

# Expert public procurement consultancy for Buyers and Suppliers at your service



## PASS CONSULTANCY

BiP's *Procurement Advice and Support Service (PASS)* provides organisations with access to experts in public procurement practices and procedures, thus helping you develop and deliver effective and efficient procurement. Our team offers a range of services to meet your specific needs. Whichever area you wish evaluated and improved, we have the experts to help.

The *PASS* consultancy's mission is to help you deliver the best in government procurement through:

- Practical solutions to improve procurement performance
- Innovative approaches to knowledge transfer within government
- Joined-up government
- Improved performance indicators
- Strategic direction and performance
- Opportunities offered by e-government
- Capacity to deliver change to meet identified needs
- Continuous improvement of services and challenging poor performance
- Sustainable development within decision-making processes and delivery of services
- EU-compliant processes
- Best practice procurement training

## PASS HEALTH CHECK

The *PASS* service can help your organisation examine its current procurement organisational structures, strategies, processes, practices and related strengths and weaknesses. It delivers a detailed *PASS Mark Health Check Outcome Highlight Report (OHR)* that outlines areas of strength as well as those requiring further attention, and provides an outline *Project Initiation Document (PID)* designed to deliver a more effective and efficient tendering process that will help you achieve optimum performance and better value-for-money procurement.

## PASS – HELPING YOU MEET KEY OBJECTIVES

The key objective of public procurement professionals is to ensure that the most suitable supplier is selected to provide goods and services on terms which are likely to offer the best value for money. The *PASS* service helps you meet this requirement and deliver contracts that offer best value-for-money terms with suppliers who will execute them efficiently.

## PASS TRAINING

Our consultants can provide you with bespoke training packages to suit your needs. Consultancy and training is available for the following: environmental purchasing, partnering, evaluation, e-government, supplier debriefing, UK legal processes and precedents, contract management, EU-compliant tendering and much more.

## PASS ONLINE GUIDANCE

The *PASS* service provides online guidances on all aspects of the public procurement process and legal requirements: [www.bipsolutions.com/html/briefing.php](http://www.bipsolutions.com/html/briefing.php)

## PASS – CAPS SERVICE

Introducing *CAPS* – the public sector's guardian through the EU public procurement process, helping you to quickly access in-depth, authoritative EU public procurement procedure assistance. We are now pleased to offer your organisation access to this vast knowledge base as and when required, through subscription to BiP's new *Contract Administration & Process Support (CAPS)* helpline service. The *CAPS* service level agreement aims to answer 99% of your enquiries within one working day and 85% of these within one working hour.

## PASS IN-HOUSE PRESENTATIONS

*PASS* consultancy can provide you with in-house presentations directed to buyer or supplier. Each presentation will be bespoke to your requirements, whether they be with regards to improving your tendering practices or your procurement strategy or processes. Contact: [pass@bipsolutions.com](mailto:pass@bipsolutions.com)

# EU PUBLIC PROCUREMENT – REALISING THE BENEFITS OF E-PROCUREMENT

## PART ONE OF TWO



**P**ublic procurement is a key sector of the EU economy accounting for about 16% of GDP. Modernising and opening up procurement markets across borders – including through the expansion of electronic procurement – is crucial to Europe's competitiveness and for creating new opportunities for EU businesses.

Using information technology appropriately can contribute to reducing costs, improving efficiency and removing barriers to trade, which will ultimately result in savings for taxpayers. The Directives adopted in March 2004 as part of the public procurement legislative package provide a legal framework aimed at boosting the development and use of electronic procurement.

This Guidance focuses on the European Commission's published Action Plan designed to help Member States implement the Directives correctly, so as to release the full potential of electronic public procurement.

## INTRODUCTION

The proposed Commission Action Plan for the implementation of the new legal framework for electronic public procurement was adopted in April 2004 as part of the legislative package of Procurement Directives 2004/18/EC and 2004/17/EC. These provide a coherent framework for conducting procurement electronically in an open, transparent and non-discriminatory way, establish rules for tendering electronically and fix the conditions for modern purchasing techniques based on electronic means of communication.

