

*Response to the Green Paper on the modernisation of EU
public procurement policy*

Towards a more efficient European Procurement Market

18 April 2011

1. About EFAMRO and ESOMAR

This paper is submitted on behalf of EFAMRO¹, the European Federation of Associations of Market Research Organisations and ESOMAR², the World Association of Research Professionals.

Founded in 1992, EFAMRO represents the interests of market, social and opinion research in Europe. Its members are national trade associations for research businesses.

Founded in 1948, ESOMAR gathers together nearly 5000 individual members worldwide on both the provider and client side as well as in public bodies and academic institutions.

2. Introduction

EFAMRO and ESOMAR welcome the opportunity offered by the European Commission to respond to the Green Paper on the modernisation of EU public procurement policy.

We have noted the questions circulated in the Green Paper and due to the broad nature of the consultation exercise have concentrated our response on the questions and topics which appear, at this stage, to be of the most particular concern to the research sector. It should be noted that we are interested in the entire procurement discussion and consultation, and would wish to be involved in any of the broader discussions not just the topics which are covered in this response.

We have consulted with key stakeholders in the market, social and opinion research sector in Europe in the preparation of this response. We confirm that the contents of this paper are not confidential and can be attributed to EFAMRO and ESOMAR.

3. Background information about market and social research

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²Register ID Number : 29952722795-07

Research in itself does not seek to change or influence opinions or behaviour. Unlike direct marketing, advertising or other commercial communications, it does not seek to promote the aims or ideals of those who conduct or commission it. While research is used by marketers to test their products or messages, it is not a commercial communication.

Market, social and opinion research plays a key role in helping businesses and other constituencies better understand consumers, customers and citizens in developing goods and services and is essential for economic efficiency, innovation and progress. Social and opinion research is widely used by public bodies to understand citizens' preferences and measure key performance indicators, for example the Eurobarometer surveys carried out by the European Commission, and government studies used for improving educational, healthcare and police services.

4. Consultation Response

Q.4 Do you think that the distinction between A and B services should be reviewed?

Q.5 Do you believe that the Public Procurement Directives should apply to all services, possibly on the basis of a more flexible standard regime? If not please indicate which services(s) should continue to follow the regime currently in place for B-services, and the reasons why.

EFAMRO and ESOMAR believe that the focus of any European procurement legislation should be to ensure efficiency in public spending whilst ensuring the best public procurement outcomes. A relatively simple and easily understood legislative framework is essential to meet these aims. Any changes that are made should improve the flexibility of public procurement whilst ensuring a level playing field for all suppliers.

Removing unnecessary distinctions is one way of achieving this but broader, far reaching streamlining of the legislation is necessary to make the kinds of significant changes that are necessary. An example of the unnecessary complexity is the current classification of service categories. Government/public sector research typically falls between one of two service categories: category 10 for 'market research and public opinion polling'; or category 8 for 'research and development'. The two categories are not clearly distinct and some social research such as studies relating to policy or service development could as easily be classified 'research and development', as 'market research and public opinion polling'. This is particularly problematic due to the exemption that exists for some 'research and development' services (when paid by the contracting authority and where the results are to be made available to others).

The more measures that can be made to support European economic and business growth the better, particularly against the backdrop of so many European countries suffering economic difficulties. Streamlining procurement legislation to reduce the administrative burden would be a significant saving for researcher (of all sizes) that provide research to public bodies.

Q.6 Would you advocate that the thresholds for application of the EU Directives should be raised, despite the fact that this would entail at international level the consequences described above?

Although the aim of the thresholds is to increase the business opportunities for businesses of all sizes and in all locations throughout Europe, this is not always the case. As with the classifications detailed above, the administration of the thresholds is unnecessary complex. For example in the research context, in determining whether a contract is likely to meet the EU threshold, estimated costs of separate contracts that meet a single requirement must be aggregated and the aggregated total compared to the threshold. ESOMAR and EFAMRO believe the threshold process should be for individual contracts not aggregated contracts, and any changes should make the thresholds easier to apply.

