

**Green Paper on the modernisation of EU public procurement policy**

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**FINAL DOCUMENT**

The Environment Committee of Italy's Chamber of Deputies,

Having examined the "Green Paper on the Modernisation of EU Public Procurement Policy. Towards a more Efficient European Procurement Market" (hereafter "the Green Paper"), pursuant to the Chamber of Deputies Rule of Procedure No. 127;

Whereas:

An external consultation has been launched on the Green Paper, which will end on 18 April 2011, to gather information and input for appraising the revision of European public procurement system, and hence Directives no. 17 (special sectors) and no. 18 of 2004 (ordinary sectors);

The method adopted for this purpose by the institutions of the European Union appears to be particularly appropriate because it encourages a prior and wide-ranging debate on all the various issues (legal, administrative efficiency, economic aspects, and market regulation for the safeguarding of competition) in relation to public procurement, focusing clearly on the problems that have emerged with the implementation of current European legislation and the possibility of introducing any needed adjustments and any supplementary provisions that may be necessary;

The European Union attributes a fundamental role to the public procurement sector in the pursuit of the objectives of the Europe 2020 Strategy, since this is one of the instruments needed to foster corporate innovation, encourage the transition towards a more efficient use of resources, including environmental resources, and to improve the business environment, particularly for the small and medium enterprises (SMEs);

The revision at EU level of the instruments and methods used for public procurement should be designed to bring this sector into line with developments in the political, social and economic environment, also for the purposes of achieving greater public spending efficiency, improving competition, and making better use of public procurement to support common societal objectives such as safeguarding the environment, more efficient energy use, promoting innovation, and social inclusion;

The Green Paper attributes particular importance to creating a European public procurement market which is capable of facilitating access by the small and medium enterprises that play a strategically important role in the Italian economy and offer great potential for job-creation, bolstering growth and fostering innovation;

The Green Paper deems it important to combine the pursuit of these objectives with the need to guarantee transparency in managing public procurement, and to prevent unsound business practices, conflicts of interest, favouritism and corruption.

Considering that:

As far as Italian law is concerned, directives 17 and 18 of 2004 have already been transposed into the Public Contracts Code by Legislative Decree No. 163 of 12 April 2006, subsequently amended by three Legislative Decrees;

The Regulation for implementing the Code, issued in Presidential Decree no. 207 of 5 October 2010, will come into force on 8 June 2011 (with a few exceptions) and some of the procedures and tools introduced when transposing European law – such as competitive dialogue, e-auctions, or the framework agreement – have therefore not yet been adequately tested at the national level;

The examination of the Green Paper has provided an important opportunity for the Committee to engage in a useful debate with the institutional and the business players involved in the public procurement sector, to identify the critical areas in the Italian system, and in the light of these critical aspects, to direct the government's negotiations on introducing changes to the relevant European legislation;

These discussions have revealed the peculiarity of the public procurement market in Italy which is excessively fragmented in terms of the stakeholders, rigid regulations and a high degree of litigation;

During the discussions, various participants pointed out that the prospect of changing European public procurement law must be coupled on the one hand with the need to guarantee a consistent and orderly set of clear and stable national rules for the parties operating in this sector, and on the other hand, with the need to prevent excessive regulation-setting when transposing it into domestic law (*gold-plating*);

Noting, furthermore, the need for this final document to be promptly forwarded, together with the opinion of the European Union Policies Committee, to the European Commission within the framework of political dialogue, and to the European Parliament and Council;

#### EXPRESSES A FAVOURABLE OPINION

while emphasising the need to encourage measures that will help to remove some of the critical aspects of the Italian public procurement system, in relation to the stance to be adopted when the EU legislative proposals are being defined, and are therefore designed:

*a) with reference to the scope for the implementation of public procurement rules:*

- To raise the thresholds of EU relevance and consider the possibility of introducing simplified forms of publicity in the case of "under threshold" procurement in amounts that will attract cross-border interest, while seeking at all events to combine the need for simplification with the need to guarantee the highest level of competition between EU operators;
- To review the "excluded contracts" section, in the light of the European Union's international commitments;

*b) with reference to improving the toolbox for contracting authorities:*

- To pursue the objective of improving project quality as early as the preliminary phase, as an essential precondition for accurately appraising project feasibility, and promote a better qualification of contracting authorities, using all the instruments already available, namely by encouraging ways of aggregating demand by means of rationalised administrative functions of contracting authorities, without prejudice to the autonomy of the individual authorities, taking due account of the object of the contract and the territorial location of the work to be implemented, in order to make it possible for the unstructured contracting authorities to delegate the contracting administrative functions to better organised authorities or to perform them jointly;
- To make it possible to extend the use of the qualification systems typical of the special sectors to apply also to the ordinary sectors, at least with reference to specific categories of work sharing homogeneous and repetitive features, while guaranteeing at all events

full competition in, equality of treatment and non-discrimination against the parties concerned;

- To make provision to extend the use of periodic indicative notices as a means to publicise that the contracting authority intends to call for tenders during the year using the restricted or negotiated procedure, without prior publication of a contract notice, for supplies, services or public works in which the services or products requested are homogeneous;
- While protecting competition, equality of treatment and non-discrimination between companies, and with the necessary guarantees in respect of the economic conditions in order to ensure public spending efficiency, to broaden the possibility of using the negotiated procedure after publishing contract notices for more complex contracts;
- To broaden the possibility of using the negotiated procedure without prior publication of a contract notice, while simultaneously adopting procedures to guarantee the principles of non-discrimination, equality of treatment, proportionality and transparency; in this connection, provision should be made in domestic law for the negotiated procedure to be used without publication of a contract notice, raising the threshold and simultaneously adopting such steps as increasing the number of companies to be invited, the criterion of rotation between these companies, publicising progress information on the procedure and the *ex post* publication of the procedure documents;
- To introduce criteria making it possible for the contracting authorities to ascertain the reliability of the companies, in respect of the individual public works, also by envisaging 'rewards' for such things as having remained compliant with schedule in previous works, the non-presentation of exceptions and reservations, or excessive rebates in previous works;
- To limit the awarding criterion of maximum rebate, while allowing for it in the case of contracts of lesser value, thereby giving priority to the criterion of the economically most advantageous tender, in order to appraise not only its financial, but also its technical and design quality as well as elements linked to its environmental and social value, reducing as far as possible the level of discretion inherent in it;
- To provide the possibility of ascertaining possession of the qualification requirements only in respect of the winning bidder, at least within a system whereby the contracting authority is deemed

able to directly ascertain possession of the qualification requirements, and in relation to contracts awarded for the lowest price;

*c) with reference to accessibility to the European public procurement market:*

- To support access to the public procurement market by small and medium businesses, without setting conditions likely to damage the economies of scale that are potentially achievable, and providing the possibility to: 1) introduce mechanisms for aggregating bidders; 2) subdivide projects into functional batches or lots; 3) enable bidders to self-certify possession of the eligibility requirements to tender, but always excluding the possibility for the contracting authority to request administrative documentation in the possession of other administrations;

*d) with reference to the strategic use of public procurement in response to new challenges:*

- To foster better use of public procurement to support social objectives, and hence so-called "green contracts", by envisaging criteria for selecting the bids referring to these objectives, with particular reference to innovation and combating climate change;

*e) with reference to the guarantee of sound procedures:*

- To prevent the risk of infiltration by criminal organisations, corruption and conflicts of interest, by reviewing the causes for barring candidates or bidders, introducing a common definition of conflict of interest, and effective ways of exchanging information between the Member States in relation to possible corruption cases and a computerised system for notifying cases of fraud.