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## IRU Position on the upcoming revision of the public procurement directives

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### I. IRU POSITION

IRU, representing the commercial road transport industry, strongly supports a more efficient and fair procurement framework. Road transport relies on procurement rules that ensure open competition, fair award criteria, and sustainable contracts. Poorly applied rules can exclude private operators from the public procurement market or drive prices down to unsustainable levels, compromising service quality. In contrast, smart procurement policies can foster innovation and deliver better value for taxpayers.

IRU calls for:

- **Reducing the high number of in-house awards.** Competitive tendering should be the standard method for awarding public contracts, with in-house awards (contracts without open competition) strictly limited to truly justified exceptional cases. Where in-house awards are used, national or sectoral legislation should require contracting authorities to include mandatory subcontracting provisions, where subcontracting is feasible.
- **Lower administrative burdens to increase SME participation and foster fair competition.** A more accessible, SME-friendly procurement system can be achieved through harmonised digital tools, standard forms, streamlined qualification criteria, and requiring lot division to facilitate SME participation.
- **No prohibition on subcontracting.** Subcontracting is a legitimate business model in road transport that enables SMEs to compete in the market and provides flexibility to operators and authorities.
- **Strengthening quality criteria in MEAT assessments to prioritise strategic procurement over lowest-bid contracts.** IRU strongly supports making quality-based MEAT criteria with a strong price-quality ratio as the norm for service contracts. The reformed framework should encourage quality services, including sustainability, and discourage over-reliance on price and strengthen the mechanisms to detect and eliminate abnormally low bids.
- **No “buy European products” clause.** At this stage, there should be no strict obligation to prioritise European products (e.g. vehicles and vehicle parts), as such policy risks increasing costs and limiting service availability.
- **Enabling greater flexibility in times of crises.** This could mean clauses that allow crisis-responsive procurement, such as contract price review systems that align with evolving costs or that encourage or require review clauses in long-term contracts

## **II. ANALYSIS**

Public procurement rules are fundamental to a well-functioning internal market, ensuring fair and open competition, fostering a healthy business environment and supporting the participation of SMEs. The European Commission is set to revise the 2014 public procurement directives to address long-standing shortcomings and challenges. Recent high-level reports have underscored the need to update procurement rules as part of efforts to strengthen Europe's economic resilience and competitiveness. Their findings reveal declining competition in public tenders over the past decade.

Public procurement represents a major segment of the EU economy. According to the European Commission, over 250,000 public authorities collectively spend approximately EUR 2.3 trillion annually on services, works and supplies. Beyond transport, procurement covers infrastructure, construction, healthcare, education, social services, catering, ICT, energy, waste management, and defense. These sectors are essential for delivering public services, supporting infrastructure, and advancing environmental and social objectives. Public procurement is also a strategic tool to promote innovation, employment and economic resilience.

Public procurement directives (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU) apply to high-value contracts and are transposed into national law. Lower-value contracts are subject to national rules but must still comply with EU principles. The 2014 reform aimed to simplify procedures, reduce administrative burdens, increase flexibility, and enable strategic procurement, particularly to support SMEs, innovation, environmental sustainability, and social inclusion.

However, public procurement remains underutilised as a strategic tool. Competition has declined over the years, with many contracts seeing single bidders or direct awards. SMEs struggle to win contracts amid heavy administrative burdens and restrictive criteria. Too often, awards default to the lowest bid, eliminating quality services, innovation, and sustainability considerations. Rigid rules on contract renegotiation during crises (e.g. COVID-19, energy price shocks due to conflict) have threatened the economic balance of contracts and continuity of essential transport services.

The revision of the EU public procurement framework must modernise and simplify procedures, promote SMEs' access to public procurement, and move beyond the lowest-price award practices. It should introduce greater flexibility to maintain services during crises and integrate Europe's sustainability and strategic autonomy goals.

