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SME PARTICIPATION IN PUBLIC PROCUREMENT IN THE COMMUNITY

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1. INTRODUCTION

1. In its Communication "Promoting SME Participation in Public Procurement in the Community"⁽¹⁾, the Commission drew attention to the apparent failure of SMEs to win a share of public contracts commensurate either with their share in the economy or their potential in supplying the missing competition essential to more open and efficient public procurement. In an earlier Communication on "Public Procurement : Regional and Social Aspects"⁽²⁾ - the Commission had also underlined the particular significance of SMEs in peripheral regions, in the context of social and economic cohesion, given their contribution to employment and to economic and financial viability, and recommended positive measures to promote their participation on an equal footing in Community wide public procurement.
2. This communication responds to the Council's conclusions of 28 May 1990 which invited the Commission:
 - to continue to examine measures and to make recommendations to promote increased access to public contracts, taking into account the objectives of the policy of open and efficient public procurement;
 - to look at ... an improvement in the TED system as a means of disseminating information and promoting and assisting transnational tendering;
 - to study the problems of SMEs in tendering for large contracts;
 - to study and analyze the various qualification and procedural requirements imposed by contracting authorities, which restrict SME participation, with a view to the possibility of drawing up standardized qualification requirements and simplified tendering procedures on a Community-wide basis;
 - to consider appropriate experiments and pilot projects, to study and evaluate their results and make more detailed recommendations on appropriate measures in this area;
 - to study appropriate and positive measures to prevent any serious risks directly associated with the implementation of open public procurement and in promoting its application at regional level;
 - to monitor on an on-going basis... the participation of several categories of size of SMEs in public procurement.
3. This Communication reflects the findings of work undertaken by the Commission, the results of pilot experiments particularly in the field of information and the considerable experience of Euro-Info Centres and other bodies in providing information and technical assistance to SMEs pursuing an interest in public contracts. Further, the Commission has benefited from discussions in the Advisory Committee on Public Contracts and in the Advisory Committee for the Opening-up of Public Contracts as well as the Consultative Committee on SMEs.
4. The market for public procurement is not homogeneous. It involves different types of purchasing authorities at national, regional and local levels, public administrations and public enterprises and different subjects - public works, supplies and services. Different parts of the market have their own specific characteristics. This Communication focuses on problems inherent in operating under the formal procedures which govern public procurement. It is, to that extent, an overview and only refers to market specificities where these are relevant.

(1) COM(90) 166 final of 7 May 1990.

(2) OJ N° C 311 of 12.12.89 (COM(89) 400 final).

11. RECENT DEVELOPMENTS

5. In the two years which have followed the Council's conclusions of 28 May 1990, implementation of the Internal Market public procurement legislative programme has progressed, with all proposals either adopted or in procedure of adoption. By the beginning of 1993, rules covering public works and public supplies for the public authorities and for the utilities will be in force. Further these will be supported by Directives providing for remedies to be obtained where Community law is not respected. Provisions regarding service procurement will follow afterwards. The entry into force of the Remedies Directive⁽³⁾ marked a critical point in establishing the genuinely open nature of procurement. This is some encouragement for firms, particularly SMEs, to consider making the substantial effort required to gain entry to public procurement markets in other Member States.

6. The Commission, in its Recommendation⁽⁴⁾ on standardization of tender notices, which includes a standard nomenclature for describing the object of procurement in public works, has also begun to lay the foundations for a common language which will enable enterprises to identify procedural requirements and understand what is required much more easily. This development will greatly enhance the potential of TED, the electronic version of the Official Journal, which is being constantly improved and refined. Since the beginning of 1990, for example, it has been possible to introduce awarding authorities' searchability, menu guided access in 9 language versions, the possibility of regional searches, a fax service, and forward cross referencing of linked documents, for example pre- and post-award contract information.