The Commission believes that if online procurement is generalised, it can save governments up to 5% on expenditure and up to 50-80% on transaction costs for both buyers and suppliers. While it is difficult to quantify competition and efficiency benefits for the EU as a whole, greater competition and efficiency in public procurement markets can impact – directly and indirectly – on the whole economy and play an important role in achieving the Lisbon objectives.

However, the inappropriate introduction of e-procurement carries high risks of market fragmentation. The legal, technical and organisational barriers that may result from procurement online are one of the greatest challenges for policy makers.

The consultations as part of the *Extended Impact Assessment for an Action Plan on electronic public procurement (SEC (2004) 1639)* conducted by the Commission confirm the need for an Action Plan. Member States, candidate countries and businesses are ready to participate in it.

*Building upon existing efforts to modernise European public procurement markets and to make these more open and competitive, the Commission proposes measures along three axes:*

- ensure a well-functioning Internal Market when public procurement is conducted electronically;
- achieve greater efficiency in procurement and improve governance; and
- work towards an international framework for electronic public procurement.

## OBJECTIVES AND ACTION

### Ensure a well-functioning Internal Market in electronic public procurement

■ *Implement the legal framework correctly and on time*

Member States are required to implement the new Public Procurement Directives by 31 January 2006, but slippages cannot be excluded. Early adoption of the new e-procurement provisions is essential to avoid barriers to and distortion of competition. It is also very important for the rapid development and the effective use of e-procurement by economic operators. The Commission requires Member States to deploy all efforts to comply with the Directives' deadline.

Erroneous or divergent interpretation of the new rules can create barriers to cross-border trade and ultimately fragment the market.

The Commission will monitor transposition closely and encourage appropriate exchanges with the Member States at the draft stage in order to facilitate understanding of the legal framework. It will issue an interpretative document on the legal requirements for e-procurement. At the same time, training demonstrators simulating the new electronic environment will be available to support initiation of administrations and businesses.

*First quarter 2005* The Commission issues an interpretative document on the new rules on electronic public procurement.

*First quarter 2005* The Commission makes online training demonstrators available, allowing contracting authorities and economic operators to become familiar with the new e-procurement provisions and tools.

*2005* The Commission provides appropriate assistance to Member States in transposing the new legal provisions.

■ *Complete the legal framework using the appropriate basic tools*

Of all notices sent for publication on Tenders Electronic Daily (TED), the official EU website which publishes all notices covered by the Procurement Directives, 90% are still in paper form. The standard forms established by Directive 2001/78/EC have slightly improved the situation. Their processing, however, still carries high costs, delaying publication and increasing the risk of errors.

The new Directives do not provide for an all-electronic notification system; this would not be feasible in the short run given the different levels of development and penetration of electronic means in the Member States. Instead, a phased approach has been chosen.

The Commission in early 2005 adopted a Regulation on standard forms adjusting the existing forms to the elements introduced by the new Directives, eg e-auctions, dynamic purchasing systems and buyer profiles. By the end of 2006, the Commission will propose a new generation of structured electronic standard forms to allow for the



electronic collection, processing and dissemination of all procurement notices covered by the Directives.

This new generation should facilitate the automatic production of summaries in all official EU languages, and should be easy to integrate into all operational e-procurement systems. The establishment of an electronic directory of EU public purchasers should also be considered.

The new Directives make the use of the Common Procurement Vocabulary (CPV), introduced by Regulation 2195/2002/EC, mandatory. Electronic public procurement creates new possibilities for using the CPV, eg structuring and analysing procurement expenditure, or the compilation of statistics. Revision of the CPV is under way to adjust it for use in a fully electronic environment. To this end, a study was launched to which Member States and interested parties will be invited to actively contribute. If successfully completed it should lead to a world-class international classification model for public procurement contracts.

