



European Economic and Social Committee

INT/776
Public Procurement/asylum
crisis

Brussels, 27 April 2016

OPINION

of the
European Economic and Social Committee
on the
Communication from the Commission to the European Parliament and the Council
on Public Procurement rules in connection with the current asylum crisis
COM(2015) 454 final

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Rapporteur: **Erik Svensson**
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On 14 October 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament and the Council on Public Procurement rules in connection with the current asylum crisis
COM(2015) 454 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 220 votes to 1 with 9 abstentions.

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1. **Conclusions and recommendations**

- 1.1 The EESC takes careful note of the Commission's explanatory communication – which does not contain any changes – in view of the current climate in which, as described, contracting authorities are under intense pressure to solve urgent problems arising from the refugee and asylum crisis.
- 1.2 The EESC hopes that both the current directive and the newest one may allow for significantly shorter deadlines for submitting tenders and for direct procurement, thereby providing sufficient scope for swifter processing.
- 1.3 The EESC would nevertheless stress that it is important:
 - to ensure a high degree of transparency and take extra care in documenting the procedure;
 - to refrain from making inappropriate use of this legislative flexibility;
 - to endeavour to opt for solutions that facilitate subsequent integration and additional support;
 - that contracts awarded in an emergency are of short duration.
- 1.4 The importance of the non-profit sector as an adjunct to public authority procurement cannot be overestimated. Thanks to the efforts of this sector, many countries have been able to help and support far more people than would otherwise have been possible.

- 1.5 Even though the regulatory framework allows for swifter processing, the EESC believes it is important to cut red tape that results in lengthy procurement procedures.
- 1.6 In the light of new and growing threats, contracting authorities should consider using a separate procurement procedure for security and insurance.
- 1.7 The EESC would observe that a similar problem arises regarding refugees who chose **not** to seek asylum on arrival, as they are also in urgent need of health and other care and protection.
- 1.8 The EESC stresses that public procurement in connection with the asylum and refugee crisis should also take into consideration other services that prepare and facilitate integration at a future date.
- 1.9 The EESC requests and recommends that the Commission also clarify in this communication the question of public procurement in connection with the present refugee crisis, or else issue an additional communication on public procurement in response to the refugee crisis.

2. **Gist of the Commission document**

- 2.1 The European Union currently faces numerous challenges due to a sudden sharp increase in arrivals of asylum seekers. Not least, Member States have to respond rapidly to meet the most immediate needs of asylum seekers (housing, supplies and services). European public procurement rules provide all the necessary tools to satisfy those needs under the provisions of the current Directive 2004/18/EC¹ (the "directive") as well as under the newest public procurement Directive 2014/24/EU².
- 2.2 This Communication does not create any new legislative rules. It encompasses the Commission's interpretation of rules covering: (i) contracts for infrastructure (housing), which can be provided either by renting existing buildings not requiring extensive adaptations (i.e. building works) or by constructing ex novo or refurbishing existing buildings, with a threshold of EUR 5 186 000; (ii) contracts for supplies such as tents, containers, clothes, blankets, beds and food, with a threshold of either EUR 135 000 (previously EUR 134 000) or EUR 209 000 (previously EUR 207 000), depending on the nature of the contracting authority; (iii) contracts for services such as cleaning, health, catering and security, with the same thresholds as for the supplies contracts. Although applicable in full to all services, particular procurement rules apply to the "light regime" (a special regime for social and other specific services). For such services, the applicable threshold has been set at EUR 750 000.

¹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts: [OJ L 134 of 30.4.2004, p. 114](#); EESC Opinion: [OJ C 193, 10.7.2001, p. 7](#).

² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC: [OJ L 94, 28.3.2014, p. 65](#); EESC Opinion: [OJ C 191, 29.6.2012, p. 84](#).

- 2.3 For contracts falling within the scope of the directive, the contracting authority can choose to award the contract following an **open** or a **restricted** procedure. The minimum deadline to submit an offer in an open procedure is 52 days, but it can be reduced to 40 days by using electronic means. In a restricted procedure, the general deadlines are 37 days to submit a request for participation and an additional 40 days to submit a tender after selection by the contracting authority of those admitted to submit a tender.

If urgency requires it, the directive allows for a substantial reduction of the general deadlines using either: (a) an "accelerated restricted procedure", in which the deadlines to submit a request for participation are 15 days and to submit an offer 10 days, or (b) a "negotiated procedure without publication", which allows for awarding contracts to provide for asylum seekers' needs in the most urgent cases.

- 2.4 Contracting authorities will have to assess on a case-by-case basis which procedure they choose for the award of contracts aimed at providing for the immediate needs of asylum seekers (housing, supplies or services).