It nevertheless remains clear that there is some way to go before TED is fully adapted to the needs of its potential users and there is scope for further simplification and development of its operations. Although it remains the primary source of information on tenders above the thresholds established by the Directives, other data, including details of smaller local tenders, have been established by institutions such as Chambers of Commerce and Euro-Information Centres (EICs). Those in cross-border regions are proving particularly valuable (Examples: EIC-initiatives in Trier, Bordeaux, Zuid-Holland). If such cross-border initiatives could be extended to voluntary cooperation of purchasers this would be of particular value to SMEs.

7. Training programmes in public procurement have been extended to target public authorities and potential suppliers. Intensive efforts have been made, despite lack of resources, within the Euro-Information Centre network, to increase the profile of public procurement and provide sectoral specific information to meet users' requirements. Initial attempts have been made to make use of the BC-Net and Europarteneriat frameworks to establish co-operation between

(3) OJ N° L 395 of 30.12.89.

(4) OJ N° C 305/19 of 6.11.91

businesses as a basis for access to public procurement, although the former initiative requires further development in order to realise its full potential in this regard. Regrettably the POINT initiative has proved not to be viable, but valuable lessons have been learnt as a result. Notably the need to target delivery of such services by identifying those firms that have the potential to successfully compete for public procurement contracts in other Member States and then seeking to persuade them to subscribe.

The recently launched Community initiative "PRISMA", while confined to Objective N° 1 regions, has the objective of demonstrating the advantages, with possibly eventual wider application of action aimed at establishing information systems adapted to the requirements of SMEs, following up information with technical assistance in bidding for contracts and providing support for co-operation between enterprises seeking to improve their financial and technical capacity to undertake public contracts.

8. Several Member States, such as France, have a well-established policy of encouraging SME participation, which is reflected in their legislation and practice. Other Member States have now taken or are considering taking action to encourage wider participation in public procurement, sometimes in the context of consolidation and review of their public procurement legislation and practice which has accompanied transposition of the provisions of the public procurement directives. Thus, Belgium and Luxembourg have introduced provision for direct payment by contracting authorities to sub-contractors. The Irish export organization, An Bord Tráchtála, has issued a series of guides to public procurement in other Member States. Portugal has encouraged constructive co-operation between larger enterprises and SMEs. The United Kingdom has pioneered an assisted consultancy scheme for firms with less than 500 employees which includes a series of discrete modules, each of which could improve their performance in procurement markets overseas. They have also produced a thirty page publication "A guide to Public Purchasing" and announced the introduction of prompt payment to sub-contractors by prime contractors as a precondition for the award of public contracts.
9. These initiatives may have the effect of raising awareness and changing traditional attitudes but this will take time, and although it is too early to be definite, it is judged that they are likely to be insufficient given the scale of the problems facing SMEs. A number of success stories that have come to the notice of the Commission do illustrate that given initiative, planning, and the provision of support at the local level, much may be achieved. Examples include a Danish engineering firm specialising in environmental problems participating with an Irish partner in an Irish project; a German firm supplying non-inflammable fibres for French military uniforms; French and British chambers of commerce on either side of the English Channel (Normandy and Hampshire) working together to resolve the problems of local architects and enterprises finding niches in one another's construction industry; a Luxembourg enterprise being introduced to Germany by a German construction firm which has had experience in working with it in Luxembourg; Spanish and French chambers of commerce exchanging information about public contracts and introducing enterprises to crossfrontier partnerships, with the active assistance of the public administrations concerned.

III. SME PERCEPTIONS OF THE PROBLEMS OF PARTICIPATION IN PUBLIC CONTRACTS

10. If such success stories give ground for hope and help to focus attention on points of growth, they do not justify complacency with regard to the overall situation. While Community legislation has yet to make its full impact, there is little evidence to suggest that increased advertising of tenders in the Official Journal and the many efforts to provide better tender information for SMEs in recent years have, so far, significantly enlarged their general share of the public procurement market within the European Community. The continuing reluctance of SMEs to try to obtain public contracts is confirmed by reports from Euro Info Centres, such as one which

"Hardly received questions from SMEs concerning public procurement. Very few companies are interested in the tenders. They do not believe that there is fair and open competition and they consider the problems as complex."