*In early 2005* The Commission adopted new standard forms taking account of new procedures and the use of electronic means of communication.

*By early 2006* The Commission presents proposals for revising the Common Procurement Vocabulary based on the results of the review study currently under way.

*By end 2006* The Commission presents a blueprint for a fully electronic system for the collection and publication of procurement notices on TED.

*By end 2007* Member States implement fully electronic systems at national level including appropriate tools for automated collection and publishing in TED.

■ *Remove/prevent barriers to carrying public procurement procedures electronically*

The barriers businesses fear most in cross-border tendering are inappropriate design of tendering systems and incompatible IT standards. Diversity and incompatibility of technical solutions can render suppliers' access to e-procurement systems impossible or discourage their participation because of additional difficulties or increased costs. Barriers may exist in terms of functional as well as technical characteristics.

In moving procurement online Member States should at all stages be guided by the basic concept that the means of communication and tools used in electronic public procurement systems should be non-discriminatory, generally available and interoperable, and should by no means restrict economic operators' access to the tendering procedure.

To prevent the emergence of e-barriers, Member States should use the results of the Commission's functional requirements analysis undertaken by the Interchange of Data between Administrations programme (IDA) when drafting legislation and designing e-procurement systems. The results of the project will be validated by the Commission and the Member States in light of the interpretative document to be issued by the Commission in 2005.

To build up confidence in e-procurement, the development of compliance verification schemes should be promoted. The Commission strongly recommends that Member States, in accordance with the Directives, introduce or maintain voluntary accreditation schemes to ascertain that e-procurement systems conform to the requirements of the Directives.

A European scheme which would build on and integrate national schemes would seem desirable to ensure the smooth functioning of the Internal Market. The Commission and Member States should examine through a feasibility study the development of such a TRUST (Transparent Reliable Unhindered Secure Tendering) scheme based on the functional requirements.

Some horizontal problems also threaten to negatively affect the functioning of the Internal Market and the initiation of e-procurement. Potential difficulties relate to the use of advanced electronic signatures, in particular signatures based on a qualified certificate and which are created by a secure-signature creation device (hereafter 'qualified signatures').

The new Directives do not define which type of e-signature should be used in electronic tendering. Thus Member States – who have

different legal signature concepts – may choose the level they require in conformity with the e-Signatures Directive 1999/93/EC. However, the Directives oblige any public purchaser in the EU to effectively recognise, receive and process tenders submitted, if required, with a qualified signature and their accompanying certificates, regardless of their origin within the EU or their technical characteristics, and even when they contain documents of different origins (eg from a consortium of suppliers) and possibly bear signatures of different levels from different sources (eg from different national authorities).

This makes e-procurement the first sector in which businesses use qualified signatures in transactions with public authorities in a Member State other than their home country. The existing significant differences between qualified signatures as required by some Member States should therefore be reason for great concern. The interoperability problems detected despite the existence of standards, and the absence of a mature European market for this type of signature, pose a real and possibly persistent obstacle to cross-border e-procurement.

A project called Bridge/Gateway CA was launched under the IDA programme in 2002 to address the issue of recognition and trust of electronic certificates issued by different Certification Authorities (CAs) in the framework of exchanging secure emails and signatures between different national administrations. The results of the Bridge/Gateway pilot, including recommendations on the technical, organisational and operational aspects of such schemes, should be available by mid-2005. Although addressing some issues related to e-procurement, it would not, however, be enough to resolve the problems described above before the 2006 deadline. Building on the current efforts, Member States and the Commission, hearing industry's views, should work together on an operational project to rapidly find a solution based on the mutual recognition principle.

At this stage, the Commission would favour a solution to test and promote solutions enabling cross-border use of qualified signatures. Any solution identified should be easy to generalise also in other fields of activity. In the meantime, the Commission recommends that Member States examine any appropriate transitional measures, eg confirmation in paper form for tenderers whose electronic signature does not correspond to the required one.

