



## Conclusions from EBSA's Online Seminar "Public Procurement in the EU: the road forward"

*Moderated by Isabel Yglesias, EBSA's Vice-Chair  
and Executive Director of the EFCI (Cleaning Services)*

16 October 2020

- Public procurement represents 14% of European GDP<sup>1</sup>, which is significant and justifies the Commission's engagement and recognition of this policy area as a strategic tool to achieve the EU's green and digital ambitions.
- Across business services sectors, this percentage can reach up to 50% of the turnover of service providers. Public procurement is thus central to businesses services and it is key we get it right.
- From our fruitful discussions with representatives from the Commission, the legal profession, contracting authorities and service providers, there is undoubtedly a general agreement that the legislation is there, it is clear, and it is moving in the right direction to drive innovative and sustainable choices. However, further effort is needed to bring this to fruition in practice and for public authorities to better promote efficient, fair, and transparent competition between operators.

### Professionalisation of procurers is key for effective application of procurement rules

- For the rules to be effectively applied in a way that promotes investment and true competition, the professionalisation of procurers needs further development, as was emphasized by Michael Freytag when introducing EBSA's vision. A similar message was echoed by Anna Lupi (European Commission Unit G1, DG Grow) who explained that a close collaboration with contracting authorities has been a key priority for the European Commission to help drive change, which EBSA very much welcomes and encourages.
- However, more needs to be done. As mentioned by Jan Bonhage (partner at Hengeller Mueller), smaller procurers, such as small city halls, often struggle to consider the many different policy drivers that add complexity to the tendering process.

### Best Value Guides: an instrument to be used for improved public procurement for business services

- The guides developed by EBSA sectoral associations together with their social partners (on cleaning, security, contract catering and engineering consulting), offer concrete and adapted solutions to many of the issues that were discussed during the webinar. This was

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<sup>1</sup> <https://op.europa.eu/en/publication-detail/-/publication/69fc6007-a970-11ea-bb7a-01aa75ed71a1>

very well illustrated by the intervention of Jaap de Konig (Chair of EFCA's Internal Market Committee) to showcase the work done on guidance for the consulting engineering sector.

- Some concrete aspects discussed on this occasion are highlighted below:

### *Exclusion of bidders and abnormally low tenders*

- Excluding abnormally low tenders is a key factor that EBSA Members are trying to address. Choices driven by price undermine the effectiveness of procurement. Promises to deliver at an unrealistic price, are often made at the expense of workers' rights and almost inevitably at the risk of not meeting the expectations once the service is provided.
- The automatic exclusion of bidders is a delicate subject on which the European Court of Justice has sent a clear message: contracting authorities need to keep their discretion in adapting the tendering process to the concrete circumstances they have before them, as we heard from Michael Rainey (partner at Addleshaw Goddard). **However, to enable a case-by-case approach, public authorities need guidance and objective benchmarks, which our guides provide.**

### *Continued dialogue with services providers*

- The importance of continued dialogue with service providers in order **to better adapt the tender process to the market circumstances** was illustrated by Li Jansson's example from the private security Swedish sector.
- Adequately **monitoring of compliance** with the contract awarded is key in holding service providers accountable for the engagements taken and ensuring the competition is indeed fair. The example from the Catalanian Government presented by Mercè Corretja (Director General for Public Procurement, Catalanian Government) is a concrete illustration of creative and collaborative solutions that can help in achieving this through tripartite collaboration between public authorities, the service provider, and the workers.

### *The award of contracts needs to be connected with the reality in the market*

- As required by the law, the award criteria need to be related to the subject matter of the contract to avoid the misuse of tender proceedings. In addition, as emphasised by José Alberto Navarro (partner at Uría Menéndez) **the contracts should be allowed to adjust to changing circumstances**, especially when the impact affects the cost of labour (i.e. changes in collective agreements during the execution of contracts which would need to be assumed by contractors). EBSA Members' guides offer the sector specific perspective on this issue as well.