3. **General comments**

- 3.1 The EESC takes careful note of the Commission's communication and agrees with its basic stance that Member States must be able to respond swiftly to the most immediate needs of asylum seekers.
- 3.1.1 The EESC observes that this communication does not contain any changes, but instead provides constructive clarifications and explanations.
- 3.2 The EESC considers it very appropriate and efficient on the Commission's part to clarify at this stage its views regarding the applicability of the current rules, since many countries – although to varying degrees – have received an unprecedented number of asylum seekers and the contracting authorities, both national and regional, are under severe pressure.
- 3.3 The EESC shares the view expressed by the Commission in the communication that the provisions of the current Directive 2004/18/EC and the new Directive 2014/24/EU, which has to be transposed into national law by 18 April this year at the latest, are basically sufficient to cope with the increasing numbers and time constraints caused by the current asylum situation.
- 3.3.1 It is of the utmost importance that public procurement rules should not present an obstacle to dealing with the present situation and offering protection commensurate with asylum legislation. The areas most at risk are housing, health, security and catering.
- 3.3.2 The EESC hopes that the new directives – and hence the new national rules – may allow for significantly shorter deadlines for submitting tenders, thereby providing sufficient scope for swifter processing.

- 3.3.3 Direct procurement is also allowed in situations of extreme urgency, even if at times this means going above the threshold.
- 3.4 The EESC would point out, however, that it is extremely important to exercise a high degree of transparency and to take extra care to document procedures when using accelerated procedures or direct procurement.
 - 3.4.1 If the law on public procurement is to continue to enjoy the backing of companies as well as trade unions and civil society in general, it is vital that no party – be it the authorities or suppliers – exploit the flexibility in the rules in an inappropriate manner. This is why it is so important to already make provision for the possibility of a review during the course of procedures. An ex-post evaluation mechanism could be considered as a means of ensuring correct implementation.
 - 3.4.2 It is important to emphasise that, even in urgent situations, efforts should be made to opt for solutions that facilitate subsequent integration and additional support. This is especially the case for vulnerable groups such as unaccompanied children, pregnant women and people with disabilities.
- 3.5 It should be stressed that, in emergency situations such as those we are witnessing in some EU countries as a result of the asylum crisis, there is always a risk that contracting authorities and suppliers alike will try to find ways of cutting corners.
- 3.6 It is important that contracts awarded on the grounds of an emergency (under the "accelerated restricted procedure" or the "negotiated procedure without publication") should be of short duration, so that standard practice can be resumed as quickly as possible.

4. **Specific comments**

- 4.1 It is important to stress that the non-profit sector has been of vital assistance in complementing the public authorities' calls for tender. It has played a crucial role in the countries that have taken the most asylum seekers, i.e. Germany and Sweden. Without the contribution of the non-profit sector, we would not have been able to cope with arrivals on the scale we are now seeing.
 - 4.1.1 The scope for direct procurement means that players who would otherwise find it harder to win public sector contracts (including non-profit organisations) can also compete.
- 4.2 Even though the regulatory framework allows for rapid processing, however, the public authorities (all too) frequently take too long over it. Red tape can lead to lengthy procurement procedures.

- 4.3 It may be appropriate to provide a concrete example from the EU Member State which in proportion to its size has, along with Germany, received the highest number of asylum seekers, especially from Syria.
- 4.3.1 In November 2015 the Swedish Government examined the case for amending the law in order to be able to cope with the acute asylum situation there.
- 4.3.2 The contracting authorities in Sweden replied that the procurement rules in the EU Directive made it possible both to respond sufficiently swiftly in the event of extreme urgency and to take account of the public interest and provide for a sensible balance of interests.
- 4.4 The EESC believes that in order for the contracting authorities to be able to respond by matching quality with due speed, a market survey should be conducted to map out potential and available suppliers and identify expected costs before the situation becomes critical.
- 4.5 The EESC emphasises that it is important for the contracting authorities not to delay contracts, but rather to conclude them with due speed as called for by the circumstances.
- 4.6 Experience shows that security and insurance costs have increased substantially (they have as much as tripled) in reaction to threats and recent events.
- 4.7 In order to reduce uncertainty in the area of procurement and increase the range of potential solutions available, contracting authorities should consider separate procurement procedures for security and insurance.
5. **Comments and observations on matters not covered in the Commission communication**
- 5.1 The EESC would observe that a similar problem arises regarding refugees who chose **not** to seek asylum on arrival. Here too there is an urgent need for health and other care and protection, in addition to meeting the most pressing human requirements.
- 5.2 In the EESC's view, when awarding contracts for housing, care and services for asylum seekers and other refugees, public authorities must also take into consideration services that prepare for/facilitate daily life and the possibility of integration in the future. Examples of priority services in this respect are language courses and, ideally, vocational training.
- 5.2.1 Practical examples already exist of procurement that includes language classes, driving lessons and similarly important activities provided by the non-profit sector, churches and civil society associations.
- 5.3 In countries with limited financial resources, where there is a risk that the authorities will not pay for services contracted, it is crucial for payments to actually be made.

- 5.4 Finally, the EESC believes that it is essential for the Commission to provide further clarification in its communication regarding the broader picture, **either** by expanding its comments on public procurement to include both the asylum and the refugee crisis **or** by issuing an additional communication on public procurement in response to the refugee crisis.

Brussels, 27 April 2016

The President
of the
European Economic and Social Committee

Georges Dassis
