

Evaluation of EU public procurement legislation and policies Preliminary conclusions of the EPM Committee (June 2010)

I. OBJECTIVES OF EUROPEAN LEGISLATION AND POLICIES

- **Increase competition** (to open up the market and maximize cost-savings/value for money): Yes, BUT... to consider also
 - short-run savings versus innovation and creativity;
 - life cycle cost considerations;
 - comparability of solutions (transparency);
 - transaction costs;
 - the restricted procedure is the most appropriate procedure for the award of consulting services;
 - dialogue with contracting authorities (definition of scope of services).

- **Foster productivity, limit obstacles to cross-border activities, limit state aid and foster innovation**
 - distortions from state aid are to be kept to a minimum in order to maintain the functioning of the single market. State aid should be directed towards horizontal EU objectives;
 - a flexible approach in amending the public procurement directives should be taken with regard to concessions and PPPs in order to balance competitiveness and transparency with the need to maintain bid costs at a manageable level. EFCA recognises the value of disseminating best practice at EU level;
 - EFCA agrees to the objective 'removal of cross-border barriers in the internal market'

- **Support green procurement and enhance consolidation of major European players**
 - EFCA supports the introduction of environmental factors in public procurement. EFCA advocates also the integration of LCC (life cycle costing) approaches (i.e. to incorporate environmental costs) and also social aspects;
 - various aspects of consolidation need to be addressed: acquisitions, relationships between SMEs and European competitiveness at the global stage. EFCA should underline the importance of public procurement for SMEs' economic performance;
 - EFCA agrees to the objectives 'enhance European financing of projects' and 'lever investments for European infrastructures'

- **Centralise procurement purchasing**
 - EFCA agrees with the standardisation of procurement methods and administrative processes (e.g. submission of documentary evidence);
 - EFCA agrees to the use of e-procurement tools. It is emphasised that in accordance with Directive 2004/18 member states cannot use electronic auctions for works and services contracts that are intellectual-related e.g. engineering design

- procurement arrangements which allow for a 'dialogue' between awarding authorities and tenderers to determine the performance or functional requirements would provide more scope for innovative solutions.

II. IMPACT OF EUROPEAN LAW AND POLICIES ON THE ENGINEERING CONSULTANCY INDUSTRY: HAVE THE OBJECTIVES BEEN ACHIEVED?

Cross-border activity: low trans-border activity over the past decade; firms primarily opt for setting up subsidiaries (use of local staff), recurring problems with regard to licenses (regulatory restrictions of professions), language barriers, focus on regional and local markets.

Export/import and trans-border activity in the internal market mainly concern foreign establishment i.e. subsidiaries or branch offices and use of local staff.

Consolidation of the industry: direct result of market forces in Europe (cf. bundling of requirements and contract aggregation). Such development could be enhanced through a limitation of some structural obstacles (entry barriers such as national regulation of the profession, national liability framework, etc.)

In-house engineering (public sector): has decreased as a consequence of European privatisation policies, but remains important in some sectors and countries. They reduce European competition for projects, e.g. transportation infrastructure and systems.

EFCA continues to advocate that the public sector contract out commercial activities to the private sector.

In-house engineering (contractors, plant manufacturers): has decreased as a result of European policies, in particular policies on conflict of interest.

However, major international contractors have build up capacities (high-level senior staff) for PPP projects and enter niche markets (concessions for the operation of airports, harbours etc.)

PPP-like procedures

Contractors take the leadership. Consulting engineers may act either as expert advisors or will be regarded as provider of commodity services (cf. outsourcing to China and India).

III. POSSIBLE CONTRIBUTIONS OF THE ENGINEERING CONSULTANCY INDUSTRY TO EU OBJECTIVES

Quality through design and supervision

- Engineering consultants are committed to quality in their design and supervision assignments.
- Acceptance of 'fit for purpose' is to be based on a transparent and common understanding of the client's realistic performance requirements

Innovation

- Public procurement can promote innovation under the following conditions:
 - no focus on the purchase price only
 - no overly restrictive selection criteria and requirements
 - contact and dialogue with research institutions and contractors
 - identify risks and responsibilities
 - professional clients
 - venture capital

(See also EFCA-Syntec Ingénierie White Paper on Innovation)

Health and safety and sustainable development

- life cycle approach
- commitment to sustainable development
- code of conduct
- enhance and safeguarding quality of life