



EFCA PUBLICATIONS

Public procurement is an important option for the engineering industry, especially in times of economic downturn. EFCA has been closely monitoring the implementation of the "2004/18/EC Directive on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts" and looking at the practical consequences, particularly regarding PPP-type contracts. It has been producing guidance documents for national associations, and policy papers for European decision-makers, in a bid to help improve transparency and fair competition.

The following publications are available on request or can be downloaded from the EFCA website:

TRANSPPOSITION OF PROCUREMENT DIRECTIVE

➤ Award of Consulting Engineering Services: Guidelines for Transposition of Directive 2004/18 to national legislation (2010)

This procurement Directive is being incorporated into national legislation throughout the EU. These guidelines are to support national associations and their involvement in ensuring fair and transparent procedures.

➤ Policy Paper on Lowest Price Award (2010)

EFCA believes that the selection of consultants on lowest price invariably leads to a lower quality of work and stifles innovation. It points to the US and Canada where quality based selection has been integrated into procurement law and explains why the most economically advantageous tender should be used for the award of consulting services in the EU.

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Changes urged for procurement policy to better support sustainable growth

Politicians must be aware that although we are in a financial crisis, unless quality criteria for public procurement are given greater importance, the life-time costs of many public projects could rise to unacceptable levels in the future – not just in maintenance but also in environmental and social costs.

An EU review has opened the door for industry to use its experience with the current procurement directive to advise politicians, and the European Commission, how its procurement policy can be improved. This accompanies the launch of Europe 2020, the new EU strategy for sustainable growth which encompasses the knowledge society and innovation, and an EU agenda for smart regulations. The European Federation of Consulting Engineers Associations (EFCA) has welcomed the review and been in dialogue with the Commission over recent months to discuss current problems.

Consulting engineers and architects play a key role in the sustainability of public projects by incorporating the latest technologies and innovations, having access to pertinent information and bringing quality expertise to the initial design phases. But this means that the tendering process must allow for more quality criteria during the selection stage – basing final decisions on lowest cost is creating abnormally low-priced offers and can be a false economy in the long run.

"Price is important," says **Jean Félix, Vice-President of EFCA and chair of its European Public Market Committee** leading the discussions, "but it should be considered over the whole life-time of a project and not just for today otherwise low price usually means low quality and limited functionality and high maintenance costs in 10-20 years time."

EFCA is now formally submitting its proposals to the EU review and calling for changes in three main areas: value-for-money, including a selection process with more emphasis on quality; unique and common rules for opening the market and developing the knowledge society; and more flexibility and dialogue during the implementation of a public contract. EFCA also considers that improving the efficiency of European policy in the public market cannot be disconnected from the updating of other instruments of European legislation and policies, such as in the insurance and qualification services sectors.



Design and management services account for just 10% of construction costs, or 3% of construction and operation costs.

Policy Paper on the Evaluation of the Proposed Project Team (2009)

EFCA is concerned that the evaluation of the project team in the selection stage of procurement, as is widespread in the EU, may not be appropriate for conceptual, practical and legal reasons. This paper recommends alternatives for a sound evaluation procedure.

EFCA Guidance on the use of the Competitive Dialogue (2007)

Competitive dialogue was introduced for procurement that cannot be specified in sufficient detail, technically or financially, at the outset. It can become a very costly procedure for private sector participants. Drawing on the international experience of its members, EFCA is updating some practical recommendations for its fair implementation.

AWARD PROCEDURES FOR PPPS

Award Procedures for Public-Private Partnerships (PPPs) for Project Delivery (due 2011)

This guideline presents the procurement process for PPPs working with public infrastructure. EFCA has included practical proposals for streamlining the procedures for a faster, cheaper and more equitable award process.

Position Paper on the set-up of Institutional Public-Private Partnerships (IPPPs) (2006)

A lack of clarity in the legal background to the set-up and operation of IPPPs, especially when relating to the selection of private partners, prompted the release of this policy paper. Concerned that it could have a negative impact on consulting engineers, EFCA clearly set out the situation and proposed that the European Commission provide more detailed guidance in specific areas.

European Consulting Firms on international markets

EFCA's 2011 conference will take place in Berlin on 27th May under the theme **"the International Standing of European Consulting Firms"**. Speakers will analyse and debate new business models, improved human resources structures and the need for innovation in order to stay on top of global competition.

Further details are available at <http://www2.efca.be/pages/eventdetail.aspx?id=105937>

Quality services

"We are trusted advisors to clients, we offer creative services," says M. Félix. "You cannot tender for intellectual services in the same way as you do for commodities – you are purchasing a creation that doesn't exist yet! So the selection criteria need to reflect that in reaching an award decision." EFCA proposes an approach based on dialogue or a negotiated procedure that allows discussion on scope with the best technical candidates.

"You could consider consulting engineers to be like the bee," M. Félix suggests, "travelling from flower to flower, disseminating innovation and creativity country to country."

The demand for common rules is to better level the playing field, starting with cross-border mobility. "The single market is a dream that doesn't work in many sectors," says M. Félix. He feels the will is there but the legal framework is insufficient. Companies have succeeded in working in other countries but they open subsidiaries

rather than transfer people because of the imposition of local requirements. "The amount of cross-border activity in terms of import/export has not been very high for any intellectual services. If we want a knowledge society we should open the borders without being submitted to national regulations." The problem is exacerbated for most SMEs because of their size.

"We can see a future," says M. Félix "where consulting engineers are expert networkers, working with sophisticated systems to synthesise information and drawing on best practices from many countries and sectors, in order to source resources and find best solutions for a client."

Fair rules

The growing number of in-house engineers is also causing concern to EFCA, who want to see regulation of this largely unfair competition. Where it is used on open markets, for example in transportation and systems, it is a case of the public sector, which does not have to cover all its costs, competing against private companies. At a national level it is fostered by the financial crisis but it may also be less flexible and less efficient, leading to higher costs in the long run. Along with academics and NGOs, EFCA would like to see in-house engineers competing on a full-costs basis or otherwise limited to assessing submissions.

PPP-like procedures, PFI and concessions mobilize public resources or public service monopoly rights in the short, medium or long term, but escape some basic requirements of public procurement. EFCA advocates a set of common rules to guarantee transparency, fair competition and opening of the market.

Flexibility

EFCA is also arguing for more flexibility during the tendering phase and after contract award in order to avoid the delays and inefficiencies of the current process. More dialogue should be allowed so that changes are possible, if required, especially during the contractual phase so as to avoid having to revert to launching a new procedure, as is currently the case. More integrated phases and partnering could be part of the solution – from project inception (feasibility stage) to its fulfilment.

"The Directive is too strictly implemented in many countries which gives a lack of flexibility," M. Félix points out. "Changing a construction project is not easy and if you need to do that, for whatever reason, you currently have to make a new tender." EFCA wants to see, as a minimum, the application of common rules to PPP and other procurement.

"We were only partly successful in 2004 (when the procurement directive was last updated) in convincing the policy-makers that it is not good to tender for creative services in the same way as construction works," says Mr Félix. "But this time because of sustainability and life-cycle costs it is even more important that our voice is heard."

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EFCA has member associations in 26 countries, and is the sole European federation lobbying on behalf of engineering consultancy and related services, a sector that employs around one million staff in Europe. EFCA contributes with a strong and cohesive input to legislative actions of its national associations on issues affecting market conditions. Furthermore, the organisation works as a Europe-wide platform for national associations and their member firms to gather relevant facts and discuss issues with their counterparts.