

[22] See the report of the Advisory Committee for the Opening up of Public Procurement, *Standards for Procurement*, CCO/92/02.

[23] Article 20 of Directive 93/36; Article 24 of Directive 93/37; Article 31 of Directive 93/38; Article 29 of Directive 92/50.

[24] Article 21 of Directive 71/305 as amended by Directive 89/440 and Article 18 of Directive 77/62 as amended by Directive 88/295. The same regime is followed in the Utilities Directive 90/531, Article 26, and the Services Directive 92/50, Article 26.

[25] Case 76/81, *SA Transporoute et Travaux v. Minister of Public Works*, [1982] ECR 457.

[26] Article 22 of Directive 93/36; Article 26 of Directive 93/37; Article 31(b) of Directive 93/38; Article 31 of Directive 92/50.

[27] Article 25 of Directive 93/36; Article 29 of Directive 93/37; Article 35 of Directive 92/50.

[28] Article 1(d) of Directive 93/36; Article 1(e) of Directive 93/37; Article 1(7)(a) of Directive 93/38; Article 1(d) of Directive 92/50.

[29] Article 1(f) of Directive 93/36; Article 1(g) of Directive 93/37; Article 1(7)(c) of Directive 93/38; Article 1(c) of Directive 92/50.

[30] Article 1(e) of Directive 93/36; Article 1(f) of Directive 93/37; Article 1(7)(b) of Directive 93/38; Article 1(d) of Directive 92/50.

[31] Article 26(1)(a) of Directive 93/36; Article 30(1)(a) of Directive 93/37; Article 34(1)(b) of Directive 93/38; Article 36(1)(b) of Directive 92/50.

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