11. The principal factors, which are claimed by SMEs themselves to inhibit them from tendering for public contracts, have been identified as:
- (1) the widespread belief that public procurement is not truly open;
 - (2) the relatively large size of the majority of contracts published;
 - (3) failure to obtain adequate information concerning contracts;
 - (4) shortage of language skills in firms, particularly in technical areas;
 - (5) the time available in which to properly prepare bids;
 - (6) continued existence of non-tariff barriers to trade, and the cost and difficulty of challenging them individually;
 - (7) the cost of preparing bids, coupled with the diversion of scarce management resources;
 - (8) problems related to the specification of standards and ignorance of the potential impact of the European standardization and certification process;
 - (9) failure to obtain quality assurance;
 - (10) the costs involved in achieving credibility in another Member State;
 - (11) financial problems, including delays in payment.

IV. POLICY OPTIONS

12. Most of the problems high-lighted are not confined to SMEs. However, they find them more formidable and, on occasion, even an insuperable barrier to market entry. Any enterprise setting out to enter the public market has to undertake extensive preparation before commencing the search for contracts. This includes understanding procedural rules; identifying potential markets; drawing up a business plan; ensuring that it can meet the required standards; obtaining certificates of conformity to a quality assurance standard; training or recruiting staff in line with the technical, management and marketing requirements demonstrated by its business plan, and evaluating the overall financial implications.

13. There are many SMEs whose management and marketing organization is insufficiently developed to enable them to overcome these hurdles. Inability to take these steps may simply be an explanation of why such firms are small and will remain so. If they are to have access to public procurement, it can only be in partnership, whether as sub-contractors or otherwise, with larger firms which have the necessary financial, organizational and technical capacities.
14. There exists another body of firms however, having experience in cross-frontier commercial transactions and/or supplying domestic public procurement markets. Such firms might be interested and sufficiently competent, but are deterred from trying to break into the public procurement markets of other Member States by the belief that they will not open their markets and that adjudication procedures are unfair.
15. This suggests that direct participation in public procurement is only likely to be feasible for a group of enterprises such as that described above. For others including some specialised enterprises without a sufficiently developed management and marketing organisation, participation through sub-contracting or other forms of partnership may be more appropriate.
16. To this end, policy needs to both systematically remove the barriers which prevent otherwise appropriate enterprises from receiving public contracts and to encourage appropriate enterprises in their efforts to achieve the necessary management and marketing organizational capacity and product quality for successful participation in public procurement.
17. Member States may be concerned about the adverse effects of SMEs losing market shares in unequal competition with larger enterprises. However, there is no justification for special or protective treatment of SMEs in general. It is, rather, potentially dynamic firms that should be encouraged as a matter of public policy and given every opportunity to expand, since it is from their ranks that will emerge much of the future competition in public procurement and, potentially, the future strength of the Community in international trade.
18. The chances of success of such an approach depend on modifying the attitudes and behaviour of both public purchasers and enterprises which might be their potential suppliers. Policy recommendations to achieve this are set out in chapters V - IX.

V. INFORMATION AND TECHNICAL ASSISTANCE

19. Public procurement, like all markets, depends for its openness on the free exchange of information between buyers and suppliers. There is no lack of information about public contracts above the Directive thresholds. As many as 80 tenders may be published in the Official Journal on a given day. With the improvements in the publication system noted above, regular users, whether SMEs or local organizations subscribing to on their behalf to TED, should not have difficulty in obtaining raw information on new tenders.