Q.14 Do you think that the current level of detail of the EU public procurement rules is appropriate? If not, are they too detailed or not detailed enough?

EFAMRO and ESOMAR believe that there is significant variation in frameworks offered by contracting authorities, all of which claim to be necessary for complying with the directive. This presents difficulties to suppliers generally, not just SMEs whose additional concerns we address separately below.

We recommend that that flexible, simplified and standardised procedures are set out in the directive. This would reduce the tendency of some contracting authorities to “gold plate” the procurement directive, and ensure that the review of the legislation meets the stated aim “...to increase the efficiency of procurement procedures...”

Q.15 Do you think that the procedures as set out in the current Directives allow contracting authorities to obtain the best possible procurement outcomes? If not: How should the procedures be improved in order to alleviate administrative burdens/reduce transaction costs and duration of the procedures while at the same time guaranteeing that contracting authorities obtain best value for money?

EFAMRO and ESOMAR do not believe that current procedures facilitate the best possible procurement of research services. On the contrary, current procedures often hinder efficient purchasing. It is important to be able to facilitate early stage dialogue, and not be forced into arms-length transactions. It is also important to take prior performance and other factors into account, as these are often essential determinants of successful procurement outcomes in a field in which the quality of intellectual input and expertise is central to the performance of the contract. Bidding for contracts is an expensive process and the consequence of too many bidders being asked to submit full tenders is that resources are wasted. This clearly has a cost (individual and collective) for bidders themselves, but also a systemic cost. The supply of high quality research has been outstripped by rising demand, and in this context it seems irresponsible to consume such scarce resources with large number of bids, almost all of which will by definition be unsuccessful and unproductive. Having large

numbers of bids also militates against the kind of valuable and constructive dialogue we feel needs to be encouraged from early stages.

Q.16 Can you think of other types of procedures which are not available under the current Directives and which could, in your view, increase the cost-effectiveness of public procurement procedures?

The current procedures do not allow contracting authorities to obtain the best procurement outcomes. In the UK for example there are three main ways of procuring research: the Official Journal of the European Union (OJEU) frameworks which require mini-competitions between lots; non-OJEU frameworks where research is classified as research and development, and single tender selection is allowed; and project based procurement using open competition. There is no consistency or consensus about which of these procurement methods works best. Each user believes their approach is most appropriate for producing quality research and best value for money.

However, the variation of approaches within these frameworks highlights the main problem³. The rules are open to wide interpretation which can result in quite different frameworks being created each with its own advantages and disadvantages. However, as the legislation is open to such wide interpretation it allows bad practice which can reduce research quality and place an unnecessary burden on both research commissioner and supplier.

As research is such an important societal tool, vital in understanding and developing public policy, services and products, it is essential that it is procured in a way which ensures good quality research results. Any changes to the legislation should simplify the process, reduce the likelihood of misinterpretation, reduce administrative burden and be fair to all suppliers of all sizes.

Q.23 Would you be in favour of a more flexible approach to the organisation and sequence of the examination of selection and award criteria as part of the procurement procedure? If so do you think that it should be possible to examine the award criteria before the selection criteria?

EFAMRO and ESOMAR supports any changes designed to improve procurement flexibility, simplicity and accessibility. For services which are heavily reliant on the skills of those providing the services, such as for technical and creative services such as research, the experience and qualifications of researchers is vital in selecting the most appropriate suppliers. As such being able to have a flexible approach to the organisation and sequence of the examination of selection and award criteria would be very beneficial for procuring and producing quality research, whilst recognising that adequate safeguards must be in place to ensure fair competition for all suppliers.

³Based on the findings from the Social Research Association report: *Different Ways of Procuring Social Research in Government* (December 2010)

Q.27 Do you think that the full public procurement regime is appropriate or by contrast unsuitable for the needs of smaller contracting authorities? Please explain your answer.

