



## EUROPEAN COMMISSION

Brussels, 2.8.2013  
C(2013) 5121 final

*Dear President,*

*The Commission would like to thank the Camera dei Deputati for its Opinion on the proposals for a directive on procurement by entities operating in the water, energy, transport and postal services sectors {COM(2011) 895 final} and for a directive on public procurement {COM(2011) 896 final} and apologises for the long delay in replying.*

*The Commission takes due note of the overall support expressed by the Camera dei Deputati, and takes this opportunity to react to some of the observations made in the opinion.*

*The Opinion refers to the proposals of the Cypriot Presidency of the Council. The general approach based on a compromise text adopted by the Competitiveness Council on 10 December 2012 clarifies and modifies the Commission proposals related to several aspects mentioned by the Camera dei Deputati.*

*In this respect, the Commission would like to make the following specific comments:*

- a) the division of contracts into lots proposed by the Commission would not be compulsory; contracting authorities would only have to give the reasons why they do not split a contract into lots ("apply or explain" principle);*
- b) as for e-procurement, the Commission proposes that only the communication in the context of public procurement is done electronically. In addition, electronic communication should improve access to public procurement, in particular for SMEs. Recent Eurostat figures show that nearly 99 % of SMEs have access to internet. Moving towards e-procurement therefore means SMEs have access to full EU procurement market and hence significant opportunities to grow and create more jobs.*
- c) the award criteria of the most economically advantageous tender should not lead to an award at the lowest price because it includes, in addition to the cost, other criteria linked to the subject-matter such as: quality, technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics, innovative character, after-sales service and technical assistance, delivery date. Where the quality of the staff employed can significantly*

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*impact the performance level of the contract, the organisation, qualification and experience of the staff assigned to performing the contract in question may also be taken into consideration. In addition, the contracting authority would need to specify in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender. Where weighting is not possible for objective reasons, the contracting authority would have to indicate the criteria in decreasing order of importance;*

*d) as far as central purchasing bodies are concerned, the positive experiences of Member States have been taken into account by strengthening the corresponding provisions;*

*e) the exhaustive lists of exclusion and selection criteria proposed by the Commission should guarantee some uniformity as regards reputation standards;*

*f) the use of a life-cycle costing approach is optional for contracting authorities; concerning the calculation of the life-cycle costs, some conditions are laid down but the methodology would be free. Only the common methods which have been made mandatory by a legislative act of the Union would be compulsory;*

*g) finally, concerning governance and the national oversight body, the evaluation of the results of the consultation on the Green paper has shown that not all Member States are consistently and systematically monitoring the implementation and functioning of the public procurement rules and that the efficient and uniform application of EU law is therefore compromised. The Commission believes that a single body with overarching tasks would best be able to suggest appropriate remedies to more structural problems and to provide immediate feedback on the functioning of the policy and the potential weaknesses in national legislation and practice. This being said, the Commission has also noted that the issue of the structures required to fulfill the tasks which are considered necessary to improve the implementation and enforcement of EU public procurement law at national level was debated in the Competitiveness Council of 30 May 2012. On this occasion, a large majority of Member States supported the compromise of the incumbent Danish Presidency to focus on tasks instead of the structures needed at national level. The Commission nevertheless intends to insist on the tasks which are necessary to remedy the identified deficiencies and to substantially improve the implementation and application of EU public procurement rules.*

*After an intensive series of trilogue negotiations, the European Parliament, the Council and the Commission have now reached a political agreement on the reform of public procurement directives during the trilogue of 25 June 2013, and a final agreement is expected to be reached after the summer under the Lithuanian presidency.*

*The Commission hopes that these clarifications address the concerns expressed by the Camera dei Deputati and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*