

EVALUATION OF SMES' ACCESS TO  
PUBLIC PROCUREMENT MARKETS IN THE EU

COORDINATED BY DG ENTERPRISE AND INDUSTRY  
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Final Report,  
submitted by GHK and Technopolis

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## EXECUTIVE SUMMARY

This Report presents the findings of the “Evaluation of Small and Medium-Sized Enterprises’ (SMEs’) Access to Public Procurement Markets”. The assignment was undertaken by GHK and Technopolis between April and September 2007 within the framework contract for the provision of studies and other supporting services on Commission evaluations (ENTR/04/093-FC-Lot 1) on behalf of Directorate-General Enterprise and Industry. The evaluation was commissioned by the Directorate E “Promotion of SMEs Competitiveness”, Unit E4 – “Horizontal Aspects of SMEs Policy” of Directorate-General Enterprise and Industry in co-operation with Directorate-General Internal Market and Services who were represented in the Steering Group.

This evaluation study was primarily conceived as a follow-up to the 2004 study ‘Access of SMEs to Public Procurement Contracts’<sup>1</sup>. That study covered 15 Member States, analysed data from 2001 on public procurement contract awards, surveyed SMEs that had won contracts and awarding authorities, and undertook national case studies. This study adopted a similar methodology to that of the earlier study. In particular it:

- § Looked at trends in SMEs’ access to above EU-threshold<sup>2</sup> public procurement for the period 2002-2005, including developments in the new Member States that joined the EU in 2004. Altogether, 37,873 companies recognized as successful in the notices were sampled, and the size characteristics of 20,601 companies were identified.
- § Surveyed 568 SMEs and 166 large-scale enterprises (LSEs) that had been successful in above EU threshold public procurement, and 84 awarding authorities, to identify factors influencing the access of SMEs to public procurement;
- § Undertook case studies exploring below EU threshold public procurement in 10 Member States, to identify practices that had influenced the access of SMEs to public procurement;
- § Reviewed the structure and functioning of the US federal public procurement market and assessed the various schemes at Federal level which aim to promote SMEs’ access to public procurement – including the Small Business Act (SBA) and Small Business Innovation Research (SBIR) – identifying their strengths and weaknesses;
- § Drew conclusions and formulated recommendations on how SMEs’ access to public procurement could be improved.

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<sup>1</sup> The Access of SMEs to Public Procurement Contracts (2004) prepared by EIM Business and Policy Research and KMU Forschung Austria for DG Enterprise and Industry.

<http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-studies/craft-publicprocurement.htm>

<sup>2</sup> As a general rule, the current value thresholds above which the EU directives apply are €5,278,000 for public works, and 137,000, 211,000, or 422,000 for supply and service contract, depending on whether the awarding authority is a central government body, other public body or a utility. The thresholds are summarised in *Table 2.1* on page 19 of this report.

## Key findings

### The EU public procurement market and policy objectives

It is estimated that in 2002 the total value of public procurement was €1,500 billion, representing 16% of the European Union's combined GDP. Since then EU public procurement will have increased as a consequence of enlargement and economic growth. An estimated 16% of the total value of public procurement in the EU is above the thresholds fixed by EU directives<sup>3</sup>. For this part of public procurement the Directives specify the procedures that should be undertaken and tenders are published in the Official Journal of the European Union (OJ). Public procurement below the Directives' thresholds falls in the competence of the Member States. The EU policy objectives are targeted at ensuring transparency, efficiency, the single market and equal access between large enterprises and SMEs. EU policies concern public procurement both above and below EU thresholds.

### Trends in the access of SMEs to public procurement

In 2004, 99.8% of all companies in the EU were SMEs. They accounted for 56% of gross value added (GVA), 67% of employees within the business sector (excluding agriculture, fisheries and financial services) and 58% of combined company turnover.

It was estimated that in 2001 the proportion of the value of public procurement above EU thresholds secured by SMEs was between 29% and 43%. The annual estimates made in this study of the values secured by SMEs since 2001 are all within the range estimated for 2001 but point to a slight overall increase. The equivalent figures for 2005 are 42% of value and 64% of contracts. SMEs tend to perform better in bidding for central government contracts and less well in the old Member States compared with the new.

SMEs seem somewhat underrepresented in public procurement above EU-thresholds, as compared to their weight in the economy – which is attributable to the weaker performance of micro and small enterprises. On the other side, medium-sized enterprises (i.e. those employing more than 50 and less than 250) secured a slightly higher share of public contracts (23%) than their role in the economy – measured by their share in combined company turnover (19%).

However, when comparing the value of contracts awarded to SMEs (42%) with the share of the latter in total company turnover in the EU-25 (58%), it should be kept in mind that this does not take into account the value of contracts subcontracted to SMEs<sup>4</sup>. In addition, the 58% figure relates to 'public and private contracts' of all sizes in the EU economy, while the 42% figure relates only to large public contracts in the EU, which are normally not accessible to a wide number of micro and small enterprises for reasons of economic and financial capacities. Indeed, the median value of contracts awarded between 2002 and 2005 was in the range of 310-360 thousand euros, while the majority EU micro-enterprises are one-man companies.

Although comparisons with the US are problematic because there is not a common definition of SMEs, it is estimated that small businesses (who may employ up to 500, and in certain sectors 1000 or even 1500 people) supplied just 23% of the total value of Federal prime contracts in 2005, while they provide around half of private sector employment and gross value added. In

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<sup>3</sup> The current directives in force, adopted in 2004, are the directives 2004/17/EC and 2004/18/EC.

<sup>4</sup> Interestingly, statistics from the US federal public procurement markets (see Section 6) indicate that small businesses received almost 40% of US subcontracting value in 2006, although the total value of contracts directly awarded to them by the Federal agencies was only 23%.

parallel the estimate of 42% for the share of SMEs in European public procurement above thresholds suggests that SMEs in the EU are performing relatively well. Particularly so since larger contracts account for a greater share in above-threshold procurement in the EU than in the US: 93% of the total value of above EU threshold public procurement was in contracts - some of which were broken down into lots - of over 1 million dollars (corresponding approximately to € 802 thousand at 2006 exchange rates), whilst the equivalent figure for the US Federal public procurement was only 74%.

This, coupled with the relatively good performance of medium-sized companies, suggests that the EU is, in general, succeeding in ensuring reasonable access of SMEs to public procurement in above EU-threshold contracts.

#### **Cross-border public procurement**

In 2001 it was estimated that at least 1.1% of above threshold public procurement contracts were direct cross (EU internal) border – without the intervention of any local distributor or subsidiary. The proportion appears to have increased since 2001 and was 1.9% in 2004. However, the tendencies of companies operating in several member states to maintain offices/addresses in the countries in which they are active, means that the estimates are likely to understate the actual level of cross border trading in above EU threshold public procurement. Interestingly, small countries tend to award more contracts to foreign companies than larger countries.

#### **The experience and perceptions of companies in public procurement**

The most frequent problem faced by European SMEs in bidding for public procurement tenders is the over-emphasis placed on price by awarding authorities (52% of the companies encountered this either 'regularly' or 'often'). Onerous paperwork requirements were also mentioned as a common problem (46%).

The use of e-mails as a preferred channel of communication, improving tender specifications and documentation, as well as improving information on tenders in general were seen as the three most helpful actions that awarding authorities could do. Training for companies, the use of framework agreements and contracts, and more time to draw up tenders were less frequently emphasised.

#### **The experience and perceptions of awarding authorities**

There are marked variations in the experience and perceptions of awarding authorities on issues affecting SMEs access to public procurement. There are also some contrasts in the perceptions of awarding authorities and SMEs as to what is or would be useful.

Of the possibilities for enabling SMEs access to public procurement above or below EU-thresholds, the mostly used option is allowing the joint fulfilment of technical or financial requirements for companies, which is used 'always' or 'often' by 60% of awarding authorities (this is made obligatory by the EU's current public procurement directives<sup>5</sup> in tenders above EU-thresholds, but which is not necessarily followed below the EU-thresholds). The emphasis on this option is justified and endorsed by SMEs. However, 31% of awarding authorities did not, or only infrequently use this possibility'.)

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<sup>5</sup> Articles 47 and 48 of Directive 2004/18/EC and Articles 53 and 54 of 2004/17/EC

Breaking down contracts into lots is also 'always' or 'often' done by 38% of awarding authorities, and also emphasised by SMEs, especially micro-enterprises, as an action that would enable the access of smaller companies to public contracts.

Only 10% of the awarding authorities surveyed published prior information notices 'always' or 'often' even though it is considered important by SMEs. Also, 23% of awarding authorities said that they never awarded framework contracts and agreements to SMEs.

The full potential of e-procurement is not widely exploited. Only 58% of awarding authorities employed some form of e-procurement. 36% of these accepted tenders in full electronic form, including electronic signatures, 40% accepted parts of the tenders in electronic form, 48% took advantage of systems storing and/or retrieving companies' administrative information (usually after some pre-selection procedure), and 65% provided electronic tools (e.g. calculation sheets) for tenderers. E-procurement has been considered rather beneficial by SMEs, while only 30% of awarding authorities saw it as 'helpful' or 'very helpful' in enabling SMEs access to public procurement.

Amongst the weaknesses perceived by awarding authorities of SMEs, capacity and financial guarantees were most often cited. The narrower product range of SMEs, their inability to meet all requests and the lack of references that could make the contracting of an SME a risk were also mentioned.

#### **The key aspects of Member State approaches to SMEs' participation in public procurement**

There is a diversity of approaches towards public procurement across and within EU Member States for public procurement below the EU thresholds. Member States operate different systems of legislation and governance. This is a legacy of years spent building up structures in isolation. On the contrary, for public procurement above the EU thresholds, the EU Directives have standardised approaches and there is some evidence from the Member States – particularly the new Member States – that the principles underpinning these Directives have filtered into national legislation governing sub-EU threshold public procurement.

Very few countries have explicit aims to increase the share of public procurement contracts won by SMEs, and most aim to concentrate on ensuring a level playing field. Nevertheless there are now a range of strategies, good practice guides, concordats and codes of conduct in use that aim to influence procurement bodies and encourage them to be more 'SME-friendly'.

Across the 10 case study countries there is a wide range of good practice and experience concerning approaches to breaking down the barriers to SMEs' access to public procurement. Activities cover a number of areas, including: providing information, training and support; simplified pre-qualification requirements; e-procurement systems; improved payment systems; debriefing arrangements; the use of smaller lots and framework agreements; and, the adoption of the 'economically most advantageous tender' criteria (as opposed to the lowest price only) as part of the bid appraisal process.

There are few mandatory measures with regard to SMEs and public procurement. In the main the measures mentioned above are voluntary examples of good practice (with the exception of some of the e-procurement activity, for instance). There is no obligation for public procurement bodies to follow all, or even, any of the recommendations. Moreover, public procurement is generally decentralised, making it hard for central government to influence decisions made at a regional and local level.

### **Similarities, differences and lessons from the US**

In contrast to the EU and EU Member States there are and have been for a considerable time targets and affirmative action programmes for small business access to Federal public procurement in the US. However, there is only limited evidence as to whether the affirmative action programmes work and what costs and benefits they generate. In addition, the EU legal framework precludes such an affirmative action approach, and this limits substantially the types of compulsory actions that could be applied. Further, the fragmentation of markets in the EU compared to the situation in the US, may require varied actions in different areas.

The US federal programmes are supported in two ways – by a procurement budget and process administered at federal level over which there is a degree of control, and by a national network of support facilities through local offices. Neither of these exist at the EU level but there are analogies at the Member States level.

The data collected in the US, partly because of the US contractor registration system means that in the US it has been possible to track the impact of the system in a way that would be extremely difficult in the EU.

### **The responses to the evaluation questions addressed**

The Task Specifications for the assignment posed six evaluation questions concerning effectiveness and efficiency.

#### **Effectiveness**

*To what extent have existing practices helped to address market gaps in SMEs' access to public procurement?*

Medium sized enterprises are performing relatively well, whereas this is not the case of small and micro enterprises when it comes to access to public contracts above the EU thresholds. Existing practices that improve information flows, reduce the transaction costs of bidding for public contracts and improve the quality of calls for tender appear to be improving access of SME to public procurement. However, there is little hard empirical evidence to assess the precise effects of existing practices.

*What other measures could be envisaged?*

Further measures to improve the quality of invitations to tender and widen the scope for aspects of quality and long term value for money considerations to be weighed against bid price in the evaluation of tenders, together with further moves towards e-procurement and central registration systems, reducing administrative burden for companies, would reduce further perceived disadvantages experienced by, in particular, small and micro enterprises.

*Are there barriers to effective transfer of good practices from one Member State to another, and from the US to Member States? If so, what are these barriers? How could any such barriers be overcome?*

There are no major legal or institutional constraints on the transfer of good practices from one Member State to another. However, there are practical challenges. The structure of public procurement varies markedly. In most countries there are many different agencies involved with different traditions and practices. Furthermore, it was not clear that good practices are necessarily transferred effectively within Member States in part because of the obvious lack of leverage



through which policies and practices could be 'enforced'. In these circumstances it is likely that the transfer of good practices between Member States would be best organised through the formation of 'clusters' of policy makers and practitioners who operate in similar institutional contexts, and including those with good and 'well evidenced' experience, working closely together over a period of time, focussed on particular aspects of good practice of mutual interest.

There is less scope for transferring good practices from the US to Member States because of the differing institutional and legal frameworks.

*Are there any aspects/means/actors that render certain aspects of good practices more or less effective than others, and – if there are – what lessons can be drawn from this?*

The evidence of this evaluation suggests that good practices are likely to be more effective if: they focus on addressing the needs of small and micro enterprises: they focus on SMEs within sectors where they appear to be performing less well compared to large companies; they improve the quality of invitations to tender, through for example, ensuring that procurement agencies are well resourced and staff well trained; and, they minimise transaction costs of preparing and submitting tenders by, for example, maximising the application of e procurement opportunities.

### **Efficiency**

*What aspects of these practices are the most efficient or inefficient, especially in terms of resources that are mobilised by stakeholders during the different phases of the process?*

The limited evaluative evidence available on the costs and outputs of specific practices to enable and improve the access of SMEs to public procurement limits the extent to which observations can be made on aspects of efficiency. However, the practices that improve information flows and reduce transaction costs incurred by tenders are likely to be efficient. Practices that ensure high quality invitations to tender and good practice tender procedures, such as the adequate resourcing and training of the staff of awarding authorities are likely to be the most resource intensive. Practices involving support for consultancy services for SMEs new to public procurement markets could also be expensive given the very large number of potential players.

*What does this represent in terms of administrative burdens on stakeholders and/or other actors?*

There is a potential danger that some practices, pursued with the intention to even the 'playing field' for those SMEs with little or no public procurement experience and hence to improve their access, could increase both administrative burdens for awarding authorities and generate costs for SMEs.

### **Conclusions**

Medium sized enterprises are performing relatively well in public procurement above the EU thresholds. However, this is not the case of small and micro enterprises. There are very wide variations between the performance of SMEs in accessing public procurement contracts in different countries. There are also marked variations in the activities and approaches of Member States and awarding authorities and contrasts in the perceptions of the problem and what should be done amongst awarding authorities and between awarding authorities and companies.

Several factors are tending to improve the performance of SMEs:

- § Improvements in information flows enabled by telecommunications. The use of the internet and e mail can help ensure SMEs are aware of tendering opportunities, can

access tender documents and be informed of the results of tenders in a timely manner and at low cost.

- § The possibilities and use of e-procurement tools. In particular SMEs benefit from being able to submit tenders electronically and avoid the repeated production of background information through centralised registration systems.
- § Moves to enable cooperation between companies to fulfil technical and financial criteria and the breaking of contracts into lots.
- § Training of the staff of awarding authorities and SME support initiatives.

The main factors that constrain SMEs access to public procurement include:

- § The growth in public procurement and pressures on the resources of awarding authorities that lead to preferences for larger contracts that in turn augur towards, poorer tender documents and awards being made on the basis of price rather than quality both of which are likely to favour larger and more experienced tenderers.

## Recommendations

Overall the study findings suggest that there is still scope for improvement in the performance of SMEs in public procurement. In the light of this, steps should be taken to: reduce differentials in access between SMEs, and in particular small and micro-enterprises, and larger companies; exchange experience and encourage peer learning activity amongst Member States and awarding authorities; and, improve the information and research base.

### Steps to reduce differentials in access between SMEs and larger companies

The following steps should be pursued:

- § The further development of Central Registration Systems should be encouraged so that the potential tenderers are only required to provide information on eligibility criteria to one register that can be referred to by different awarding authorities.
- § The further promotion and adoption of e-procurement should take place. e-procurement can reduce the transaction costs of preparing and submitting tenders which are disproportionate for SMEs compared to larger companies able to maintain procurement specialists and departments.<sup>6</sup>
- § The encouragement of initiatives that enhance the capacity of awarding authorities to generate high quality invitations to tender that increase the likelihood that factors other than price can be properly taken account of in award decisions, should take place.
- § The further promotion and adoption of measures perceived by SMEs, especially small and micro enterprises, and proven to be beneficial should be encouraged.

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<sup>6</sup> The Commission published an Action Plan for the Implementation of a legal framework in 2004. A review of this is anticipated in 2007

### **Steps to encourage the exchange of experience between Member States and awarding authorities**

A series of meetings of Member State procurement policy actors and relevant stakeholders should take place in order to identify and oversee a programme of Peer Learning Activities.

The activities could include: clusters of Member State representatives from countries with similar procurement structures and policies working together to identify successful approaches to improve the access to public procurement of SMEs; study visits to Member States by actors from other countries to assess in detail the mechanisms used and their applicability and transferability; evaluation studies; and, seminars and conferences of awarding authorities at the EU level.

### **Steps to improve the information and research base**

In order to: provide an informed backdrop to the exchange of experience activity; assess the performance of SMEs in public procurement; and evaluate the impact of relevant policies and practices, there would be benefit in the following:

- § Monitoring at the EU, national and sectoral levels on an annual basis the access of SME to above threshold EU public procurement.
- § Awarding authorities being required to issue contract award notice (CANs) for all public procurement tenders.
- § The frequency and quality of information on the identification of the company awarded the contract and the value of contracts awarded on CANs being improved. (During this assignment only 64% of all CANs provided sufficient information on these two parameters to be used in the analysis).
- § The CANs actually indicating the category of company. In the short term tenderers could be requested to self assess the category to which they belong when bidding, in the longer term centralised registration would enable reliable classification.
- § Tenderers being asked to indicate the proportion of the tender price that is planned to be subcontracted to SMEs. EU institutions could usefully take a lead on this.
- § Data on the concentration of employment and output within sectors being developed in a manner that enables valid comparisons between the performance of SMEs (and medium, small and micro enterprises) in public procurement and their contribution to the economy as a whole.

The findings of this evaluation and the comparisons with the US raise interesting questions about the state of the EU public procurement market and the role of SME and larger companies within it. It can be conjectured that the relative fragmentation of the EU market may limit the extent to which public procurement is generating innovation and efficiencies and the development of EU companies (large companies as well as SME) that are able to compete in public procurement markets outside the EU. The improvements in the information base could help inform and research such questions and help assess whether the relative decentralisation of public procurement markets in the EU and lack of a 'single market' is advantageous to SME and the EU economy.

# 1 INTRODUCTION

## 1.1 Background to the assignment

This report provides the main findings of an assignment concerning the “Evaluation of SMEs’ Access to Public Procurement Markets”. The assignment was undertaken by GHK and Technopolis within the framework contract for the provision of studies and other supporting services on Commission evaluations (ENTR/04/093-FC-Lot 1) on behalf of Directorate-General (DG) Enterprise and Industry during the period April to September 2007.

The evaluation was commissioned by the Directorate E “Promotion of SMEs Competitiveness”, Unit E4 – “Horizontal Aspects of SMEs Policy” of the Directorate-General, in co-operation with DG Internal Market and Services, which was also represented in the Steering Group. Other Commission services dealing with public procurement will use the results of the evaluation, including Unit E3 – “Crafts, Small Business, Cooperatives & Mutuals”, Unit R5 “Strategic Planning and Management” and Directorate C “Public Procurement Policy” of DG Internal Market and Services.

## 1.2 Objectives of the assignment

Following the Task Specifications, this evaluation study was mainly conceived as a follow-up to the 2004 study ‘*Access of SMEs to Public Procurement Contracts*’<sup>7</sup>, prepared by EIM Business and Policy Research and KMU Forschung Austria for DG Enterprise and Industry. The previous study covered 15 Member States, and:

- § analysed data on public procurement contract awards from 2001 relating to tenders published in the EU Official Journal (OJ);
- § assessed the legal background, practices, and measures to facilitate SMEs’ access to public procurement in the Member States;
- § included telephone surveys of SMEs that won public procurement contracts, and of awarding authorities;
- § identified a number of critical issues concerning SMEs’ access to public procurement; and,
- § described a number of good practices and formulated a set of recommendations.

The overall purpose of this study was to evaluate the progress made since the 2004 study and to assess the effectiveness of policies and practices introduced since. More specifically, the main objectives of the evaluation were:

- § to evaluate the development in SMEs’ access to public procurement above the thresholds published at European level since the 2004 study (which used data from 2001) and to identify

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7 The Access of SMEs to Public Procurement Contracts (2004)

<http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-studies/craft-publicprocurement.htm>

trends in SMEs' access to public procurement for the period 2002-2005, including developments in the new Member States that joined the EU in 2004. The analysis included:

- the identification of the proportion of the overall number and value of public procurement contracts covered by the relevant EU Public Procurement Directives during the period 2002-2005 awarded to SMEs;
  - the identification of trends in SMEs' access to public procurement and differences between Member States, sectors, and contracting authorities;
  - the identification of factors influencing trends and differences; and,
  - the identification of 'success factors' that have helped SMEs to access public procurement contracts (for example, identifying whether they have benefited from any support measures, simplified procedures, etc.)
- § to provide information on the nature of SMEs' access to public procurement contracts not covered by the Directives in a select number of Member States, drawing on recent surveys, studies, and interviews;
- § to assess the existing barriers to SMEs' successful participation in tenders, with a focus on the Community and national legislative frameworks and practices on the ground;
- § to take stock of existing good practices which facilitate SMEs' access to public procurement contracts at European, national, regional or local level (including tenders above and below the thresholds). The aspect of 'transferability' was taken into consideration in identifying good practices;
- § to describe and analyse the structure and functioning of the US Federal public procurement market by:
- analysing and assessing the various schemes at Federal level which aim to promote SMEs' access to public procurement – notably the Small Business Act (SBA) and Small Business Innovation Research (SBIR) – and to identifying their strengths and weaknesses;
  - comparing the EU and US systems (considering for example, whether the US initiatives and good practices are transferable to EU Member States without modifying the existing European legal framework);
- § to make recommendations, focusing on action to be undertaken by the Commission (such as suggesting appropriate improvements in the legislative framework, communication actions, and exchange of good practice).

It should be stressed that the findings concerning the statistical analysis of Contract Award Notices (CANs) - especially with respect to SMEs' share in public procurement contracts - are estimates made on the basis of samples. Therefore, their accuracy and reliability is subject to certain limitations. A methodological note in the Annex explains the way in which the samples were obtained, how data were analysed, and describes the limitations of the statistical findings.

### 1.3 Structure of the report

This report is structured as follows:

- Section 2*      Presents the policy context to the study, looking at: the scale and nature of European public procurement markets; key legislation; and the policy objectives in relation to SMEs' access to public procurement.
- Section 3*      Provides the statistical analysis of above-threshold EU procurement<sup>8</sup>, including analyses of country and sector variation and trends. It is based on the information on CANs published on Tender Electronic Daily (TED).
- Section 4*      Contains the findings of interview surveys amongst European SMEs, large companies, and awarding authorities on the perceived problems of SMEs' access to public procurement and possible solutions.
- Section 5*      Summarises the best practices and lessons learnt from ten national case studies that examined public procurement practices in Member States both above and below the EU-threshold. The case studies provide information on the legal background, policies, and key actions in the respective countries.
- Section 6*      Describes the functioning of the US Federal procurement market, with a specific view on the SBA, and comments on the adaptability of US solutions to the European context.
- Section 7*      Provides the evaluation conclusions and recommendations, structured around the objectives and key questions addressed in the study.

Supporting material – methodological notes and individual Member State case studies – is provided in Annexes.

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<sup>8</sup> I.e. public procurement above a certain value threshold (see the Glossary in Section 1.4), which is regulated by the EU Public Procurement Directives

## 1.4 Glossary

A short explanation to the most important acronyms and terms that appear in this study are given in *Table 1.1* below.

**Table 1.1: Key acronyms and terms**

<b>CANs</b>	Contract Award Notices - notices on the results of tenders above EU-thresholds, published on TED.
<b>Cross-border procurement</b>	Public procurement in which the company supplying the goods or services is based in a different country than the awarding authority.
<b>EU-thresholds</b>	The value thresholds for public works, supply and service contracts above which the Public Procurement Directives take effect, as specified in Commission Regulation (EC) No 2083/2005 (see Table 2.1). Procurement above EU-thresholds has to be published on TED.
<b>ITTs</b>	Invitations to tender; notices on tenders launched above EU-thresholds, published on TED.
<b>Public Procurement Directives</b>	Directive 2004/17/EC, coordinating procurement procedures of entities operating in the water, energy, transport and postal services sectors; and Directive 2004/18/EC, on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.
<b>SBA</b>	Small Business Act, a key legal act in the United States setting out the main provisions in support of small businesses.
<b>SMEs</b>	Micro, small and medium-sized enterprises, in the meaning of the current EU definition (see Figure 2.1).
<b>TED</b>	Tenders Electronic Daily, supplement to the Official Journal of the European Union, containing notices on tenders, results of tenders and other relevant information for public procurement above EU-thresholds ( <a href="http://ted.europa.eu">http://ted.europa.eu</a> ).

## 2 THE CONTEXT FOR THE STUDY

### 2.1 Introduction

This aim of the study was to explore the situation of, and trends in European public procurement markets and the extent to which Small and Medium-Sized Enterprises (SMEs) are disadvantaged in accessing public contracts. For the purposes of this assignment we have used the definition of SMEs developed by the European Commission (see Figure 2.1).

**Figure 2.1: Definition of SMEs, based on the Commission recommendation<sup>9</sup> from 2003**

SMEs are enterprises which:

- § employ fewer than 250 persons; and,
- § have an annual turnover not exceeding 50 million euro and/or an annual balance sheet total not exceeding 43 million euro (meeting only one of the two criteria is necessary).

The thresholds apply to consolidated figures, taking into account partner and linked organisations, which means that a proportion or 100% of their respective headcount and financial figures have to be added to the company's data. Exceeding the headcount and financial ceilings for two consecutive accounting periods, results in losing SME status.

Additionally, a company with 25% or more of its capital or voting rights (whichever is the higher) directly or indirectly controlled, jointly or individually, by one or more public bodies may not be considered as an SME. The exception is public investors with a stake of below 50% which are:

- § Public investment corporations, venture capital companies and business angels;
- § Universities and non-profit research centres;
- § Institutional investors, including regional development funds;
- § Autonomous local authorities with an annual budget of less than 10 million euro and fewer than 5,000 inhabitants; and/or,
- § Not linked to one another, and which are not influencing the management of the enterprise in a way that corresponds to the definition of a linked enterprise.

In Europe there are some 23 million SMEs, representing more than 99% of all businesses, producing more than half of European GDP, and providing around 75 million jobs. SMEs form a key part of many European industrial sectors, such as textiles, construction and furniture manufacture. SMEs are also a major source of entrepreneurial skills, innovation and contribute to economic and social cohesion. However, SMEs, because of their size, may suffer from specific

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<sup>9</sup> Commission Recommendation 2003/361/EC as published in the Official Journal of the European Union L 124, p. 36 of 20 May 2003



and serious challenges, such as disproportionate administrative burdens and inadequate access to information on potential business opportunities that, if not properly addressed, may hinder the growth of European economy<sup>10</sup>.

In 2005, the Renewed Lisbon Programme<sup>11</sup> reiterated the importance of SMEs for delivering stronger growth and more and better jobs, and called for improvements to SMEs' business environment and action to address SMEs' needs through providing specific support.

In response to these needs, the European Commission launched its "Modern SME Policy for Growth and Employment"<sup>12</sup>. This strategy aimed to create a consistent policy framework for SMEs, integrating the various objectives of existing policies (such as the European Charter for Small Enterprises), with a view to building synergies. One of the priorities of 'modern' SME policy is to enhance SMEs' access to markets and, in particular, their access to public procurement.

The conclusions of the March 2006 European Council<sup>13</sup> endorsed the objective to strengthen SMEs' access to markets, particularly by improving and facilitating access to public procurement markets.

Public procurement is the process of purchasing supplies, equipment and services (including works) by public or private bodies using public funds, regulated by law – and/or the public contracts which secure the provision of such supplies, equipment and services. Public contracts are defined by Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (Article 1) as:

*"contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services"*<sup>14</sup>.

This section of the report provides the context for the study and reviews: the scale and overall structure of the European public procurement market; the core objectives and policies governing public procurement (including SMEs' access); and, the key aspects of EU-level legislation in the field.

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<sup>10</sup> See key elements of European SME policy:  
[http://ec.europa.eu/enterprise/entrepreneurship/sme\\_policy.htm](http://ec.europa.eu/enterprise/entrepreneurship/sme_policy.htm)

<sup>11</sup> Communication from the Commission on "Common Action for Growth and Employment: The Community Lisbon Programme" SEC (2005) 981  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0330en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0330en01.pdf)

<sup>12</sup> Communication from the Commission on "Implementing the Lisbon Programme Modern SME Policy for Growth and Employment", COM (2005) 551 final  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0551en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0551en01.pdf)

<sup>13</sup> Brussels European Council 23/24 March, Presidency Conclusion 775/1/06  
[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/89013.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/89013.pdf)

<sup>14</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0018:EN:NOT>

## 2.2 The European public procurement market and regulation of public procurement

According to estimates from DG Internal Market<sup>15</sup>, the total value of public procurement in the then 15 Member States amounted to some €1,500 billion in 2002, corresponding to 16% of the total GDP<sup>16</sup> of the EU-15.

Only a small fraction of this figure is procurement by EU institutions. The vast majority of public procurement takes place in the Member States. The main responsibility as regards the steering, management, and supervision of public procurement rests with the Member States (through governance arrangements at a national, regional or local level).

However, the EU does have rights and responsibilities in the area of public procurement since it concerns the functioning of the single market, competition policy, and international – for example, World Trade Organisation (WTO) – agreements that the EU enters into. This is particularly true of larger procurement contracts above certain thresholds<sup>17</sup>. Smaller purchases do not fall within the scope of EU-level public procurement legislation, though they must respect the basic provisions of the Treaties, and are thus still subject to rules ensuring the fair competition on the internal market, including the banning of discrimination towards bidders from other Member States.

Public procurement in the EU is subject to internal market rules. These include: the ban on quantitative restrictions, and measures having equivalent effect, on the free movement of goods; the right of establishment; and, freedom of services. EU-level regulation is provided through two Directives (the Public Procurement Directives):

- § Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; and,
- § Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

These Directives were adopted by the European Parliament and the Council on 31 March 2004, and succeeded a set of earlier Directives.

The 2004 Public Procurement Directives concern most public procurement projects above the EU-thresholds. They exclude the procurement of much military equipment for the defence sector<sup>18</sup>. The current thresholds<sup>19</sup> that have been effective since 1 January 2006 are shown in Table 2.1.

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<sup>15</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

<sup>16</sup> These estimates were based on data provided by National Statistical Institutes to Eurostat for National Accounts and from annual reports and other sources for the Utilities sector.