### **1. Scope and application – limit in-house awards**

Currently, EU rules apply above certain value thresholds (periodically updated for inflation) and allow specific exemptions (e.g. in-house awards, inter-municipal cooperation, or service concessions). Over the last decade, a growing share of public contracts in Europe have been awarded through non-competitive contracts. In some countries, public authorities have relied heavily on in-house awards or legal exceptions to bypass open tendering. This trend is problematic, as it can entrench incumbents (often state-owned operators) and exclude efficient private operators. IRU members report cases where local transport authorities rely on in-house awards, stifling competition.

#### ***IRU position:***

- Exemptions (such as in-house awards) should be narrowly defined, justified and monitored to prevent abuse. The revised directives should require an economic test in order to justify in-house awards, as well as periodic review for non-competitive awards.
- Where in-house awards are utilised, contracting authorities should be required, via national or sectoral legislation, to include mandatory subcontracting provisions, where subcontracting is feasible. This could involve setting minimum quotas to open a portion of service to competition, for example, by requiring the involvement of local businesses or SMEs.

- During the revision of the public procurement directives, the European Commission must address the conflict between Regulation (EC) No 1370/2007 on public passenger transport services by rail and road and the public procurement directives, particularly in relation to public transport tendering processes in markets such as Germany.

## **2. Boost participation of SMEs**

Despite the intent of the 2014 directives to open markets and facilitate SMEs' access, systemic barriers and inefficiencies persist in public procurement, affecting SMEs and undermining fair competition. Complex procurement processes act as a barrier to entry for many smaller firms in road transport. Lengthy forms, excessive documentation demands, and divergent national rules make bidding costly and time-consuming. Although the 2014 directives introduced measures like the European Single Procurement Document (ESPD) to ease this burden, SMEs still win a relatively small share of public contracts, partially due to inability to cope with administrative burdens.

Preparing a compliant bid can entail voluminous paperwork, costly legal guidance, and strict formal requirements (e.g. obtaining various certificates, financial guarantees, etc). For a small coach or taxi company, these administrative hurdles can be discouraging and resource-intensive. The European Court of Auditors in 2023 highlighted a lack of simplification: procurement procedures have actually lengthened over the past decade and have not significantly increased the participation of SMEs. Specifically, the average time from initiating a tender to contract award increased from about 62 days to 96 days (2011–2021). Such delays and procedural complexity can disproportionately impact smaller operators who cannot afford lengthy bidding and waiting cycles.

### ***IRU calls for:***

- Reducing administrative burdens to increase the participation of SMEs and foster fair competition, ensuring all notices, tenders, and supplier documents can be handled through interoperable online systems. A small haulier or coach company should be able to upload certificates and references once and reuse them for multiple tenders via a central database, rather than repeating paperwork for each bid.
- Limiting the scope of requirements to only those strictly relevant and proportionate to the contract. For example, turnover or insurance thresholds should not unjustly exclude SMEs. The directives could strengthen the principle of proportionality and require justification for any bidder qualification criteria that exceed certain standards.
- Obliging contracting authorities to break large contracts into smaller lots (e.g. by volume, scope, or geographic area) unless a clear and documented justification is provided. This would replace the current soft encouragement with a legal duty, making it easier for SMEs to participate.

## **3. No prohibition on subcontracting**

Subcontracting is crucial for opening public contracts to SMEs, allowing them to join consortia or handle parts of large contracts they might not otherwise bid for, thus boosting competition and access. While subcontractors face risks like opaque chains, late payments, and unfair terms, EU procurement rules now provide key protections, including transparency obligations, direct payments, and liability and exclusion grounds.

### ***IRU position:***

- IRU opposes any blanket prohibition on subcontracting in public contracts. Subcontracting is a legitimate business model in road transport that enables SMEs to compete in the market and provides flexibility to operators and authorities.

#### **4. Strengthen award criteria to support quality**

One of the most problematic barriers to a level playing field is the prevalence of awarding contracts based predominantly on the lowest price, and the acceptance of abnormally low bids without adequate scrutiny. The directives allow contracting authorities to choose the Most Economically Advantageous Tender (MEAT) based on a combination of price and quality criteria and require the investigation of bids that appear suspiciously low. However, in practice, many authorities still award based on lowest price alone or give cost an overwhelming weight.

