

GUIDELINES FOR FACILITATING SMEs' ACCESS TO THE DEFENCE MARKET



INTRODUCTION

On 14 May 2007, the Steering Board in Defence Ministers formation endorsed the strategy for the European Defence Technological and Industrial Base (EDTIB), reflecting the clear and unequivocal objective of the pMS to develop and sustain a DTIB in Europe that is capability-driven, competent and competitive. European Small and Medium-sized Enterprises (SMEs) have a vital role to play in helping shape such an aspired EDTIB of the future. The European Defence Ministers underlined that the future success of the DTIB in Europe will depend upon effective utilisation of human capital and innovation also including that of Small and Medium-sized companies. pMS noted that "a healthy, competitive and integrated future EDTIB will not be realised if the market-opening efforts are perceived to be simply a bonanza for the large prime contractors". Therefore, the benefits of competition should be cascaded down the supply chain - so that competent second- and third-tier companies, often SMEs, are able to prosper in the European market.

OBJECTIVES

The defence market's uniqueness relates to a number of issues: technological level, programme cycle, security of supply, market regulation and industry's relationship with governments. Governments dominate the sector through a variety of roles such as regulators, owners, controlling shareholders, funders of R&D and as principal customers. Therefore, the governments' attention should be directed to all stakeholders, not only to the major prime contractors but also to SMEs, which possess the technology but lack resources necessary to penetrate the market.

The modern SME policy, at the Community and national levels, should create favourable conditions for development of these companies.

The purpose of the document is to provide pMS authorities with general guidance on how they can support SMEs operating in defence environment.

These non-binding Guidelines are complementary to the existing documents directed towards facilitating SMEs' access to the market and ensuring transparency and competition in the defence market - the Small Business Act for Europe, the Code of Conduct on defence procurement and the Code of Best Practice in the Supply Chain.

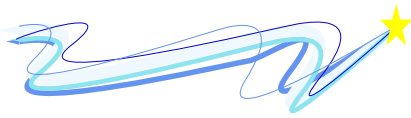
This document does not prejudice the interpretation and application of any national or EU laws and regulations.

GUIDELINES

ACCESS TO INFORMATION

Information is a key factor in competitive markets, particularly so for SMEs. Due to the specificities of the defence sector, accessibility of information is often difficult, whereas at the same time crucial for the industry. To function effectively in defence business, SMEs need to be able to understand the interaction between MODs' procurement priorities and the latest developments in a range of technologies, and to understand the capability requirements of potential customers.





GOVERNMENT TO GOVERNMENT INFORMATION: SME PoCs NETWORK

Over the time, a number of policies for SMEs have been adopted, both nationally and on the European level. Therefore, there is scope to facilitate an exchange of information and experiences between national and European authorities.

Recommendations:

For development and implementation of measures for SMEs and to facilitate the flow of information, a network of national government PoCs for issues related to defence-related SMEs has been established. The contact details of all PoCs are available for EDA and government use; the list of POCs is also available for the National Defence Industry Associations – however, only for their internal use (not to be published or forwarded to companies) and for general enquiries. The group shall meet at least once a year to monitor and discuss policies and measures for SMEs; reports from the meetings will be submitted to the EDA Steering Board.

GOVERNMENT TO INDUSTRY INFORMATION: EVENTS FOR INDUSTRY

To improve SMEs' market awareness and ensure access to all the relevant information on business opportunities is key in order to strengthen their future capabilities and to remain innovative. Improved communication and transparency are fundamental for SMEs' involvement; in particular policies that improve SMEs' access to information regarding longer-term requirements and future capabilities allowing them to better target their efforts and facilitate their involvement.

Recommendations:

- To facilitate industry's understanding of MoD priorities and to help the industry anticipate the required technological innovations, pMS are encouraged to organise events on their future armaments and R&T priorities.
- pMS should also organise business-to-business events (e.g. "launch conferences") for specific major programmes, to present to the industry the operational requirements and the milestones, in order to foster wide industrial participation and to facilitate partnering between the companies.
- The flow of information between governments and industry should be facilitated and improved; some of the examples of possible measures that can be used by MoDs include Help desks, IT tools, workshops, brochures etc.
- pMS authorities should encourage national defence industry associations (NDIAs) and other industry associations, which help defence market to function by, for example, creating networks, disseminating information and assisting contractors to find suitable subcontractors.

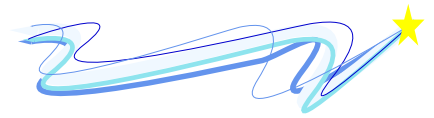
PUBLIC PROCUREMENT

SMEs' difficulties related to defence procurement result from limited access to information about contract opportunities or tendering procedures, complexity of procedures, short time limits, required certification etc. Fair competition and transparency in procurement procedures are essential in promoting opportunities for all suppliers and so especially for SMEs who generally have difficulty marketing themselves to relevant administrations of Member States, Primes (national and on the European level) and other buyers in the supply chain.

ENSURING TIMELY PAYMENTS

Effective financial management remains one of the major challenges SMEs are facing. With scarce financial resources any late payments can have adverse impact on cash flow management, particularly affecting SMEs, their competitiveness and viability.