<sup>17</sup> Different thresholds apply for different public procurement contracts (i.e. provision of public work or services). The value of thresholds is updated every two years (adaptation to GPA thresholds). The current thresholds are given on the DG Internal Market website:

[http://ec.europa.eu/internal\\_market/publicprocurement/key-docs\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm)

<sup>18</sup> Military equipment for the defence sector and exclusion of services of annexes II B to Directive 2004/18/EC and XVII B to Directive 2004/17/EC

<sup>19</sup> The thresholds have changed several times since 2002, which may impact on the statistical analysis, in terms of comparability over time

**Table 2.1: The main thresholds for Community legislation for public procurement (values in euro, excl. VAT)**

Category	Public works contracts	Supply contracts	Service contracts
Central government authorities (excluding defence procurement of products outside Annex V of Directive 2004/18/EC)	5,278,000	137,000	137,000
Other bodies, and defence procurement of products outside Annex V	5,278,000	211,000	211,000
Utilities: gas, heat and electricity, water, telecommunication, transport and postal services	5,278,000	422,000	422,000

Source: Commission Regulation (EC) No 2083/2005

The Directives establish a specific common procedural framework for above-threshold procurement, aimed at further opening up the internal market and ensuring wider competition at the European level. Awarding authorities are obliged to follow transparent open procedures ensuring fair conditions of competition for suppliers. This includes, in particular, respect of minimum deadlines for the submission of tenders, application of objective criteria for the selection of tenders and the award of contracts, and also the publication of contract award notices at EU level in the Official Journal. Overall, the two Directives aimed to further simplify and modernise procurement procedures, and to reinforce the transparency and the possibilities for legal remedies. The deadline for transposing the directives into national law was 31 January 2006, though 7 Member States of the 27 had not done so<sup>20</sup> as of April 2007.

However, the majority of public procurement in Europe falls below the thresholds set for the two EU Directives. In 2004, for example, sub-threshold public procurement was estimated to account for around 84% of total EU-27 public procurement. Below the EU-thresholds there is no obligation for procuring authorities to follow the requirements set out in the Directives. Consequently, there are significant differences in approaches to public procurement legislation between Member States, which could feasibly have an impact on the organisation and the functioning of public procurement as a system, and, indirectly, also on the opportunities and threats companies experience when competing for public contracts.

High-level regulation is usually done in the form of a specific national act on public procurement. For countries with a highly decentralised regional structure (like Germany and Austria), this is a framework law that is complemented by regional laws. Regions, local authorities – depending on the constitutional structure of the Member State concerned – may adopt their own detailed regulations, or just operational rules on the responsibilities in connection with public procurement procedures. The case studies reviewed in Section 5 of this report shed light upon the national legislative framework in 10 Member States, and their similarities and differences.

EC institutions follow the EU's own rules to public purchases (these are governed at high level in the Financial Regulation<sup>21</sup>).

<sup>20</sup> See the report from the European Parliament:  
<http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&mode=NOT&language=EN&reference=P E388.489>

<sup>21</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

## 2.3 Policies relating to public procurement and SMEs

The key objective of public procurement within the EU is to maximise value for money, while it should also fully respect the core aims laid down in the Treaties, ensuring fair and unbiased competition in the internal market. The two goals are intertwined: value for money is usually best achieved by opening up purchases to more competition, via enabling the equal access of all potential bidders. The Commission has indeed found<sup>22</sup> that the opening up of public procurement within the internal market may have already had a positive impact on cross-border competition, and on the prices paid by public authorities (although direct cross-border deals are still relatively rare). The means of achieving this were greater transparency, eliminating unnecessary restrictions, and reducing the bureaucratic burden to companies wishing to participate in tenders in the Member States.

As a result of its sheer size, public procurement is also a potentially powerful instrument of economic policy. The awarding authorities may pursue additional goals, other than the value of money principle, which may be taken into account when planning for, and managing, public procurement tenders.

Considerations may be given to for example, social or environmental objectives. Procurement strategies, and single tenders rewarding socially responsible behaviour have been developed<sup>23</sup>. Furthermore, the European Commission itself is promoting 'green' procurement methods<sup>24</sup> – in which environmentally friendly activities are given advantage. These approaches do not contradict the objective to maximise value for money, but introduce a wider dimension, by trying to take due account of the impact that the production and supply of goods and services may have on society and the environment.

Bearing all these considerations in mind, a key policy objective is to improve SMEs' access to public procurement markets. In the year 2004, according to Eurostat data, 99.8% of all companies in the EU were SMEs, which accounted for 56.4% of gross value added (GVA), and 67.1% of employees within the business sector (excluding agriculture, fisheries and financial services)<sup>25</sup>. Their share of company turnover was 57.6%.

However, as the 2004 study on SMEs' access to public procurement markets pointed out, their proportion in the value of public contracts above the EU-thresholds was only 43% in 2001. Commission and SME representative organisations are thus of the opinion that there is room for improvement in SMEs' involvement in public procurement. This was also a conclusion of the 2004 study.

European policy – in line with the Treaty, and as cited in Directives 2004/17/EC and 2004/18/EC – aims to open up public procurement markets to competition and to ensure greater transparency by creating a level playing field to give all companies similar chances of participation and success. As SMEs are considered to face the most barriers, the policy focus is directed at their needs in terms of simplification, information and support. If SMEs' chances to secure public

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<sup>22</sup> See "A report on the functioning of public procurement markets in the EU" from 2004:  
[http://ec.europa.eu/internal\\_market/publicprocurement/docs/public-proc-market-final-report\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/public-proc-market-final-report_en.pdf)

<sup>23</sup> The "Developing Public Procurement Policies for Sustainable Development" of the Nordic Council of Ministers is to mention here in first place.

<sup>24</sup> See e.g. DG Environment's activities in this regard: [http://ec.europa.eu/environment/gpp/index\\_en.htm](http://ec.europa.eu/environment/gpp/index_en.htm)

<sup>25</sup> This is based on business statistics broken down by company size-classes, as provided by Eurostat (Be a bit more specific)

contracts are improved, this may bring benefits through ensuring better prices/quality through increased competition. Benefits to local economies could also accrue.

Various studies<sup>26</sup>, position papers on the subject, and Commission policy documents consider the following to be the key barriers to SMEs, restricting their access to public procurement markets:

- § lack of awareness amongst SMEs: the Commission indicated that “SMEs are not always aware of the opportunities offered by public procurement markets”<sup>27</sup>. (However, this view was not endorsed by all the EU stakeholders interviewed during this study),
- § lack of accessible, timely and comprehensible information available to SMEs, including: information gaps concerning rules and tender procedures, the future plans of awarding authorities and specific tenders; and, problems of unclear jargon used in procurement documents,
- § lack of knowledge and skills amongst SMEs: for example SMEs may not have ‘tendering departments’, and may lack specialist knowledge in public procurement. The language skills required for cross-border procurement are also not always present,
- § small size, inadequate capacities of SMEs: the size of the contracts, the qualification levels and certification requirements and requirements for financial guarantees are often high and may exclude SMEs,
- § relatively high transaction costs for SMEs: the costs of preparing public procurement proposals are high. The costs for SMEs may be disproportionate,
- § shortage of time available to SMEs: the time spans for preparing proposals may be too short, taking account of the time required should SMEs need to enter into collaborative relationships.

This study has assessed the significance of these barriers by asking companies in a telephone survey about the problems they encountered when competing for public contracts. The results of the survey are summarised in Section 5 of this report. In addition, country-specific findings are highlighted – where relevant - in the case studies in the Annex.

The companies surveyed were also asked about measures that could help in improving access, in overcoming the most common barriers. Several options are already promoted, and some general requirements set by the Public Procurement Directives, the most significant of these being:

- § breaking down public contracts into lots,
- § excluding small lots from the scope of the Directives (in case of procurement above the EU-thresholds),
- § using framework agreements and contracts in order to reduce administrative burden and to give companies incentives to invest in their products or services,

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<sup>26</sup> Including the 2004 study and the Sixth Report of the European Observatory for SMEs (2000)

<sup>27</sup> Commission Communication COM(2005) 551 from 10 November 2005, ‘Implementing the Community Lisbon Programme: Modern SME Policy For Growth and Employment’

- § defining specifications in the form of performance and functional requirements rather than using detailed technical specifications, in order to allow for innovative solutions, and to capitalise on the flexibility of SMEs,
- § obliging awarding authorities to allowing economic operators to jointly meet technical or financial criteria (economic operators may rely on capacities and abilities of consortium partners or subcontractors),
- § prohibiting the use of disproportionate requirements in the tenders, and an opportunity for legal action against such undue requirements,
- § using prior information notices more regularly,
- § using the possibilities of e-procurement, and thus relieving the administrative burden and costs imposed on companies.

These measures are implemented in Member States in various forms and to various extents. Some options are employed more often, and some options infrequently, or not at all - as for example, when they are not compatible with national regulations. Also, in certain countries, some of the requirements set by the Directives have filtered into below-threshold procurement regulation. The above and other practices undertaken on the ground are considered to have had a major impact on SMEs' performance in public procurement in some of the case study countries.

However, some legal provisions, as well as some new concepts in procurement are seen to have an adverse impact on SMEs' access. For example, the use of framework agreements may be an effective barrier, as they usually require making available large free capacities for a certain period of time, which may be difficult for small companies.

Another trend that may disadvantage SMEs is the development and application of Public-Private Partnerships (PPPs). In PPPs, large contracts are awarded to a general contractor without subdividing it into lots. Smaller companies can only participate as second, third, or even fourth-tier subcontractors, obviously, with less attractive terms and conditions.

Section 5 – and the detailed case studies in the Annex – explore policies and key initiatives of the Member States, and their results in so far as it is possible to obtain data (inter alia on SMEs' share in winning public contracts) and to draw conclusions.

## 3 PATTERNS AND TRENDS IN PUBLIC PROCUREMENT ABOVE EU-THRESHOLDS

### 3.1 Introduction

The study analysed CANs of above-EU threshold tenders that had been published on the TED website, with a view to exploring the characteristics of public procurement and SMEs' access to public contracts, and identifying both trends and variations between countries and sectors. The starting points for this exercise were DG Internal Market and Services databases containing all relevant notices on procurements published in the Official Journal, extracted from the TED archives for the years 2002 to 2005<sup>28</sup>. Over this time period, the databases included a total of 877,052 records, covering invitations to tender, CANs, prior information notices, design contests and their results, information on European Economic Interest Groupings (EEIG), etc.

The results of the analysis are given in this section. The findings are structured along the study's main points of interest: general trends in European public procurement, cross-border procurement, and SME participation in public procurement above the EU-thresholds.

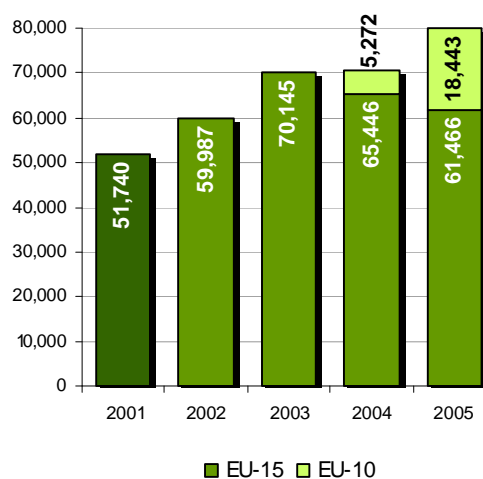
### 3.2 General trends in public procurement in EU-thresholds

#### Number of contract award notices

Altogether, 280,759 contract award notices (CANs) were published on TED in the four years between 2002 and 2005. The comparable figure of 51,740 from 2001, published in the previous study on this topic, was significantly exceeded in 2002, and the number of published CANs showed an uninterrupted increase over the five-year period 2001-2005<sup>29</sup>.

However, the increase is attributed to the 10 new Member States that joined the EU on 1 May 2004. The number of notices published by 'old' Member States began, after reaching its peak in 2003, to decline from 2004. The trends are illustrated in *Figure 3.1*.

**Figure 3.1: Contract award notices published from 'old' and 'new' Member States**



<sup>28</sup> Notices from the years 2000 and 2001 were also extracted for comparison purposes.

<sup>29</sup> Comparative data for 2001 were not taken from the 2004 study, but were reproduced from the TED database. This explains the small difference between this figure and that given in the 2004 report.

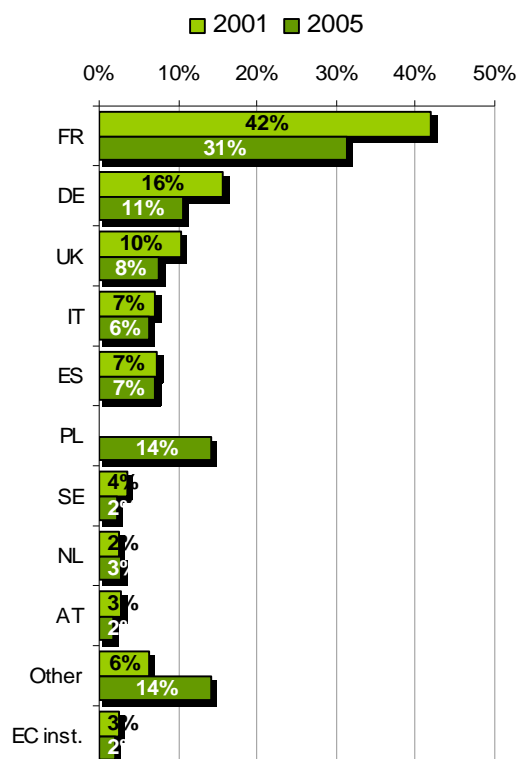
### Distribution of contract award notices amongst Member States

France published by far the most CANs: 110,960 from 2002 to 2005 (39% of all notices), Germany 36,570 (13%), and the UK 24,791 (9%). Evidently, larger Member States published more notices than smaller ones, but France stands out in the number of CANs publicised. This is mainly explained by the practice of French awarding authorities breaking down contracts into lots – and often publish results for different lots separately.

The proportions shifted after the 2004 enlargement: in 2005, the first full year after its accession, Poland was already the second largest publisher of CAN (11,229 notices, amounting to 14% of the total). Lithuania, Hungary and the Czech Republic are also significant contributors, with a share of around 2% each. The publication of several contract award notices for the different lots of a single tender is also widespread in Poland and Lithuania – explaining their good position relative to their size.

In contrast, the relative weight of France, Germany, the UK and Italy decreased (from a combined share of 74% in 2001 to 56% in 2005). The distribution of CANs between Member States and trends between 2001 and 2005 are illustrated in *Figure 3.2*.

**Figure 3.2: Distribution of contract award notices by country in 2001 and 2005 (number)**

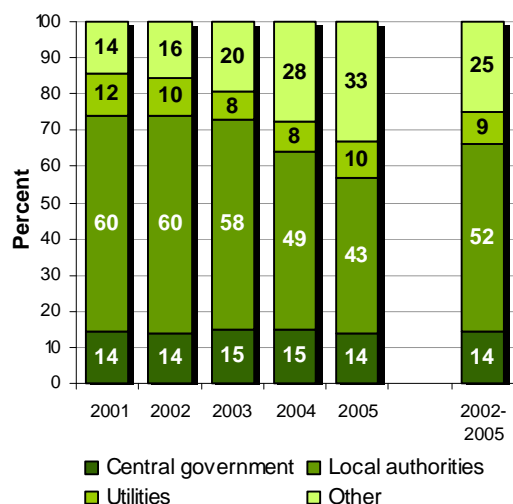


### Distribution of contract award notices by awarding authorities

The majority of CANs (52%), 145,637 in total, were published by local authorities in the four-year period from 2002 to 2005. Central government agencies in the Member States published 40,450 CANs, public utilities contributed with 25,493 notices. The remainder of the CANs (69,179) were published by other actors (private companies, EC institutions, bodies governed by public law, etc.).

A strong shift can be observed in favour of 'other' organisations - mostly due to the increased activity of private entities. 'Other' awarding authorities increased their share from 14% in 2001 (7,446 notices) to 33% in 2005 (26,614 notices). The number of contract award notices originating from local authorities did not change much, and remained in the range of 30-40,000 per annum, but this meant a significant decrease in their share, from 60% to

**Figure 3.3: Trends in distribution of contract award notices by awarding authority, 2001-2005 (number)**





43%. The share of central government agencies stayed at around 14-15%. *Figure 3.3* illustrates the distribution of CANs between different types of awarding authorities and trends.

The analysis of CANs by type of awarding authority reveals striking differences between countries.

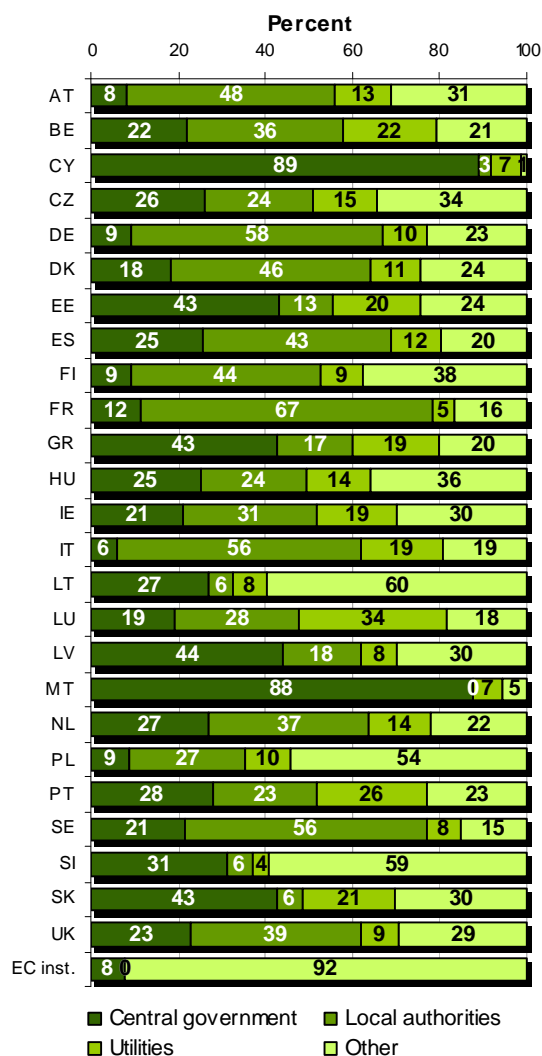
Central government bodies' significance within CANs published varies from around 6-9% in decentralised countries (for example, Italy, Austria, Germany, Poland) to above 40% for smaller, more centralised countries. Malta and Cyprus – being very small countries – are exceptional cases where central government accounts for 88-89% of CANs.

The local authorities share of CANs is lower than the EU-wide average in most countries, especially new Member States (the lowest shares are in Malta: 0%, Slovakia, Slovenia and Lithuania: 6%, Estonia: 13%). The high average weight of this category can be attributed to a set of large Member States that publish the majority of notices – most notably France, Germany and Italy. In the latter countries, the proportion of CANs from local authorities varies between 56% and 67% - this is attributable to their decentralised public procurement systems, where local authorities are responsible for the implementation of a wide range of policies, e.g. education, healthcare.

Utilities usually account for 9-15% of all CANs. Portugal (25%), Slovakia (21%), Estonia (20%) are significantly above this range – while Slovenia (4%), France (5%) are below.

*Figure 3.4* illustrates wide variations between Member States and EC institutions. Nearly all CANs (92%) issued by EC institutions fall in the category of 'other' awarding authorities<sup>30</sup>. But this category is also particularly strong in some new Member States. Its share of the CANs published is 60% in Lithuania, 59% in Slovenia and 54% in Poland. This group includes a significant amount of for- or non-profit entities that received grants from the Structural and Cohesion Funds, and were obliged to public procurement.

**Figure 3.4: Overall distribution of contract award notices by awarding authority, in each country, average for 2002-2005 (number)**



<sup>30</sup> 8% of EC institutions were categorised as "central government" bodies

**Distribution of contract award notices by nature of contract**

Service and supply contracts were the most common types of CANs. Services took the lead with 116,676 notices, while the number of supply CANs amounted to 110,174. Together, they comprised 81% of all CANs between 2002 and 2005. 48,961 contract award notices (17%) concerned public works, and only 4,948 were combined contracts.

Amongst the four categories, service contracts saw the biggest increase in its share (from 36% to 44%). Public works CANs grew in absolute numbers, but their relative weight decreased from 19% to 15%. The 'combined contracts' category is no longer used and is therefore rapidly losing its significance within contract award notices. In 2004, only 47 such notices were published, and a mere 24 in 2005 (all by EC institutions).

**Figure 3.5: Trends in distribution of contract award notices by nature of contract, 2001-2005 (number)**

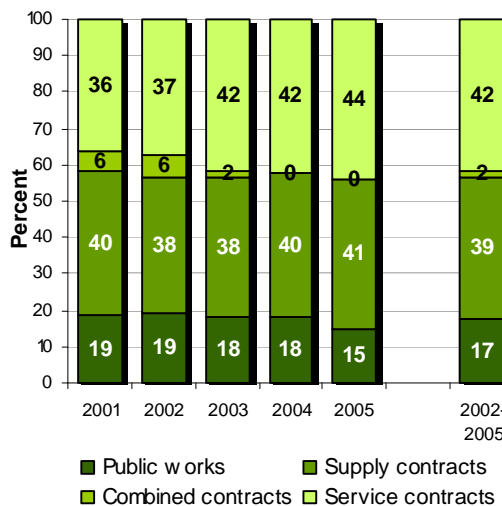


Figure 3.5 illustrates the distribution of CANs by type of contract and changes over time.

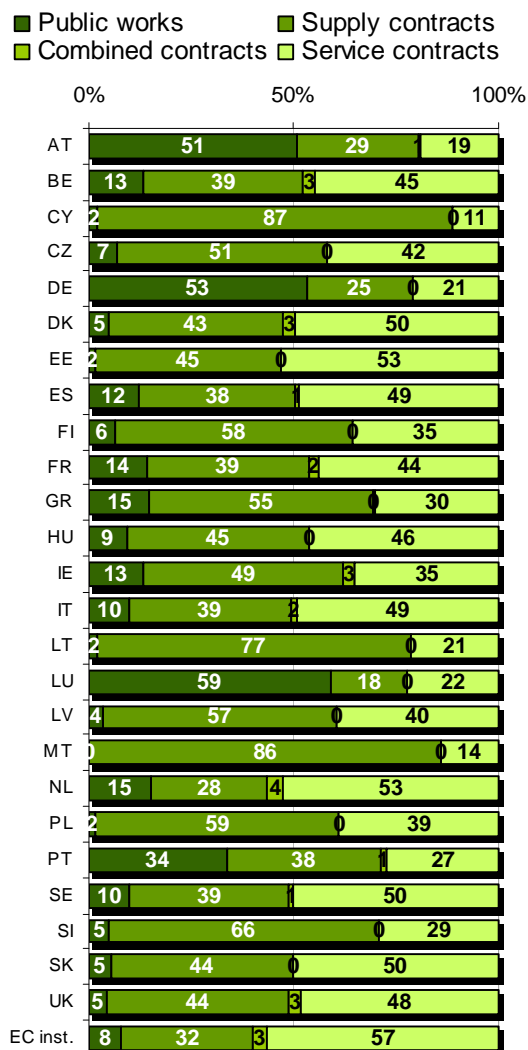
The distribution of CANs according to the nature of the contract is relatively stable across Member States, with some exceptions.

The public works' proportion is high in Luxembourg (59%), Germany (53%), Austria (51%) and Portugal (34%). In Germany and Austria, the low share of supply and service contracts (46-48% for the two combined) can possibly be explained by the strongly decentralised nature of these countries. Autonomous local authorities may not need to exceed the EU thresholds in their procurement.

The share of public works is particularly low in the new Member States (Malta had no public works CANs published, while the public works share was around 2% in Poland, Lithuania, Estonia and Cyprus). This is due to the relatively large number of supply and service contracts they published (some of them attributable to recent Structural Funds support).

Figure 3.6 illustrates the variations between countries in the nature of contracts.

**Figure 3.6: Overall distribution of contract award notices by nature of contract in each country, average for 2002-2005 (number)**



**Distribution of contract award notices by sector of product/service**

The three main product/service categories are: manufactured products with 113,548 CANs (40%), construction with 47,340 (17%), and business services with 64,313 (23%).

The sectors have some connection to the nature of the contract: the share of supply contracts is approximately the same as that of manufactured products (39% vs. 40%), and the relative weight of public works is almost identical to the proportion of construction activities amongst the CAN (both 17%).

The main sectors mirror the shifts between the contract categories very closely. The share of construction decreased in much the same way as public works (from 19% to 14%), and business services and 'other' sectors (a majority of which are services) gained significance in terms of CAN (together, they increased their share from 38% to 44%).

**Figure 3.7: Trends in distribution of contract award notices by sector of product/service, 2001-2005 (number)**



Figure 3.7 illustrate the sector of product services and trends.

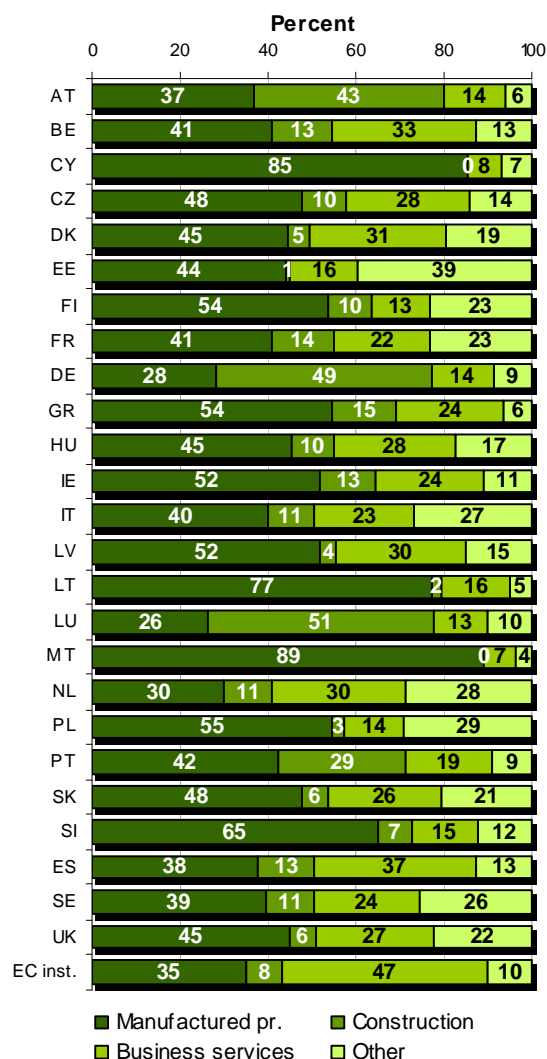
The differences across Member States in the sectors of product services are again closely linked to differences within the nature of contracts.

Construction activities are strongly represented in Luxembourg (51%), Germany and Austria (49% and 43%, respectively), and in Portugal (29%). The share of business services tends to be lower in the new Member States with a lower per capita income (Poland, Slovenia, Lithuania, Estonia are all within the range of 14-16%), though their share is also low in Luxembourg and Finland.

EC institutions order a large amount of business services (47%), while 'other sectors' are less significant (with 10% only) – this is due to the fact the EU does not provide the range of public services, which are typically represented within this category.

Figure 3.8 illustrates the variations between countries and EC institutions in the sector of product/service of CANs.

**Figure 3.8: Overall distribution of contract award notices by sector of product/service, country differences, average for 2002-2005 (number)**



### 3.3 Relationship between tender notices and contract award notices

The results of public procurement tenders (i.e. CANs published) are available for only a minority of all tenders above EU-thresholds in the TED database. Even though the obligation to publish was included in the 'old' public procurement directives prior to 2004, awarding authorities only disclose information for around 54-56% of the public procurement procedures they launch. This means that the contract value and the identities of companies that were awarded contracts are not available in the TED database for a large part of tenders launched. Unfortunately, it is also not known how many of the tenders launched do not result in awards. These factors may limit the validity of findings of this study and indeed any survey of above-threshold procurement including those undertaken by DG Internal Market and services.

Table 3.1 shows the trends in the publication of Invitations to Tender (ITTs) and CANs over the years 2002-2005<sup>31</sup>.

**Table 3.1: Trends in the publication of ITTs and CANs, from 2002 to 2005**

	EU-15 only				EU-25	
	2002	2003	2004	2005	2004	2005
Invitation to tender published	107,020	114,069	115,246	128,289	115,246	128,289
- excluded from analysis <sup>32</sup>	627	675	10,136	20,983	269	276
Invitation to tender analysed	106,393	113,394	105,110	107,306	114,977	128,013
<b>Corresponding CANs with reference to the original tender published (until 2005)</b>	<b>30,836</b>	<b>40,297</b>	<b>37,398</b>	<b>18,760</b>	<b>43,507</b>	<b>27,194</b>
- in same year	12,937	19,522	17,989	18,760	20,786	27,194
- in next year	16,919	19,799	19,409	..	22,721	..
- in third year	862	976	..	..	..	..
- in fourth year	118	..	..	..	..	..
<b>Estimates on total corresponding CANs (including CANs without reference)</b>	<b>57,739</b>	<b>63,478</b>	<b>54,091</b>	<b>26,036</b>	<b>63,580</b>	<b>38,543</b>
- in same year	28,357	32,208	27,155	26,036	31,377	38,543
- in next year	27,913	29,887	26,937	..	32,203	..
- in third year	1,301	1,383	..	..	..	..
- in fourth year	167	..	..	..	..	..

<sup>31</sup> The table presents figures separately for CANs that included a reference number to the original tender, and overall (estimated) figures for all CANs. Data could only be extracted for the first group of CANs, as the original ITT could not be identified for CANs not indicating a reference number (the number of such notices was very significant, 30-40% of all CANs in 2003 to 2005, and even 50% in 2002). Here, estimates were made, based on the initial number of CANs without reference information, under the assumption that the statistical patterns would be similar to CANs with reference numbers.

<sup>32</sup> The analysis for the years 2002-2003 only includes notices from the EU-15 and EC institutions. All other notices (EU-10, Bulgaria, Romania, and Turkey) have been excluded. For 2004 and 2005, separate analyses for the EU-15 and the EU-25 have been made.

Proportions of ITT analysed that led to CAN						
<b>Corresponding CANs published (until 2005)</b>	<b>29.0%</b>	<b>35.5%</b>	<b>35.6%</b>	<b>17.5%</b>	<b>37.8%</b>	<b>21.2%</b>
- in same year	12.2%	17.2%	17.1%	17.5%	18.1%	21.2%
- in next year	15.9%	17.5%	18.5%	..	19.8%	..
- in third year	0.8%	0.9%	..	..	..	..
- in fourth year	0.1%	..	..	..	..	..
<b>Estimates on total corresponding CANs (including CANs without referece)</b>	<b>54.3%</b>	<b>56.0%</b>	<b>51.5%</b>	<b>24.3%</b>	<b>55.3%</b>	<b>30.1%</b>
- in same year	26.7%	28.4%	25.8%	24.3%	27.3%	30.1%
- in next year	26.2%	26.4%	25.6%		28.0%	
- in third year	1.2%	1.2%				
- in fourth year	0.2%					

Most public procurement procedures are closed in the same, or subsequent, year when the tender was advertised on TED<sup>33</sup>. However, the proportion of procedures launched in 2004 for which CANs were submitted to the Official Journal until the end of 2005 was only 55.3% - and only 51.5% for the EU-15. However, there has been a gradual increase in the proportion of procurement procedures that lead to CAN. For example, the 'two-year coverage ratio'<sup>34</sup> of ITTs rose from 52.9% in 2002 to 55.3% in 2004.

<sup>33</sup> There are however cases when contract award notices are published for tenders that were launched five or more years before.

<sup>34</sup> I.e. the ratio of public procurement procedures, to which CANs have been published in the same, or subsequent, year (one or more, if the ITT covered several lots).