Q.28 If so, would you be in favour of a simplified procurement regime for relatively small contract awards by local and regional authorities. What should be the characteristics of such a simplified regime?

EFAMRO and ESOMAR support a flexible, simplified and accessible approach to procurement. However, this does not mean that practical variations should be dismissed on the basis that they may result in greater complexity. A balance needs to be struck between simplicity and accessibility. The main beneficiaries of a lighter procedural framework would primarily be smaller suppliers and academics. Small businesses are vital to European economic growth, particularly at a time when many European economies are struggling; therefore any measures which can be introduced to support small businesses would be welcomed.

The primary characteristic of any simplified regime must be reduced administrative burden and greater centralising and sharing of core supplier information to reduce duplication of effort.

The UK has recently introduced a package of measures to open up Government contracts to small companies, charities and voluntary organisations. Key measures include:

- The launch of a Contracts Finder website where all public sector contracting opportunities over £10,000 will be publicised.
- Seeking to eliminate PQQs (Pre-Qualification Questionnaires) for all central government procurements under £100,000.

These kinds of measures or similar would be suitable at a European level.

Q.46. Do you think that the EU public procurement rules and policy are already sufficiently SME-friendly? Or, alternatively, do you think that certain rules of the Directive should be reviewed or additional measures be introduced to foster SME participation in public procurement? Please explain your choice.

The Green Paper raises the issue of the administrative burdens on Small and Medium-sized Enterprises (SMEs). This may take a number of forms including

- the large quantity of evidence that must be supplied in the selection phase or even to join a panel for future tenders;
- the variation ways in which this information is requested.

EFAMRO and ESOMAR support the suggestion that undertakings be allowed to submit only a summary of the relevant information for selection and/or provide self-declarations on the fulfilment of the selection criteria as a first step.

We would also welcome some standardisation in the questions asked across public authority frameworks. Research suppliers agree that the information required is relevant and necessary and note that there are common sets of information that are requested, such as dealing with waste, health and safety or data security. Many suppliers prepare for this by keeping standing files with the relevant information. Problems arise however where public authorities do not ask consistent questions, requiring the information to be rewritten or represented on each occasion. EFAMRO and ESOMAR recommend that public authorities be required to standardise common information requests with the additional possibility that such information be held centrally, with suppliers being able to update the information on a regular basis.

86. Do you think that obligations on what to buy should lay down other obligations for contracting authorities as regards the level of uptake (e.g. of GPP), the characteristics of the goods/services/works they should purchase or specific criteria to be taken into account as one of a number of elements of the tender?

Procurement frameworks should ensure that contracting authorities can set minimum standards for products or services.

EFAMRO and ESOMAR recommend that these should include:

- that the supplier adheres to a relevant code of conduct or practice, or other self-regulatory scheme where applicable;
- that the supplier has obtained a relevant quality assurance standard, such as ISO or CEN.

This would have two effects: that the contracting authority would be obtaining products or services or a particular minimum quality; and that the contracting authority would recognise the steps taken and effort expended by responsible suppliers to meet minimum process and ethical standards.

Q. 98 would you be in favour of introducing an EU definition of conflict of interest in public procurement? What activities/situations harbouring a potential risk should be covered (personal relationships, business interests such as shareholdings, incompatibilities with external activities/ etc.)?

EFAMRO and ESOMAR support any changes to the legislation which ensures fairer and more transparent research procurement. A clear definition of conflict of interest could assist this assuming that the definition was clear, unambiguous and applied consistently across Europe.

Conflicts of interests also occur where a contracting authority is a supplier of services, and in effect a competitor in the market. EFAMRO and ESOMAR are aware of situations where a contracting

authority has refused to put projects out to tender, even though the projects met the requirements to be put through a public procurement process. The contracting authority has instead retained the project for itself, depriving local businesses the opportunity to compete on a level playing field.



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