20. However, the comparatively short period allowed for the preparation of bids means that serious contenders need advance warning of intended purchases if they are to properly prepare their offer. The periodic information notices provided for in the Directives are intended to help meet this need and to help firms to carry out research in order to find out this information for themselves. Developing experience with these notices should, progressively, make them more useful.
21. Such information will not, however, be of great help to SMEs which are unprepared for participation in public procurement. Nor will it remove the need to obtain further particulars of the contracting authorities' requirements within the short time available. This will inevitably involve contact with the contracting authorities, usually raising language problems in the case of a tender from another Member State. Obstacles encountered in obtaining in time full information on such matters as specifications and standards readily defeat the less determined and the less qualified, who become discouraged and disillusioned.
22. Improvement in the quality and rapidity of access to essential information will be obtained:
 - by constant improvement (for example in regional access) in TED and the ECHO Customer Services, in response both to improvements in the public procurement publication system and to technological development;
 - by more willingness on the part of contracting authorities to provide and disseminate information on their requirements and to explain it, through guides to suppliers, vademecums or seminars;
 - by the development of electronic data systems which permit instant dialogue between contracting authorities and the enquiring enterprise, if possible on the basis of a common language.
 - by Member States ensuring that their public purchasers strictly observe the requirements to give advance notice of their purchases. It would also be helpful to SMEs if this process could be extended on a voluntary basis.
23. Information will not lead to greater participation in public procurement, if firms have not already prepared themselves to make use of it. Practical training in the priority areas of management, marketing and quality needs to be linked with more methodical and detailed explanation of public procurement procedures.

The Irish training authority, Foras Áiseanna Saothair, in its Training Support Scheme to improve the skills of operators and managers in firms seeking to meet the challenge of the Single Market, makes participation conditional on evidence that training needs have been clearly identified and linked to a company business plan, which has already identified difficulties and opportunities.

24. The other lesson to be learned from pilot projects is that unless information is supplemented by some form of consultancy and rapid access to translation, it is all too likely to be wasted. Such technical assistance services have a role to play, not only in helping to prepare and follow up bids, but also in the analysis of company needs and potential and in the search for partners. Technical assistance to SMEs, in this wider sense, assumes a key role among the measures to improve participation in public contracts to be assisted under the Community Initiative "PRISMA".

VI. TENDERING FOR LARGER CONTRACTS

25. In examining the problem of SMEs in tendering for larger contracts, it is necessary to consider the advantages and disadvantages and their appropriateness to different situations of:
- (a) subdivision of contracts into lots;
 - (b) sub-contracting;
 - (c) co-operation between enterprises; in meeting the objects of open and efficient public procurement and extending and enhancing the participation of SMEs in public procurement.

Division of contracts into lots

26. Certain Member States, such as France and Germany, have a settled policy of division of works contracts into lots, the practice being obligatory in Germany. The value of the work in the individual contracts is thus reduced and made more accessible to SMEs. It is illegal to use the practice to evade the application of the public procurement directives. However, division into lots requires that the contracting authority accept responsibility for the management of the project. This requires considerable management capacity and technical competence, which some contracting authorities may lack or may, as a matter of policy, wish to devolve on others. Above all, a general policy of matching the size of contracts to the known capacities of SMEs may not be consistent with the proper object of each particular public procurement.
27. There may, however, be advantages in some cases. Prices can be lower for lots than for sub-contracts, where a contracting authority reserves a margin of security to protect it in the event of the failure of a sub-contractor. Division into lots may be more appropriate to public works, where a construction project is naturally divisible into elements which can be separately assembled by specialize firms or to supplies, where successive orders are for variable quantities of the same product, and smaller firms can be more competitive than larger ones where certain work is concerned because of their lower fixed overheads.

Sub-contracting

28. While sub-contracting has the possible disadvantage of placing extra risks and costs on contracting authorities, it has compensating advantages and, under certain conditions offers the best possibility for many SMEs, which do not have the organizational and management capacity to bid for direct contracts, to participate in public procurement.
29. Sub-contracting exists in practice when a missing competence or speciality has to be found. Sub-contractors can be engaged without the procedural formalities needed for a prime contractor. The increasing complexity and the number of components of many final products provides a natural growth area for sub-contracting. Where sub-contractors enjoy relations of confidence and security with principal contractors, there can be the added advantages of:
- technology transfer;
 - a reasonable possibility of semi-permanence in public procurement.

These advantages are not of course general although they mirror the symbiotic sub-contractor relationships typical of Japan, where SMEs have achieved a much higher share of public procurement than in Europe⁽⁵⁾. They are also common in the utilities sectors, where public procurement is to be opened up from the beginning of 1993.

