

How can you reduce the burden on SMEs and encourage SME involvement without breaking the rules?

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Key importance of SMEs

21 million SMEs in EU

99% of all enterprises in EU are SMEs

SMEs produce more than half of EU GDP

SMEs account for 2 out of 3 jobs in private sector

How do SMEs fare?

- 56% of ATCs awarded to SMEs (66% in Ireland)
- 29% of ATCs (by value) awarded to SMEs (25% in Ireland)
- Less likely to win large ATCs
- Win lower number of supply contracts than works contracts
- Win less negotiated (19%) than open (34%) / restricted (29%)
- Win more from regional authorities (37%) than utilities (15%)

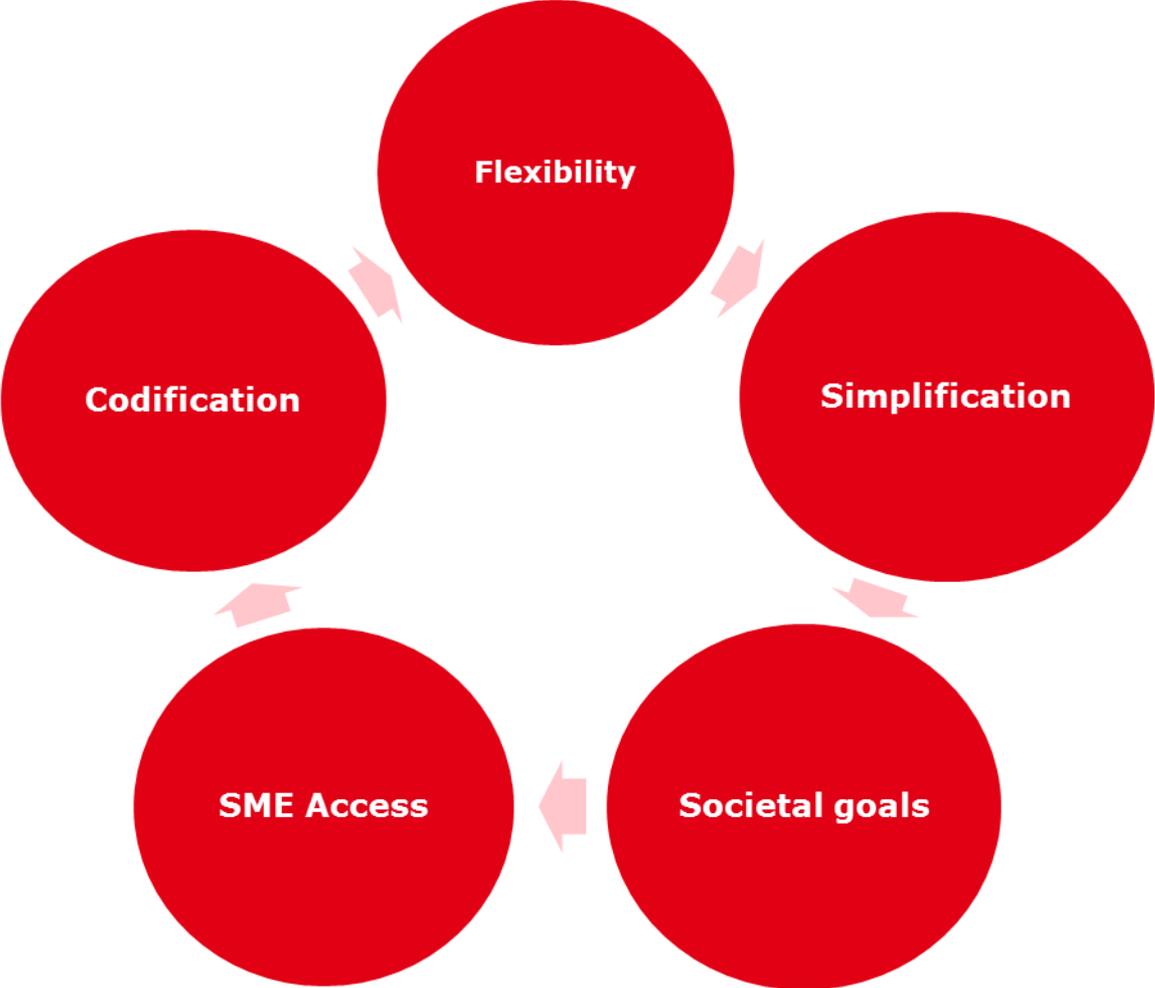
A lot done already

- Single centralised website
- Free information
- Below threshold advertising
- Publishing names of prime contractors
- Standardisation of documents
- Authority training
- Market consultation
- Meet the Buyer events
- Use of PIN notices
- Tender Advisory Service

Persistent Barriers to Procurement

1. Contracts too big / required capabilities too broad
2. Excessive administrative burden
3. Disproportionate technical & financial requirements
4. Over-emphasis on price & costly industry standards

2014 Procurement Directives



New Procurement Directive 2014/24

"A revised and modernised public procurement legislative framework, with a view to underpinning a balanced policy which fosters demand for environmentally sustainable, socially responsible and innovative goods, services and works. This revision should also result in simpler and more flexible procurement procedures for contracting authorities and provide easier access for companies, especially SMEs."