Recommendations:

- Contracting authorities should ensure that their payments are made on time (within contractual or statutory period of time – Directive 2000/35/EC), possibly within 30 days payment deadline. Similarly, the authorities may encourage main contractors to pay their subcontractors on time.

MAKING SUBCONTRACTING OPPORTUNITIES MORE VISIBLE AND ENSURING EQUAL TERMS FOR SUBCONTRACTORS

In the defence market, subcontracting is often the most important part of SMEs' business as they usually lack both the economies of scale and scope to develop complete systems. It is therefore crucial to promote transparency and fair competition at the contract and subcontract level.

Recommendations:

- As agreed by SB NAD on 15 October 2008, the subscribing Member States (sMS) shall inform during their tendering process on governments' subscription to the Code of Best Practice in the Supply Chain (CoBPSC).
 - Contracting authorities may encourage main contractors, for example through guidelines for industry, codes of good business behaviour, clauses in the call for tender, etc., to deal with their subcontractors on not less favourable conditions than those between contracting authorities and main contractor.
- Moreover, defence procurement authorities should in their actions follow the principles and recommendations of the Small Business Act for Europe and the European Code of Best Practices facilitating access by SMEs to public procurement contracts.

LANGUAGE

Tendering and contracting procedures in national languages are a crucial obstacle for SMEs' cross-border activity. Usually contracting in national language is required by law, there is however some flexibility with regards to tendering procedures. The main objective is to allow companies to identify interesting opportunities abroad; therefore any information provided in English would be of help to SMEs and does not have to be legally binding (e.g. "courtesy translation").

Recommendations:

- pMS defence procurement authorities are encouraged to address the language issue in their procurement procedures. A first step could be to provide during the tendering process non-legally binding information in English.

CERTIFICATION

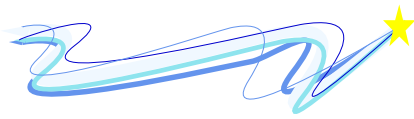
Documentation required by national procurement authorities is normally set in the national law and differs between pMS.

During the tendering process, a company has to provide a number of documents proving its competence in relation to the contract:

- documents evidencing technical/professional capacity, which are related to selection process and are set on a case-by-case basis;
- documents related to company's eligibility to do business in pMS (e.g. criminal records, financial eligibility, security clearance, quality standards), which are usually common for all procurements (not only defence).

Recommendations:

- To promote transparency and facilitate SMEs' understanding of national procurement procedures, information on the standard documents requested to prove tenderers':



- Personal situation (extract from the judicial record, certificate issued by competent authority, declaration of oath etc.);
- Authorisation to pursue the professional activity;
- Economic and financial capability;
- Quality management systems standards;
- Environmental management standards.

is included in the EBB Vademecum. This information provides an overview (checklist) for industry to know in advance what documentation is normally required by defence procurement authorities in the specific pMS.

RECOMMENDATIONS FOR DEFENCE-RELATED LOWER VALUE CONTRACTS

Facilitating SMEs' access to the European-wide defence market and increasing their awareness of possible business opportunities outside national markets relates also to lower value contract opportunities.

Recommendations:

It is recommended that for contracts above € 250 000 but:

- below the threshold applied in the Defence Procurement Directive (€ 412 000 for supply and services), or
 - below the Code of Conduct on defence procurement threshold (€ 1m) when article 296 of TEU applies and the related contract notice is not published on EBB;
- contracting authorities should set the time limit for the receipt of tenders of no less than 20 days (subject to the complexity of the contract).

INTELLECTUAL PROPERTY RIGHTS (IPRs)

SMEs' innovative and creative capacity is not always fully exploited as many SMEs are not aware of the intellectual property system or the protection it can provide for their inventions, brands, and designs. Also, due to their size, SMEs have limited resources to protect, monitor and claim infringements of their IPRs.

Recommendations:

- Defence procurement authorities should ensure that information on the Intellectual Property protection is available within MoDs (e.g. contact details to appropriate institution dealing with Intellectual Property can be obtained, booklets available within MoDs facilities, etc.).
- Defence procurement authorities may encourage main contractors to deal with their subcontractors on not less favourable IPRs protection terms than those agreed between contracting authorities and main contractors.

R&T-RELATED POLICIES

Research and technology (R&T) is also one of the areas where SMEs can succeed in direct competition. Therefore, actions fostering government - industry cooperation with innovative and responsive SMEs are needed in defence acquisition in order to support a vibrant EDTIB.

Recommendations:

- pMS authorities are encouraged to distribute to the industry relevant information on future R&T priorities, new projects, cooperative opportunities etc.
- Collaborative programmes between government and industry provide good incentives to increase SMEs' participation in R&T. This requires however appropriate provisions for IPRs and for future use of the technology developed. In such programmes, contractual processes should be simple and reactive to provide quick feedback for the industry.



The European Defence Agency was established under a Joint Action of the Council of Ministers on 12 July, 2004, "to support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future".

The European Defence Agency, within the overall mission set out in the Joint Action, is ascribed four functions, covering:

- developing defence capabilities;
- promoting Defence Research and Technology (R&T);
- promoting armaments co-operation;
- creating a competitive European Defence Equipment Market and strengthening the European Defence, Technological and Industrial Base.