30. The considerations of Part V as regards information apply equally to potential sub-contractors in public procurement. There is a need to obtain information about sub-contracting possibilities early in the procurement cycle, ideally before the main contract is advertised, and to establish the necessary links between sub-contractors, main contractors and contracting authorities. The establishment of data bases through which sub-contractors could obtain details of the winners of large contracts and/or the use of early warning systems like those at present operated by the United Kingdom Ministry of Defence and the European Space Agency could be extended. There are objections to specific public procurement legislation which privileges sub-contracting or interferes in the legal order which governs the relationship between contracting and sub-contracting enterprises. It would, however, be a legitimate object:
- to require the use by prime contractors of true specialist sub-contractors where the achievement of the objective of the procurement renders this advantageous;
 - to seek to achieve a better balance between principal contractors and sub-contractors, through, for example, the use of framework contracts or support for the establishment of agreed codes of practice concerning the relationships of principal contractors and sub-contractors⁽⁶⁾;
 - to exchange information, in this context, on common trends in the development of law and practice.

Co-operation between enterprises

31. Co-operation of enterprises, in the form of consortia, or the formation of European Economic Interest Groupings, can be a vehicle for establishing the necessary credibility and capacity for participation in public procurement. This is particularly so across national frontiers where a local presence, whether through subsidiary, branch, joint venture, or agency agreement, is often helpful for securing contracts.

There are, however advantages and disadvantages in association, which seems to compromise a jealously guarded independence, without necessarily guaranteeing long term security. More knowledge and experience is needed, particularly in the area of cross-border partnerships. The rules governing such partnerships also need to be reviewed to see whether they effectively deal with such problems as the assessment of the combined financial and technical capacity of enterprises working in co-operation in a way which meets the reasonable requirements of contracting authorities.

VII. SIMPLIFICATION AND STANDARDIZATION

(5) "Towards a European Market in sub-contracting". SEC(91) 1286 of 17.01.92.

(6) eg Agreement concluded between the International European Construction Federation (FIEC) and the Comité Européen des Equipments Techniques du Bâtiment (CEETB) on 8.07.82 - OJ N° C 52/2 of 24.2.88.

General

32. Many things have to be achieved by SMEs themselves if they are to participate in public procurement. The burden of failure to do so cannot be transferred to contracting authorities. Nonetheless, a change of attitude is also necessary on the part of many procuring authorities and entities, who are often insufficiently aware of the costs they impose on SMEs, not just in preparing bids, but in responding to the whole tender process. These includes costs incurred in paying for tender documents, providing for product demonstrations and coping with extended delays. The principle of proportionality, matching, for example, small procurements of supplies with simpler, standardized purchasing conditions, has much to commend it.
33. Open tendering procedures mean more opportunity for SMEs to learn about available work. However, a plethora of bids adds to the total cost and the complexity of the award procedures for both SMEs and the contracting authorities. For the same reason, more advertising on a voluntary basis of contracts below the Directive thresholds may not necessarily help SMEs, but even lead to their losing markets in which they did not previously have to compete with larger enterprises. Restricted procedures need not be a barrier in themselves to SME participation, providing the pre-qualification process is transparent and fair to them.

Problems of timing

34. Even if firms are aware of the existence of a call for tender on the very day of publication in the Official Journal, it will normally be necessary to write or fax for details. If long, they will have to be despatched by post. Only when they are then translated, can a preparation for a bid be considered, in the appropriate language. Delays of several days in the post, not uncommon in certain Member States, can, under these circumstances result in missed deadlines.
35. Part of the remedy lies in the hands of contracting authorities. It is essential that details of tenders are notified promptly and correctly, that the spirit as well as the letter of the public procurement directives is observed in avoiding unjustified delays in sending the correct documents, and that the directive provisions allowing accelerated procedures for cases of urgency should not be abused. Purchasing authorities could simplify matters and avoid loss of time by making more information available about their requirements and procedures, for example in the form of guides, which could usefully be made available in a number of Community languages.