### *Quality-based procurement*

- Quality-based award of contracts is the corner stone of positive public procurement driving true competition in all its factors not only on price.
- For that to materialize however, it is important to avoid that quality criteria are strictly defined upfront through technical specifications that do not foster true competition on the basis of quality but ultimately drive authorities to choose on the basis of price alone. As outlined by Clarisse Thomas (Sodexo Group) in the discussion, the integration of mandatory and detailed criteria may prove counterproductive if they are too restrictive and do not allow space for innovative solutions to be proposed by the service providers. Authorities need to value quality in the award criteria and adapt the tender to the concrete market circumstances encouraging providers to come up with solutions to their problems.
- This is also the way ahead to better include SMEs in the tender procedures, as we heard from Andreas Gyllestrand (Cubsec) from his experience in the security services sector. Authorities need to focus on describing the problems and challenges they face so providers can design solutions on the basis of their expertise and creativity. SMEs are often the best placed to offer tailored solutions. At the basis of these steps is a good understanding of what quality means in each sector, which EBSA Members' sectoral procurement guides are well equipped to provide.

By way of conclusion the EBSA urges the Commission to consider these elements when taking public procurement policies forward and considering the potential introduction of mandatory procurement criteria, as summarised by Cristina Freitas da Costa (Deputy Secretary General of FoodServiceEurope) at the end of the session. **It is fundamental to ensure tenders provide the flexibility to apply a case-by-case approach that is framed by sector specific guidance. The sectorial Best Value Guides are a concrete contribution to such an objective that should be used by the Commission and Member States in driving the EU public procurement agenda.**

**The European Business Service Alliance (EBSA)** brings together the European associations within the business services sector. Business services are important for the European economy; however, they are often invisible in our everyday lives. EBSA's vision is to achieve an internal market for business services in the EU, and to gain recognition for the important role business services play in the European economy. EBSA therefore works on increasing knowledge, visibility and recognition of the business services industry at the European level and promotes the convergence of views and positions expressed by European Business Services associations in order to enhance our ability to make strong representations to the EU Institutions and other relevant European and international stakeholders.

**EBSA**



## Public Procurement in the EU: the road forward

Presenting the last editions of "The Government  
Procurement Review" \*

**ONLINE SEMINAR**  
**8 OCTOBER 2020, 11.00 CET**

Moderated by Isabel Yglesias, EBSA's Vice-Chair and Executive  
Director of the EFCI

- 11.00 Welcome**  
Michael Freytag, EBSA's Chair and EU Public Affairs  
Manager at WEC-Europe
- 11.05 The European Commission's views on the  
implementation of the 2014 package in the services  
sector and the way ahead**  
Anna Lupi, Unit G.1 – Public Procurement Strategy, DG  
Grow (European Commission)  
Q&As
- 11.30 Presentation of the European, Spanish and German  
chapters of the "The Government Procurement Review"  
by their respective authors:**  
Michael Rainey, partner at Addleshaw Goddard  
Dr. Jan Bonhage, partner at Hengeler Mueller  
José Alberto Navarro, partner at Uría Menéndez  
Q&As
- 12.10 Best practices in creating value through public  
procurement**  
*The 2018 Framework Agreement for cleaning services of  
the Catalan Government* – Mercè Corretja, Director for  
Public Procurement, Generalitat de Catalunya (Spain)  
*How to derive MEAT criteria* – Jaap de Koning, Chair of  
EFCA's Internal Market Committee  
*Good procurement practices from the Swedish private  
security sector* – Li Jansson, Säkerhetsföretagen and  
Andreas Gyllestrand, Cubsec  
Q&As
- 12.50 Conclusions**  
Cristina Freitas da Costa, EBSA's Board and Deputy SG  
at Food Service Europe

**Registration by email to [secretariat@servicealliance.eu](mailto:secretariat@servicealliance.eu)**

\*The Government Procurement Review, Law Business Research Ltd