

## **EMTA remarks on proposal for a Directive on Public Procurement (COM (2011) 896 Final)**

EMTA represents the Transport Authorities responsible for devising, planning, integrating and financing the complex public transport networks of the largest metropolitan areas across Europe. Those Transport Authorities are responsible for holding the system while meeting the new mobility needs of the passengers, they're also accountable for its economic efficiency.

Founded in 1998, EMTA enjoys a membership of around 30 members across 17 Member States of the European Union. All together they cater for the daily commuting of around 90 million European citizens.

EMTA members are concerned by the two proposals in so far as they launch call for tenders issued in the public transport sector in the form of public procurement contracts in conformity with Art 5.1 of Regulation 1370/2007.

Members support the EC objectives of simplifying and improving the efficiency of public procurement procedures.  
However EMTA would like to stress some first concerns which it considers being in contradiction to the above objectives.

### **1. EMTA first remarks on proposal for Directive 2004 -18 (GENERAL) and on proposal on Directive 2004-17 (UTILITIES)**

#### **1.1 Modification of contracts**

EMTA is pleased to see the recognition of the need for modification of contracts during their life. In the public transport sector contracts are often both broad in scope and long in duration, such as long term infrastructure maintenance and rolling stock contracts.

It is undoubtedly useful to have a benchmark for what is considered to be a substantial contract change.

However, the two proposals for a Directive tolerate a modification to the contract that does not exceed 5% of the initial contract. These thresholds are so restrictive that they are unworkable for many EMTA members. In fact they are unlikely to be of any use as those thresholds are frequently and easily reached and would if they were maintained exclude practically all amendments being signed today. EMTA urges the deletion of these articles.

#### **1.2 Transmission of concluded contracts to an oversight body**

The proposals stipulate that an oversight body be set up in each Member State. EMTA wishes to point out that Member States already have structures that exercise effective

oversight.

In particular Article 93.6 of the directive for utilities and Article 84.6 of the directive for public contracts impose the transmission to the national oversight body of the full text of all concluded contracts with a value above a defined threshold

The intention that this should capture only the largest contracts is understood; nevertheless, this provision is likely to include a large proportion of the contracts let by transport authorities. Many member states already have mechanisms to address transparency in such cases. A further regime would be both costly and unnecessary. EMTA believes that the transparency requirements of the proposed new directives should be met through these existing regimes and practices and that the above-mentioned articles should be deleted.

### **1.3. Framework agreements**

Framework agreements are a useful procedure for the procurement of services, works and supplies. In order to maximize the potential benefit of the application of framework agreements, more flexible provisions and a longer validity timeframe for framework agreements are needed. The proposed constraints are not conducive to the aim of simplifying and modernising the procedures. In particular, the rules on the award of contracts based on a framework agreement are very detailed and lack flexibility. EMTA asks for these rules to be reviewed towards simplification and efficiency and considers necessary the time limit of four years be deleted.

## **2. EMTA remark on Rapporteur Marc Tarabella Draft Report on the proposal for a Directive on public procurement**

### **2.1 Sub-contracting**

In his Draft Report 2011/0438(COD) rapporteur Mr Tarabella has suggested limiting the flexibility on the use of sub-contractors (Amendment 137) and allowing them to make claims directly to the original tenderer, in EMTA's case the transport authority (Amendment 138).

Not only would constraints on the ability to sub-contract limit the freedom and flexibility for contracting authorities, they would also disadvantage many SMEs who are not able to compete for larger contracts. Therefore EMTA thinks Amendments 137 and 138 to Art 71 should be deleted.

Paris, 3 July 2012

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