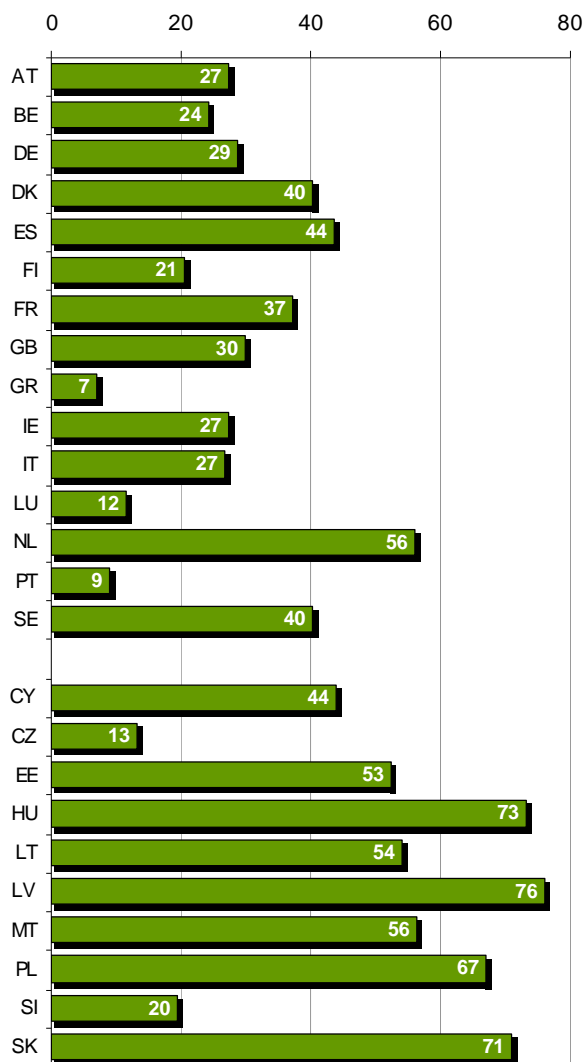
The analysis in Table 3.1 indicates that the proportion of ITT that led to CANs is higher for the EU-25 than for the EU-15. This is confirmed by the analysis of publication patterns by country shown in *Figure 3.9*: (only CANs with reference number assessed). Latvia, Hungary, Slovakia, and Poland are leading the Member States in terms of the publishing of CANs (the same or next year), with rates of between 67% and 76% of the tenders they launched leading to CAN.

The second tier – in the range of 53-56% - includes Malta, Lithuania, Estonia, and only country one from the old Member States, the Netherlands.

The countries that publish CANs very infrequently are Greece (7%), Portugal (9%), Luxembourg (12%) and the Czech Republic (13%). Subsequent estimates made for these countries of the median value of contracts, cross-border procurement, and SMEs' share in public procurement, are therefore less reliable and need to be considered with caution.

However amongst these countries, Portuguese awarding authorities increased four-fold the 'two-year coverage ratio' (from a mere 3% for 2002 tenders to 13% in 2004). Other countries with significant improvements were Germany (from 19% to 36%), Italy (from 19% to 31%), and France (from 33% to 40%), all contributing to the positive trend observed in the EU-15. Spain (with an increase from 29% to 53%) surpassed the Netherlands and was in 2004 the best performer in the EU-15.

**Figure 3.9: Proportion of ITTs covered with CAN(s) by country, average for ITTs published in 2002-2004 (2004 only for EU-10)**





### 3.4 The value of public procurement contracts above EU-thresholds

The median values of all CANs published did not change significantly between 2002 and 2005, and has remained in the range of 310-360 thousand euros.

Per country median values however show great variety. As a general rule, values in the new Member States tend to be lower: the figures for Cyprus, Latvia, Malta, Poland and Slovenia are all below €300,000, and Lithuania has an average of only €53,000.

The median values are also lower in some large countries: e.g. Germany (€307,000) and most notably France (€244,000). For these countries – Lithuania included – the common practice of breaking down tenders into lots and publishing results separately may provide an explanation.

Figure 3.10 and Figure 3.11 illustrate the trend and country variations in the median contract values of the published CAN.

Figure 3.10: Trends in median value of contracts (2002-2005)

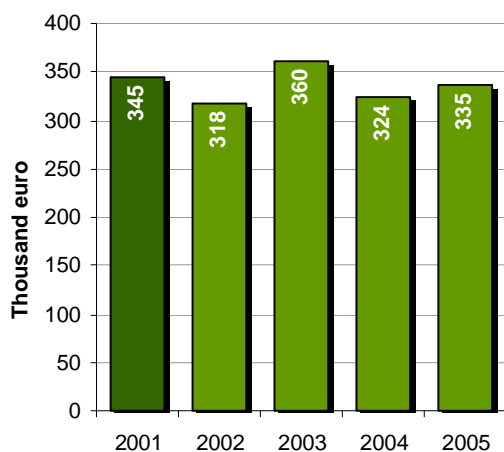
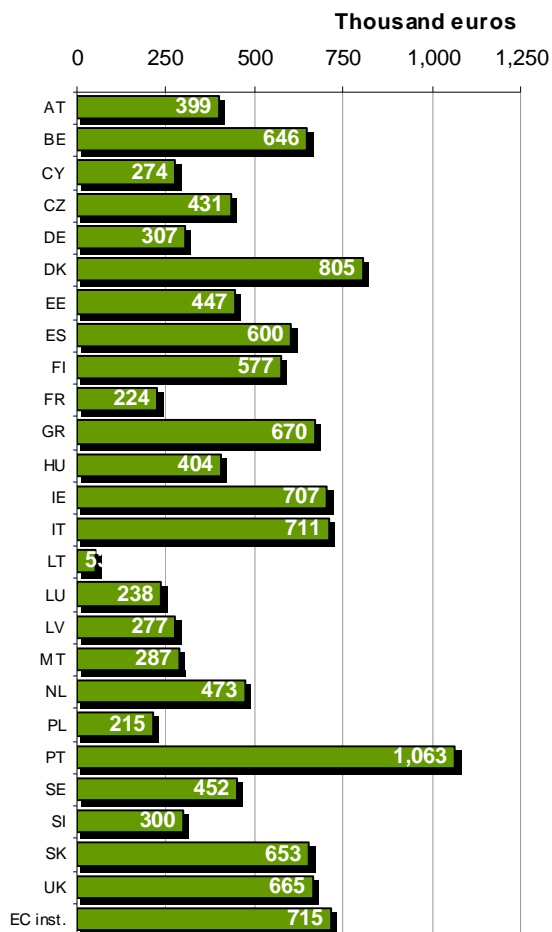


Figure 3.11: Median value of contracts in each country, in 2005

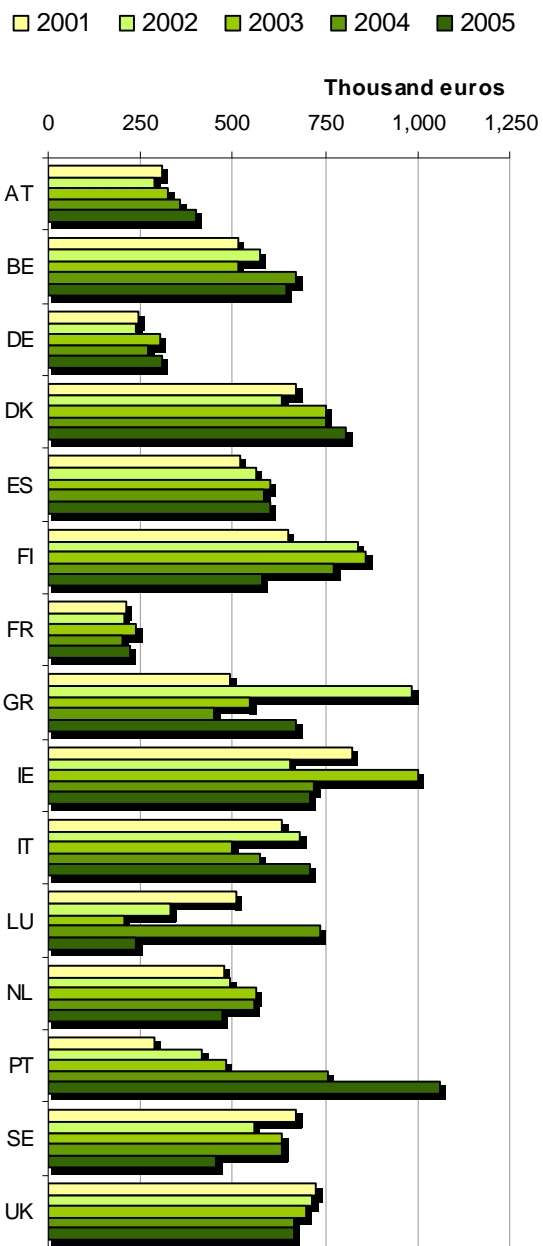


The medium-term trends in around half of the EU-15 indicate a slight increase in median values of CANs over the five-year period between 2001 and 2005. The relatively constant headline figure is partly attributable to the lower values in the new Member States.

A more or less rising trend can be observed in Austria, Belgium, Germany, Denmark, Spain, Italy, the Netherlands and Portugal – while median values in Ireland, Luxembourg, Sweden and the United Kingdom decreased.

The trends by country in the EU 15 are illustrated in *Figure 3.12*.

**Figure 3.12: Trends in median value of contracts in the EU-15 (2001-2005)**



**Variation of value of contracts between awarding authorities**

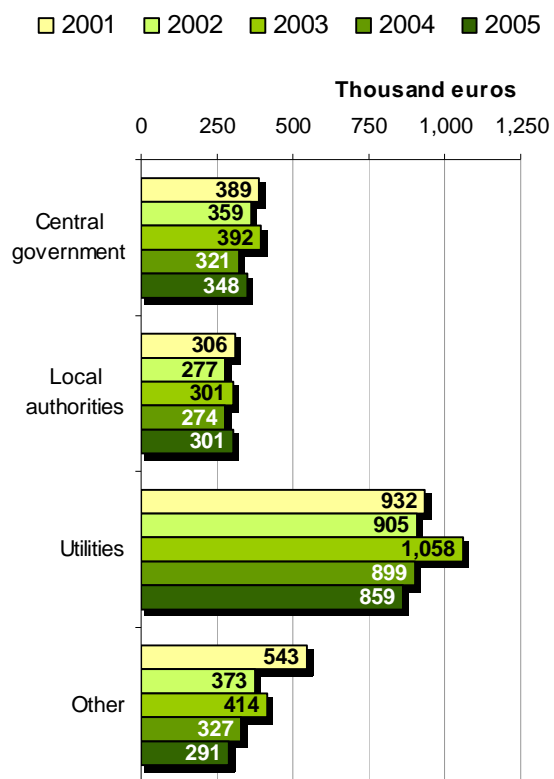
The differences in median values of CANs by the main types of awarding authority are minor. The figures for central government, local authorities and other bodies fell within the range of 300-400 thousand euros during each year studied.

The exception is utilities: median values are above €800,000, which is more than double the respective figures from the other three categories.

There was a slight decrease in median values of the public procurement contracts of utilities, and a more significant decrease for 'other' authorities. However, the latter may be influenced by the high number of relatively small private sector contracts from the new Member States, published on TED.

The trends are illustrated in *Figure 3.13*.

**Figure 3.13: Trends in median value of contracts, by awarding authority (2001-2005)**



**Variation in median values by nature of contract**

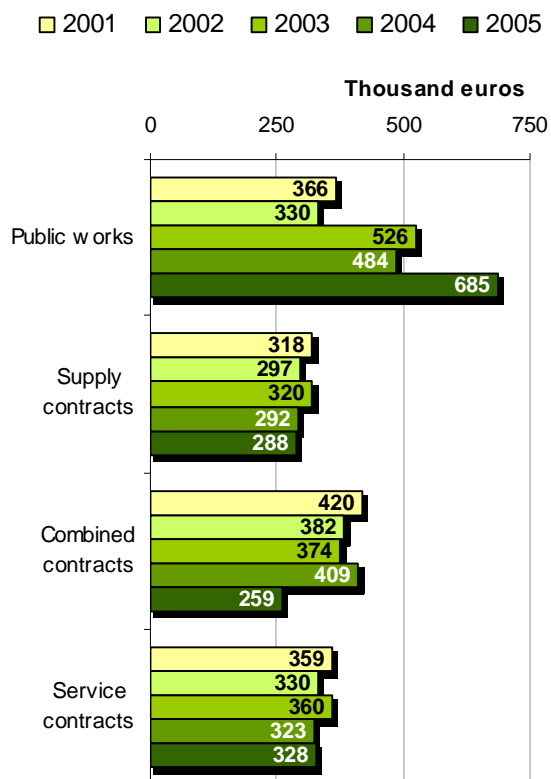
The subdivision of CANs by the nature of contract shows very similar median values for supply and service contracts (both having similar EU thresholds), of around 280-360 thousand euros.

The values for public work contracts exceeded the above two categories significantly. However, the gap was very small in 2001 and 2002 (at a time when the thresholds were very different), and only started to widen from 2003. Interestingly, the median values for public works are much lower than the EU thresholds (which is currently € 5,278,000, and has been similar to this since 2000). This is because certain Member States including Germany and France used to publish separate CAN for different lots under above-threshold construction projects. This has an important impact on the overall EU figures, as these two Member States are the countries that publish the most CANs.

Medium-term trends show two contrary tendencies: median values for supply and service contracts decreased slightly (this may have been influenced by new Member States), but the values for public work contracts increased markedly (the category of combined contracts declined because it is no longer applied).

These trends are illustrated in *Figure 3.14*.

**Figure 3.14: Trends in value of contracts, by nature of contract (2001-2005)**



**Variation in median values by sector of product/service**

The subdivision of data by sector of product/service results in similar patterns as the analysis by the nature of contract.

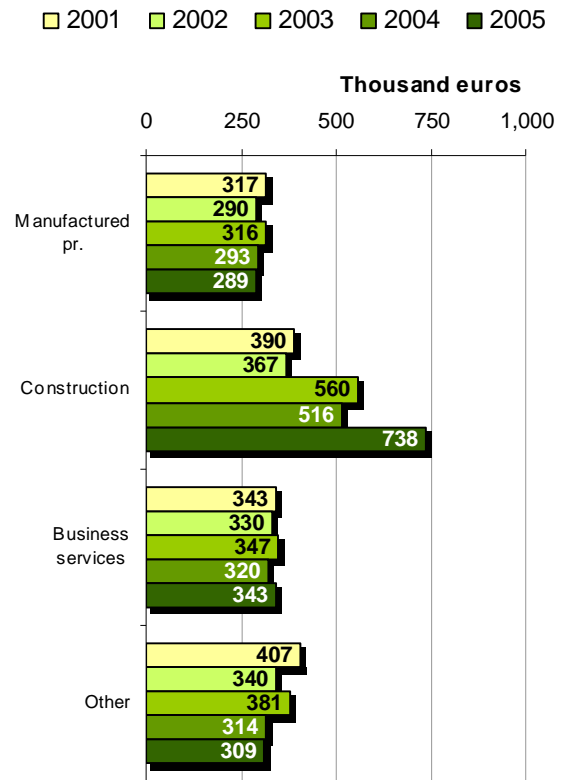
The median values of contracts concerning manufactured products, business services and other procurements do not vary much. They fell within a €280-410,000 range for all of the years studied.

The median value for construction works however showed an almost two-fold increase from 2001, reaching €738,000 in 2005.

A slight decreasing trend can be observed in the 'manufactured products' and 'other' procurement groups. This is in line with corresponding trends in the median values of supply and service contracts.

Figure 3.15 illustrates these trends.

**Figure 3.15: Trends in value of contracts, by sector of product/contract (2001-2005)**



### 3.5 Cross-border procurement

#### Number of cross-border contracts

Cross-border procurement took place in 2,074 cases, corresponding to 1.7% of all CAN analysed from the 2002-2004 period. (Around 61% of all the CANs published were used to inform this estimate: those that contained sufficient price information and information on the winners, including the postcode of their mailing address).

Cross-border procurement is defined as public contracts between an awarding authority and a company that has its seat in a different country – the latter established in the basis of the postcode of the winner(s), as supplied in the TED databases. As some notices contain lots or contracts with more than one company, they were considered as a case of cross-border procurement when at least one winner had its seat in a different country.

The significance of cross-border transactions remained unchanged at 1.5% in 2002 and 2003, but grew slightly from 2003 to 2004, from 1.5% to 1.9% (see *Table 3.2*). These figures are comparable with those in the previous study, which set the share of cross-border transactions for the year 2001 at 258 cases, or 1.1% of all CAN<sup>35</sup>. Subsequent analysis of country variations indicated that in the EU-15, the figure for 2004 was 1.8%. The additional increase by 0.1% for the EU-25 is explained by the higher proportion of cross-border contracts in the new Member States (3.5%).

*Table 3.2* indicates the actual instances of cross border public procurement for 2002, 2003 and 2004.

**Table 3.2: Number of cross-border procurement, 2002 to 2004**

	Number of cases				As proportion of notices			
	2002	2003	2004	Total	2002	2003	2004	Total
Number of contract award notices analysed (country of company seat resolved, based on postcodes)	31,858	36,560	54,502	<b>122,920</b>	100.0%	100.0%	100.0%	<b>100.0%</b>
Winner(s)' address in home country	31,376	36,022	53,448	<b>120,846</b>	98.5%	98.5%	98.1%	<b>98.3%</b>
At least one winner's address in foreign country	482	538	1,054	<b>2,074</b>	1.5%	1.5%	1.9%	<b>1.7%</b>

Source: calculations based on TED database

<sup>35</sup> The actual significance of cross-border procurement is considered to be much higher, as it is common for companies competing on a global or European market (mostly large-scale enterprises) to have a subsidiary, dealer, or at least a mailing address in the Member State where they tender. These cases were not covered by the analysis.

### Value of cross-border contracts

The estimated value, cross-border public procurement was 8,841 million Euro in the three-year period from 2002 to 2004, corresponding to 2.4% of total value of contracts analysed (see *Table 3.3*).

This proportion varied over the period, falling from 4.4% in 2002 to 1.2% in 2003, and increasing to 2.6% in 2004 (the corresponding values for the EU-15 were 2.4% and 8.1% for the new Member States). The variations may be explained by unusual large procurements: e.g. in 2002 an Italian company won a motorway construction contract in Austria with a value of 746 million EUR, and a French company won a contract on the supply of locomotives and railway rolling stock in Sweden for 740 million EUR. These two contracts affected the figures for 2002 significantly. Excluding these exceptional cases, a steady rise of cross-border deals in terms of their share of the total procurement value can be observed.

**Table 3.3: Value of cross-border procurement, 2002 to 2004**

	Value in million Euro				As proportion of total value			
	2002	2003	2004	Total	2002	2003	2004	Total
Value of contract award notices analysed	59,133	130,185	184,810	<b>374,128</b>	100.0%	100.0%	100.0%	<b>100.0%</b>
Winner(s)' address in home country	56,520	128,674	180,093	<b>365,288</b>	95.6%	98.8%	97.4%	<b>97.6%</b>
At least one winner's address in foreign country	2,613	1,510	4,717	<b>8,841</b>	4.4%	1.2%	2.6%	<b>2.4%</b>

Source: Estimates based cases identified within TED database

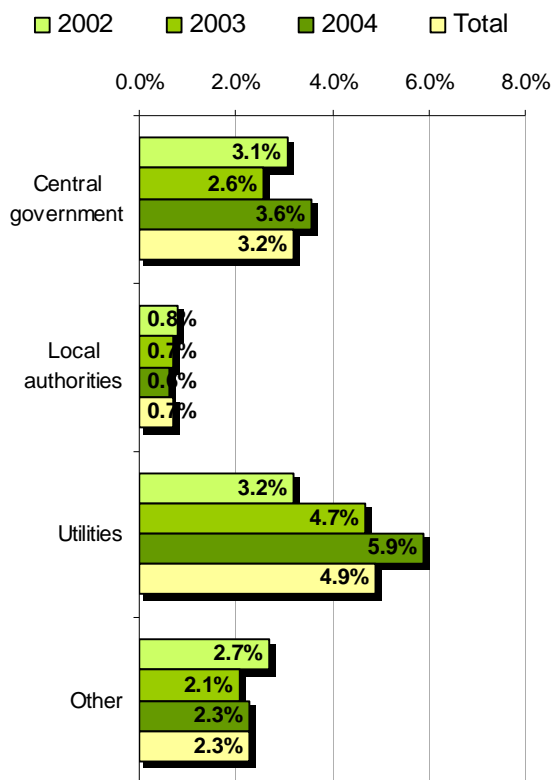
**Cross-border procurement variations by awarding authorities and nature of contract**

The incidence of cross-border contracts varies by type of awarding authority and by the nature of contracts. Amongst awarding authorities, utilities entered the cross-border transactions most often (4.9% of CAN included companies with seat in a foreign country, with a significant increase over the three years), and local authorities the least (0.7%). Central authorities were in between, with 3.2%.

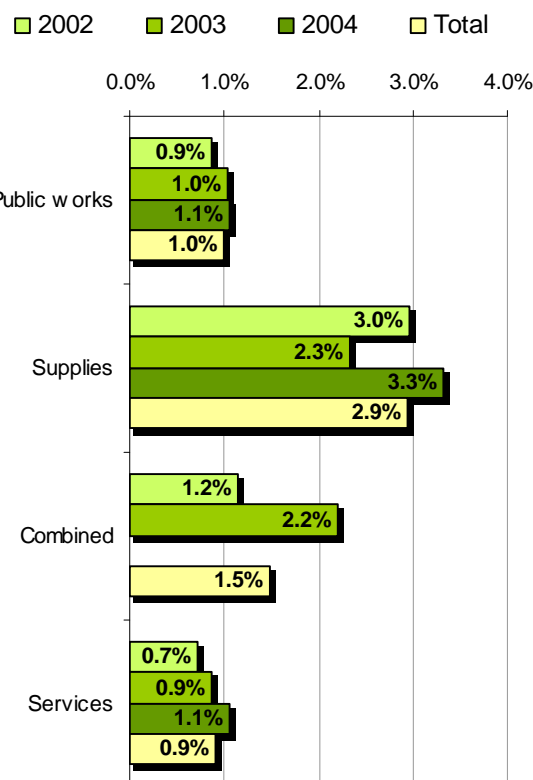
Concerning the nature of contract, public works and service contracts were less likely to be awarded to foreign companies (1.0%, and 0.9%, respectively). Such companies had however an above average share in supply contracts with 2.9%.

Figure 3.16 and Figure 3.17 illustrate the trends in cross border public procurement by type of awarding authority and nature of contract.

**Figure 3.16: Trends in cross-border procurement, by type of awarding authority (2002-2004)**



**Figure 3.17: Trends in cross-border procurement, by nature of contract (2002-2004)**





### Country variations in cross-border procurement

The analysis cross border procurement by country shows that small countries tend to award more contracts to foreign companies. The proportion of contracts awarded to companies located abroad is above 25% in Luxembourg and Cyprus (also in Malta, but the total number of CAN examined was only 3), and also high in Ireland, Latvia and Hungary (12-15%). In contrast, large Member States, (e.g. Germany, France, Spain, Italy, UK) have very low numbers of CANs indicating that companies from other countries were successful (0.6% to 2.0%). A low share of cross border procurement tends to be associated with the comparatively high importance of local procurement. France and Germany are examples where this link appears strong.

Table 3.4 illustrates the trends in cross border public procurement in each country.

**Table 3.4: Trends in cross-border procurements by country, 2002 to 2004**

Country	Number of cases				As proportion of CANs			
	2002	2003	2004	Total	2002	2003	2004	Total
LU	35	25	14	<b>74</b>	34.7%	45.5%	18.9%	<b>32.2%</b>
IE	28	33	58	<b>119</b>	14.4%	16.8%	15.4%	<b>15.5%</b>
BE	25	41	62	<b>128</b>	5.2%	7.3%	7.7%	<b>6.9%</b>
AT	67	67	70	<b>204</b>	5.2%	6.0%	6.7%	<b>5.9%</b>
GR	1	7	26	<b>34</b>	7.1%	8.0%	4.8%	<b>5.3%</b>
NL	25	28	59	<b>112</b>	4.3%	4.7%	4.5%	<b>4.5%</b>
DK	11	18	29	<b>58</b>	3.2%	3.5%	5.7%	<b>4.2%</b>
PT	0	3	9	<b>12</b>	0.0%	3.2%	5.4%	<b>3.4%</b>
SE	35	28	51	<b>114</b>	3.5%	2.6%	3.3%	<b>3.1%</b>
FI	9	6	19	<b>34</b>	2.3%	1.7%	3.9%	<b>2.8%</b>
GB	33	44	83	<b>160</b>	1.8%	1.8%	2.2%	<b>2.0%</b>
IT	21	39	71	<b>131</b>	1.0%	1.2%	1.4%	<b>1.3%</b>
DE	36	47	104	<b>187</b>	0.5%	0.9%	1.3%	<b>0.9%</b>
FR	143	128	196	<b>467</b>	1.0%	0.7%	0.9%	<b>0.9%</b>
ES	13	22	32	<b>67</b>	0.5%	0.7%	0.7%	<b>0.6%</b>
<b>EU-15 total</b>	<b>482</b>	<b>536</b>	<b>883</b>	<b>1,901</b>	<b>1.5%</b>	<b>1.5%</b>	<b>1.8%</b>	<b>1.6%</b>
MT			1	<b>1</b>			33.3%	<b>33.3%</b>
CY			2	<b>2</b>			28.6%	<b>28.6%</b>
LV			31	<b>31</b>			13.2%	<b>13.2%</b>
HU			28	<b>28</b>			12.1%	<b>12.1%</b>
EE			8	<b>8</b>			8.2%	<b>8.2%</b>
SK			11	<b>11</b>			7.4%	<b>7.4%</b>
SI			6	<b>6</b>			6.6%	<b>6.6%</b>
LT			33	<b>33</b>			3.8%	<b>3.8%</b>
CZ			3	<b>3</b>			3.4%	<b>3.4%</b>
PL			48	<b>48</b>			1.5%	<b>1.5%</b>
<b>EU-10 total</b>	<b>0</b>	<b>0</b>	<b>171</b>	<b>171</b>			<b>3.5%</b>	<b>3.5%</b>
<b>Grand total</b>	<b>482</b>	<b>536</b>	<b>1,054</b>	<b>2,072</b>	<b>1.5%</b>	<b>1.5%</b>	<b>1.9%</b>	<b>1.7%</b>

Source: calculations based on TED database

The distribution of contract values between countries indicates a similar pattern. The smaller countries like Luxembourg, Ireland, Cyprus and Malta awarded more than 30% of contract value to foreign companies (the figure for Cyprus was 72.4% in 2004), and a number of other – ‘medium sized’ – countries (Austria, Belgium, Lithuania, the Czech Republic, Slovakia, Latvia) had cross-border procurement shares above 10% of the total value of public procurement above EU thresholds. Trends are indicated for each country in *Table 3.5*

**Table 3.5: Trends in the value of cross-border procurement by country, 2002 to 2004**

Country	Value in mio €				Share of total value			
	2002	2003	2004	Total	2002	2003	2004	Total
LU	67	16	14	<b>97</b>	55.4%	57.7%	10.3%	<b>34.0%</b>
IE	186	94	1,195	<b>1,475</b>	20.5%	11.8%	38.1%	<b>30.5%</b>
AT	811	93	181	<b>1,085</b>	32.0%	4.6%	5.2%	<b>13.5%</b>
BE	21	146	502	<b>669</b>	1.7%	7.1%	17.2%	<b>10.7%</b>
SE	846	24	185	<b>1,056</b>	23.0%	0.7%	4.2%	<b>9.2%</b>
GR	3	15	96	<b>113</b>	13.4%	6.0%	5.4%	<b>5.5%</b>
DK	39	28	154	<b>222</b>	4.0%	1.8%	8.1%	<b>5.0%</b>
PT	0	3	50	<b>52</b>	0.0%	0.6%	8.3%	<b>3.2%</b>
NL	27	73	129	<b>229</b>	1.7%	3.9%	2.5%	<b>2.6%</b>
FI	10	13	61	<b>84</b>	1.0%	1.5%	3.7%	<b>2.4%</b>
IT	88	293	445	<b>827</b>	1.4%	2.4%	2.2%	<b>2.1%</b>
FR	269	271	877	<b>1,416</b>	1.9%	1.2%	1.9%	<b>1.7%</b>
DE	76	75	201	<b>352</b>	1.0%	0.3%	0.8%	<b>0.6%</b>
GB	82	321	157	<b>559</b>	0.7%	0.8%	0.3%	<b>0.6%</b>
ES	88	47	47	<b>183</b>	1.2%	0.4%	0.2%	<b>0.5%</b>
<b>EU-15 total</b>	<b>2,613</b>	<b>1,510</b>	<b>4,295</b>	<b>8,418</b>	<b>4.4%</b>	<b>1.2%</b>	<b>2.4%</b>	<b>2.3%</b>
CY			6	<b>6</b>			72.4%	<b>72.4%</b>
MT			0	<b>0</b>			31.1%	<b>31.1%</b>
LT			64	<b>64</b>			18.4%	<b>18.4%</b>
CZ			8	<b>8</b>			18.4%	<b>18.4%</b>
SK			106	<b>106</b>			16.8%	<b>16.8%</b>
LV			25	<b>25</b>			16.5%	<b>16.5%</b>
HU			28	<b>28</b>			7.6%	<b>7.6%</b>
PL			167	<b>167</b>			6.7%	<b>6.7%</b>
SI			3	<b>3</b>			2.4%	<b>2.4%</b>
EE			15	<b>15</b>			1.5%	<b>1.5%</b>
<b>EU-10 total</b>	<b>0</b>	<b>0</b>	<b>422</b>	<b>422</b>			<b>8.1%</b>	<b>8.1%</b>
<b>Grand total</b>	<b>2,613</b>	<b>1,510</b>	<b>4,717</b>	<b>8,841</b>	<b>4.4%</b>	<b>1.2%</b>	<b>2.6%</b>	<b>2.4%</b>

Source: calculations based on TED database

As regards success in public procurement in foreign markets, there are major differences between companies from different Member States. Considering the share of cross-border contracts in the total volume of public procurement contracts secured by companies, German, UK, French and Italian companies were most successful in terms of value (1,249 to 1,982 million EUR for the three years between 2002 and 2004). The scale of the national economies within which these companies operate could be the explanatory factor.

However, considering the relative share of revenues from public procurement contracts form a different picture emerges. (see *Table 3.6*). Companies from smaller countries like Luxembourg, Ireland, Belgium or Denmark secure a significant share of their revenues from public procurement contracts abroad (4.4% to 7.1%, and 14.3% for Luxembourg)<sup>36</sup>. Portugal also scores well, but this may be a result of a distortion effect, as only a relatively low number of contracts from Portugal had sufficient price information and retrievable company addresses in the TED databases, i.e. the revenues of Portuguese companies from public procurement in their domestic market might be significantly underestimated. In contrast, Greek, Spanish, Swedish, French and UK companies seem to be more reliant on their domestic procurement markets (with the share of revenues from procurement contracts abroad ranging from 0.6% to 1.5%).

