

P7_TA-PROV(2011)0233

Public procurement

European Parliament resolution of 12 May 2011 on equal access to public sector markets in the EU and in third countries and on the revision of the legal framework of public procurement including concessions

The European Parliament,

- having regard to Directives 2004/18/EC and 2004/17/EC on procedures for the award of public contracts and Directives 89/665/EC, 92/13/EC and 2007/66/EC on review procedures concerning the award of public contracts,
 - having regard to the European Parliament resolution of 18 May 2010 on new developments in public procurement (P7_TA(2010)0173),
 - having regard to the report to the President of the European Commission, José Manuel Barroso, by Professor Mario Monti, entitled ‘A New Strategy for the Single Market – At the Service of Europe’s Economy and Society’,
 - having regard to the communication of the European Commission ‘Towards a Single Market Act – For a highly competitive social market economy’ (COM(2010)0608),
 - having regard to the Green Paper of the European Commission on the modernisation of EU public procurement policy – Towards a more efficient European Procurement Market (COM(2011)0015),
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas a well-functioning procurement market is of essential importance in order to foster the Single Market, stimulate innovation, foster growth, employment and competitiveness, promote a higher level of environmental, climate and social rights protection throughout the EU, and achieve optimal value for public authorities, citizens and taxpayers,
- B. whereas especially in view of overcoming the financial and economic crisis and protecting against any future crisis, public procurement is of crucial relevance, serving as a catalyst for the revitalisation of EU economy and accordingly for employment and welfare in the EU,
- C. whereas a sound and well-considered process of optimising the legal framework for public procurement is of vital importance for the welfare of EU citizens, EU consumers and EU businesses, for national, regional and local public authorities and thus for the acceptance of the EU as a whole,
- D. whereas regarding the multitude of issues within the revision of EU procurement law, different priorities in terms of urgency as well as thematic connection have to be realised in view of ongoing political developments at EU and international level,
- E. whereas an extensive set of questions within the traditional framework of public procurement and the closely linked issue of concessions will need a coherent assessment based on a consistent consultation with the stakeholders,
- F. whereas the specific issue of safeguarding equal treatment and fair competition on public procurement markets in the EU and in third countries urgently needs more political attention,

especially with a view to current problems regarding access to public sector markets in third countries, slow progress in negotiations on the revision of the WTO Government Procurement Agreement (GPA) and the obvious reluctance of many third countries to join the GPA,

1. Refers to its comments in its resolution of 18 May 2010 on new developments in public procurement, and especially to paragraph 46 of this resolution stating that, while arguing strongly against protectionist measures in the field of public procurement at global level, it firmly believes in the principle of reciprocity, mutual benefit and proportionality in that area; and calls on the Commission to conduct a detailed analysis of the potential benefits and problems associated with imposing proportional, targeted restrictions on access to parts of the EU's procurement markets, an impact assessment analysing when it might be used and an assessment of the legal basis that such an instrument would take for those trading partners which benefit from the openness of the EU market, but have not shown any intention of opening up their own markets to EU companies, while continuing to encourage the partners of the EU to offer reciprocal and proportional market access arrangements for European companies before proposing any other new text in the area of public procurement;
2. Is of the opinion that the spirit of positive reciprocity and transparency will in effect secure more open public procurement markets and avoid protectionist measures using all existing tools available;
3. Asks the Commission, therefore, to provide data regarding the level of openness of public procurement and to ensure reciprocity with other industrialised countries and major emerging economies; invites the Commission to look into new ways of improving access for European enterprises to public procurement markets outside the EU, in order to ensure a level playing-field for both European and foreign enterprises competing for the award of public contracts; proposes, in more general terms, that future trade agreements negotiated by the Union should incorporate a chapter on sustainable development, drawing on the principles of corporate social responsibility as defined by the 2010 update of the OECD Guidelines for Multinational Enterprises;
4. Is convinced that in order to avoid new protectionist measures which might harm the interests of EU exporters also in fields beyond public sector markets, the Commission should search for adequate measures which will not allow for blanket EU or national counter-measures, but be based on appropriate tools in the area of public procurement;
5. In this regard, calls on the Commission to assess the problems associated with extraordinary low bids and to propose appropriate solutions;
6. Recommends contracting authorities to provide for early and sufficient information to other bidders in cases of abnormally low bids, in order to allow them to assess if there is ground for initiating a review procedure;
7. Sees an urgent need for the EU to achieve better coherence between the common external trade policy of the EU and practices in Member States accepting exceptionally low bids from companies whose home countries are not signatories to the GPA, to the disadvantage of EU companies and labour, social and environmental standards existing in the EU Member States;
8. With a view to question 114 of the Commission's Green Paper on the modernisation of EU public procurement policy asking for a ranking of priorities amongst the various issues raised in the Green Paper, endorses the importance of achieving effective solutions concerning the need for fair, open and balanced market access whilst promptly addressing other urgent issues, such as simplification and clarification of the rules, improving SME access to public contracts,

driving innovation through public procurement and subsequently considering other aspects of the review of public procurement with regard to concessions; therefore calls on the Commission to first approach the issue of simplification of rules, achieving well-balanced access to public sector markets, improving SME access, and to undertake the revision of public procurement and concessions as a second step, in order to allow for the necessary, sound involvement not only of the European Parliament and the Member States, but also of citizens and businesses, with a view to achieving the necessary recognition for all of these important Single Market issues, which are highly relevant for the overall welfare of the EU;

9. Instructs its President to forward this resolution to the Council and the Commission.