Pre-qualification

36. The object of pre-qualification procedures is to simplify the process of selecting tenderers. Pre-qualification can be positively helpful to SMEs where it results in the reducing of lists of candidates for specific contracts to those which are properly equipped. SMEs have no interest in the over-extension of bid lists, which only leads to wasted costs in preparing bids. There is a point beyond which these procedures cannot be simplified, if they are to meet the need of the contracting authority to satisfy the requirements of accountability, without impractically close and costly supervision of contracts, and also to avoid the risk of accepting an offer from a non-viable firm, which has submitted it purely to obtain financing to continue in activity.

37. However, there is an almost complete lack of homogeneity in pre-qualification systems.

The public procurement directives leave such procedures to the contracting authorities. Differences between systems mean that successful pre-qualification for one authority may give no help in pre-qualifying for another. Given the variety of circumstances to be covered, agreement on a set of general rules governing pre-qualification is too much to hope for. However, any degree of alignment or mutual recognition could help reduce costs. The most promising way forward would seem to lie in agreeing codes of practice for particular sectors in conjunction with the major buyers in the fields concerned.

Standards and technical specifications

38. Where there are no European standards in existence, national standards or in their absence industry-specific specifications continue to be included in tender specifications. The latter type of specification may well have been worked out with existing suppliers, giving them an advantage over newcomers. Although national standards should not be difficult to obtain, availability in other languages is likely to be limited. The adoption of common European standards should help overcome such obstacles.
39. Much depends, therefore, on the process of adopting European standards. It is therefore important that the problems of management of this process be resolved as rapidly as possible. Ensuring systematic notification of new national technical regulations as required by Council Directive 83/189/EC, and ensuring that national standards take proper account of the principles of mutual recognition are of great importance in this respect. It is, further, important that the work arising from the new approach Directives, such as that on construction products⁽⁷⁾, which is of great importance for public procurement and for SMEs, should move forward, enabling the process of establishing the hundreds of Euro-standards needed to begin in earnest.

Financial problems, including delays in payment, caution and guarantees

40. The obligation to deposit performance bonds can act as a disincentive to SMEs, particularly as banks frequently reduce other finance facilities as a consequence of extending such guarantees. The solution may lie with the SMEs themselves, through the organization of a central insurance organization. Professional associations have, in certain countries, established a continuing guarantee for their members, providing for an alternative enterprise to take over in the event of failure to complete a contract.

(7) Council Directive of 21.12.1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (89/106/EEC) OJ N° L40 of 11.02.89.

41. Delays in payment

Delays in payment add to costs and can, in extreme cases, endanger the existence of SMEs. Their limited borrowing facilities and high borrowing costs, may even prevent bidding for other contracts until overdue payments are received. The situation of sub-contractors will be equally affected by failure to pay the principal contractor.

An analysis by the Commission of existing provisions in Member States regarding payment terms in public procurement pointed to substantial lack of transparency of provisions in this area and to considerable disparities between and within the Member States. It also allowed the identification of several measures that can be taken by public authorities to improve payments to main contractors and subcontractors. These include:

- simplifying and accelerating payment procedures
- better transparency in the arrangements for payment
- the fixing of a maximum period within which payment must be made, and provisions on the staging of payments
- measures to ensure the prompt payment of sub-contractors

These issues will be further examined in a Green Paper which the Commission expects to issue shortly.

VIII. STUDIES AND PILOT PROJECTS

42. The Commission has launched a study programme in the field of information systems (SIMAP), which will embrace issues raised by the special requirements of SMEs, including sub-contractors, and longer-term improvements in the TED database.

43. There is a continuing need for surveys and studies in specific areas, including:

- the monitoring on a pilot basis of the use of possibly out-dated standards in contract specifications;
- a study to find out how translation of national standards that will not be adapted to conform with European Standards might be made more widely available;
- as more European standards come into effect, regular surveys to evaluate the level of compliance costs borne by SMEs.