Lack of generalised and interoperable e-ordering and e-invoicing tools across the Internal Market also creates obstacles to the equal participation of suppliers in cross-border procurement. At present, these types of transaction are little used in practice and on an optional basis only. The Commission will continue monitoring the situation while solutions are being sought in the framework of standardisation activities undertaken by the EU.

*In 2005* Member States and the Commission test, refine and validate the results of the IDA common functional requirements for e-procurement systems, based on the 2004 IDA study on common functional requirements.

*Early 2006* Member States review whether all operational e-procurement systems have been adjusted to the requirements of the Directives.

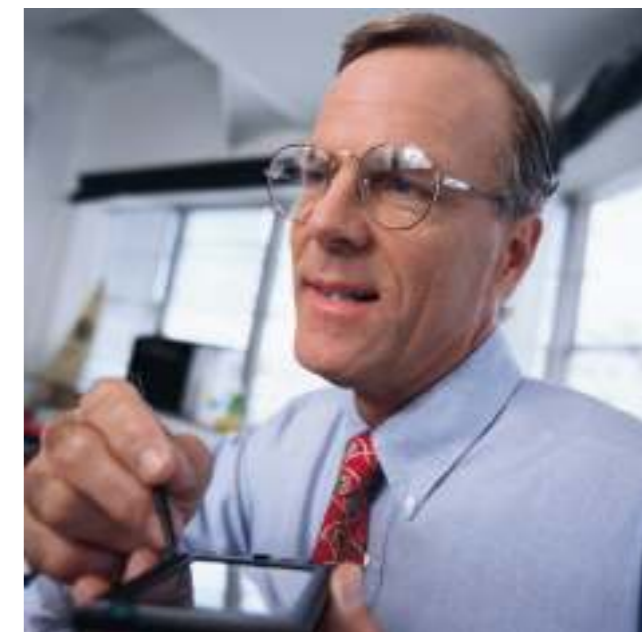
*By mid-2005* Member States introduce national accreditation schemes to verify compliance of electronic tendering systems with the legal framework.

*By end 2005* Member States and the Commission consider through a feasibility study whether to introduce a European compliance verification scheme.

*In 2005-06* The Commission proposes an action under the IDABC programme to help Member States coordinate implementing the use of advanced qualified signatures to resolve interoperability problems.

*By 31 January 2006* Member States apply, if required by national law, interoperable qualified electronic signatures.

■ *Detect and address interoperability problems over time*



In light of the above, it is clear that interoperability problems are persisting or may still emerge. Some have already been detected and appropriate actions have already been induced; others should be discovered through the gap analysis on interoperability needs in e-procurement currently carried out by CEN/ISSS.

However, interoperability should remain a constant concern. Technical and operational developments make it necessary to continually revise and improve existing systems covering all stages of the purchasing cycle. Standards in the area are market-driven. Relevant input from RTD projects in the area of e-government should also be considered. Governments must follow and work on interoperable solutions through dialogue between the different parties involved either at national or European level and trail developments in business-to-business (B2B) electronic commerce in order to avoid driving a wedge between private and public procurement markets.

The Commission will continue to monitor the situation with respect to the emergence of interoperability problems in the Internal Market and in international trade and, if appropriate, consider issuing standardisation mandates. It would be desirable to continue current work in the IDA e-Procurement workshop and to continue monitoring developments so as to share information on specifications and good practice.

By quarter 2005 CEN/ISSS completes gap analysis on interoperability needs for effective electronic public procurement.

*2005-07* The Commission proposes to continue activities on electronic public procurement under the IDABC programme for exchange and discussion on interoperability issues and monitoring of Member States' developments.

*2005-07* The Commission and Member States' promote standardisation activities at European level and liaise with international standardisation bodies.

GUIDANCE 7B WILL FOCUS ON ACHIEVING GREATER EFFICIENCY IN PROCUREMENT, IMPROVING GOVERNANCE AND COMPETITIVENESS

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