**Table 3.6: Value of contracts “exported” by Member States, 2002 to 2004**

Country	Value of CBC in mio €				Share in total value of contracts			
	2002	2003	2004	Total	2002	2003	2004	Total
LU	6	22	3	<b>31</b>	10.5%	67.5%	2.2%	<b>14.3%</b>
IE	43	41	179	<b>263</b>	5.6%	5.6%	8.1%	<b>7.1%</b>
BE	64	52	201	<b>318</b>	4.9%	2.7%	7.7%	<b>5.4%</b>
PT	20	9	60	<b>88</b>	3.0%	2.1%	9.8%	<b>5.3%</b>
DK	23	61	105	<b>189</b>	2.4%	3.9%	5.9%	<b>4.4%</b>
AT	19	109	110	<b>239</b>	1.1%	5.4%	3.2%	<b>3.3%</b>
DE	301	324	1,357	<b>1,982</b>	3.9%	1.1%	5.4%	<b>3.2%</b>
IT	806	130	313	<b>1,249</b>	11.6%	1.1%	1.5%	<b>3.2%</b>
NL	34	57	170	<b>261</b>	2.1%	3.1%	3.2%	<b>3.0%</b>
FI	56	10	24	<b>90</b>	5.3%	1.2%	1.5%	<b>2.6%</b>
FR	860	75	334	<b>1,270</b>	5.9%	0.3%	0.7%	<b>1.5%</b>
GB	183	148	1,120	<b>1,450</b>	1.6%	0.4%	2.4%	<b>1.5%</b>
SE	11	53	65	<b>130</b>	0.4%	1.6%	1.5%	<b>1.2%</b>
ES	59	87	166	<b>312</b>	0.8%	0.7%	0.9%	<b>0.8%</b>
GR	0	7	5	<b>12</b>	0.0%	3.0%	0.3%	<b>0.6%</b>
<b>EU-10 Total</b>	<b>2,485</b>	<b>1,186</b>	<b>4,212</b>	<b>7,883</b>	<b>4.2%</b>	<b>0.9%</b>	<b>2.3%</b>	<b>2.1%</b>
MT			0	<b>0</b>			55.4%	<b>55.4%</b>
CZ			33	<b>33</b>			48.1%	<b>48.1%</b>
HU			80	<b>80</b>			18.9%	<b>18.9%</b>
SI			30	<b>30</b>			18.4%	<b>18.4%</b>

<sup>36</sup> The table contains – for information purposes – figures for the new Member States that joined the EU in 2004, but these should be treated with caution, as they are based on a very low number of cases, and the countries were not obliged to publish all their domestic contract award notices above threshold prior to May 1 2004.

SK			43	43			7.5%	7.5%
LV			2	2			1.4%	1.4%
PL			27	27			1.2%	1.2%
EE			4	4			0.4%	0.4%
LT			1	1			0.4%	0.4%
CY			0	0			0.0%	0.0%
<b>EU-15 Total</b>			<b>220</b>	<b>220</b>			<b>4.4%</b>	<b>4.4%</b>
<b>Grand Total</b>	<b>2,485</b>	<b>1,186</b>	<b>4,432</b>	<b>8,103</b>	<b>4.2%</b>	<b>0.9%</b>	<b>2.4%</b>	<b>2.2%</b>

Source: calculations based on TED database

Companies tend to compete for public procurement contracts in neighbouring countries. Reviewing the top five foreign procurement markets for the companies from each Member State in terms of revenue, one can see that most of the top five 'target' markets are neighbouring countries. The larger countries (for example, the UK, France, Germany, Poland) are also significant foreign 'target' markets because of their scale. The patterns are indicated in *Table 3.7*.

**Table 3.7: Top five target countries of companies in terms of cross-border procurement, and their share of total value of cross-border contracts for the companies from each Member State, 2002 to 2004**

Country of company	No.1		No.2		No.3		No.4		No.5	
AT	DE	32.1%	UK	28.6%	PL	20.3%	IT	6.6%	FR	3.2%
BE	FR	41.4%	NL	31.2%	DK	16.3%	DE	3.5%	LU	2.6%
DE	FR	27.2%	IT	19.9%	AT	14.0%	IE	8.7%	UK	7.5%
DK	SE	52.8%	NL	15.3%	UK	12.5%	AT	9.6%	DE	5.7%
ES	FR	76.4%	IT	11.2%	GR	5.4%	NL	2.8%	BE	1.4%
FI	DE	51.9%	FR	15.7%	SE	15.3%	LT	4.8%	EE	3.7%
FR	SE	58.5%	BE	15.1%	ES	7.5%	DE	6.0%	UK	5.5%
UK	IE	86.4%	FR	7.1%	SE	1.2%	NL	1.1%	IT	0.9%
GR	IE	33.4%	FR	28.0%	DE	20.1%	CY	18.4%	AT	0.0%
IE	UK	45.7%	DK	32.6%	FI	13.0%	DE	4.4%	SE	2.5%
IT	AT	60.1%	BE	29.7%	FR	6.5%	GR	1.2%	DK	0.8%
LU	ES	65.3%	FR	27.3%	IT	4.5%	BE	2.8%	AT	0.1%
NL	FR	49.0%	BE	13.1%	IE	8.3%	UK	7.5%	DE	7.2%
PT	PL	60.9%	FR	23.5%	ES	5.8%	GR	2.7%	AT	2.2%
SE	DK	26.5%	NL	21.1%	FR	16.7%	LT	16.2%	FI	9.7%

Source: calculations based on TED database

### 3.6 SMEs' participation in public procurement above EU-thresholds

#### 3.6.1 The evidence base

From the CANs for which sufficient information on price and company was available, random stratified samples were selected and sent to Dun & Bradstreet, which tried to match the companies the contract was awarded to with their databases, and return the information needed to determine their size-class.

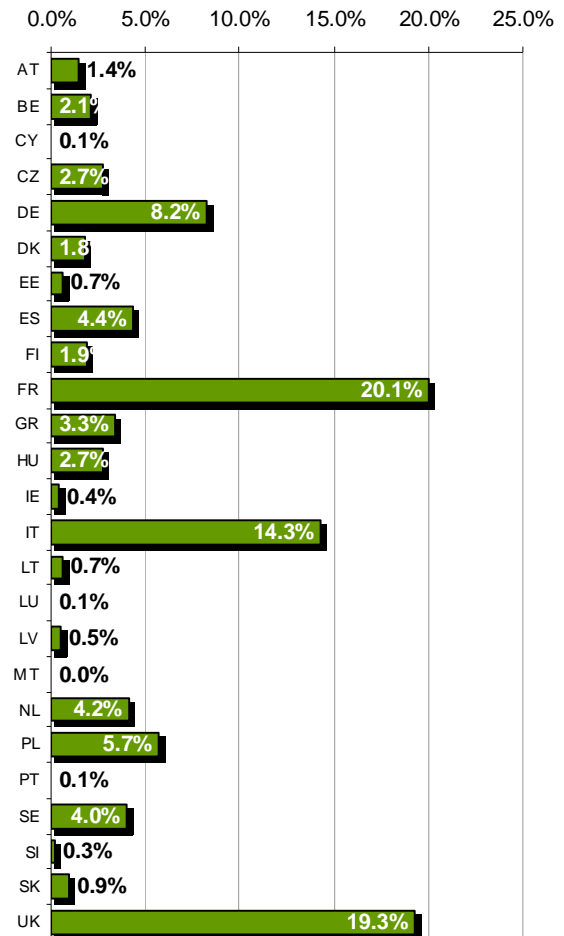
The sample size was different for 2002 to 2004, and for 2005. As the focus of the analysis was put on the most recent year, a larger sample was selected from the 2005 records, while the samples from 2002-2004 were smaller, and only used to highlight trends.

The number of CANs in 2005 that were included in the initial sample was 25,437, out of the original 57,010 that had sufficient information (44.6% coverage)<sup>37</sup>, with a total value of € 72.6 billion. From the above, 19,414 notices were single lots (totalling € 43.7 billion), and 6,023 contracts had more than one lot (€ 28.9 billion).

The average size of a single contract was 2.2 million Euro for contracts with one single lot, and around € 991 thousand for contracts with more than one lot.

France and the UK had the largest share in terms of total value in the sample: 20.1% and 19.3%, respectively. The figures are broadly in line with public procurement statistics published by DG Internal Market and Services. Amongst larger countries however, the Netherlands (4.2%) seems over-represented, while Spain and Germany are under-represented<sup>38</sup>.

**Figure 3.18: Countries' share of contract award notices in the sample, in 2005 (value)**

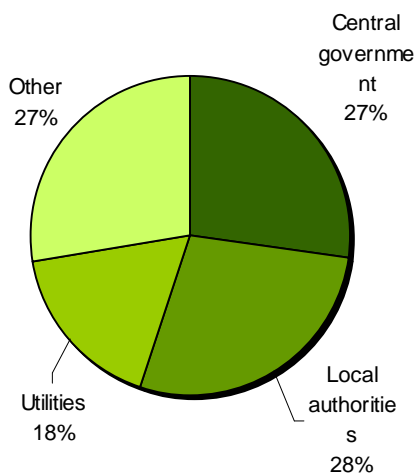


<sup>37</sup> This includes only contract award notices that contained adequate price information and adequate data on the company that was awarded the contract.

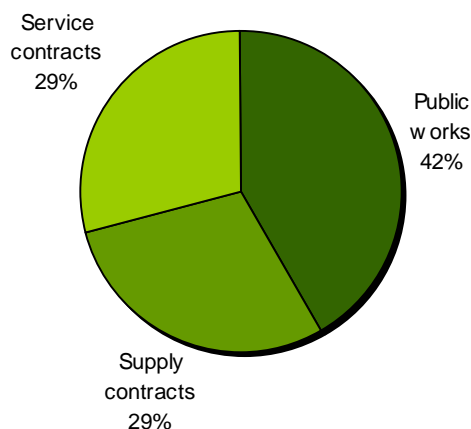
<sup>38</sup> This means that initial results had to be re-weighted to obtain overall figures on the total value of contracts, average contract size, or SME's participation.

The distribution of the initial sample by the type of awarding authority or the nature of contract was very similar to the full dataset. Contract award notices from local authorities (42%) and 'other' entities (31%) accounted for the largest share of contracts (their proportions in the original 2005 database were 43% and 33%, respectively).

**Figure 3.19: Distribution of contract award notices analysed, by awarding authority, in 2005**



**Figure 3.20: Distribution of contract award notices analysed, by nature of contract, in 2005**



The proportion of CANs on public works was, at 25%, larger than in the original TED database (where it was only 15%), while CANs on supply and service contracts were slightly under-represented: supply contracts made up only 36% of the sample, compared to 41% in the original dataset. The respective figures for service contracts were 39% in the sample against 44% in the total population. This potential bias occurred because the awarding authorities tended to publish more information in the CAN for (larger) public works contracts.

### 3.6.2 *SMEs' share of procurement contracts*

From the 25,437 companies in the original 2005 sample, information to undertake a size-class classification was available for 11,630 (46%). The distribution was calculated separately for each country and for each contract type (public works, supplies, services), and then the individual results were re-weighted, using the distribution of contracts in the original sample – in order to limit possible bias arising from disparities across countries and contract types due to data availability.

Based on this analysis, SMEs' share of public procurement contracts within the 2005 sample was estimated to be 61% in terms of number of contracts, and 42% in terms of total value<sup>39</sup>. This can be broken down into company size-classes as follows: micro-enterprises secured 7%, small companies 11%, medium-sized enterprises 23% of all public procurement, in terms of the value of contracts.

These estimates only take into account the total value of public procurement contracts directly awarded to SMEs and do not cover the value that is subcontracted to SMEs. Unfortunately the size of the EU subcontracting market is not known, though statistics from US federal public procurement markets (see Section 6) indicated that small businesses received almost 40% of US subcontracting dollars in 2006, although the total value of contracts awarded to them directly was only 23%. Evidence suggests that SMEs' direct and indirect contribution to the execution of public contracts above EU-thresholds may be significantly above the estimate of 42%. It should however be born in mind that sub-contracts may be less attractive than direct contracts, because the main contractor is potentially in a position to negotiate sub-contracts with less favourable conditions than in the main contract.

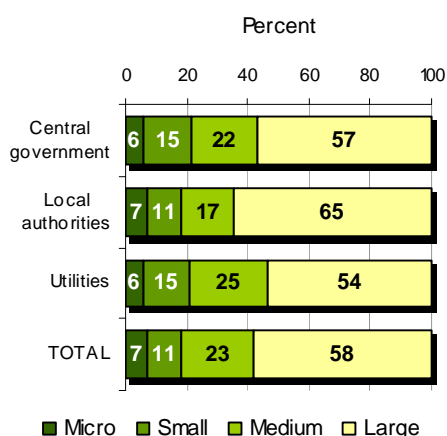
Also, the 42% figure relates only to large public contracts in the EU, which are not necessarily accessible to a wide number of micro and small enterprises, due their economic and financial capacities. Indeed, the median value of contracts awarded between 2002 and 2005 was in the range of 310-360 thousand euros, while the majority EU micro-enterprises are one-man companies.

As Figure 3.21 shows, the proportion of public procurement contracts awarded to SMEs is highest for contracts issued by central governments and utilities (43% and 46% of the total respectively),, and lowest in contracts issued by local government (35% of the total).

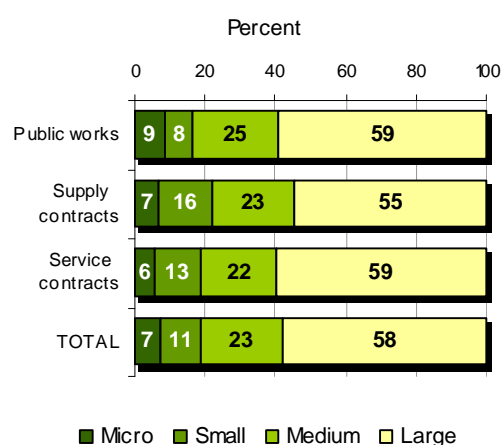
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<sup>39</sup> The full contract value in each record was attributed to the company/leader of the consortium. This method does not take into consideration consortium partners, or the potential involvement of SME's – or large enterprises – via subcontracting.

**Figure 3.21: Share of SME's, by awarding authority, in 2005 (value)**



**Figure 3.22: Share of SME's, by nature of contract, in 2005 (value)**



As Figure 3.22 shows, SMEs account for a slightly below average share of the total contract value of public works and service contracts (41%), while their performance in supply contracts (45%) is above average. This may be explained by the strong role of large telecommunication, consultancy and other professional services companies in outsourced activities – and the significance of small-sized firms in the manufacturing of specialty goods and trading/distribution.

The analysis by country shows large difference in the total value of public contracts awarded to SMEs. The figures tend to be higher in small countries (Luxembourg, Ireland, Finland, Slovakia, Slovenia, and Latvia) and larger countries with a relatively strong SME sector (e.g. Italy). In these countries, SME participation is usually around, or above 50% in terms of total value of contracts. It may be surprising that SMEs' share is below the EU average in France and Germany – countries known for their strong SME sector. This might be explained by the fact that the large companies in these countries are even stronger – e.g. in construction in France, or manufacturing in Germany – this is also reflected in large enterprises' relatively high share of the economy in France and Germany.

**Table 3.8: Estimated share (in terms of value) of contracts awarded to companies by size class and by country, 2005<sup>40</sup>**

Country	Share of individual size-classes, in %				
	Micro	Small	Medium	SMEs	LSEs
Ireland	1	11	53	65	35
Luxembourg	8	32	23	64	36
Finland	2	14	35	51	49
Italy	10	12	27	49	51
Austria	6	26	16	48	52
Sweden	6	16	22	44	56
Denmark	8	19	15	41	59
Netherlands	2	9	29	41	59
Belgium	7	19	13	39	61

<sup>40</sup> Figures for Portugal, Greece, Cyprus and Malta were omitted because of the low number of companies in the sample.



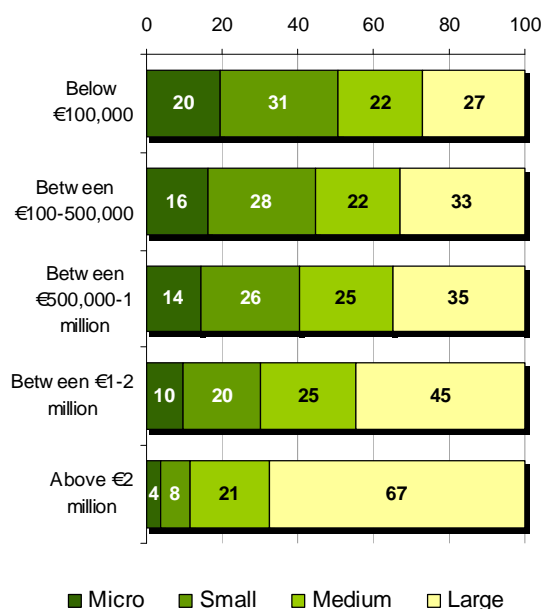
Germany	7	12	18	37	63
France	7	16	12	35	65
Spain	8	5	22	35	65
United Kingdom	2	5	24	31	69
<b>EU-15</b>	<b>7</b>	<b>10</b>	<b>21</b>	<b>39</b>	<b>61</b>
Slovenia	16	21	42	78	22
Slovakia	13	10	53	77	23
Hungary	9	36	23	68	32
Latvia	11	10	46	67	33
Czech Republic	10	27	23	59	41
Poland	5	12	35	53	47
Lithuania	4	24	14	43	57
Estonia	22	10	9	41	59
<b>EU-10</b>	<b>7</b>	<b>18</b>	<b>33</b>	<b>59</b>	<b>41</b>
<b>Grand Total</b>	<b>7</b>	<b>11</b>	<b>23</b>	<b>42</b>	<b>58</b>

Source: calculations based on TED database

Of course, the value of a public contract has a major influence on the extent SMEs can access these.

Figure 3.23 shows the share of contracts in terms of value that goes to SMEs (broken down into size-classes) or large enterprises, in different value ranges. SMEs evidently have only limited access to large contracts above €2 million (33%), while they accounted for 73% of public procurement with individual contracts below €100,000 in 2005.

**Figure 3.23: Share of value of public contracts awarded to companies in different value ranges, broken down by size-class (2005)**

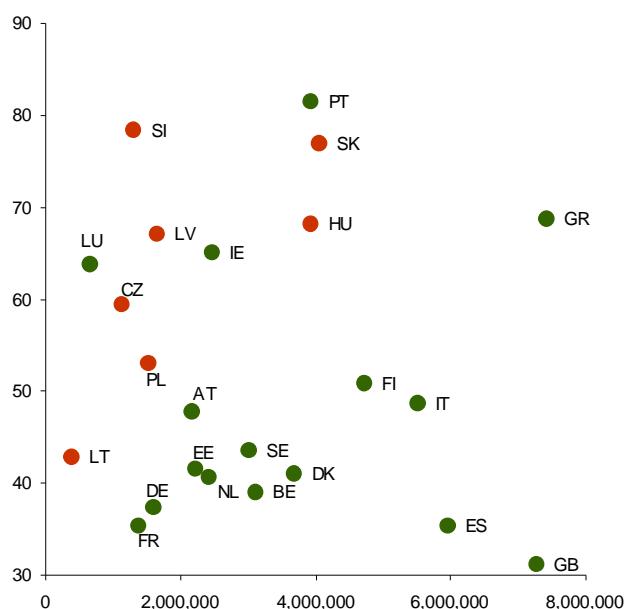


The figures indicate that even micro-enterprises were able to secure a certain number of the larger contracts (4% of contracts above €2 million), which may not be correct as the figure exceeds the upper threshold for the annual turnover of this size category. However, the contracts in question here are large contracts that contain multiple lots: from which one or more have been awarded to micro-enterprises (another possible explanation is, that some companies identified as micro-enterprises are actually affiliated to larger firms).

The scatter-diagram in *Figure 3.24* shows the relationship between the average contract size and the share SMEs' secured in public procurement above EU-thresholds in Member States.

Although – as seen before – there is a negative correlation between contract size and SMEs' access, no such relationship can be detected on the diagram, suggesting that other factors – such as differences in SMEs' significance in the respective economies and the organisation of public procurement – may be more significant. This is explored below.

**Figure 3.24: Relationship between average size of public contracts (in EUR), and SMEs' overall share in winning contracts above thresholds, by country**



### 3.6.3 SMEs' share in public procurement and the concentration of output in small and medium-sized enterprises

To be able to judge whether there is an unduly under (or over) representation of SMEs as regards of their share in winning public contracts, a comparison with their share in the economy as a whole is needed. As already mentioned in Section 2, 99.8% of all European companies are SMEs. In the light of this, the proportion they account for in the total value of all public contracts above EU-thresholds, i.e. 42%, appears very low, as it would mean that a mere 0.2% of European companies accounted for 58% of contract value. The valid indicator for comparison is, however, not the number of SMEs, but rather SMEs' share in total company turnover, generated in the private economy<sup>41</sup>.

The breakdown of the two indicators mentioned, showing SMEs' relative importance in the economy by country is given in *Table 3.9* below. This shows that although large companies only represent 0.2% of all companies, their proportion of total turnover generated is much larger (41.9%) and that there are significant variations between countries.

<sup>41</sup> Excluding agriculture and fisheries, as products and services in these sectors are only very rarely subject to public procurement

**Table 3.9: Breakdown of key indicators by company size-class (NACE C-I, K: business economy excluding financial services) in percentage, 2003<sup>42</sup>**

Country	Number of companies				Total turnover			
	Micro	Small	Medium	Large	Micro	Small	Medium	Large
BE	92.1	6.7	1.0	0.2	22.8	21.4	20.6	35.3
CZ	95.2	3.9	0.7	0.2	19.4	19.9	21.6	39.1
DK	86.6	10.9	1.9	0.3	21.4	22.9	21.6	34.1
DE	83.0	14.2	2.3	0.5	12.3	16.0	19.1	52.6
EE	80.1	16.4	3.1	0.4	..	..	..	..
ES	92.2	6.9	0.8	0.1	25.3	24.2	19.2	31.3
FR	92.2	6.5	1.1	0.2	20.0	19.4	17.2	43.4
IT	94.5	4.9	0.5	0.1	29.0	22.4	18.6	30.0
LV	82.5	14.5	2.7	0.4	17.6	30.5	29.6	22.4
LT	77.4	18.2	3.8	0.5	11.9	25.7	25.0	37.4
HU	94.7	4.4	0.7	0.2	21.1	19.0	18.6	41.2
NL	88.1	9.8	1.8	0.3	16.4	22.2	24.5	36.9
AT	86.7	11.3	1.7	0.3	..	..	..	..
PL	96.3	2.6	0.9	0.2	25.3	14.5	22.1	38.1
PT	92.4	6.6	1.0	0.1	..	..	..	..
SI	92.8	5.6	1.3	0.3	..	..	..	..
SK	73.3	20.0	5.2	1.4	12.7	15.9	19.8	51.5
FI	92.1	6.3	1.3	0.3	15.6	15.6	19.8	48.9
SE	90.8	7.6	1.3	0.3	..	..	..	..
UK	86.4	11.4	1.8	0.4	15.4	16.3	18.0	50.3
<b>EU-25</b>	<b>91.5</b>	<b>7.3</b>	<b>1.1</b>	<b>0.2</b>	<b>19.4</b>	<b>19.3</b>	<b>19.2</b>	<b>41.9</b>

Source: Eurostat

Using this comparison, we can obtain a more realistic picture on the relative success of SMEs. The statistical analysis of the TED database showed that the value of contracts awarded to SMEs accounted to 42% of all public procurement in 2005 - which is lower than their 58% share in total turnover in the EU-25, in the NACE sectors C-K, excluding financial services (J).

It should be kept in mind however, that the 42% figure only relates to relatively large public contracts, which are evidently not accessible to a wide number of micro and small enterprises for reasons of economic and financial capacities, contrary to public contracts under the EU-thresholds. Further, the figure takes into account public contracts directly awarded to SMEs only, and does not cover the amount subcontracted to SMEs, which can be a significant share of individual contracts.

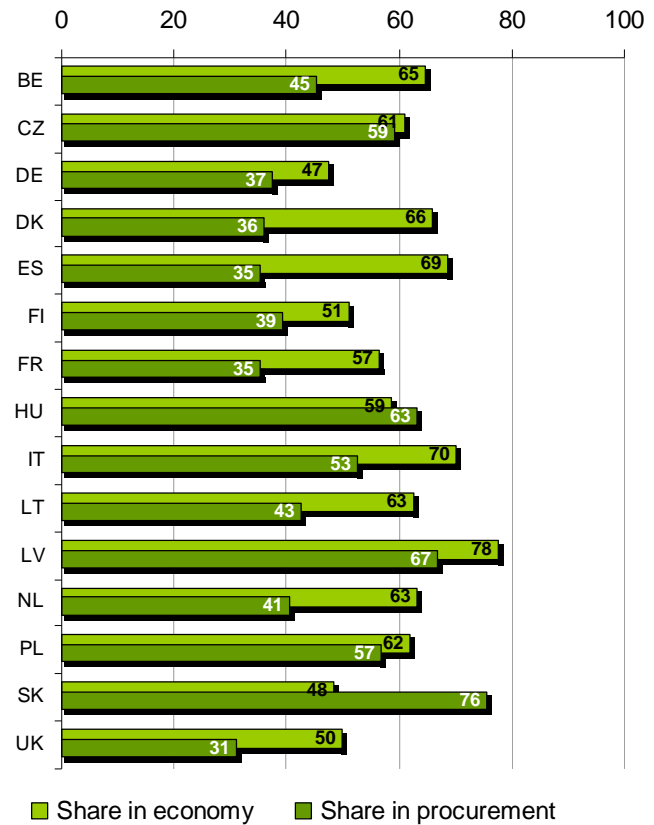
<sup>42</sup> Individual figures for Greece, Malta, Cyprus, Luxembourg, Ireland were not available on Eurostat, but aggregate EU-25 data were given.

It is also worth mentioning that only micro- and small enterprises are under-represented – medium-sized companies actually secured a larger share in above-threshold public procurement (with 23%) than they have in the real economy (their share in the aggregated turnover of companies in the EU is 19%).

A comparison by country shows that SMEs' under-representation is the highest in Spain, Denmark, the Netherlands, with differences of between 23 and 33 percentage points.

In Slovakia and Hungary, SMEs have a greater access to public procurement than their significance in the wider economy would suggest. SMEs are close to parity, and only slightly under-represented in the Czech Republic, Poland, and Germany.

**Figure 3.25: Difference in SMEs' share in public procurement above EU-thresholds, and in real economy, in terms of turnover in 2005, by country**



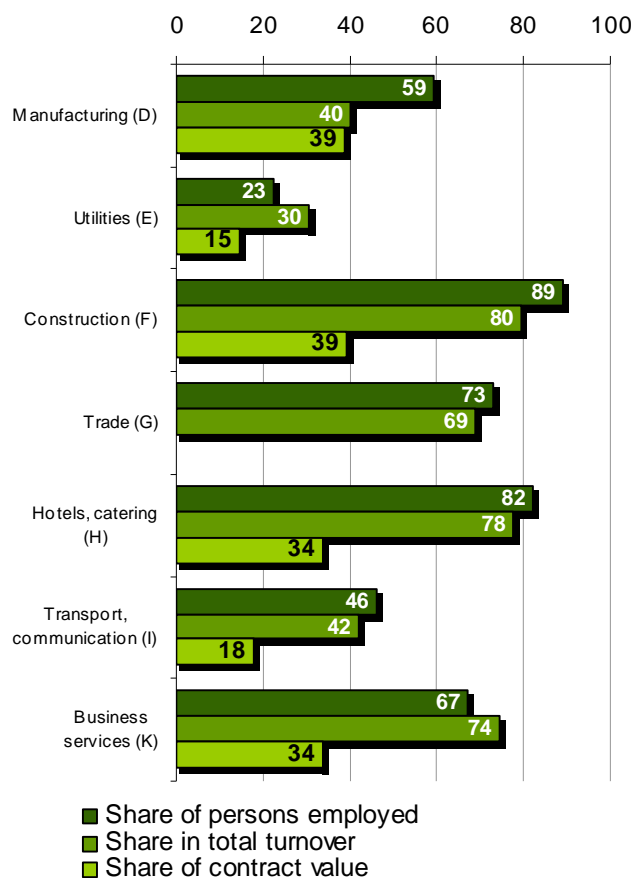
A further breakdown of business statistics shows marked differences between the performance of SMEs in public procurement and the economy in individual NACE<sup>43</sup> sectors.

The significance of European SMEs in terms of employment or company turnover is high in the construction sector (NACE class F), hotels, restaurants, catering (H), and business services (K), while their role is more limited in manufacturing (D), the generation and supply of electricity, gas and water (E) and transport, postal services and communication (I).

Figure 3.26 compares SMEs' proportion in the total value of public contracts awarded above thresholds in different sectors<sup>44</sup> (derived from the 2005 TED database, by categorising companies on the basis of the product code of the goods or services they supplied), and SMEs' aggregate share in the EU-25 in terms of total employment and turnover.

This comparison highlights that SMEs lag behind in public procurement more significantly in some sectors than it would appear from the overall figures solely. Companies active in manufacturing (NACE class D) did perform relatively well in public procurement, securing almost the same share of contracts in terms of value (i.e. 39%) than their share in the real economy (40%). But companies in all other sectors only attained about half the share in public procurement than they contribute in terms of aggregated turnover in their respective sector.

**Figure 3.26: Difference in SMEs' share in public procurement above EU-thresholds in 2005, by number of persons employed and turnover, in selected NACE sectors**



<sup>43</sup> Nomenclature d'activité dans la Communauté Européenne: a classification of economic activities generally used by Eurostat and national statistical offices

<sup>44</sup> This categorisation focuses on the goods or services, and not on the companies, businesses active in distributive trade (G) were therefore not identified separately

### 3.6.4 Trends in SME participation in public procurement 2001-2005

As regards of SMEs' access to public procurement, an overall slightly positive trend can be observed over the four-year period from 2002 to 2005. The number of contracts awarded to SMEs varied in the range of 59%-65%.

**Table 3.10: Estimated number of (single) contracts awarded to SMEs<sup>45</sup>**

	2002	2003	2004	2005	
				EU-15	EU-25
Total number of CANs assessed	41,771	34,230	50,462	42,809	59,013
Number of contracts awarded to SME's (estimate)	24,708	21,448	32,635	27,008	37,524
SMEs' proportion	59%	63%	65%	63%	64%

Source: calculations based on TED database

As shown in *Table 3.11*, the share of SMEs in the total value of public procurement contracts also varied in a range, from 33% to 42% (39% for the EU-15 in 2005). Here again, the analysis could highlight a small positive trend. The median values of contracts awarded to SMEs are significantly below the median value of all contracts, but this gap varies, between 47 and 78 thousand euros.

**Table 3.11: Estimated total value and median value of contracts awarded to SMEs**

	2002	2003	2004	2005	
				EU-15	EU-25
Total value of contracts (€mn)	86,216	155,507	145,542	130,622	156,113
Total value of contracts awarded to SME's (€mn)	28,813	60,134	51,145	50,498	65,422
SMEs' share	33%	39%	35%	39%	42%
Median value of all contracts in sample (€ thousand)	344	436	457	412	376
Median value of contracts awarded to SME's (€ thousand)	297	359	379	343	319
Difference between the median value of all contracts and SMEs' contracts (€ thousand)	-47	-77	-78	-69	-57

Source: TED database, estimates based on samples

<sup>45</sup> Figures for 2001 and 2004 refer to EU-15 only

### 3.7 Summary

The landscape of European procurement above EU-thresholds has changed slightly between 2001 and 2005.

Trend analysis shows that the number of contract award notices published on TED continued to rise each year. However, the increase in the last two years was attributable to the ten Member States that joined the EU in 2004 only – the number of notices published by the EU-15 started to decrease in 2004 and 2005. France remained the most active publisher, accounting for 39% of all contract award notices, but Poland – after its accession – emerged as the second largest publisher. They are followed by Germany and the UK.

One can also observe a shift towards awarding authorities that are not classified as either central government, local authority or public utility. The procuring bodies in question are often private companies (and often in the ‘new’ Member States) that received grants from public funds, and are thus classified as public procurers. The significance of services also increased in above-threshold public procurement over the five years between 2001 and 2005.

The median values of contracts have not changed much, but there are significant differences amongst Member States. This is mostly attributed to the fact that some countries usually publish more contract award notices for purchases that were broken down to different lots (e.g. France, but also Germany). Contract values in the new Member States generally tend to be lower (especially in Lithuania).