European Commission

1. Contracts are too big / requirements too broad

– Consortia bidding

- Reg 19 & Reg 63
- if qualifications/experience relied upon, entities in question must perform the relevant works or services
- 'prove' that it will have resources necessary, including by producing a commitment by the entities to that effect
- authority now required to verify whether entities relied upon fulfil the selection criteria and whether there are grounds for exclusion under Reg 57
- authority may require operator and other entities to be jointly liable for execution of contract
- authorities may require that certain critical tasks be performed directly by tenderer itself or by a participant in that group

1. Contracts are too big / requirements too broad

– Consortia bidding

- Guide for SMEs on Consortium Bidding (CCPC, Dec 2014)
- A consortium bid will not breach competition law if:
 - the consortium members are not actual or potential competitors, or
 - the consortium members are all owned by the same parent company.
- Consortium between actual/potential competitors will not breach law if:
 - no consortium member/sub-set of members could fulfil tender/contract
&
 - only minimum info strictly necessary for formulation of bid / performance of contract is shared between consortium members
&
 - info restricted to relevant staff on a 'need to know' basis
&
 - consortium members compete vigorously as normal in other contexts

1. Contracts are too big / requirements too broad

– Lots

- Directive/Regulations & Circular 10/14 encourage greater use of lots
- Recital 78 (Directive 2014/24)

"authorities should ... be encouraged to divide large contracts into lots. Such division could be done on a quantitative basis, making the size of the individual contracts better correspond to the capacity of SMEs, or on a qualitative basis, in accordance with the different trades and specialisations involved, to adapt the content of the individual contracts more closely to the specialised sectors of SMEs or in accordance with different subsequent project phases."

- Reg 46 - authority must state in procurement documents (or Reg 84 report) an indication of the main reasons a contract was NOT split into Lots

1. Contracts are too big / requirements too broad

– Lots

- Recital 78
 - *"The contracting authority should have a duty to consider the appropriateness of dividing contracts into lots while remaining free to decide autonomously on the basis of any reason it deems relevant, without being subject to administrative or judicial supervision.*
 - *"Such reasons could for instance be that the contracting authority finds that such division could risk restricting competition, or risk rendering the execution of the contract excessively technically difficult or expensive, or that the need to coordinate the different contractors for the lots could seriously risk undermining the proper execution of the contract."*
- Broad discretion?
- Will this mean more awards to SMEs (for smaller contracts)?
- Authorities have to consider administrative burden of running multiple lots

1. Contracts are too big / requirements too broad

– Lots

- Authority can limit number of lots a tenderer can apply for
- Authority can limit the number of lots that a tenderer may win, provided criteria clear on determining which lots to award
- Where more than one lot awarded to same tenderer, the authority may combine lots into one contract
- Possibility of requiring an aggregated turnover where multiple lots to be awarded
- Might help spread work around, but will it result in more awards to SMEs?

2. Excessive Administrative Burden/Cost

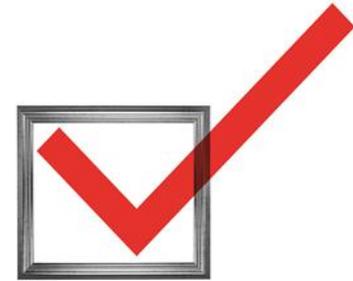
– Self-certification (Reg 59)

- European Single Procurement Document
 - Commission Implementing Regulation (EU) 2016/7
- ESPD will allow all businesses to electronically self-declare that they meet the necessary capability requirements
- Obviates need for certificates and other documents
- Only winner will need to submit all documentation proving that it qualifies for the contract

2. Excessive Administrative Burden/Cost

– Self declaration

- no grounds for exclusion apply (multiple questions)
 - all selection criteria are met (single question)
 - supporting documents can be provided
 - must confirm info continues to be correct
-
- If selection criteria vary from lot to lot, ESPD should be completed for each lot (or group of lots with the same selection criteria).
 - Separate ESPDs necessary for: consortia, sub-contractors, third parties relied upon
 - Operators can rely on ESPDs previously provided - if still correct
 - Supporting documents can be requested at any time from any tenderer



3. Disproportionate Technical/Financial Requirements

- Reg 58
- Selection criteria must always be:
 - proportionate
 - related to subject matter of contract
 - appropriate
- Minimum annual turnover cannot exceed 2x estimated contract value (except in duly justified cases)
- Experience more than 5 years / 3 years old may be assessed
- Experience should not be too narrowly defined
- Use of third party resources/consortia should be encouraged

4. Over-emphasis on price / industry standards

- Use of MEAT ?
- Less weighting on cost?
- Less reference to industry standards
- More focus on performance/functional standards (output)

Will new Regs make a difference?

- Will we see a dramatic difference in SME win rate?
- Concerns:
 - Tender processes remain complex, costly, time consuming
 - Consortia can be difficult for SMEs to manage
 - Shorter time limits may disadvantage SMEs
 - Greater use of negotiation procedures may disadvantage SMEs
 - Feedback often not constructive
 - Remedies regime may not be effective for SMEs
 - Public sector scepticism?

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