44. Assisted projects and programmes, for example, those carried out within the framework of the BC-Net, European Information Centres, "Interprise" or Europartenariat, need to be adapted to meet the requirements of particular sectors and the need for technical assistance and a practical training dimension in addition to information. A review should also examine how the information gained and the positive results achieved can be disseminated with the objective of improving the general level of provision within the Community, particularly as regards counselling and training services.

There is scope for pilot programmes in new areas. Projects could aim at fostering cross-border partnerships or consortia of SMEs, to enable them to bid for larger contracts. The existing BC-Net computerised network, aimed at promoting cross border partnerships, allied to a system whereby preliminary consultancy guidance could be given before a partnership search commenced, offers a mechanism which merits further study. A pilot project should be launched in a suitable area on the achievement of Quality Assurance certification, through the provision of consultancy services at a reduced cost.

IX. THE REGIONAL DIMENSION

45. The peripheral regions of the Community are heavily dependant on SMEs. Opening up public procurement will bring the challenge of new competition from enterprises established outside which may be better informed and have more sophisticated marketing skills. Greatly increased investment in infrastructure with structural support is, however, providing new opportunities and the potential for transfer of technology from larger incoming enterprises.
46. The situation will be helped by assisting SMEs to find sufficient resources in the vital areas of technological and market development. The Community Initiative, "PRISMA"⁽⁸⁾ provides for specific funding in Objective N° 1 regions for:
- (a) measures to create and strengthen structures for calibration and metrology and related services for the benefit of enterprises - essential to the effective pursuit of a quality policy;
 - (b) measures of technical assistance, including information services on public contracts, national quality systems, research and development results intended for the public sector market and new market opportunities: aid is also available for costs related to co-operation with other firms, registration and admission to lists of qualified tenders and translation and other bidding costs.

A total amount of 100 million ECU has been made available for national programmes, which have now been approved for all the Member States concerned. These measures can be combined with measures of the same nature eligible for assistance under the Structural Funds Community Support Framework for the region in question and with other Community Initiatives in the fields of research and development, training and development of border areas, in developing a coherent and comprehensive strategy geared to specific needs and opportunities.

X. CONCLUSIONS AND RECOMMENDATIONS

47. There is no simple remedy for helping SMEs participate more fully in the public procurement market and to draw the greatest benefit from its opening up. Rather, what is needed is continuing action on a wide range of issues, all of which can offer help to SMEs which have the dynamism to exploit their opportunities.

This Communication has described many different actions, ranging from correct information on Community law, through the development of more effective resources on information, to measures offering direct help to SMEs which want to equip themselves to exploit their opportunities.

This involves action by the Commission, the Member States, contracting authorities, major contractors and, most of all, SMEs themselves.

The Commission will continue to develop its actions along the lines set out in this paper, in consultation with the Member States and interested parties. It will, from time to time, report on the development of its work.

48. There are a number of areas, where the Commission has responsibilities and which it is obliged to keep under review. These include:
- surveillance of compliance with the public procurement directives, including the management of complaints;

(8) OJ N° C 33/9 of 8.02.91.

- guidance and clarification on the provisions of Community legislation and its correct application;
 - management of the various problems related to the coming into effect of European standards over time;
 - development of the TED database in the light of improvement in the publication system and dissemination of information, whether on public contracts or on other relevant matters, at affordable prices.
49. As to projects and programmes to assist SMEs, it would be appropriate:
- to review existing projects in the light of the specific aspects of public procurement markets noted in paras. 13-16 and drawing on the national experience available, based on PRISMA (see para. 46) or other projects;
 - to consider how projects should be adapted to sectoral particularities and the need for technical assistance and a practical training dimension in addition to information;
 - to propose, where appropriate, the development of pilot projects and studies in relatively new areas, such as quality assurance and cross-border partnership.

Any national measures should be compatible with Community competition law and policy.

50. There are other areas, covered by the Council's conclusions on COM (90) 166 (see para. 2), in which technical suggestions are made in this Communication as to how Member States might address the problems of SME participation through greater transparency in their procurement policies and procedures and in ways consistent with the object of open and efficient procurement.