The median contract values of public works are around one tenth of the (current) threshold of euro 5,278,000. Evidently, the threshold is applicable to full construction projects, which are often subdivided into phases and lots, and procured in separate procedures.

Cross-border procurement, is at a similar level as in 2001: 1.5% of contract award notices indicated that at least one company awarded a contract was located in a different country in 2002 and 2003, and 1.9% in 2004. On average, cross-border procurement accounted for 2.4% of all above-threshold procurement in terms of value of contracts. It should be noted however that significantly more cross-border transactions take place in connection with public procurement than can be identified with the method employed in this analysis – multinational companies very often market their goods and services abroad via distributors and subsidiaries - or they have at least a mailing address in the countries in which they compete for public contracts.

Local authorities rarely purchase from companies abroad, while utilities and central government bodies do this more often. Supplies contracts are more frequently given to companies from abroad, services contracts rarely. And, finally, the results indicated that small countries tend to procure cross-border more frequently - especially Luxembourg and Ireland from the EU-25, and Cyprus, Malta, Latvia and Hungary from the EU-10. In Germany, France, Spain, the significance of cross-border procurement is very low.

From the companies' perspective, German, UK, French and Italian companies win the most contracts outside their home countries. In relative terms, however, enterprises from Luxembourg, Belgium and Denmark receive the largest share of their total revenues from public contracts above EU-thresholds from abroad. Greek and Spanish companies appear to have put less emphasis on competing for public contracts abroad.

SMEs' share in the value of all public contracts was 42% in 2005 (and 61% in the number of contracts), marking a slightly positive trend from 2002. Micro-enterprises accounted for 7% of the total, small companies for 11%, and medium-sized enterprises for 23%. The proportions are relatively stable e. for each type of awarding authority and the nature of contract.

There are however great difference amongst Member States. Small countries appear to award the biggest share of public contracts, in terms of value, to SMEs (Luxembourg, Ireland from the EU-15, and Slovenia, Slovakia from the EU-10 come first in this respect). Italy and Sweden do also perform well. Interestingly, SMEs in France and Germany seem to be disadvantaged.

Comparing results with SMEs' significance in the economy, one can observe that SMEs' are indeed under-represented in public procurement above EU-thresholds. SMEs' accounted for 58% of company turnover in the EU-25 in 2003 – this is significantly more than their share of 42% in public procurement. However, the analysis shows that micro- and small enterprises only are under-represented and medium-sized enterprises are not. This finding could encourage Member States to put more emphasis on measures that are most helpful to micro- and small enterprises, such as breaking down tenders into lots, employing more flexible rules to prove their economic and financial capacities and publishing prior information notices (see findings in Section 4).



## 4 THE EXPERIENCE OF COMPANIES AND AWARDING AUTHORITIES WITH PUBLIC PROCUREMENT

### 4.1 Introduction

Within the framework of the study, a telephone survey was undertaken amongst companies and awarding authorities within the Member States. The main objective of the survey was to collect information, directly from the stakeholders on the ground, on: companies' activity in the field of public procurement; information sources used to learn about tender opportunities; the barriers to SMEs' access to public contracts; awarding authorities' perceptions of the potential problems of SMEs; and actions undertaken by awarding authorities to improve SMEs' access.

The telephone survey was carried out during August and September 2007, in 12 languages.<sup>46</sup>

Altogether, 734 companies were interviewed. The companies surveyed were mostly SMEs, but a number (166) of large-scale enterprises (LSEs) were included in order to highlight differences between different-sized companies, and to explore patterns of SME-LSE cooperation. The companies surveyed had all won public procurement tenders during either 2004 or 2005 and their details were obtained from CANs on the TED databases. Each company surveyed had succeeded in at least one tender above the EU thresholds during these two years. It was assumed that most of the companies would also be experienced in below-threshold procurement.

The 84 awarding authorities surveyed were also selected from the authorities that appeared in the 2004 or 2005 TED databases, as above-threshold procurers, for which adequate contact details were available. The group included government bodies at both national and regional levels, local authorities, other bodies governed by public law (for example, universities), and public utilities.

The survey questionnaires for both companies and awarding authorities were similar to those used in the 2004 study in order to allow the comparison of findings. In addition to questions about the profile of the company or authority interviewed, they contained both closed questions on the study's topics of interest, and some open-ended questions to allow for more detailed responses. The modifications made to the questionnaires compared with those used in the earlier study covered *inter alia* the introduction of additional questions on e-procurement, and the use where appropriate of rating scales of 1 to 5, which enabled the interviewees to express nuanced opinions.

The analysis of the companies' and awarding authorities' replies are given in this section of the report.

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<sup>46</sup> The telephone surveys were undertaken by Interview-NSS, an Amsterdam-based market research company (now part of the Synovate group), acting as a subcontractor to GHK.

## 4.2 Companies' experience with tendering and public contracts

### 4.2.1 The evidence base

In the telephone survey, 734 companies were interviewed from 23 EU Member States. Companies from Estonia and Slovenia were not included, as the number of contacts available was too low to arrive to a reasonable number of completed interviews.

The number of companies per country interviewed varied, ranging from 9 (Malta) to 77 (United Kingdom). This variation is largely explained by: the size of the respective country; the availability of company contact details; and the willingness of companies to participate in the survey. Wherever possible a minimum of 10 responses from each Member State were achieved.

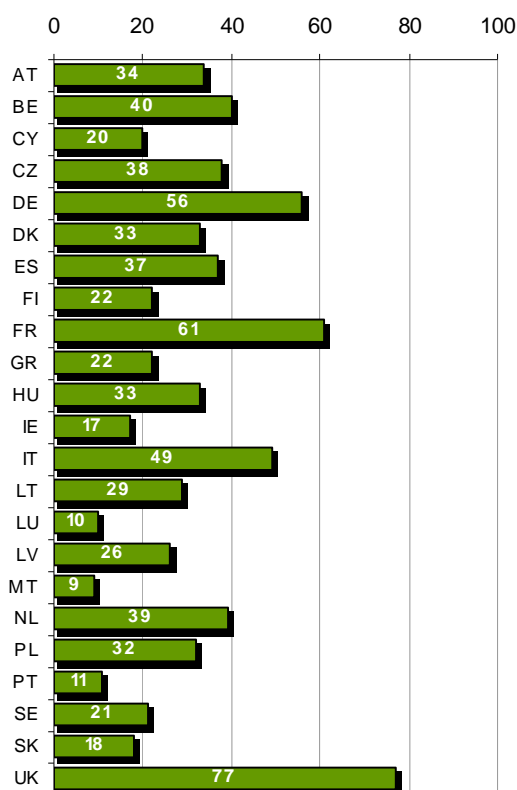
The uneven sample sizes for different countries do not strongly influence the size-class and other cross-comparisons – and thus most findings – but should be borne in mind when considering the descriptive statistics.

#### Size-class distribution

Of the 734 companies, 166 (23%) were LSEs. Some emphasis was placed on including more companies in the sample from the ten Member States<sup>47</sup> that were selected to be included as country case studies (see Section 5) in this report, in order to allow for larger sample sizes, and thus for better opportunities to cross-check the findings from the case studies.

565 of the interviewed companies were SMEs under the EU definition. Two were controlled by public bodies, thus not qualifying as SMEs under the EU definition, but – as relatively independently operating entities that participate in public tenders – they were included in the SME group for the purpose of the analysis. Another company described itself as semi-independent, but was also included as an SME. Thus in total there were 568 SMEs (corresponding to 77% of the total sample)<sup>48</sup>.

Figure 4.1: Number of companies interviewed



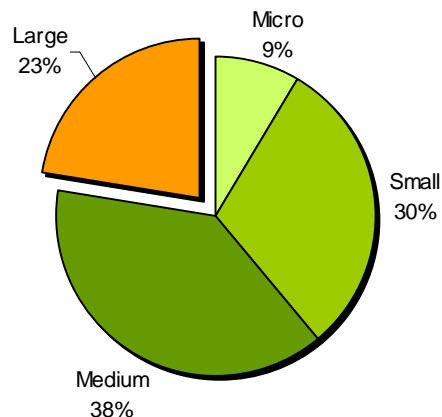
<sup>47</sup> France, Germany, Hungary, Italy, Latvia, Poland, Slovakia, Spain, Sweden, UK

<sup>48</sup> Interestingly, 24 companies classified themselves as SMEs, even though the headcount figure in their company or group of companies was over 250 and/or turnover exceeded 50 million euro. It is assumed that the above-threshold figures did not apply for at least two consecutive accounting periods (as the condition of losing SME status, as given in the EU definitions), and these companies therefore can rightly be considered as SMEs.

These SMEs were - as another relevant addition to the analyses of the previous study - subdivided according to the company size-classes as set out in the EU definition of SME. Employment and turnover data provided by the interviewees has been used for this purpose. SMEs reporting more than 50 employees or an annual turnover of over €10 million were classified as medium-sized enterprises, and SMEs with less than 10 employees and a turnover of €2 million as micro-enterprises. All other companies – i.e. firms with figures between the two above thresholds – were categorised as small enterprises.

There were relatively few micro-enterprises in the sample (9% of all companies). This reflects the propensity of micro-enterprises to only rarely win tenders above the EU-thresholds. Small enterprises made up 30% of the sample, and medium-sized enterprises 38%.

**Figure 4.2: Distribution of companies interviewed by sector by size-class**

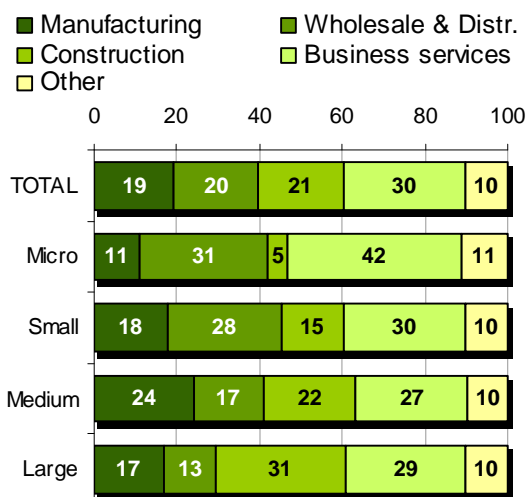


**Sector distribution of companies**

The sectoral distribution of the companies was established by using the categories applied in the 2004 study to classify companies (i.e. manufacturing, wholesale and retail, construction, business services, and other sectors). Respondents were asked to identify their main sector of activity according to above categories. Where the companies answered ‘other’, but specified a sector, the response was examined to assess whether the company fitted in any of the categories.

The distribution was relatively balanced. 19% of all companies worked in manufacturing, 20% in wholesale & retail, 21% in construction. Business services had a somewhat larger share with 30%, while 10% of the firms interviewed could not be allocated to any of the above categories<sup>49</sup>. There was some variation amongst different size classes: construction companies interviewed tended to be larger, wholesale and distribution companies smaller, and business services were most common among micro enterprises.

**Figure 4.3: Distribution of companies interviewed by sector, broken down by size-class**



<sup>49</sup> They were active e.g. in agriculture, financial services, health services, education

In addition to the country of origin, enterprise size-classes and industry sectors as defined above have been used as the key dimensions for comparisons between groups of enterprises in the subsequent analyses.

#### 4.2.2 Characteristics of the companies interviewed

##### Main geographical market of companies interviewed

Most companies asked (54%) regarded the national market as their main geographical market. The local market was the main market for only a relatively small number of companies (21%). This may be because companies participating in public procurement above the EU-thresholds are more open to competing in larger markets.

Of course, micro-enterprises are less likely to enter EU or global markets. These categories are however the main markets for 33% of the large companies surveyed.

Manufacturing companies – often producers of high-tech or other specialty goods – were more likely to regard the national markets as their main geographical market (60% did so). Large companies active in construction often reported (43%) an EU-wide or global presence. A relative high proportion of distribution and business services firms surveyed focus on their local markets.

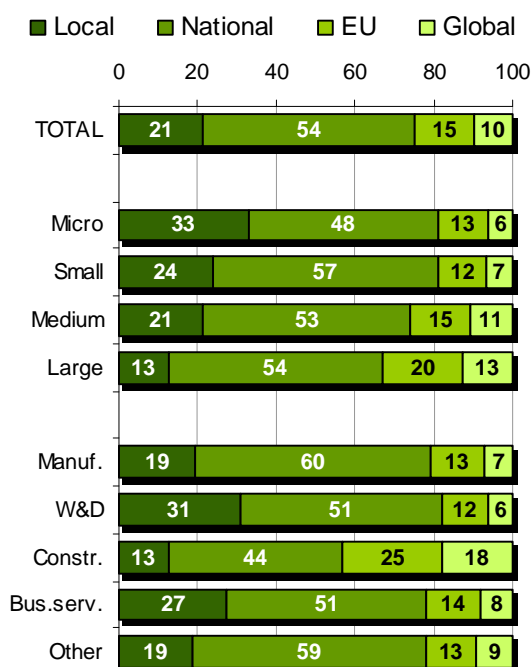
##### Significance of the public sector as a client

The public sector is an important client for most of the companies that participate in public procurement. For 49% of the companies, the majority of their sales went to the public sector. For 25% of them, the public sector's share exceeded 75%. This latter figure varied between company size classes. Micro- and small enterprises that won above-threshold public procurement were highly focused on the public sector, with 42% of micro-enterprises and 28% of small enterprises reporting their share of sales to the public sector being above 75%.

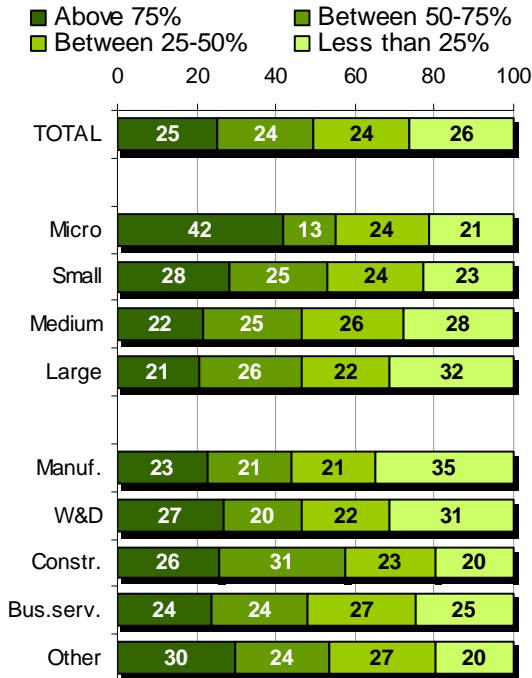
Companies operating in manufacturing or distribution generally had a more balanced customer base (the public sector accounted for the majority of sales only for 44% and 47% of these companies, respectively). Construction companies however, tended to be more often focussed on public procurement markets, with 57% of respondents reporting sales to the public sector of above 50% of all sales.

Slightly different patterns were evident in the emphasis placed on competing for public procurement contracts within the companies' strategies. 7% of companies worked exclusively for the public sector as a client (and this is predominantly done via public procurement), and another 49% reported that public procurement was very important in their organisation's strategy.

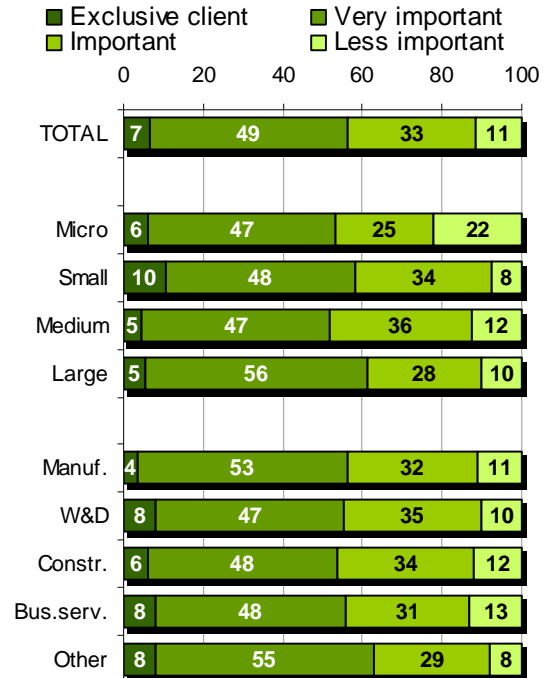
Figure 4.4: Main geographical market of companies interviewed, broken down by size-class and sector



**Figure 4.5: Share of the public sector in the companies' sales, broken down by size-class and sector**



**Figure 4.6: Emphasis put on public procurement within the companies' strategy, broken down by size-class and sector**



A relatively high number (22%) of micro-enterprises however reported that public procurement is less important for them. This response was less often mentioned by other companies (8-12%). This finding points towards the more balanced customer base of larger companies. A number of micro-enterprises submitted public procurement tenders just once or twice, while the large companies were more likely to participate routinely in public procurement.

### Experience in public procurement

More than one third (37%) of companies interviewed had considerable experience of public procurement, with more than 100 tenders submitted during the last three years. Only 6% of companies were 'novice' to public procurement markets, having submitted 5 or less tenders.

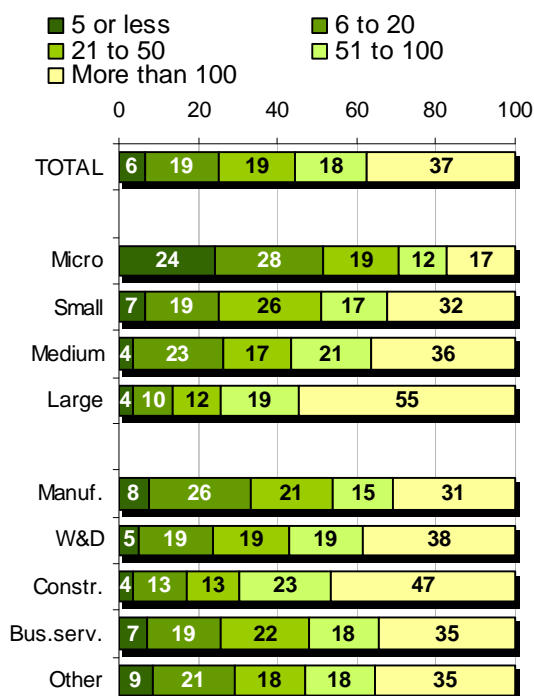
Novices were more common amongst micro-enterprises, 24% of them submitted less than 5 tenders in the last three years. 55% of large companies in the sample were major players in the public procurement market, having submitted over 100 tenders submitted during this period. A figure of above 1,000 was reported by 42 companies, most - but not all - of which were large-scale enterprises.

The sectoral distribution shows that firms operating in the construction business tend to submit public procurement tenders routinely (though this is partly explained by the higher share of larger companies in the construction sector in the sample). 47% of construction companies submitted more than 100, and 23% more than 50 tenders during the last three years. Manufacturing companies were however less active participants (only 31% of them submitted more than 100 tenders), which could be a reflection of different patterns in the procurement of public works and supplies.

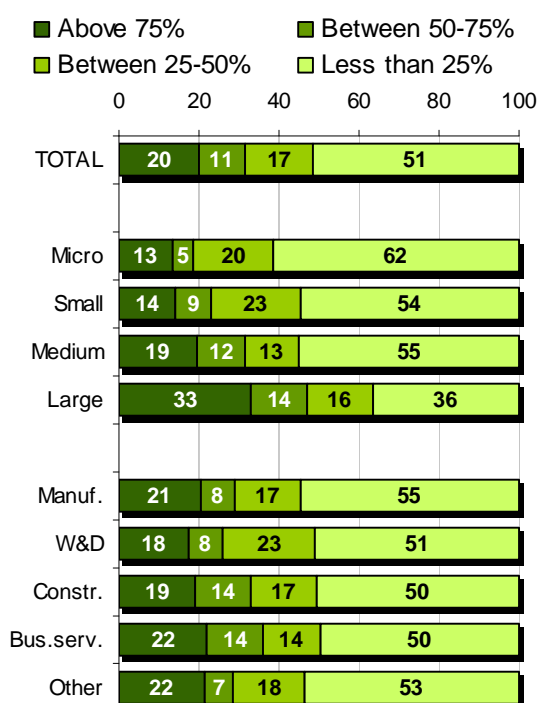
Above-threshold procurement markets were less important than (national) below-threshold procurement for most interviewees. 51% of the companies reported that tenders submitted for procurement above the EU-thresholds accounted only for less than one quarter of all their public procurement tenders. Below-threshold procurement accounted for at least half of all tenders submitted for 68% of the companies.

The importance of below-threshold tenders was especially strong with micro-enterprises: 62% of them reported that less than a quarter, and 82% less than half of the tenders they submitted were for public procurement above the EU-thresholds.

**Figure 4.7: Number of tenders submitted in the last 3 years**



**Figure 4.8: Share of tenders above EU-thresholds within all tenders submitted**

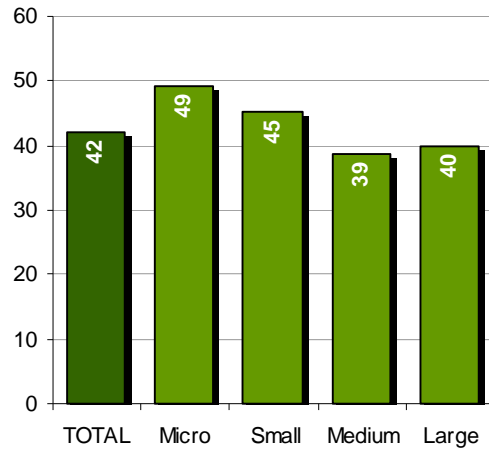


The sectoral breakdown of companies reveals that below-threshold tenders are more common for wholesale and distribution companies (74% reported that more than half of their tenders were for below-threshold procurement), but less common for firms operating in the business services sector (64%).

There were only small variations in the average reported success rate of respondents according to size class. 'Success rate' is defined as the ratio between the tenders won and the tenders submitted in the last three years.

The average<sup>50</sup> of individual success rate amounted to 42% for the full sample, where micro-enterprises came first in the ranking, with 49% of all their tenders being successful, and medium-sized companies came last, with a 39% success ratio.

Figure 4.9: Average success rates



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<sup>50</sup> The simple average of the individual success rates of companies was taken.

### 4.2.3 Access to information on public procurement

A variety of information sources at EU or Member States level are used by enterprises to learn about public procurement opportunities.

The survey asked interviewees to indicate which sources they usually took advantage of. The options given were those information sources that were most often mentioned by companies in the 2004 study. In addition to the questions asked in the last study, the respondents were also asked to indicate how often they used the information sources.

Results are shown in *Figure 4.10* for all companies (but a further breakdown by company size-class is given below).

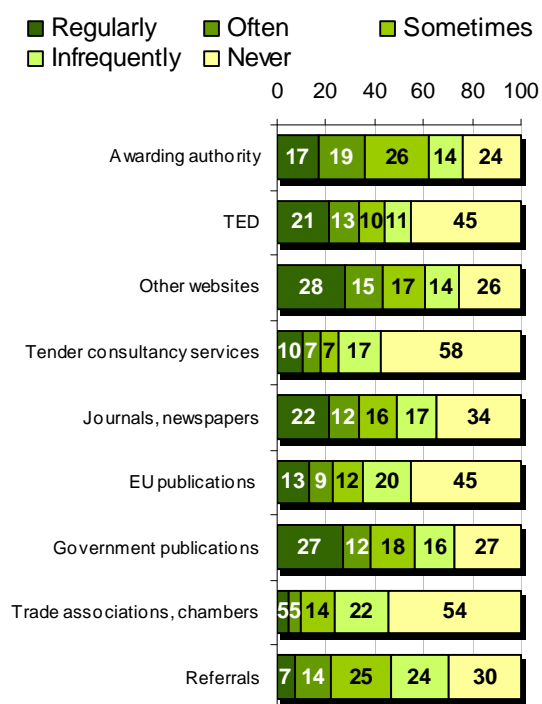
The information sources used most frequently are websites other than TED (e.g. searchable public procurement databases with domestic tenders or tenders from abroad), with 43% of respondents using them 'regularly' or 'often'.

Almost equally important are government publications - which most commonly meant the official national tender bulletin (39%) - and the awarding authorities directly (this includes written invitations to tender, used mainly in restricted procurement procedures, general or contract-specific information sessions, etc.) with 36%.

The TED (34%), journals and newspapers (34%) also play a major role as information sources, while the importance of EU publications (22%, including the Official Journal), referrals from business partners (21%), tender consultancy services (17%), and trade associations, chambers of commerce (10%) was significantly less.

139 companies (19% of total) also mentioned other information sources. These were however often options (official tender bulletins and relevant public procurement websites, industry journals) that may fall within the pre-defined categories. Interestingly, 9 companies (1% of total) never used any of the options given, and only one of them referred to an external organisation managing public procurement tenders for them.

**Figure 4.10: Information sources used by companies about tendering opportunities**





### Breakdown by company size class

The breakdown of results by company size-classes reveals some interesting variations. In *Figure 4.11*, the proportion of companies using the option in question 'regularly' or 'often' is indicated.

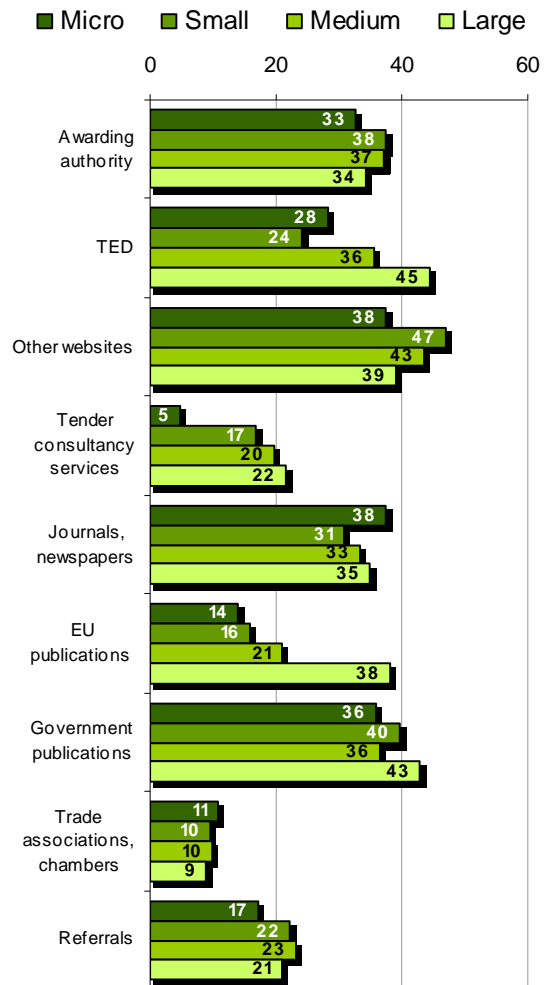
Though there are no significant differences between micro-, small-, medium-sized and large companies in obtaining information directly from the awarding authority, from websites other than TED, or from government publications (like official tender bulletins), there are relatively large variations, when information sources like the TED, tender consultancy services, or EU publications are concerned.

While 45% of large companies use the TED often or regularly, the corresponding figure is only 24% for small companies. Interestingly, 28% of micro-enterprises reported an extensive use of the TED database, but these were to a large extent business services specialised on the public sector market (the share of the public sector within their sales was high), while such specialisation was not observed amongst small enterprises.

Tender consultancy services, however, were very rarely used by micro-enterprises, with only 5% of them employing them regularly or often. In the other three company size-classes, the corresponding figure was within the range from 17 to 22%. This gap might be because, as mentioned before, many of the micro-enterprises interviewed specialise on the public sector, which implies that they have a good knowledge of tendering practices. Another explanation could be the relatively high price of such services. However, the success rate of companies employing or not employing tender consultancy services did not differ markedly within the sample. Actually, the success rate of companies employing tender services regularly or often was slightly less, at 37%, compared to 43% for companies that never used them.

The large companies used the EU publications more often than other companies, with 38% of them reporting regular or frequent use compared to between 14-21% for the other size-classes. It is reasonable to assume that there needs to be a 'critical mass', i.e. large companies, active in above-threshold procurement, to be motivated to subscribe to the Official Journal or other, industry-specific EU-publications.

**Figure 4.11: Use of information sources by company size-class, proportion of the answers 'regularly' or 'often' amongst all answers**



**Breakdown by sector**

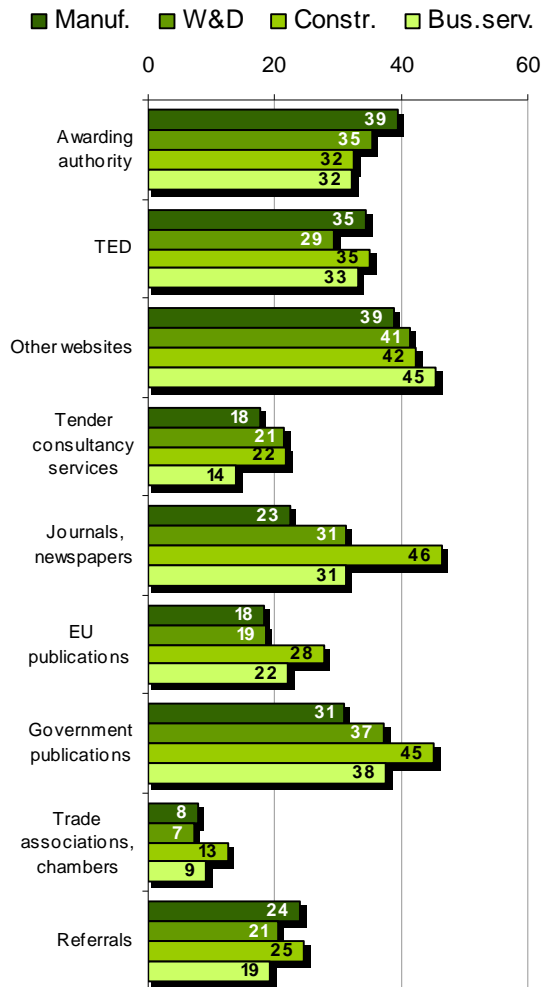
There were relatively small differences between sectors.

Marked differences only occurred in the use of journals and newspapers, EU and government publications; and to a lesser extent in the use of websites other than TED.

Construction companies were more reliant on their industry-specific journals, where information on (upcoming and open) public tenders are publicised. 46% of them use such journals and newspapers regularly or often. They also use EU and government publications (including the Official Journal and national tender bulletins) rather frequently (28% and 45%, respectively), when compared to firms in other sectors.

Websites other than TED are however more extensively used by business services (45% reported regular or frequent use, compared to a 39% of all manufacturing companies).

**Figure 4.12: Use of information sources by sector, proportion of the answers ‘regularly’ or ‘often’ amongst all answers**



### Breakdown by experience in public procurement

The findings of this study suggest that a focus of policy actions should be on companies that currently infrequently take part in public procurement. By and large, the more experienced companies already know how to obtain information and how to compile successful tenders, they have extensive partner networks, as well as credentials.