According to the European Court of Justice Special report 28/2023, over 80% of contracts were awarded to the lowest bidder in eight Member States in 2021. This practice severely undermines the intended impact of MEAT. Due to the high number of awards given to the lowest bidder, large contractors can often undercut costs, making it difficult for SMEs to compete, which ultimately leads to market concentration and reduced competition.

Additionally, abnormally low tenders often submitted by bidders who may ignore legal, environmental, or service obligations (e.g. maintenance obligations) distort competition and frequently lead to problems during contract execution or subsequent cost overruns.

##### ***IRU calls for:***

- Making MEAT with a strong price-quality ratio the rule, not the exception. Awarding based on best price-quality should become the standard, particularly for service contracts, where quality, reliability, and sustainability directly affect citizens. Reliance on price-only awards should be limited to clearly defined cases.
- Integrating sustainability criteria as core quality components. Public procurement can be leveraged to support the EU Green Deal. MEAT criteria can make the procurement process a driver of sustainable and resilient service delivery, particularly in public transport.
- Ensuring effective exclusion of abnormally low offers through rigorous technical-economic analysis. The revised directives or accompanying guidance should strengthen the mechanisms to detect and eliminate abnormally low bids. This could involve defining clearer EU-wide criteria or benchmarks (e.g. if a bid is 20% lower than the average of other qualified bids or below a certain cost threshold, it must be justified). If a bidder cannot prove their price is sustainable, the bid must be rejected.

#### **5. Avoid ‘buy European products’ requirements**

In the wake of global economic competition, there have been increasing calls to use procurement as an instrument of industrial policy, essentially to give preference to European products in public contracts. In road transport, a “buy European products” requirement, such as vehicles and vehicle parts, could drive up vehicle purchase costs, maintenance expenses, and delivery times, ultimately reducing the profitability of European transport companies and raising public transport prices for consumers, especially when European production is lacking (e.g. Class III coaches).

##### ***IRU calls on:***

- The EU to reject the inclusion of any mandatory “buy European products” clause in the directives. At this stage, there should be no strict obligation to prioritise European products, as such policy risks increasing costs and limiting service availability. Instead, the EU should focus on trade defence tools at its disposal to address legitimate concerns, as well as encourage innovation and competitiveness of European companies through EU funding.

#### **6. Enable greater contract flexibility in times of crisis**

The COVID-19 pandemic, as well as the war in Ukraine and the subsequent fuel price crisis, has shown that rigid contracts can become unworkable overnight. The COVID-19 pandemic saw public transport use plummet and operational costs spike, while fuel

price surges strained transport operators working on fixed-price contracts in 2022. Currently, procurement directives do allow some contract modifications without a new tender in cases of unforeseeable circumstances, but these are limited (generally a 50% price increase cap) and subject to varying interpretation. Many public contracts lack clear clauses for inflation or emergency adjustment, leaving both authorities and contractors scrambling for ad-hoc solutions or facing contract terminations. This resulted in common service disruptions or financial losses that could have been mitigated with more flexible provisions.

Moreover, in crisis situations, contracting authorities sometimes resorted to extreme measures like direct awards under urgency or invoking force majeure, which, while legal, bypass normal competition. A better approach is to have pre-defined flexibility mechanisms within ongoing contracts and frameworks so that continuity can be maintained transparently.

***IRU calls for:***

- Implementing explicit measures for crisis-responsive procurement, such as contract price review systems that align with evolving costs, especially in extraordinary circumstances (e.g. crises like COVID-19).
- Encouraging or requiring the inclusion of review clauses in long-term contracts (especially in sectors like transport) that allow adjustments when certain triggers are met (e.g. fuel price indices moving beyond a set range, or inflation exceeding a certain percentage). Given the inherent unpredictability of inflation, the inclusion of price caps should be avoided.
- Allowing larger or more frequent modifications when a public authority formally declares a state of emergency or when an EU-wide crisis is recognised. For instance, allowing modifications above the 50% threshold if they are strictly to cope with the emergency's impact.

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