51. With regard to the problems of SMEs in tendering for larger contracts:

- (i) contracting authorities should be encouraged to make appropriate use of the possibilities of the public procurement directives concerning division into lots and the publication of subcontracting intentions, with better transparency in tender and award notices as to the possibility of division into lots for specific contributions to a project;
- (ii) there should be support for the establishment of agreed codes of practice concerning the relations of principal contractors and subcontractors and for exchange of information on common trends in developments of law and practice.

52. With regard to improvements in the dissemination of information to potential bidders and its quality:

- (i) contracting authorities should be encouraged to see that urgent or accelerated tendering procedures should not be used unless strictly justified;
- (ii) contracting authorities should be encouraged to increase the transparency of information supplied to the Official Journal, particularly as regards more detailed essential specifications;
- (iii) outline specifications for tenders should be expanded so that they contain sufficient detail for potential bidders to be able to decide what it is that contracting authorities actually require;
- (iv) arrangements should be made to survey the difficulties arising from the failure of purchasers to notify their requirements including details of their future needs in good time and meetings organized with larger buyers to agree solutions or establish codes of good practice;

- (v) contracting authorities should consider limiting their charges for tender documentation to cover only the marginal costs of production and distribution;
- (vi) guides to complaint procedures at national and Community level should be widely publicized and made available to organizations in regular contact with SMEs;
- (vii) Member States should consider the issue of guidance to purchasers on Community and national requirements, including computerized "compliance programmes" for the use of responsible officials;
- (viii) negotiations should be instituted between the Commission, CEN, CENELEC and national standards bodies to see that there is an improvement in the general level of efficiency in the transposition of new European standards and in the supply of information about new standards. Wherever possible, guides should be made available commercially, explaining the provisions of standards, where these are so complex as to cause difficulties in interpretation, particularly for SMEs;
- (ix) purchasing bodies should be encouraged to provide introductory guides to potential suppliers setting out their normal requirements and administrative procedures in all relevant Community languages.

53. With regard to qualification and procedural requirements:

- (i) attempts should be made to standardize pre-qualification requirements on a sectoral basis through the drawing up of codes of practice which are subscribed to by major buyers;
- (ii) simpler standard purchasing conditions should be considered for tenders, the value of which is not greatly in excess of the minimum figures quoted in the public purchasing directives;
- (iii) the possibility of establishing mutual guarantee schemes or guarantee funds, along the lines provided by existing export credit organizations, should be examined, as a means of meeting the difficulties of SMEs in establishing their financial bona fides when seeking to pre-qualify;
- (iv) attempts should be made to standardize pre-qualification procedures across the EC on a sectoral basis.

54. With regard to studies and pilot projects:

- (i) contracting authorities should be encouraged, where appropriate, to co-operate with the Commission, for example, in the launching of projects to assist SMEs in priority areas to achieve Quality Assurance certification, or in the proposed Commission pilot project on cross-border co-operation;
- (ii) information on assistance programmes currently available within Member States to SMEs seeking to secure public contracts, whether in another Member State or their own, should be more widely disseminated with the object of improving general levels of provision within the EC, particularly as regards counselling and training services;
- (iii) there should be support within Member States for the inclusion of technical assistance to projects for SMEs, along the lines of those funded under the PRISMA Community initiative, within Structural Funds Community Support Frameworks.
- (iv) there should also be more general support for SMEs particularly as regards the analysis of company competitiveness and potential for successful participation in foreign public procurement markets.

55. With regard to other matters:

- (i) national inspection authorities should be encouraged to coordinate their enforcement of Council Regulations for the CE Mark, once these have been approved by the Council so as to ensure equality of treatment as between the products of Member States;
- (ii) the provision of financial guarantees by national governments, against the cost born by firms in obtaining Quality Assurance certification, should be considered with the objective of ensuring that their borrowing powers in order to finance other projects are not diminished;
- (iii) the problems caused by late payments in respect of public procurement contracts should be reviewed in the light of the Commission's forthcoming Green Paper, with a view to:
 - a better transparency in the arrangements for payment;
 - an acceleration of payments by public authorities to their contractors;
 - an acceleration of payments due to sub-contractors.