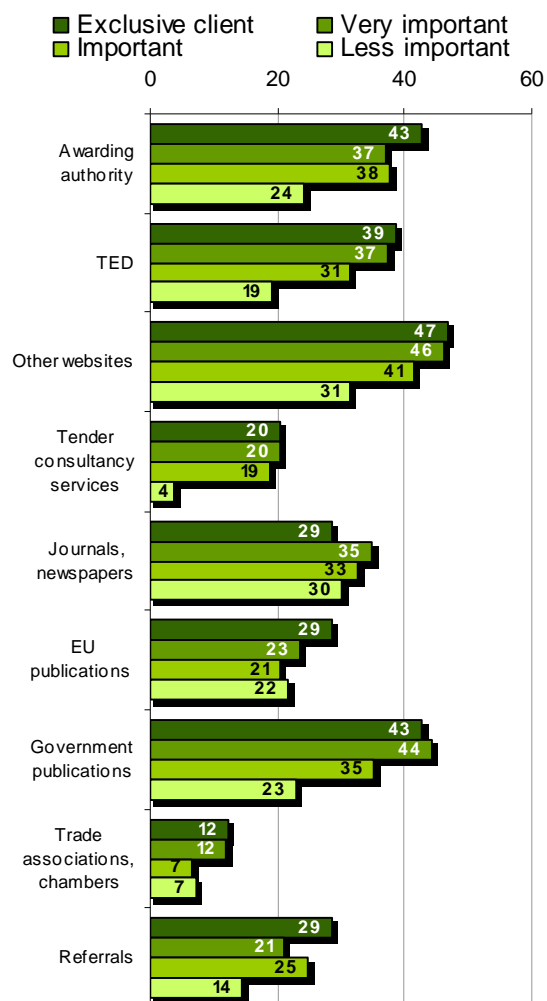
Therefore, it is useful to explore differences between companies that are new to public procurement and between firms frequently participating in public procurement. This was done by analysing survey results by the emphasis put on competing for public contracts within the organisation's strategy, and by the number of tenders submitted in the last three years.

The variation in the access to, and use of, information sources amongst companies with a different public procurement track record was substantial.

As indicated in *Figure 4.13* companies that give less importance to competing for public tenders in their corporate strategy tend to use almost all information sources less frequently.

There are however areas where this information gap is even wider. Inexperienced companies use tender consultancy services very infrequently (4%, compared to the 19-20% of the companies that emphasise tendering). Evidently, they also have much weaker links to awarding authorities than more experienced companies (only 24% of them obtain information directly from awarding authorities regularly or often), and they also use the TED, other information websites and government publications (tender bulletins) significantly less frequently. Companies relying most on public contracts, do often use these three information sources (values between 39% and 47%).

**Figure 4.13: Use of information sources by emphasis on competing for public contracts in company strategy, proportion of the answers 'regularly' or 'often' amongst all answers**



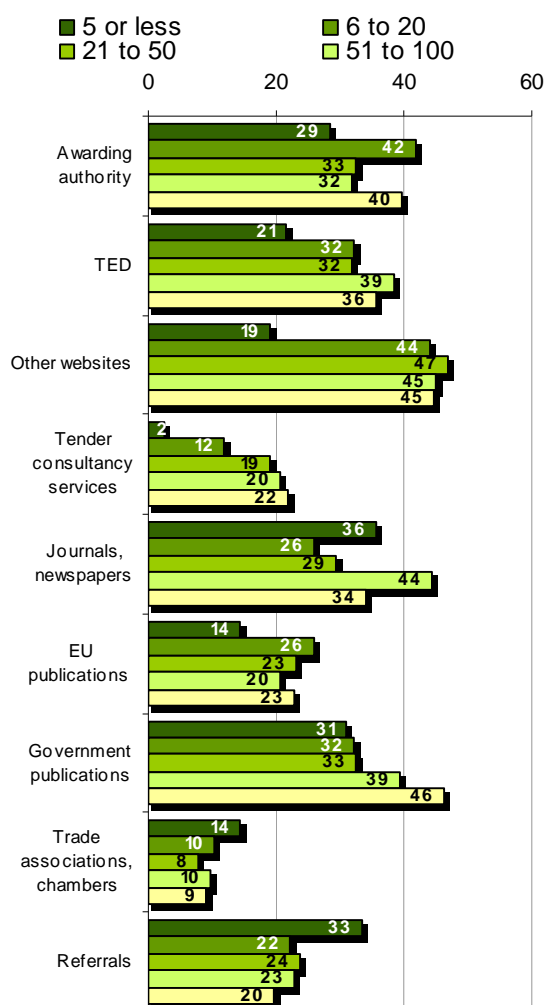
The analysis by the number of tenders submitted in the last three years also shows large differences between the individual subgroups, but here, the patterns are somewhat different.

As shown in *Figure 4.14*, companies that submitted 5 or less tenders during the last three years use government publications, journals and newspapers about as frequently as enterprises with more experience of public tenders. The gap to other companies is however quite large in the use of the TED site (only 21% use them regularly or often, whilst equivalent figures for firms submitting tenders more regularly are 32-39%), and especially other websites containing tender data (19%, against figures above 40% for all other categories of companies).

Interestingly, companies submitting few tenders also tend not to employ tender consultancy services (only 2%, while 12-22% of firms with more experienced of public tenders use them regularly or often). , Arguably those with less experience would be in more need for such services.

The significance of referrals is however relatively high amongst the information sources that companies with less experience use: 33% of companies submitting 5 or less tenders reported that they relied on referrals from business partners regularly or often.

**Figure 4.14: Use of information sources by number of tenders submitted in last 3 years, proportion of the responses of 'regularly' or 'often' amongst all responses**



### Breakdown by country

The use of the different information sources varied markedly between Member States. As shown in Table 4.1, Greek, Portuguese and British companies tend to make use of all available information, while Hungarian, French and Luxembourg tenderers are more selective and rely on fewer sources. The differences are likely to be largely a result of individual national public procurement traditions and the availability and quality of certain information sources.

- § Companies from Cyprus, Malta, and the UK tend to often receive information from the awarding authorities directly (80, 67 and 49% of the companies interviewed indicated that they obtained information from this source regularly or often), while this was less the case for Lithuanian, Irish and French companies (17-21%).
- § The TED is often used by Maltese, Polish, Czech and Slovak companies (67 to 50%, respectively), but infrequently by Luxembourg, Latvian and French enterprises (zero to 16%).

- § Websites other than TED are used frequently by Latvian, Greek and Maltese companies (73%, 68% and 67%). But Cypriot, Danish and Dutch companies access such websites less often (10%, 21% and 23%).
- § Polish and Spanish enterprises tend to employ tender consultancy services relatively often (41% and 35%), but the companies from Luxembourg, Malta and Slovakia interviewed never used them.

**Table 4.1: Use of information sources by country, proportion of the responses of ‘regularly’ or ‘often’ amongst all responses (highest and lowest values are highlighted)**

Country	Information sources									
	Awarding authority	TED	Other websites	Tender consultancy services	Journals, newspapers	EU publications	Government publications	Trade associations, chambers	Referrals	
Austria	41	<b>18</b>	<b>65</b>	15	<b>47</b>	18	47	12	21	
Belgium	30	35	48	20	<b>15</b>	<b>45</b>	43	8	13	
Cyprus	<b>80</b>	20	<b>10</b>	15	<b>75</b>	<b>5</b>	<b>100</b>	<b>25</b>	25	
Czech Republic	32	<b>50</b>	<b>63</b>	<b>5</b>	24	<b>3</b>	<b>18</b>	8	26	
Denmark	<b>45</b>	33	<b>21</b>	<b>27</b>	21	<b>30</b>	<b>18</b>	6	24	
Finland	41	23	32	14	41	<b>9</b>	41	5	23	
France	<b>21</b>	<b>16</b>	49	13	<b>48</b>	18	46	5	<b>5</b>	
Germany	39	27	52	16	38	23	43	5	<b>32</b>	
Greece	27	45	<b>68</b>	18	<b>73</b>	23	<b>64</b>	<b>45</b>	18	
Hungary	<b>48</b>	42	<b>24</b>	<b>3</b>	33	12	<b>9</b>	-	12	
Ireland	<b>18</b>	<b>47</b>	47	24	24	18	47	-	12	
Italy	35	29	35	24	<b>10</b>	27	31	<b>4</b>	16	
Latvia	<b>46</b>	<b>12</b>	<b>73</b>	15	31	12	50	8	<b>46</b>	
Lithuania	<b>17</b>	24	45	<b>3</b>	31	14	<b>66</b>	7	21	
Luxembourg	30	-	30	-	<b>90</b>	<b>40</b>	50	-	-	
Malta	<b>67</b>	<b>67</b>	<b>67</b>	-	22	11	<b>89</b>	11	<b>11</b>	
Netherlands	26	44	<b>23</b>	<b>28</b>	<b>15</b>	<b>38</b>	38	10	26	
Poland	28	<b>56</b>	53	<b>41</b>	25	13	<b>6</b>	<b>3</b>	22	
Portugal	36	<b>18</b>	45	9	<b>73</b>	18	<b>55</b>	<b>18</b>	<b>55</b>	
Slovakia	33	<b>50</b>	50	-	39	28	39	<b>28</b>	17	
Spain	27	41	32	<b>35</b>	<b>19</b>	19	<b>59</b>	14	16	
Sweden	38	29	29	<b>24</b>	38	10	<b>14</b>	5	<b>33</b>	
United Kingdom	<b>49</b>	43	38	21	31	<b>42</b>	23	<b>16</b>	<b>31</b>	

- § Luxembourg, Cypriot, Greek and Portuguese companies show an outstanding interest in journals and newspapers, where obtaining information about tendering opportunities is concerned (90 to 73%), while Italian, Belgian and Dutch firms rely less on these sources (10%, and 15-15%).

- § EU publications are rarely used by Cypriot, Czech and Finnish companies (3 to 9%). Other countries, especially Belgian and British ones (45% and 42%), however use this information source relatively often.
- § Government publications are a prime source of information on Cyprus and Malta (100% and 89%), but less so in Poland and Hungary (6% and 9%, though many respondents in these two countries did not include the national official tender bulletin in this category).
- § Though trade associations and chambers are not frequently asked by companies about tender opportunities generally, Greek, Slovak and Cypriot firms have stronger ties to them (45%, 28% and 25%). Hungarian, Irish and Luxembourg companies that participated in the survey did not use these organisations as sources of information at all.
- § Referrals from business partners are important for Portuguese and Latvian firms (55-46%), but are not, or rather infrequently used by Luxembourg or French companies (0%, 5%).

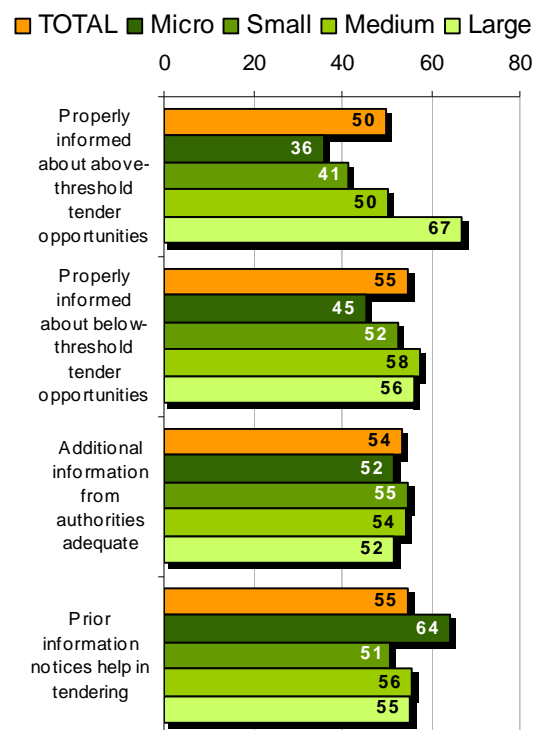
### The availability of adequate information

Companies were asked to give their opinion on the appropriateness of available information on public procurement tenders and public procurement. Preliminary stakeholder interviews suggested that insufficient information was one of the key barriers for SMEs to access public contracts.

Four statements were read out by the interviewers, and the respondents were asked to indicate the degree to which they agreed with them (fully agree, rather agree, neutral, rather disagree, fully disagree). The statements were the following:

- § “I feel properly informed about public tender opportunities above EU thresholds”
- § “I feel properly informed about domestic public tender opportunities below EU thresholds”
- § “Awarding authorities provide adequate additional information when asked”
- § “Prior information notices help in drawing up better tenders”

**Figure 4.15: Opinion of companies on the appropriateness of information available, proportion of companies that fully or rather agree, broken down by size-class**



The results show that access to information on public procurement opportunities is not considered to be fully satisfactory. Only 50% of the interviewees indicated during the interviews that they would ‘fully’ or ‘rather’ agree with the statement that they were properly informed about tender opportunities above EU thresholds, and 55% indicated the same for tender opportunities below

EU thresholds. 54% indicated that additional information from the awarding authorities was adequate, and 55% agreed that prior information notices help in drawing up better tenders.

The analysis also highlights that large companies did not necessarily have better access to information. At least, the companies themselves do not see it like that. Micro-, small- medium-sized and large-scale enterprises were almost equally satisfied with their access to information.

Only two notable differences could be identified amongst companies of different sizes: access to information on above-threshold procurement seems to be more problematic for smaller companies (36% of micro-enterprises are satisfied, against 67% of large companies), and they also put greater emphasis on the utility of prior information notices (64% of micro-enterprises thought it helpful). The latter might be because enterprises have to plan for tenders well ahead, given their smaller capacities.

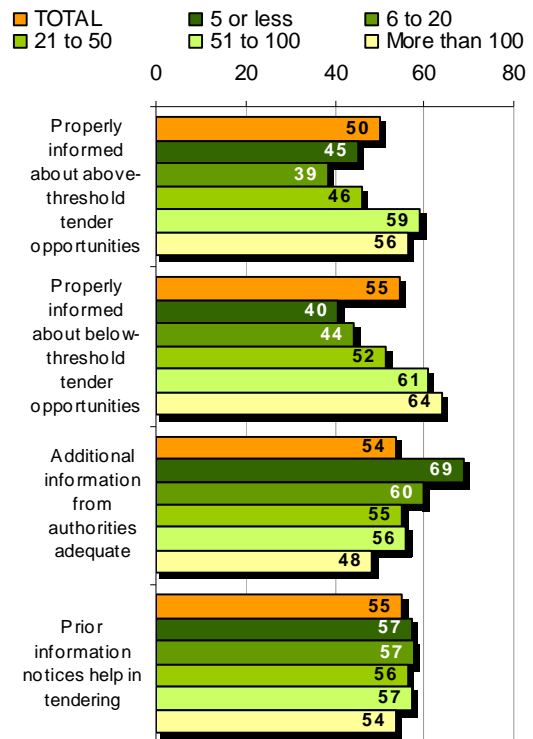
In terms of satisfaction with available information, the gaps between companies that are on a different level of experience in public procurement are wide.

Companies that frequently submit tenders formulated less criticism on the availability of information on tender opportunities, but had more concerns about the quality of additional information from awarding authorities (only 48% fully or rather agreed that such information is adequate, against 54% of all companies).

Firms preparing only a few tenders in the last three years however were not particularly satisfied with the amount and accessibility of information on tender opportunities below the thresholds (this can be compared with the overall average of 55%).

As these companies should be the focus of policy action, these variations need to be taken into account when drawing final conclusions.

**Figure 4.16: Opinion of companies on the appropriateness of information available, proportion of companies that fully or rather agree, broken down by number of tenders submitted**



#### 4.2.4 The use of e-procurement solutions

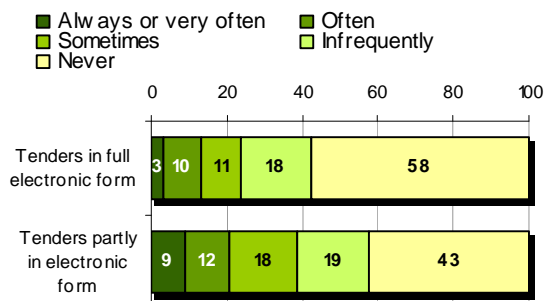
A relatively new concept in public procurement is the use of e-procurement solutions. More developed solutions may allow a full electronic submission of tender documents with electronic signature, (reverse) electronic auctioning, or the linking of awarding authorities' internal procurement systems to databases of the tax authority. But a partial submission of documents in electronic form, electronic communication between bidders and awarding authority, or electronic calculation or self-assessment tools provided to bidders may also be regarded as forms of e-procurement.

The survey results confirm that e-procurement is uncommon in Europe. 58% of the companies interviewed never submitted tenders in full electronic form, 43% of them not even partly in electronic form. The proportion of companies that have the opportunity to submit their tenders in full electronic form 'at least sometimes' is only 24%.

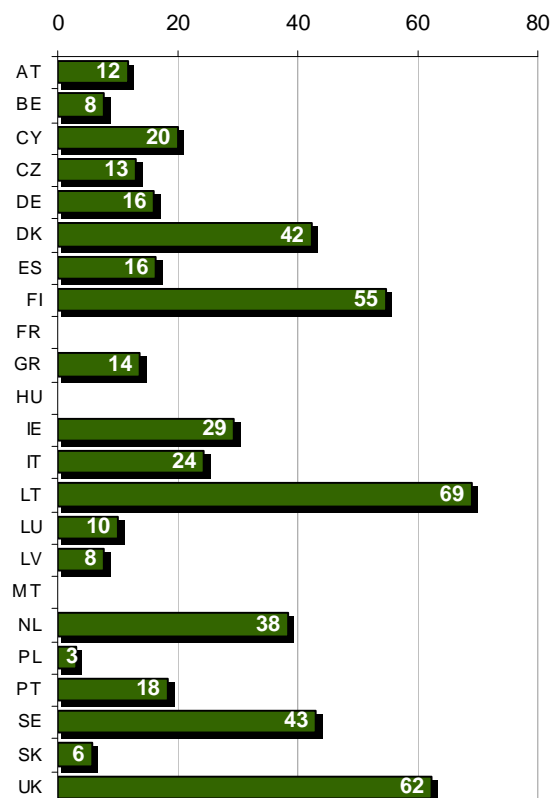
However, there are large variations between Member States. The UK and Lithuania take the lead in this regard. 62% and 69% of companies respectively indicated that they submit their tenders in full electronic form at least sometimes. Finland, Denmark and Sweden also scored well in this respect.

No companies from France, Hungary or Malta reported making electronic submissions of their tenders. In Hungary, this is because full electronic submission is not yet feasible (but parts – mostly the technical and financial offers, but not the certifications – may be submitted in electronic form, in addition to the paper-based form and is sometimes requested by awarding authorities). The findings from France are unexpected because e-procurement is in place and encouraged there.

**Figure 4.17: Frequency of submitting public procurement tenders in electronic form**



**Figure 4.18: Submitting public procurement tenders in electronic form at least sometimes, country variations**

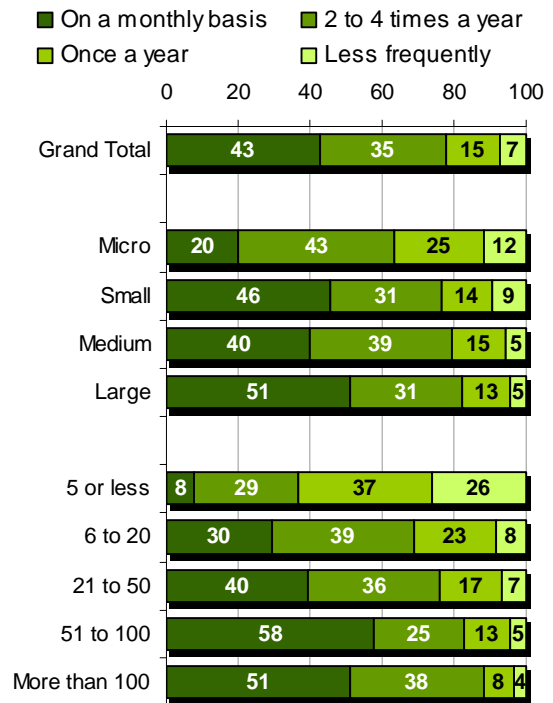




One potential benefit of e-procurement solutions is the easing of the administrative burden laid on companies by reducing the number of documents, including certifications, to be supplied in paper form.

Producing such documentation is indeed a costly and time-consuming activity for enterprises. When asked how regularly they update their administrative documents for public tenders, 43% of companies reported that they do this on a monthly basis or more often. An additional 35% indicated that they updated company documents 2 to 4 times a year. These figures applied to larger companies, but also small-, and (to a somewhat lesser extent) even to micro-enterprises.

**Figure 4.19: Frequency of updating administrative documents for public tenders**



#### 4.2.5 The barriers of entry to public procurement markets and suggestions

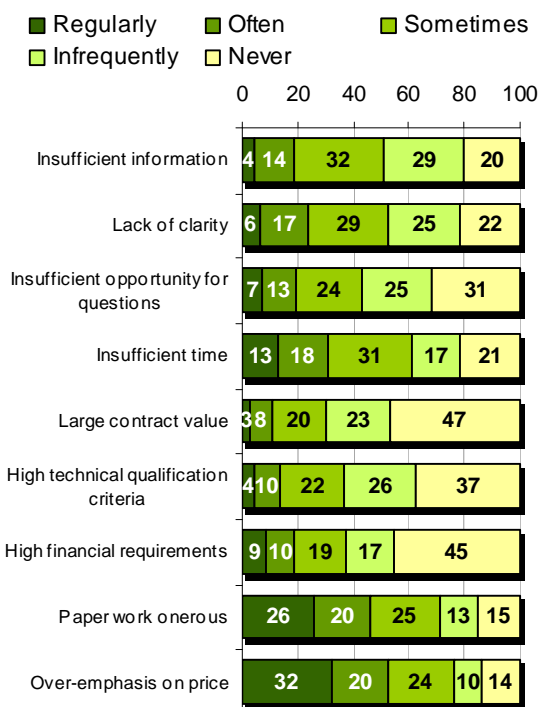
##### Barriers of entry

The 2004 study identified a number of barriers that may impede companies', especially SMEs' access to public procurement. The survey further explored the significance of the barriers by asking the SMEs selected how frequently they encountered such problems.

The barriers included in the interview checklist were as follows:

- § Insufficient information about the tender
- § Lack of clarity in the invitation to tender
- § Insufficient opportunity to ask questions about the tender prior to tendering
- § Insufficient time to prepare a tender
- § The large contract value relative to the size of your company
- § Technical qualification criteria too high
- § Financial requirements such as bank guarantees too onerous
- § 'Paper work' requirements of tenders too onerous
- § Over-emphasis on price in selection of contractors

**Figure 4.20: Frequency of perceiving problems in tendering for public contracts, answers from SMEs only**



The survey results clearly indicate that the most frequent problem faced by European SMEs is awarding authorities' over-emphasis on price (52% of companies experienced it regularly or often). As explained by respondents, evaluation criteria often neglect the eventual better quality and flexibility offered by smaller bidders, and tend to disregard even the full life-cycle cost (considering all cost elements in the whole process of procuring, operating and disposing a certain good or service, rather than the purchase price only). This result supports the commonly expressed opinion<sup>51</sup> that the risk-averse behaviour of awarding authorities and their focus on short-term expenditure is probably the biggest barrier to SMEs winning public contracts.

Onerous paperwork requirements were also mentioned as a common problem (46%). This validates EU and national policy initiatives to reduce the bureaucratic nature of public procurement, and to make it more 'user-friendly'.

<sup>51</sup> This was also emphasised by many contributors on the Commission's workshop on SMEs' access to public procurement markets on 22 February 2007, jointly organised by DG Enterprise and Industry and DG Internal Market in Brussels.

The technical and financial qualification requirements were less frequently seen as problematic (14%, and 19%, respectively). However, it should be noted that the differences between company size-classes were significant in this regard.

The analysis of results by company size-class highlights the specific problems of micro- enterprises: a major problem experienced was the high financial requirements. 36% of micro-enterprises face this problem regularly or often, more than twice as frequently as small or larger companies. Onerous financial requirements, as well as large contract values are - evidently - seldom a problem for large enterprises.

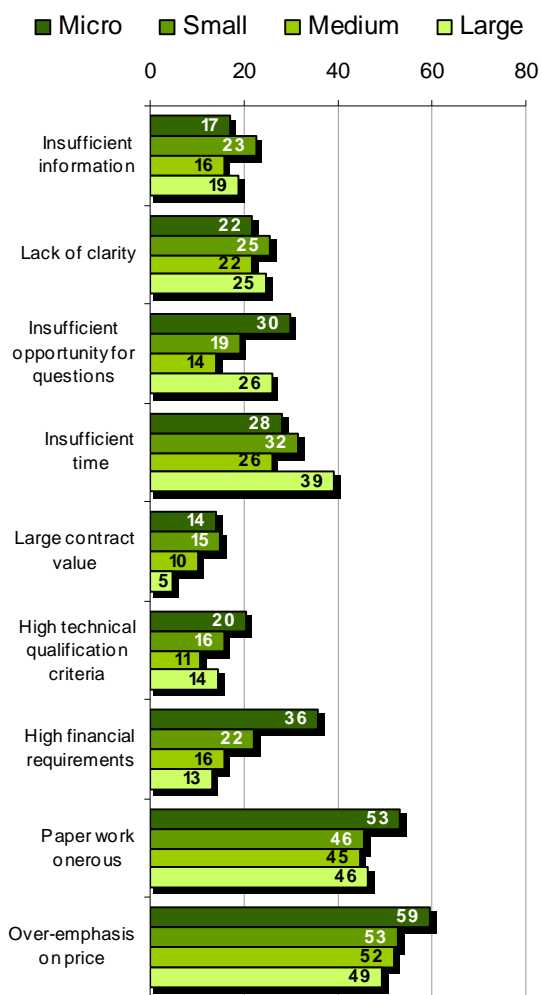
The smallest companies also perceive an over-emphasis of awarding authorities on price as a barrier more often (59%) than their larger counterparts.

Interestingly however, the smaller the companies are, the less they tend to regard insufficient time for preparing tenders as a problem.

Apart from the pre-defined answer options, companies were also allowed to identify other barriers or problems they face when tendering for public contracts. The issues mentioned were *inter alia*:

- § low quality of the invitations to tender, ambiguities and contradictions, including incoherent technical requirements, discrepancies between the terms published in the tender notice and given in the background documentation
- § inappropriate terms of contract, which may be in conflict with legislation in place, or unacceptable for the supplier due to a misbalance of rights and obligations
- § lack of opportunities for a dialogue with the client, for further specifications of customer demand
- § high charge of tender documentation and high cost of tendering in general
- § no or inadequate provisions for the exclusion of unrealistic offers
- § ambiguous evaluation criteria and mistakes made during the evaluation of tenders, bias towards a preferred supplier

**Figure 4.21: Perceiving problems in tendering for public contracts regularly or often, breakdown by size class**



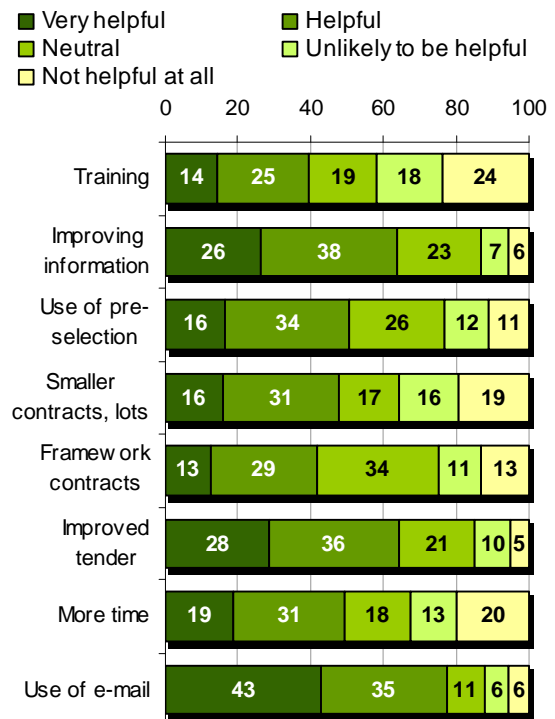
- § recall of tenders, done often after carrying out the costly procedure (e.g. because of insufficient funds on behalf of the awarding authority)
- § insufficient possibilities for legal remedies
- § late payments

**Suggestions of SMEs**

In the previous study, SMEs were asked to give suggestions on how to best improve their access to public procurement markets. The answers most often mentioned were:

- § Training to assist you in the preparation of public procurement tenders
- § Improvements in the information available on public procurement opportunities
- § The use of pre-selection and tender short lists
- § Smaller contracts, or contracts divided into smaller lots
- § The use of framework contracts
- § Improved tender specifications and opportunities for clarifications
- § More time to find partners and to prepare tenders
- § The opportunity to send and receive tenders and information by e-mail

**Figure 4.22: Judgement of the helpfulness of certain options in improving SMEs' access to public procurement, answers of SMEs only**



These options were included in the survey undertaken as part of this study, in order to obtain more detailed replies from the companies on how important they felt these actions. The analysis of responses shows a number of differences in the significance that SMEs attribute to the options.

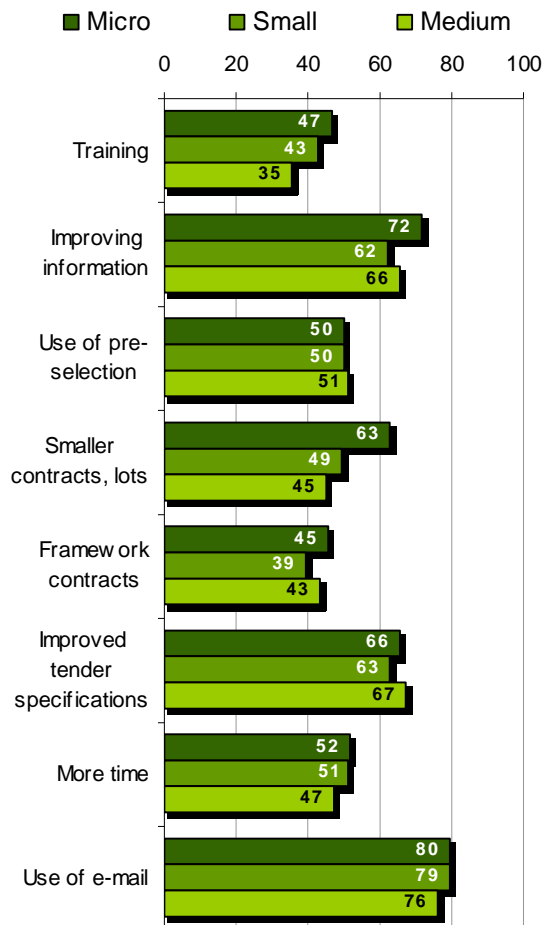
The use of e-mails as a preferred channel of communication, improving tender specifications and documentation, as well as improving information on tenders in general were seen as the three most helpful actions. The proportion of companies considering these helpful or very helpful was 78%, and 64%-64%, respectively. Trainings to companies, the use of framework agreements and contracts, and more time to draw up tenders were less frequently emphasised.

The analysis by company size-class did not reveal big differences amongst SMEs. Micro-enterprises more often considered the options as helpful, (they are often considered the group that needs more help in general), but there were no significant differences between smaller and larger firms.

Common suggestions of SMEs interviewed on methods to improve access to public procurement, which were not included in the pre-defined set of answers included the following:

- § more free information available on tender opportunities, better search facilities on the websites publishing public procurement tenders, e-mail alerts
- § less bureaucratic processes, less paperwork requirement
- § more clarity in tenders
- § raising the thresholds, more opportunity for restricted tenders, more procurement at regional level

**Figure 4.23: Options considered very helpful or helpful in improving SMEs' access to public procurement by size-class**



### 4.3 Awarding authorities

Awarding authorities from 17 Member States were interviewed.

Some countries (Cyprus, Estonia, Finland, Greece, Lithuania, Malta, Portugal, and Slovenia) were not included in the survey as the number of available contacts from these countries was low, and because emphasis was placed on the countries within which case studies were also done, in order to better underpin arguments.

84 authorities were included altogether. The number of authorities interviewed from each country varied between 11 (Germany, France) to 1 only (Ireland, Luxembourg and Slovakia).

#### Distribution by type of awarding authority

From amongst the 84 authorities, 60 categorised themselves as either a government body, a local authority, body governed by public law, or public utility. An additional 15 could be classified according to the above categories, based on the description they gave of their organisation, and only 9 awarding authorities (11% of total) were classified as 'other' organisations.

Of the organisations interviewed, 28% were local authorities. National or regional government bodies and government agencies made up 24% of the sample. 18% were bodies governed by public law (including *inter alia* universities, hospitals), and 19% public utilities in the energy, heating and transport sectors.

