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PROMOTING INNOVATION THROUGH PUBLIC PROCUREMENT BEST PRACTICE & NETWORKING Brussels, 23 March 2010

Session 'Tools to support innovative procurement: building platforms'

1. Background

a) Review and possible revision of the 2004 Directives

Representatives of the Commission and other stakeholder (certain MEPs and public authorities) have expressed that a revision of the 2004 Directives may be necessary due to perceived legal uncertainties, need for better incorporation of considerations (green and social).

b) European Innovation Partnership/Pact

The European Commission will present a new innovation plan, which title should be *European Innovation Partnership or Pact*, by September 2010.

c) EU 2020: towards an "Innovation Union"

Research and innovation is a key pillar of the EU 2020 strategy. The European Commission aims to launch a flagship initiative entitled "Innovation Union", based on three objectives:

1. To complete and develop the European Research Area (ERA)

In particular, the ERA should be more focused on societal challenges (such as energy security, transport, climate change and resource efficiency, health and ageing, etc).

2. To improve framework conditions for business to innovate

- Create the single EU Patent and a specialised Patent Court
- Improve access of SMEs to Intellectual Property Protection
- Speed up setting of interoperable standards
- Improve access to capital and make full use of demand-side policies, e.g. **through public procurement** and smart regulation.

3. To launch "European Innovation Partnerships" between the EU and Member States to speed up the development and deployment of the technologies needed to meet the challenges identified. The first will include "Building the bio-economy by 2020", "The key enabling technologies to shape Europe's industrial future", "Technologies to allow older people to live independently and be active in society".

The "Innovation Union" initiative is in line with BUSINESSEUROPE's proposals as developed in the response to the public consultation on Community innovation policy (sent on 16 November 2009). Please see below, point 3 b).

2. BUSINESSEUROPE's key messages

BUSINESSEUROPE published on 12 October 2009 a brochure "Innovation: Building a successful future for Europe", which chapter 4 calls for developing demand-side instruments in innovation policy, in particular pre-commercial public procurement.

- a) Public procurement is still insufficiently used in Europe as a tool for promoting innovation
 - The US spends some 50 billion \$ on procuring R&D from the private sector every year, much more than governments in Europe do. Public procurement represents 16% of EU GDP (=
 - Furthermore, in the US, some 2 billion \$ of these 50 billion \$ are specifically for SMEs.
- b) Innovation can be promoted within the current legal framework, new legislation in this field is unnecessary.

The existing legal framework provides sufficient legal certainty on how to use public procurement as a tool for innovation and it secures open, transparent and fair public procurement throughout Europe.

- c) Public procurement cannot drive but facilitate innovation

Public procurement can facilitate but not drive innovation:

"The main reason repeatedly stated for pursuing innovation through public procurement lies in the economic impact and importance of such procurement. Public purchasers are seen as important buyers having a huge effect on the market through their demands for goods and services. That, however, does not mean that all procurement made by public purchasers is suited to encouraging innovation".

(Extracted from BUSINESSEUROPE's response to the public consultation on Community innovation policy - sent on 16 November 2009).

- d) Public procurement is one of the demand-side instruments which needs to be developed in research and innovation policy

Market demand for new products and services is a key factor influencing the level and strategic orientation of R&D investment. More efforts must be done create more innovation-friendly markets.

The EU “Lead Market Initiative” is a good step in that direction as it aims to create better and more innovation friendly market framework conditions (including regulation, procurement and standardisation - see table 1) to stimulate markets of high economic value. Yet, progress in implementing the Initiative is rather slow.

Lead Market Areas	EU policy tools		
		Legislation	Public procurement
			Standardisation Labelling Certification
	eHealth	✓	✓
	Sustainable construction	✓	✓
	Protective textiles		✓
	Bio-based products	✓	✓
	Recycling	✓	✓
	Renewable energies	✓	

Table 1. State of play: implementation of the EU Lead Market Initiative

e) Green public procurement

Public procurement can play an important role in promoting innovation by helping to shape production and consumption trends and demand from public authorities for greener goods and contributing to creating markets for environmentally-friendly products and services.

Green public procurement is rising in prominence across Europe, with many authorities choosing to procure low carbon solutions from the private sector, who have a lot to offer in technology and expertise.

The Commission “Action plan for sustainable production and consumption and a sustainable industrial policy” and the Communication on Green Public Procurement (GPP) encompass a very extensive package but coordination of these documents seems insufficient.

Efforts to enhance environment-oriented procurement in a manner that is transparent across the EU are essentially welcome.

In doing so however, it is essential that public authorities respect the European legal framework for public procurement, ensuring that the use of environmental criteria is:

- related to the object of the contract
- in line with the basic principles of non discrimination and transparency which are essential for any kind of public procurement in the Internal Market.

The EU should refrain from creating new legislation in this area.

f) SME access to public procurement:

Improved access by SME would promote innovation. Within the existing framework there are many tools that can be utilized such as:

- encourage small enterprises to bid for contracts
- divide contracts into lots where suitable
- encourage subcontracting of larger contracts
- apply well balanced contracts to avoid unbalanced risk
- apply suitable qualification criteria
- abstain from unnecessarily high levels of proof and financial guarantees
- advertise not only large, but also small public procurement opportunities on national centralised websites

d) Key recommendations

- **Further implement the “Lead Market Initiative”** in an open competition context
- **Encourage more use of pre-commercial procurement of R&D services** by national, regional and local public authorities
- **Consider on a case-by-case or category-by-category basis** whether innovation should or can be a part of a particular purchase
- The best way to safeguard innovation is to **guarantee market openness and transparency** in public procurement.
Current exemptions regarding the publication of tenders for reasons of the economic crisis should not be perpetuated.
- The **Most Economically Advantageous Tender** should be used systematically to award contracts.
- The **Confidentiality** of tenders and technical solutions submitted by contractors must be strictly respected. IPR should be respected within the boundaries set forth in the procurement rules.
- Instead of new legislation the development of **guidelines and toolkits** should be promoted
- Although we welcome the emphasis on public procurement we encourage that Commission initiatives should be coordinated by DG MARKT in order to ensure coherence.

a) Example of good practice in public procurement: the British “Innovation Nation” Plan

The “Innovation Nation” White Paper launched in 2008 spells out how the British government creates demand for new innovative products and services covering £150 billion in public spending (on both goods and services) each year. In 2006/2007, public procurement in the UK was £ 175 bn (€ 195 bn).

The paper recommended a series of actions such as the publication by each Department of an Innovation Procurement Plan as part of its commercial strategy. A

supervisory body is nominated, targets are set and exchange of good practice is facilitated.

This example of good practice was quoted in BUSINESSEUROPE's brochure "Innovation: Building a successful future for Europe".

Norwegian Supplier Development Program:

This Supplier Development Programme is a tool for stimulating further innovation. Suppliers and public authorities to meet at an early stage of a purchasing process, through this development programme, which stimulates innovation. These forums provide a possibility to develop competitive areas and for the suppliers to get insight into the purchasers' wants and needs.