

Revision of EU Directives on Public Procurement - comments from Almega

Almega is Sweden's leading employers' organization for companies within the service sector. We would like to highlight the following aspects with regard to the review of the procurement directives.

- The EU principles of transparency, equal treatment, non-discrimination, proportionality and mutual recognition safeguard the suppliers' interest of fair treatment in public procurement. These principles must remain cornerstones of the revised directives.
- It is of vital interest of suppliers – especially SMEs - to safeguard that requirements and criteria are relevant for the scope of the contract. The present requirement of a link to the subject matter must thus be upheld.
- As regards a European preference approach we see a need for clarification regarding the aim of introducing such a preference as well as clear definitions of what is to be considered "European". Thorough impact assessments are needed of the upcoming effects if a European preference should be applied. Risks for conflicts with WTO/GPA must also be thoroughly analyzed.
- All companies should have the right to participate in public procurement of social and other specific services regardless of their organizational form. We urge that this be clarified in the rules. Otherwise there is a risk of less competition and less contribution to social purposes at stake.
- The threshold values should not be increased since that would expand the challenges for cross-border tenders within the European Union.
- Almega's surveys show that companies offering services in public procurement are experiencing challenges caused by focus on price. Price pressure leads to risks at the expense of seriousness and quality in the execution of the assignments.
- We support the principle of most economically advantageous tender (MEAT). As regards services we specifically support the use of best price-quality ratio.

Quality oriented procurement must be promoted. Price as the sole award criterion for public contracts relating to services often cause problems (see above) and must be limited. Member States' mandate to impose restrictions in this respect should be upheld, see ECJ ruling in case C 769/23, Mara.

- Floor prices should be explicitly allowed, at least in situations/sectors where there is a problem with low pricing. We also encourage the possibility to use fixed-price procurement as regards services.
- The conditions for reviewing and rejecting abnormally low tenders must be analyzed and made more efficient.
- The grounds for exclusion are insufficient to block rogue and criminal suppliers, and the rules must therefore be updated and improved.
- Contracting organizations should be encouraged to form procurement based on functional requirements. This would create incentives for innovation and can also reduce companies' present challenges regarding extensive and detailed requirements.
- Negotiation within the procurement processes creates better and mutual understanding of the conditions for assignment. Therefore negotiation should be allowed in all procurement procedures without exemptions.
- In order to facilitate the procurement procedure the directives should solely stipulate how to buy and not what to buy. Issues on environmental, social and labour conditions should be regulated in other legislation, common standards and collective agreements.
- Article 18.2 provides sufficient legal basis as regards social criteria. Such criteria should be designed in accordance with the conditions in each Member State.
- We see a need for digitalization based on common standards in public procurement. Digital and interoperable systems within EU would lead to improvements in vital aspects such as simplifications, better data for analysis, improved data for follow-up during the contract period, increased contractual fidelity and cost savings.