Figure 4.24: Number of awarding authorities interviewed

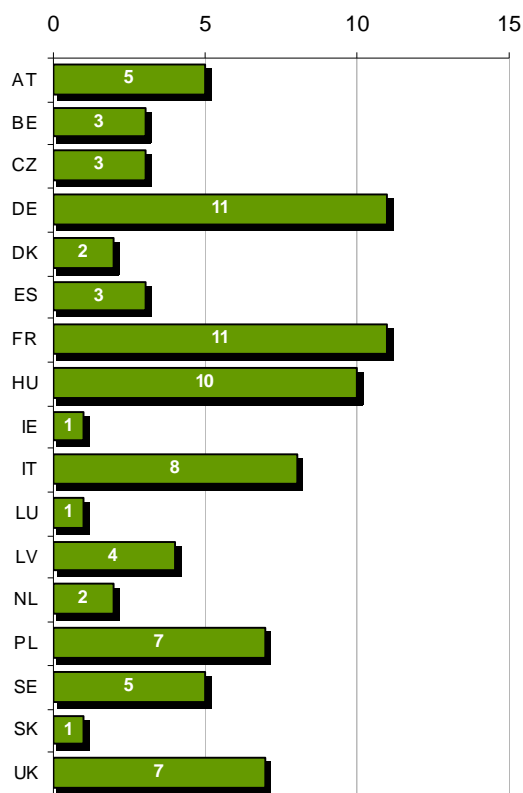
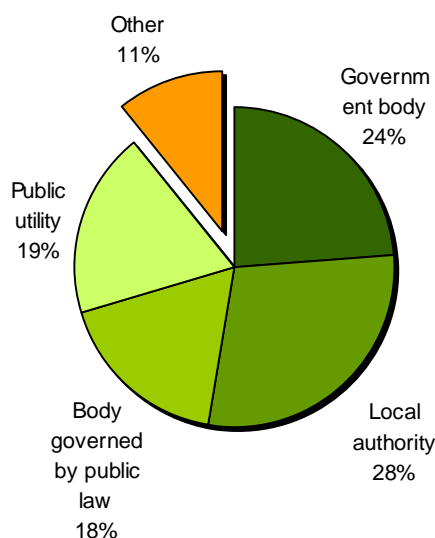


Figure 4.25: Distribution of sample by type of awarding authority



### 4.3.1 Characteristics of the authorities interviewed

#### Number of tenders published

The sample was relatively well balanced between larger and smaller procurers. The share of authorities publishing less than 10 tenders a year above EU thresholds was 50%, while the respective figure was 30% for below-threshold tenders.

At the other end of the scale, organisations publishing at least 50 tenders annually above EU thresholds made up 11% of the sample, and 42% below the thresholds. It is clear that the awarding authorities publish more (and smaller) tenders below thresholds, which explains this big difference.

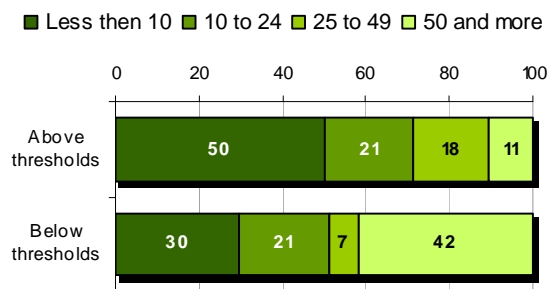
#### Total value of procured goods/services

The breakdown of the sample by the value of goods or services procured per year reflects the variety of the amounts of procurement activities of the organisations interviewed even more.

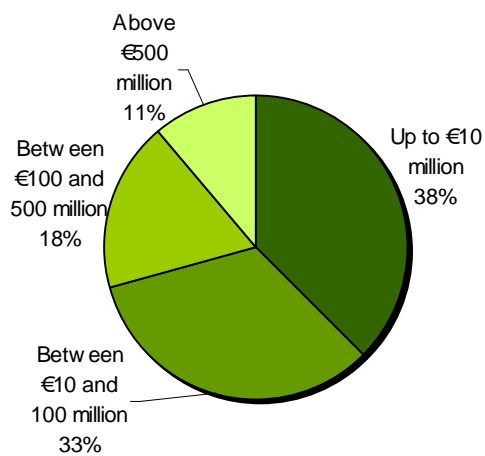
About one third of the awarding authorities reported annual procurement of below €10 million euro, or between €10 and 100 million (38%, and 33%, respectively). 18% procured between €100 and 500 million, while 11% above €500 million, a value over 50 times higher than the purchases of the smallest organisations.

This allows the study to take account of the problems, views and opinions of both large and small awarding authorities – though the differences were usually not very significant.

**Figure 4.26: Distribution of the sample by the number of tenders published annually**



**Figure 4.27: Distribution of the sample by the total value of goods/services procured annually**



### 4.3.2 Providing information on procurement

The first thematic question to awarding authorities concerned the channels they use to officially publish their tenders and to disperse additional information about their public procurement activity.

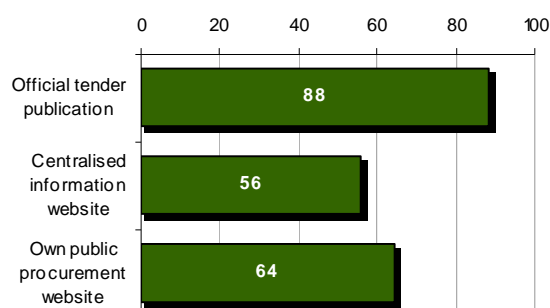
88% of respondents publicised tenders in the country's official tender bulletin (or the Official Journal for procurement above the EU thresholds). 56% used a central information website on public procurement, while 64% used their own procurement website – as a substitute or a complementary option.

As indicated in the responses to the survey of companies, access to adequate information about tenders is essential to promote SMEs' access to public procurement. Reaching out to more bidders is also key to increasing competition and thus maximising value for money in public procurement. Most awarding authorities are aware of this and try to supply additional information or to employ more channels to reach potential bidders.

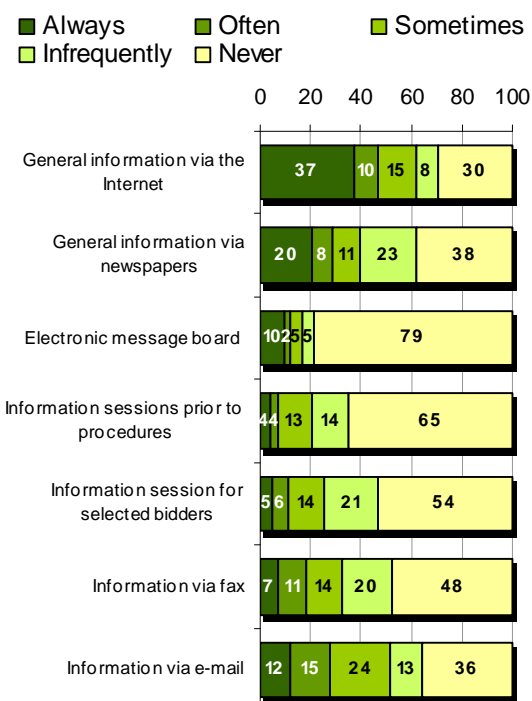
47% of awarding authorities use the internet always or often to provide general information about their tenders and procurement activity, and 28% use newspapers to spread information.

Other options are less frequently used. 12% use electronic message boards, and 8% hold information sessions prior to starting the procurement procedure (both are considered efficient two-way communication tools), 11% organise information sessions for selected bidders, i.e. after having started the procedure, mostly following a pre-selection decision. 18% supply information via fax, and only 27% of awarding authorities use e-mails always or often, although the importance of this channel of communication has been emphasised by micro- and small enterprises.

**Figure 4.28: Options used by awarding authorities to officially publish their tenders**



**Figure 4.29: Additional options used by awarding authorities to inform potential bidders, and frequency of usage**



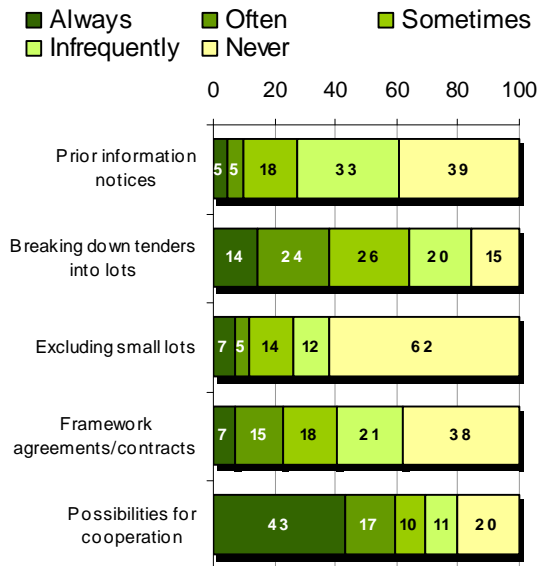


### 4.3.3 Actions undertaken to improve SMEs' access

The authorities were specifically asked whether and how often they employed the possibilities intended to promote SMEs' equal access to public contracts, which are also endorsed in the new Directives<sup>52</sup>. The options raised were:

- § the regular use of prior information notices
- § sub-division of contracts into lots
- § exclusion of small lots from the scope of the Directives (for above-threshold procurement)
- § use of framework agreements and contracts
- § employing more flexible rules to prove technical or financial capacities, allowing cooperating smaller companies to jointly fulfil criteria<sup>53</sup>

**Figure 4.30: Options used by awarding authorities to promote SMEs' access to public procurement, frequency of usage**



The results show that allowing joint fulfilment of technical or financial requirements by cooperating smaller companies (both above and below the EU-thresholds) is most widely employed. 60% of awarding authorities interviewed reported that they used this option always or often. The focus on this option is well justified, as it was also endorsed by smaller companies, as a great help. However, 31% of awarding authorities never, or only infrequently used this possibility.

Similarly, breaking down contracts into lots is also often done by authorities (38%), and also emphasised by SMEs, especially micro- enterprises, as an action that would enable the access of smaller companies to public contracts.

From the actions in favour of SMEs' equal access that was deemed most important by the companies themselves, the publication of prior information notices seems to be used less frequently than it might be. Only 10% of the awarding authorities asked employed this option always or often.

In between came the use framework contracts and agreements (in connection with pre-selection procedures, which was mentioned by some SMEs as a positive action). However, it might give cause of some concern that 23% of the organisations using this option said that they never awarded framework contracts or agreements to SMEs.

<sup>52</sup> Directive 2004/17 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, and Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

#### 4.3.4 e-procurement practices

As a new topic in comparison with the 2004 study, details about the use of e-procurement solutions was also explored in the survey.

As results from the company survey showed, e-procurement is still not frequently used, but is more and more considered as a useful tool to ease the administrative burden of companies participating in public procurement, and to enhance SMEs access.

58% of awarding authorities (i.e. 49 organisations) employed some form of e-procurement solutions. Asking for details, 36% of these reported accepting, at least sometimes, tenders in full electronic form, including electronic signatures. Here, further progress is still needed: 53% never accept full electronic tenders.

40% accepted parts of the tenders in electronic form, 48% took advantage of systems storing and/or retrieving companies' administrative information (usually after some pre-selection procedure), so that they do not have to submit such documents for every tender, and 65% provided electronic tools (e.g. calculation sheets) for tenderers.

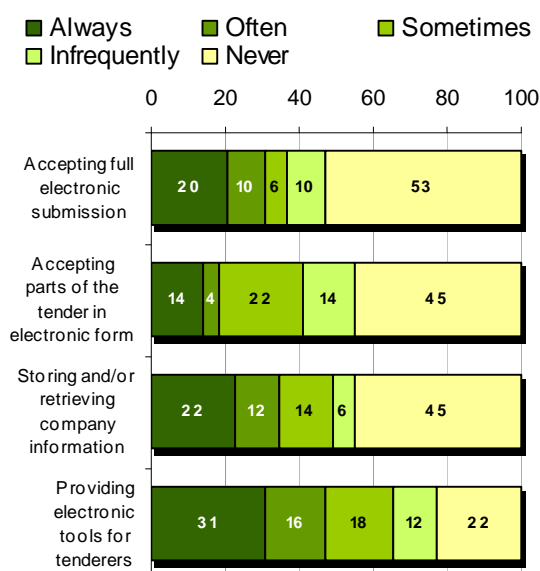
Reasons mentioned by organisations that do not, or only rarely make use of e-procurement included fears about the security of operations or that the process of the opening of tenders may lose transparency, as well as reference to the unresolved authentication of electronic signature in some countries (for example, Hungary), due to technical standards not being in place.

#### 4.3.5 Experience with SMEs in public procurement

Though not all awarding authorities were convinced that working with SMEs was advantageous, an overwhelming majority of the organisations in favour of SMEs referred to their flexibility and proximity. Better prices were also often mentioned. However, only 38 authorities (45%) told that they undertook measures to help SMEs to access public contracts.

Amongst the perceived weaknesses, the smaller size of SMEs was most often cited, meaning both capacities and financial guarantees, which are barriers for larger contracts. Their narrower product range, the eventual inability to meet all requests, the lack of references that could make contracting of SMEs too risky were also mentioned by several organisations.

**Figure 4.31: The frequency of different options used by awarding authorities that employ any e-procurement practices**



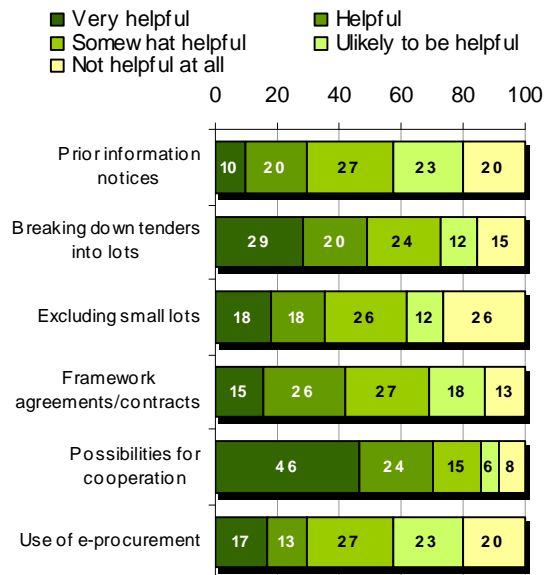
<sup>53</sup> According to Directives 2004/18/EC (Articles 47 and 48) and 2004/17/EC (Articles 53 and 54), this is obligatory in public procurement above EU-thresholds. However, it is not always employed in procurement below the thresholds.

Based on their experience of working with SMEs, authorities found that - from the possibilities endorsed in the new Directives - allowing the joint fulfilment of technical or certain financial requirements could have the largest positive impact on the access of companies to public procurement. Altogether, 70% of awarding authorities thought that this would be helpful or very helpful.

The second most favoured option was the breaking down of contracts into lots (49%).

The exclusion of small lots from the scope of the EU Directives was less emphasised (36%), and the smallest utility (30% seeing it helpful or very helpful) was attributed to the use of prior information notices, and to the use of e-procurement tools. This finding is not in line with SMEs' views on the topic. Companies, including SMEs were rather in favour of prior information, and they also advocated the strengthening the use of electronic channels of communication.

**Figure 4.32: Judgement of awarding authorities of the helpfulness of options in promoting SMEs' access to public procurement**

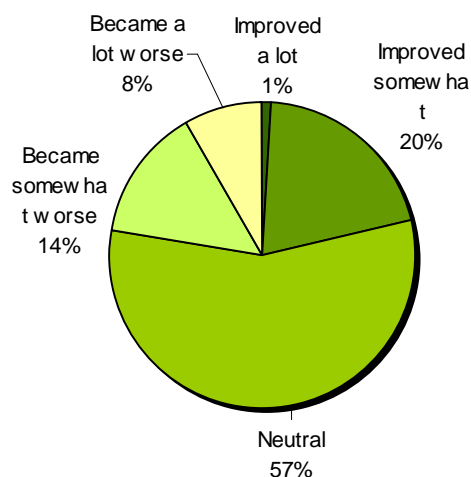


#### 4.3.6 The impact of EU legislation on SMEs access

Finally, the awarding authorities interviewed were asked how they judged the impact of the new Directives on the access of SMEs to public procurement markets.

The opinion of practitioners of public procurement was mixed about the changes in EU legislation. Though most were neutral, 21% of them welcomed changes as an improvement, against the 22% who said that the legal framework made the situation somewhat, or a lot worse. However, only one organisation thought that the Directives improved the situation a lot as compared to the pre-2004 regulation.

**Figure 4.33: The perceived impact of the Directives on the access of SMEs to public procurement**



#### 4.4 Summary

The telephone survey amongst European companies and awarding authorities shed light on various aspects of SMEs' access to public procurement, most notably on the availability and use of information sources on tenders and tendering opportunities, on the problems SMEs experience when competing for public contracts, and on what the options intended to serve SMEs can achieve in practice.

The conclusions of the survey point to the need to focus policy to improve access to public on smaller companies, and SME that have participated in public procurement infrequently

The use of the TED database and other information websites on public tender opportunities - very popular with companies in general – is much less frequent amongst micro-enterprises and companies with less experience in procurement. There is also a clear gap between smaller and large enterprises, in their assessment on the availability of information. Prior information notices, are considered a major help by the smaller companies and firms less active in public procurement.

Awarding authorities are aware of the importance of access to information. They do not rely on the official publication of tender notices only, but also often provide additional information to potential bidders via the Internet and newspapers, and tend also to send alerts to registered companies. However, one mismatch between companies' demand, and authorities' supply of information prevails in the area of publishing prior information notices, which is done only by a small fraction of awarding authorities regularly.

The new possibilities of e-procurement are still relatively rarely employed by awarding authorities and companies in Europe. Over a half of awarding authorities did not allow electronic submission of tenders at all. However, the variations amongst Member States are large: UK, Lithuanian and Danish companies take the lead, while Hungarian and French firms are lagging behind in the use of e-procurement tools.

The key barriers to entry for all SMEs appear to be the awarding authorities' over-emphasis on (purchase) price, the administrative burden. In addition, smaller companies within that category often struggle with high financial requirements, though they don't see the contract value itself as a barrier. The access to information is also significantly more difficult for small firms than for larger companies.

Important issues mentioned as problems included: the low quality of tender documentation; lack of opportunities for a dialogue with the client; no or inadequate provisions for the exclusion of unrealistic offers; insufficient possibilities for legal remedies; and the high cost of tendering in general. These again usually hit small companies harder.

The suggestions to overcome barriers, most endorsed by SMEs, were the improvement of information availability and tender specifications (the quality of documentation). Micro-enterprises also put emphasis on the subdivision of tenders into lots. The use of e-mail, as a quick and cheap method of communication was frequently advocated by companies. Overall, SMEs expressed less preference for initiatives for improving their own knowledge and skills through more training opportunities. Rather, they favoured options that would improve the quality of tenders and transparency, and ease the costs and administrative burden of public procurement.

As a positive sign of SMEs preparedness: it seems from the results that there are only small variations in the success rate of companies. Small enterprises, when participating had a similar

chance of winning contracts as larger ones. It should of course be added that companies from different size classes may often be competing only with companies within their own size class .

Not all awarding authorities took the view that working with SMEs would be beneficial, but most did. The flexibility and proximity of SMEs, and also better prices were mentioned as reasons to work with small and medium-sized companies. Authorities regarded the lower capacities and inadequate financial guarantees as key weaknesses of SMEs, as well as their narrower product range and lack of credentials.

Many of the awarding authorities try to overcome these weaknesses, and are undertaking certain measures intended to improve SME access to public procurement. Breaking down tenders into lots, and allowing small companies to group together to jointly fulfil financial requirements are the most frequently – but still not regularly – used approaches. These actions are seen to have a very positive impact on the access of the smallest companies to tenders, as these companies were reporting problems as regards of high contract values and financial requirements.

Most of the options used are also endorsed by new EU legislation (the Public Procurement Directives). However, awarding authorities tend to see the impact of them as neutral, and only one of the interviewees thought the impact was very positive.

## 5 PUBLIC PROCUREMENT PRACTICE IN THE MEMBER STATES

### 5.1 Introduction

This section of the report synthesises and presents the results of the case studies of public procurement practice in ten Member States<sup>54</sup>. The purpose of this work is to:

- § Explore how national policy and regulation shapes public procurement below the EU thresholds, particularly in respect of SMEs;
- § Analyse the available data on SMEs and sub-EU threshold public procurement;
- § Identify and review national good practice in the field of SMEs' access to public procurement.

Individual case study write-ups are attached as Annex, and should be read in conjunction with this section of the report.

### 5.2 Public procurement regulation and governance in the Member States

The introduction of the new EU Directives regulating public procurement resulted in the introduction of a series of new procurement laws across the Member States in 2006. These new laws replaced a patchwork of existing procurement legislation, often build up over a number of years. In addition to transposing the requirements of the EU Directives to procurement above the EU-thresholds, in many cases the new laws introduced similar elements into below-threshold procurement also.

Most Member States operate a range of additional procurement thresholds below the EU thresholds. For instance:

- § In Italy, public works contracts with a value between €0 and €211,000 are subject to 'local procedure', whilst between €211,000 and the EU threshold (€5,278,000) such contracts are subject to 'national procedure'.
- § In Slovakia, supply contracts are subject to four separate thresholds: above the EU threshold (greater than €154,000 for central government), a 'national threshold' (between €59,276 and €154,000), a below national threshold (between €29,638 and €59,276), and a low value threshold (under €29,638).

Thresholds are used to determine the procedure behind the award of public procurement contracts, which usually vary in 'complexity' from low value contracts up to national and EU threshold contracts. In the Italian example, for instance, under both the local and national procedures, notification requirements are reduced considerably from the EU threshold regulations. Under the national procedure, notification is limited to one national daily newspaper (two newspapers if over the EU threshold), whilst under the local procedure only the online *Albo Ente* service needs to be notified.

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<sup>54</sup> France, Germany, Hungary, Italy, Latvia, Poland, Slovakia, Spain, Sweden and the UK.

In terms of governance, most case study Member States have established national agencies dedicated specifically to public sector procurement (such as the Public Procurement Office in Slovakia, and the Public Procurement Council in Hungary). Generally, however, these agencies do not have statutory powers, and can only prepare advice and guidance for other public bodies.

Member States also demonstrate varying degrees of decentralisation, depending on national governance structures. In Italy, for instance, public procurement is largely devolved to a regional level, and consequently there are some differences in the approaches taken to awarding public contracts (provided they are below the EU procurement thresholds). Germany has the most regionalised public procurement structures, which is an effect of the federal nature of the state. The responsibility over public procurement lies with the Länder, only framework legislation exists at federal level. The UK is much more centralised, and a single agency – the Office of Government Commerce – controls procurement across central government.

### **5.3 SMEs and public procurement regulation and governance in the Member States**

In addition to general arrangements governing public procurement, a number of Member States have also introduced specific measures concerning SMEs' access to public sector contracts. Most Member States recognise the specific barriers that SMEs face when attempting to secure public sector contracts, and furthermore seek to actively break down these barriers to improve levels of SME participation. In the UK, for instance, government research has identified an apparent 'under-representation' of SMEs in public sector procurement, and argues that this needs to be addressed since SMEs often represent 'better value for money', 'better quality of service', and greater scope for innovation. In Sweden SMEs are supported due to their importance to the national economy (more than 99% of businesses in Sweden are SMEs) and their perceived role as an important source of new jobs.

In France the Minister of Economy, Finance and Industry announced in 2005 that, henceforth, the government would aim to facilitate SMEs' access to public procurement. Consequently the 2006 Code on Public Procurement contained a number of measures designed to aid SMEs, including: the sub-division of contracts into lots; more flexible rules for economic operators to prove their technical ability; eased financial checks; the possibility to ask bidders if they intend to subcontract to SMEs; and an obligation for awarding authorities to measure and report on the number of contracts awarded to SMEs. There was an additional provision that enabled awarding authorities to establish a quota of SMEs amongst candidates, but this was retracted in July 2007.

The subdivision into lots is endorsed by German framework regulation, as well as by the regional 'public procurement acts' and 'SME development acts' at Länder level. Debates are however in progress between the Länder, the federal ministries concerned (economics and technology; transport, building and urban affairs; and defence) and industry stakeholders to reinforce the current wording. This would set the subdivision of contracts into lots as a general rule instead of merely encouraging it (and thus would become closer to the French approach).

UK policy with regard to SMEs' access to public procurement dates back to 2003 with the publication by the government of a report exploring the role of small firms in public contracts. In 2005 a Concordat was published that set out good practice designed to aid SMEs' access to public procurement. Though non-statutory, local authorities were encouraged to sign up to the concordat in order to demonstrate their commitment to reform. Unfortunately it has not been possible to ascertain the level of participation. Similar guidance exists at the level of national government, but again it is purely voluntary, and thus difficult to evaluate.

Public procurement is, of course, a contested policy area subject to competing agendas. Whilst one area of government may produce guidance and good practice favouring SMEs, this may go against other policy objectives influencing procurement bodies. In Slovakia, for instance, it has been suggested that the Public Procurement Office currently has limited scope to impact on SMEs' access to public contracts, since they have no regulatory powers to affect other government departments, only the ability to issue good practice. In other cases central government may be actively promoting good practice to benefit SMEs, but the decentralised nature of public procurement means that regional and local government is free to pursue its own policies. In Italy, for instance, much procurement policy is set at a regional level, and thus there are significant variations in approaches. This is also certainly the case in Germany. Indeed variations in the inclusion of aspects other than value for money in public procurement regulation and guidelines at Länder level (such as preferences in tender evaluations in favour of women, environmental factors and participation in vocational training schemes) probably limit the emphasis given to SMEs' access per se – and impose an additional burden on companies that have to get acquainted with several different rules and guidelines, if they want to compete for public contracts in several Länder. In the UK, the central Office of Government Commerce works closely with the Local Government Association in order to build a consistent approach and to improve the extent to which the various layers of government follow the same policy objectives.

In other cases government policy is not designed explicitly to favour SMEs, and instead focuses on simplifying the public procurement process more generally, ultimately to create a level playing field. Spain and Italy exemplify this approach. In the former, efforts to improve the efficiency of public sector procurement – through legislation designed to reduce administrative burdens, for example – are arguably of disproportionate benefit to SMEs, but are not applied with any particular sector of the business community in mind. Likewise in Italy, despite lobbying by SME groups (such as the National Italian Association for the Construction Sector, part of the Italian Confederation of SMEs), there is presently little in the way of legislation designed to be of direct benefit for smaller firms.

#### 5.4 Measuring SMEs' access to public procurement

Whilst almost all of the case study Member States collect data on public procurement as a whole, information on SMEs' share of this total is much patchier<sup>55</sup>. Generally data are collected by a dedicated public procurement observatory or monitoring body, such as the Economic Observatory for Public Procurement (*Observatoire économique de l'achat public*) in France. Table 5.1 summarises the available data on SMEs' share of public procurement, though the following points need to be made about the reliability of this information:

- § The data include public procurement above the EU thresholds. The distorting effect of this information is larger for statistics on the value of procurement. In Hungary in 2005, for instance, contracts above the EU thresholds accounted for 21% of the total number of public procurement contracts, and 44% of the total value;
- § Data exclude public procurement below 'minimum' national thresholds – generally 'low value' and/or 'local' contracts (see Section 5.2);

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<sup>55</sup> Of the case study countries, only France, Hungary, Slovakia and the UK collect consistent data on SME access to public procurement.



- § It is not always clear whether the definition of an SME that Member States have used is in full compliance with the EU definition (e.g., the traditional concept of the 'Mittelstand' in Germany does not fully coincide with the EU definition).
- § Particularly in smaller countries, SMEs may make up a very large share of the total stock of businesses and thus would be expected to win a greater share of total public procurement. Though not included in the data, in Latvia, for instance, there are 58,600 SMEs, and just 6 large firms.

The data show that there is considerable variation between Member States in the level of SMEs' access to public procurement contracts. SMEs are least successful at winning public procurement contracts in the UK, where in 2005 they accounted for 16% of the total value of public contracts, and 50% of the total number of public contracts. Elsewhere the proportions were higher – as much as 46% of the total value of contracts in Slovakia. Particularly for smaller countries, however, it must be remembered that SMEs constitute a much larger share of the total stock of businesses (for example, see the Latvian example above). Also, there are marked differences between the results of these national studies and the results of the EU level analysis undertaken in this study and reported in Section 2. The figures in brackets in the Table 5.1 derive from this study. This is likely to be due to the inclusion of below EU threshold procurement and other definitional issues that limit the validity of comparisons.

**Table 5.1: SMEs' share of public procurement in selected Member States (2005)**

Member State	SMEs' share of public procurement		
	Volume of contracts (from national statistics)	Value of contracts (from national statistics)	Value of contracts above EU thresholds (estimates from TED)
France	64%	32%	35%
Hungary	67%	41%	68%
Slovakia <sup>56</sup>	n/a	46%	77%
UK	50%	16%	31%

Given the highly decentralised nature of their public procurement markets, data from Germany are generally not available, and the little information obtainable only exists at above threshold level, as awarding authorities are obliged to provide information on these to the statistical office (as well as to the Official Journal).

The French Observatory for Public Procurement collects detailed data on SMEs' access to public sector contracts (see Table 5.2). The data indicate that SMEs are much more successful at winning contracts from regional and local government than from the central government (39% of the total value of regional and local government contracts compared to 19% of the value of state government contracts). Moreover SMEs are more successful in winning public works contracts than any other type of public procurement, accounting for just under half – 46% – of the total value of such contracts in 2005 (77% by volume).

<sup>56</sup> Data are for 2006

**Table 5.2: SMEs' share of public procurement in France (2005)**

		Value	Volume
Awarding authority	State	19%	56%
	Regional and local	39%	66%
Type	Works	46%	77%
	Supplies	22%	47%
	Services	31%	62%
<b>Total</b>		<b>32%</b>	<b>64%</b>

## 5.5 Approaches to overcoming barriers to SMEs' involvement in public procurement

In seeking to better understand the barriers faced by SMEs when accessing public procurement, a number of Member States have undertaken research and survey work with smaller firms. In Poland, for instance, the Ministry of Economy, Labour and Social Policy undertakes six-monthly surveys of SMEs to explore their views on public procurement opportunities. Work by the Polish Agency of Enterprise Development found that the three most common barriers were:

- § Difficulties faced by SMEs when identifying and obtaining information on public procurement contracts;
- § A lack of capacity (managerial and technical competencies) within SMEs to deal with more complex tender procedures;
- § A shortage of financial resources to cope with bank guarantees, advance payments or delays in payments by public authorities.

In other countries the authorities also make use of surveys to collect intelligence and feedback from SMEs. In 2004 the French authorities undertook an extensive survey of companies that had never accessed public procurement contracts in order to determine why, and also of firms that had been unsuccessful when bidding for public contracts.

Based on a number of sources<sup>57</sup>, a list of good practice methodologies designed to remove barriers to SMEs' participation in public procurement was prepared, and each of the case study Member States interviewees were asked to describe whether they undertake such activity.

Overall, no case study Member State reported that they carried out work in each of the good practice areas. There follows a review of the main points of interest from the case studies under each of the good practice areas.

### *Informing SMEs about tendering opportunities*

Overall this is one of the more common areas of action within Member States, since national research has shown that this is a major barrier (in France and Poland, for instance). Moreover this activity is closely related to the e-procurement agenda, since websites and email alerts are

<sup>57</sup> Including the 2004 study on SME access to public procurement carried out for DG Enterprise and Industry and national strategies and good practice guides prepared by the authorities in the Member States.

seen as a more effective way of disseminating information on procurement opportunities than traditional forms of print media (newspapers, journals etc).

