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NOTE

from: General Secretariat
to: Working Party on Public Procurement
on: 3-4 May 2012
No. Cion prop.: 18966/11 MAP 10 MI 686
Subject: Proposal for a Directive of the European Parliament and of the Council on public procurement
- Non-paper on use of the Internal Market Information System (IMI) in the context of public procurement

In view of the Working Party on Public Procurement on 3-4 May 2012, delegations will find in the Annex a non-paper on the above issue prepared by the Commission services (DG Internal Market).

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Use of the Internal Market Information System (IMI) in the context of public procurement

Current situation

Already today, Directive 2004/18/EC, provides for mutual assistance and information exchange in the following cases.

- Article 45(1)⁴ subparagraph (obligatory exclusion grounds¹);
- Article 45(4): Designation of the authorities and bodies competent to issue documentation concerning exclusion criteria²;
- Article 48(2)(a)(i): certificates of satisfactory execution of works³;
- Article 52(8): Information on authorities or bodies responsible for official lists or similar certifications⁴

However, the current Directive does not specify how the information exchange shall be operated, nor does it provide any tools to this end. Authorities are left "alone" as to where and how they get the information needed, e.g. to verify if documents provided by an economic operator from another Member State are authentic and up-to-date; language issues are not tackled.

¹ ... "Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. ..."

² "Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. ..."

³ ... "Where appropriate, the competent authority shall submit these certificates to the contracting authority direct" ...

⁴ "Member States which have official lists or certification bodies as referred to in paragraph 1 shall be obliged to inform the Commission and the other Member States of the address of the body to which applications should be sent."

Use of IMI

To address these problems, the proposal aims at facilitating the exchange of information between authorities of different Member States, by giving contracting authorities access to the Internal Market Information system. This will allow for

- easy identification to whom the question should be addressed (IMI provides for advanced search functions and structured catalogues of responding authorities)
- quick, fully electronic and cost-free transmission of requests and replies directly between the competent authorities, allowing contracting authorities to obtain up-to-date information in real time
- translation in all official languages being provided in IMI for pre-defined sets of questions and answers, plus automatic translation of free text inserted in IMI
- possibility to store general information, e.g. on the content of certain national instruments or rules, as a standard reply to recurring questions

Concretely, contracting authorities should be enabled to use IMI for the following functions:

1. In case of doubts, ask the issuing authority to **confirm the authenticity and correctness of certain official documents provided by economic operators, as well as confirmation that information contained in the certificate is still up-to-date:**
 - Extract from the judicial record, proving absence of conviction for corruption etc. (Art. 55.1 of the proposal)
 - Certificate attesting that no tax / social security contributions are unpaid (Art. 55.2)
 - Certificate attesting non-insolvency etc. (Art. 55.3.b)
 - Extract of trade or professional registers (Art. 56.2)
 - Proof of registration in an official list of approved economic operators (Art. 63)

2. Where the contracting authority has reasons to believe that other public authorities could provide useful input to its assessment of certain exclusion criteria, it can **request such relevant information** from the other public authority through IMI:
 - Information on potential professional misconduct of the economic operator concerned (55.3.c)
 - Information on possible bad performance of the economic operator concerned in a prior public contract with the other ("issuing") authority
3. Finally, IMI could also be used to **gather general information** on the content or functioning of certain national mechanisms, rules or instruments.

As IMI will as of next year provide for customised repositories of information, all responses to such general questions could be stored and hence serve, over time, as a general information basis for recurring questions. E.g., contracting authorities could use IMI to

- inquire about the content of certain national standards which an economic operator might refer to, claiming compliance with technical specifications (Art. 40)
- inquire about applicable social and environmental law obligations in the Member State of origin of the tenderer.
- request an indication of authorities / bodies keeping official lists according to Art. 63.

Precondition for this function: Member States would need to designate one or several authorities competent for providing this general information.

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