Most of the Member States reviewed have established websites providing information on public procurement opportunities. These centralised systems of providing information about public contracts are rarely targeted specifically at SMEs, instead they aim to increase overall awareness (though the benefits are arguably disproportionately felt by smaller firms). The coverage of these websites, however, is highly variable. Many only provide details of central government contracts, and in some cases this does not cover all government ministries (in France, for instance, the Ministry of Defence has its own procurement opportunities website). In Sweden it is the private sector that fulfils the role of collating and presenting information on public sector procurement opportunities (two such portals are OPIC and AJOUR).

The more comprehensive platforms provide information on regional and local government as well as central government. In Spain the Ministry of Industry, Tourism and Trade has developed an information portal called the '*Company Information System*' that lists all public procurement opportunities, from EU through to local government level. Other systems – such as the Supply2.gov service in the UK – aim to provide information specifically on smaller value contracts (usually under £100,000 or €150,000) from across central, regional and local government. However, in general these centralised systems are not compulsory and thus rely on 'attracting' awarding authorities.

In Germany, there is no single centralised bulletin or any other official nation-wide information source on public tenders. Most Länder used to publish their own bulletin (and also made this available on the Internet), in which public procurements are collected – though some Länder do not publish any such bulletin, which means that awarding authorities have to publish their tenders below EU-thresholds through other means: in newspapers, industry journals, their own websites, or on a variety of regional or supra-regional information websites. Such public procurement portals may contain sector-specific (like construction) tenders, or procurement of certain government levels (local authorities), but none of them provides full coverage of German tenders. The arguably largest of the portals, managed by a private entity, makes notices from the majority of Länder (and also, to a certain extent, from Austria and the Switzerland), and from all sectors, accessible in one place. Efforts are undertaken currently to widen the coverage of German tenders for which information will be available on the Internet, by creating a supra-portal, linking existing information sources.

There are also major variations in the depth of the information provided through centralised procurement registers. At their most basic these systems simply list contracts, perhaps in PDF format. More sophisticated platforms provide much more information – such as price, a named contact within the awarding authority, and perhaps even the full tender documents available for download. In other cases websites make use of a detailed search facility. The Procurement Monitoring Bureau in Latvia, for instance, operates a website with a search engine facility that enables businesses to search by date, price and the type of procurement procedure. A similar system operates in Poland. The Latvian website also enables awarding authorities to upload tender specifications, though the authorities estimate that just 1% of participating authorities provide this level of detail.

Despite their advantages, websites remain a reactive source of information, and in some cases Member States have implemented systems that contact businesses – usually via an email alert system – about upcoming procurement opportunities. The Company Information System in Spain, for instance, allows users to register for certain types of contract (usually sectoral), details of which are then emailed to them on a daily basis.

### *Training and support for SMEs*

Improving the capacity of SMEs to access public procurement is one of the main ways in which governments can increase the share going to smaller firms. Some research has shown that SMEs often lack the managerial and technical capacity to bid for complex public procurement contracts.<sup>58</sup> Some form of advice and/or training provision for SMEs takes place in all of the case study Member States. At a most basic level this consists of factsheets or guidance published on the website of the awarding authority. In the UK, for instance, local authorities usually include such information as part of a 'selling to the council' website, whilst the UK Welsh authorities have published a 'winning our business' guide that is available on their public procurement website.

Elsewhere public procurement agencies run courses of advice or training designed specifically for SMEs. The Procurement Monitoring Bureau in Latvia runs seminar courses providing information on public procurement law and other relevant issues that have been designed specifically with SMEs in mind. The Polish Programme of Public Procurement Educational and Informational Measures 2003-05, included a raft of free training and support activity designed to encourage businesses to bid for public sector contracts. Also in Poland, the Polish Agency for Enterprise Development runs an academy portal that includes public procurement training delivered via e-learning technology. In Sweden, NUTEK (the Swedish Agency for Economic and Regional Growth) runs a comprehensive training package for businesses in order to increase their capacity to bid for public sector contracts. This package includes a national awareness raising campaign, and assistance provided by a network of expert procurement consultants.

In other cases the private sector organises and runs training and support services aimed specifically at helping SMEs access public sector procurement. Chambers of Commerce are particularly active in this area. In Italy, for instance, the Association of Chambers of Commerce of the Veneto Region runs courses for SMEs to assist them with accessing public procurement contracts above the EU threshold. In both Spain and France the Chambers of Commerce have taken the lead in this area. The same applies in Germany: Chambers in most Länder operate public procurement advisory centres, which consult companies and awarding authorities on the procedure. The centres also draw up and maintain a list of qualified local suppliers - these lists can help awarding authorities that wish to learn about, and invite, potential bidders in the vicinity ('Zubenennungsverfahren').

### *Simplification of pre-qualification requirements*

The administrative burden associated with complying with the pre-qualification requirements of public procurement contracts can be borne to a disproportionate extent by SMEs. Consequently, as part of good practice packages, Member States often advocate the simplification of such requirements. In the UK, for instance, the Office of Government Commerce has developed a standardised Pre-Qualification Questionnaire and circulated it amongst awarding bodies at a central, regional and local level. The Questionnaire is restricted to simple questions to determine bidders' suitability, covering health and safety, equal opportunities and the applicant's financial situation. The principle of self-certification is adopted, such that bidders are not required to provide evidence at the pre-qualification stage, but may be asked to do so subsequently.

Elsewhere, Member States have encouraged the use of databases of companies, such that bidders need only complete pre-qualification requirements once. The Slovakian Public

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<sup>58</sup> See e.g. the UK study done by the Office of Government Commerce/Small Business Service, "Small supplier...better value?", 2005

Procurement Office has run such a company register since 2001. Applicants provide information regarding insurance status, (lack of) criminal record, tax compliance etc, after which they are permitted to remain on the register for one year. Upon request the Public Procurement Office provides 'acknowledgements' to procurement bodies that bidders meet these pre-qualification requirements, thus reducing the administrative burden placed on businesses. In 2006 the database contained 3,600 firms, and the Office had provided 3,600 acknowledgements.

Lists of local suppliers, operated by German chambers may also be considered as a pre-qualification tool, as the firms listed have to prove that they have the basic technical qualification for the crafts they are engaged in.

#### *De-briefing arrangements*

Though a requirement for public procurement above the EU thresholds, Member States make their own arrangements with regard to de-briefing bidders for smaller contracts. However, the picture here is mixed, and in general it appears that few countries operate consistent systems through which bidders are be-briefed following an unsuccessful attempt to secure a public sector contract. In France the Public Procurement Code makes it compulsory for awarding authorities to explain to failed bidders why they were unsuccessful (including for tenders below the EU threshold).

However, making such a requirement mandatory is uncommon amongst the case study Member States, and instead debriefing is usually included as good practice within (non-compulsory) guidelines or codes of conduct. In the UK, for instance, de-briefing forms part of the Code of Good Practice for Central Government, though it has not been possible to determine the extent to which these good practice principles are actually followed.

#### *Improved payment systems*

SMEs are more vulnerable than larger firms to the effects of late payment by public sector authorities, since the impacts are usually magnified. Nevertheless there is limited evidence available from Member States of good practice in this area.

In France the Economic Observatory for Public Procurement monitors and publishes data on public sector debtor days. In 2005, for instance, the figures indicate that the average for central government was 32.3 debtor days, and for local government 25 debtor days. The Observatory has set a target of reducing the former to 28 days by 2008, and has published a number of recommended measures for achieving this goal, including: keeping staff informed about the consequences for SMEs of late payments; simplifying the documents required of businesses prior to payments being made; and developing systems of online payment.

In the UK the Office for Government Commerce has introduced the Government Procurement Card (GPC). The GPC is a branded VISA purchasing card that can be used by all public sector bodies. The aim of the GPC is to make public sector procurement more efficient, and to ensure that private sector providers are paid on time. The value of public procurement using the GPC is expected to rise from £1.1 billion (€1.6 billion) in 2004 to £4.5 billion (€6.5 billion) in 2008.

#### *E-procurement*

E-procurement is of major importance, and all of the case study Member States were active to some extent in this area. Much of this activity is not targeted specifically at SMEs – instead the

driver is often public sector efficiency – but the benefits (administrative and other transaction cost reductions) are felt to a disproportionate extent by smaller firms.

In some case study Member States, e-procurement systems are at a relatively early stage, and are either being trialled within a small cross-section of government, or have only recently been introduced. The Public Procurement Office in Slovakia, for instance, launched an e-procurement system – EVO – at the beginning of 2007. The aim of EVO is to enable awarding authorities and bidders to conduct business entirely electronically (publishing through to submitting and assessing offers). A similar system is planned in Poland through the ‘gateway to Poland’ e-government system.

The French government has been actively promoting e-procurement as a means of selling to the public sector. Part of the problem has been raising the profile of e-procurement, and to this end it was made illegal to prohibit the electronic submission of bids in January 2005. The authorities have also been working towards overcoming other barriers to e-procurement, most notably the issue of electronic signatures and the security of electronic applications. In 2007 the Ministry of the Economy, Finance and Industry (MINEFI) established an e-procurement label in order to guarantee high quality and safety levels. Nevertheless e-procurement is still at an early stage – MINEFI estimate that whilst 80% of tendering packages are obtained electronically by downloading from the relevant website, only 2-5% of companies reply with electronic bids.

In Germany, e-procurement systems exist at several levels of government. At federal level, these are operated by the Ministry of the Interior, but also most Länder (e.g. North-Rhine Westphalia, Berlin and Bayern), and a number of local authorities have put into place such systems. The supra-regional information websites also have e-procurement functionalities. They can handle electronic signatures, allow full electronic submission of tenders, and may be integrated into awarding authorities’ own internal public procurement processes.

In Scotland in the UK, the Scottish Executive launched an e-procurement system in March 2002. ‘eProcurement Scotl@nd’ caters for both national and local government as well as the National Health Service in Scotland, and provides complete e-procurement functionality (covering end-to-end processes from requisitions to invoice payments).

#### *Other measures*

There are a host of other good practice methodologies that can make it easier for SMEs to access public procurement contracts. These include:

- § Breaking contracts into smaller lots to make them more manageable for SMEs, and/or excluding smaller lots from the requirements of the EU procurement Directives. These approaches are fairly common throughout the EU. In France the Public Procurement Code requires awarding authorities to make use of lots, unless this would limit competition, or create technical problems. Smaller lots are also common practice in Germany, and in Sweden, with 27% of procuring authorities reporting that they always make use of lots, and a further 26% reporting that they mostly make use of lots;
- § Making use of framework agreements. In Sweden, for instance, framework agreements are commonplace in public sector procurement, and frequently involve smaller companies. In Germany, framework agreements are employed by a number of large awarding authorities (e.g. the state railway), but their accessibility to SMEs was questioned;

- § Encouraging consortia of small firms. Most case study Member States indicated that they welcome bids from consortia of small firms, but do not have an explicit policy of encouraging such activities;
- § Employing 'most economically advantageous' or other economic criteria as part of bid appraisal. Under this approach the appraisal of public procurement bids is allowed to take account of factors such as overall quality and maintenance costs, as opposed to purely cost-based criteria. This approach is permitted for use in Slovakia for example, since it is recognised that large companies are able to push down prices, but competing pressures around low costs often mean that procurers are reluctant to appoint higher priced bids from SMEs.

For each of these measures it is difficult to ascertain how widely they are used, and also how effective they are in breaking down barriers to SMEs' access to public procurement. Most national procurement guidelines, good practice statements or codes of conduct include most or all of these activities as recommended methods of operation, though it is usually left to the discretion of the awarding authority as to whether they make use of them. Overall, very few of the Member States that were case studies collected information on the scale of usage of any of these methods, making it difficult to establish whether good practice is being followed and whether or not it is effective.

## 5.6 Summary

This section of the report looked in more detail at public procurement in ten Member States, and explored how the authorities in each country approach the issue of SMEs' access to public contracts (particularly those below the EU thresholds).

One of the key points to emerge from the case studies is the diversity of approaches towards public procurement in operation across and within the Member States. For public procurement below the EU thresholds, Member States operate different systems of legislation and governance, legacies of years spent building up structures in isolation. The recent EU Directives on public procurement have standardised approaches above the set thresholds, and there is some evidence from the Member States – particularly the accession countries – that the principles underpinning these Directives have filtered into national legislation governing sub-EU threshold procurement.

With regard to SMEs, all the case study Member States recognise smaller firms in some way, though approaches vary significantly. Very few countries have explicit aims to increase the share of public procurement contracts won by SMEs, and most aim to concentrate on levelling the playing field. Nevertheless there are now a range of strategies, good practice guides, concordats and codes of conduct in use that aim to influence procurement bodies and encourage them to be more SME-friendly.

Unfortunately, data on SMEs' share of public procurement are limited to a handful of countries. Those reviewed as part of this study show a wide range in terms of the proportion of public contracts awarded to SMEs, though other factors – not least the importance of SMEs within the business structure – affect this, making direct comparisons between countries problematic.

Across the case study Member States there is a wide range of good practice available regarding approaches towards breaking down the barriers to SMEs' access to public procurement. Activities cover a number of areas, including: providing information, training and support, simplified pre-qualification requirements, e-procurement systems, improved payment systems, debriefing

arrangements, the use of smaller lots and framework agreements, and the adoption of economically advantageous criteria as part of the bid appraisal process.

Assessing the effectiveness and impact of these measures is problematic, however. Many have either recently been implemented, or are in the process of being implemented. There is almost nothing in the way of published evaluation material available, or even monitoring on the part of the implementing authorities. Furthermore there is very little in the way of mandatory policy with regard to SMEs and public procurement. On the whole the measures reviewed above are purely voluntary examples of good practice (with the exception of some of the e-procurement activity, for instance). There is no obligation for public procurement bodies to follow all or even any of the recommendations, and there are other, sometimes competing forces that influence the activities of procurement bodies (for example, value for money and broadening competition). Moreover, public procurement is highly decentralised, making it hard for central government to influence decisions made at a regional and even local level, and leading to a wide diversity of approaches.



## 6 REVIEW OF THE FEDERAL PUBLIC PROCUREMENT MARKET IN THE UNITED STATES

### 6.1 Introduction

In addition to the national case studies, the study has looked at the situation in the US, and more specifically described and analysed the structure and functioning of the US federal public procurement market. This included:

- § analysing and assessing the various schemes at federal level which aim to promote SMEs' access to public procurement – most notably the Small Business Act (SBA) – and identifying their strengths and weaknesses;
- § comparing the EU and US systems (considering for example, whether the US initiatives and good practices are transferable to EU Member States without modifying the existing European legal framework).

There are similarities and differences between the procurement systems in the US and the EU. Some of the differences are fundamental in nature; others are significant but still may have some interesting aspects from a European perspective,

This section looks specifically at federal procurement. Individual states also have procurement procedures. The majority of them follow very similar principles, and have their own small and 'disadvantaged' business support mechanisms. At present there are relatively few formal links between the state and federal levels.

The major differences between the EU and US are as follows:

- § The EU public procurement legal framework consists of coordination rules enabling Member States to establish, within the limits of this legislation, a procurement practice that fits their national needs. The focus of this legislation is more on the procedure of buying (fair play) than on what is bought. There is some degree of freedom for contracting authorities to set requirements regarding private companies tendering for contracts. The directives are not intended to transform national law into a uniform model, but allow Member States significant freedom to draw up their legal framework according to the specific national situation. However, public procurement procedures in Member States should in principle enable enterprises to be familiar with the 'rules of the game', regardless of the Member State in which they tender. Although the rules are set at EU level, there is no actual procurement function of the scale of federal procurement in the US – there is therefore no direct correlation between the roles of the administrations.
- § The principle of the contracting rules in Europe is concerned with providing equal access to opportunities. The US, on the other hand, not only has specific targets for the involvement of small businesses but also has specific types of actions for which only small businesses are eligible. The context in the USA is therefore rather different from the EU since there is a very specific programme of positive action in favour of various 'disadvantaged' business types, together with a comprehensive system of reporting. There are also a range of specific schemes to support the achievement of these targets and a network of support organisations to assist the small businesses with the required certification and procurement processes. The affirmative action model is not unique to the US. There has been a recent government-wide

review of the procurement system in Canada which states that in instances where large scale procurement is the better option but one that poses barriers for small businesses then the Commodity Council will determine the best ways to protect the interests of SMEs and ensure that they have access either through consortia or a percentage of subcontracts<sup>59</sup>. Japan has had a system like this since 1970.

## 6.2 The context for federal public procurement in the US

The US government applies standardized procedures to purchase goods and services, using procedures that conform to the Federal Acquisition Regulation (FAR). The FAR is a standardized set of regulations used by all federal agencies in making purchases. It provides procedures for every step in the procurement process. It can use a variety of contracting methods including simplified acquisition procedures, sealed bidding, contracting by negotiation and consolidated purchasing vehicles to purchase products and services. The FAR is issued and maintained jointly by the Department of Defence, the General Services Administration and NASA. It was designed to consolidate the various individual agency requirements into a single consolidated set of standards. Although nearly all government agencies are required to use FAR, a few agencies are exempt from using it, and some have issued supplementary regulations – the main example of this being the Defence Federal Acquisition Regulation Supplement (or DFARS), which is used by the Department of Defence.

The main purpose of the FAR is to provide "uniform policies and procedures for acquisition".<sup>60</sup> The aim is to provide a system that

- § Satisfies customer's needs in terms of cost, quality, and timeline
- § Minimizes administrative operating costs
- § Conducts business with integrity, fairness, and openness
- § Fulfils other public policy objectives<sup>61</sup>

The FAR is the instrument that sets out certain wider socio-economic requirements, especially those relating to small and disadvantaged businesses, including the requirement for use of SMEs as subcontractors.

As with the European Directives, there are a series of thresholds within the FAR that govern the procurement process. These include a micro-purchase threshold (currently \$3,000), where there are no competition or publication requirements, and a simplified acquisitions procedure (FAR 13) for purchases between \$3,000 and \$100,000. These were mainly initially set out in the Federal Acquisition Streamlining Act (FASA) of 1994, which was intended to simplify government buying procedures. Government agencies, however, are still required to advertise all planned purchases over \$25,000 in [www.FedBizOpps.gov](http://www.FedBizOpps.gov). Originally micro purchases were set aside for small businesses but this is no longer the case and agencies can make micro-purchases using a Government Purchase Card.

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<sup>59</sup> Lastewka, W (2005) "Parliamentary Secretary's Task Force, Government Wide Review of Procurement: Final Report. Government of Canada

<sup>60</sup> FAR1.101

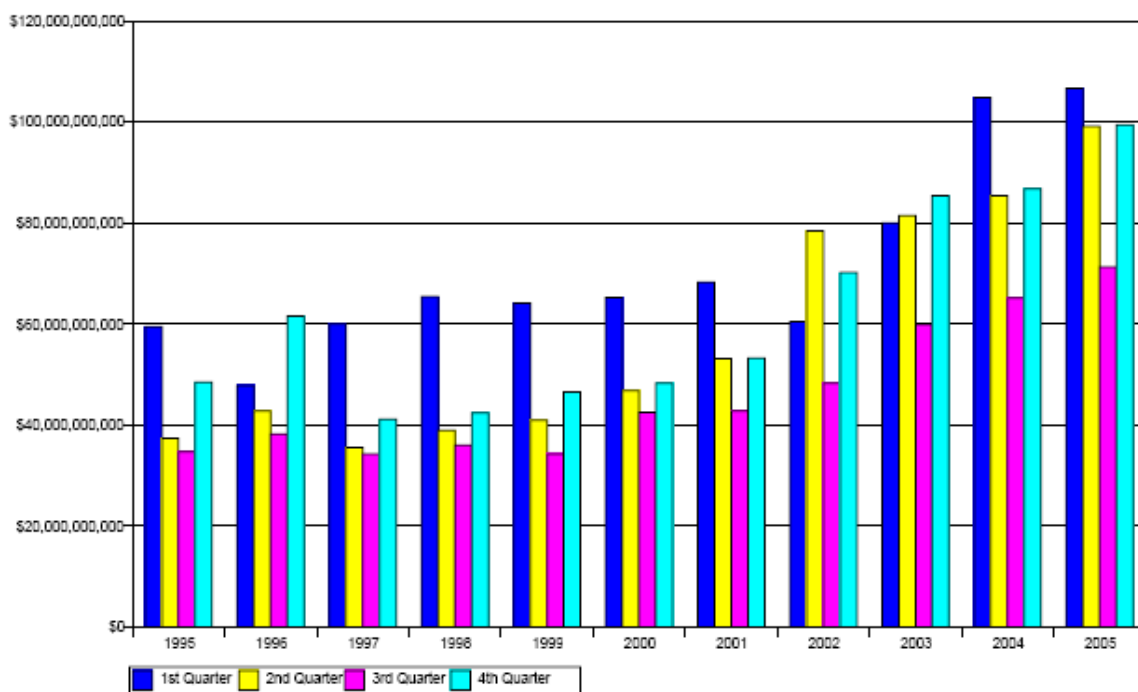
<sup>61</sup> FAR 1.102(b)

Procurement reform has also resulted in numerous new and/or modified acquisition vehicles. These include “indefinite delivery/indefinite quantity (IDIQ) contracts, government-wide acquisition contracts (GWACs) and multiple award schedules (MAS) contracts depending on the agency or the context in which they are used. These vehicles encourage long-term vendor agreements with fewer vendors and are in some ways similar to framework contracts and agreements. These contracts have also been criticised for reducing competition<sup>62</sup>. The US Acquisition Advisory Panel, an independent Commission, recently reported that forty percent of the almost \$400 billion US procurement market is handled through multi-agency framework agreements.<sup>63</sup>

It has been argued that the major driver behind this streamlining effort was the need to reduce federal employment numbers. The reduction in the number of procurement officers meant that the streamlining was needed in order to cope with workloads. However, these new contracting methods have much in common with some of the results of the recent reforms of the procurement directives, such as the move to framework contracts and the bundling of smaller contracts into larger units.

The federal government procures more than \$380 billion in goods and services each year. Legislation obliges agencies to contract with small business when sufficient numbers of such firms bid and the purchase is valued between \$2,500 and \$100,000.

**Figure 6.1: Federal Procurement trends by quarter, 1995 to 2005 (US\$)**



Source: FPDS-NG Federal Procurement Report FY 2005

<sup>62</sup> See, for example, GAO report No GAO-05-229 of 2005 and GAO report GAO/NSAID-0056

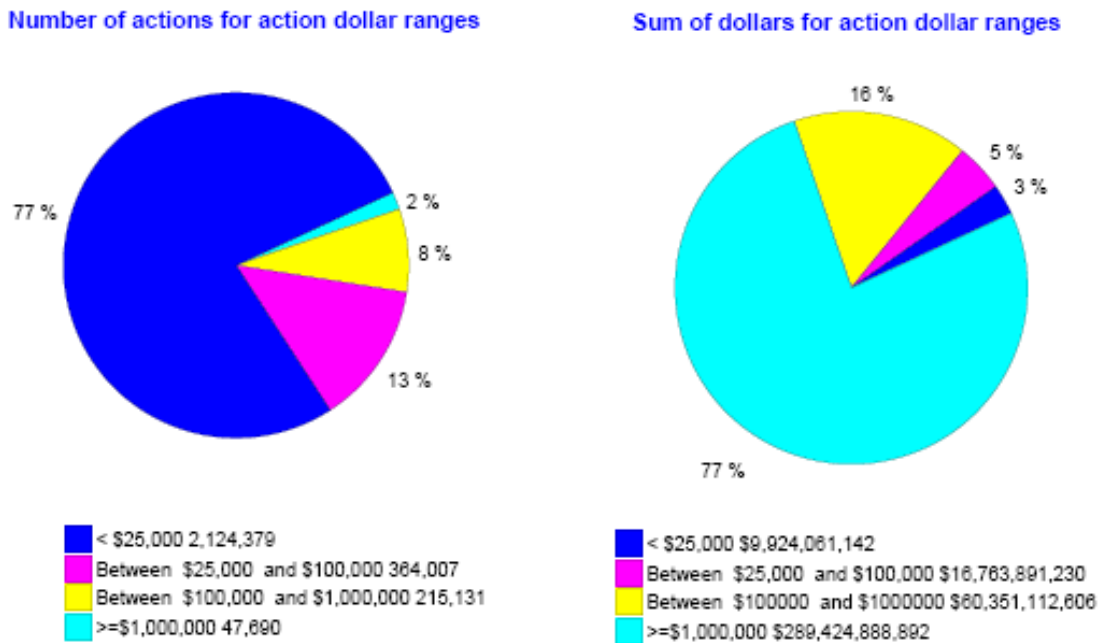
<sup>63</sup> Report of the Acquisitions Advisory Panel to the Office of Federal Procurement Policy and the US Congress (Draft final report December 2006)Draft final report

Within overall procurement patterns there has been a marked move from goods to services procurement. Currently services procurement accounts for more than 60% by value. In 2005 the Department of Defence (DoD) committed more than \$141 billion to service contracts, which represents an increase of 75% since 1999. However, it appears that this particular position of the DoD has no bearing on the global results since the share in value of the contracts awarded by this Department to small businesses is close to the average share awarded to small businesses by Federal administrations taken altogether<sup>64</sup>.

US contractors register centrally in order to participate in the public procurement process. This means that in principle follow-up and data monitoring are much simpler than in the EU. It also means that contracting officials can search the Central Contractor Registration to identify qualified small business contractors for specific small business opportunities. CCR is used to collect, validate store and disseminate data both on federal procurement and on grants and other forms of federal assistance. It covers both current contractors and potential providers. Applicants complete a one-time registration, updated annually, providing basic data for procurement and financial purposes – the system is also used for electronic funds transfer data. Connected to and largely integrated with CCR is the ORCA web-based system that collects various compliance and certification information that define businesses in terms of size, exclusion criteria and ownership that have to be submitted as part of the offer process. These are held centrally, obviating the need for contractors to submit the same information each time they make an offer since all the procurement offices across government can access the system. ORCA also automatically populates the basic vendor data in CCR based on the DUNS number.

The pattern of procurement opportunities in the US shows that it is dominated by a relatively large number of small procurements, but that the few large procurements account for a high proportion by value.

Figure 6.2: Contract actions by dollar value, FY 2005 through Fourth Quarter

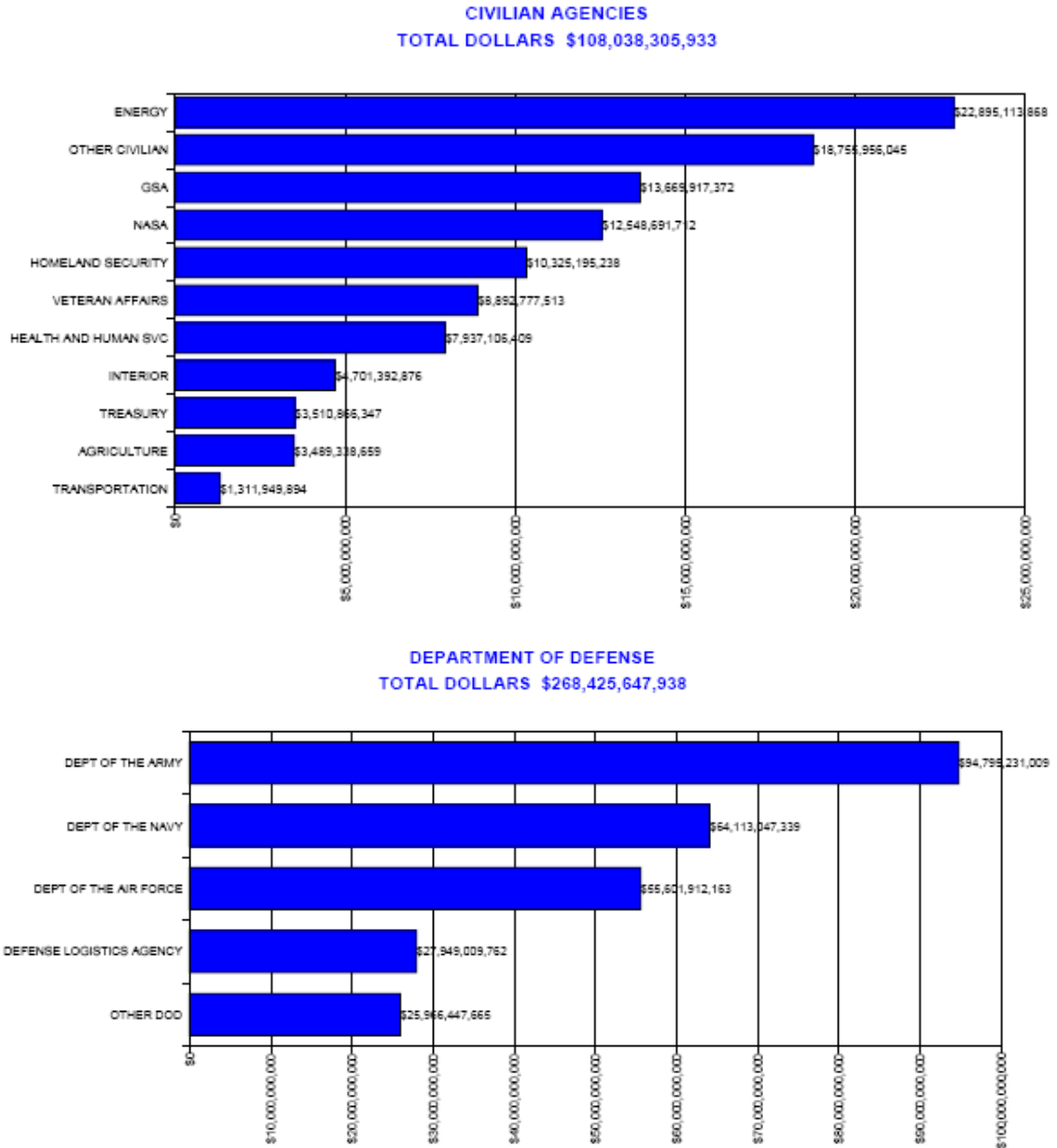


<sup>64</sup> Small Business Administration, 2005 Report

Source: FPDS-NG Federal Procurement Report FY 2005

Federal procurement covers both military and non-military purchasing in the US – while, in the EU, trade in arms, munitions and war material is outside the scope of the Directives. The key procuring agencies are indicated in Figure 6.3.

**Figure 6.3: Contract dollars by executive departments and agencies**



Source: FPDS-NG Federal Procurement Report FY 2005

### 6.3 Small businesses in the US context

Unlike the EU, the USA does not have a single definition of a small business. For research purposes the SBA Office of Advocacy defines small businesses as independent businesses

having fewer than 500 employees. However, in order to participate in procurement programmes and be designated as small businesses for these special programmes, they must meet size standards specified by the US Small Business Administration Office of Size Standards. These standards vary by industry<sup>65</sup>.

According to estimates of the US SBA Office of Advocacy there were 26.8 million businesses in the US in 2006. Of these about three quarters are single person businesses. Altogether small firms represent 99.9% of total businesses (the most recent data identify more than 17,000 large firms in 2004).

Small businesses represent 99.7% of employer firms, and employ about half of public sector employees. They are estimated to have generated between 60 and 80% of net new jobs annually over the past ten years. They create more than half of non-farm private GDP and contributed significantly to exports both by number and value. Small firms supplied 22.8% of the total value of federal prime contracts in 2005.

#### 6.4 Support for small businesses

The main provisions in support of small business in the US are set out in or related to the Small Business Act of 1953. This states that it is the declared policy of Congress that the Government should aid, 'counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order: to preserve free competitive enterprise; and, to insure that a *fair proportion* of the total purchases and contracts or subcontracts for property and services for the Government... be placed with small business enterprises...' (The Small Business Act of 1953).

Law 95-507, enacted in 1978, amended section 15 of the Small Business Act (15 U.S.C. § 644) to require that all federal agencies with procurement powers establish an Office of Small and Disadvantaged Business Utilization (OSDBU) and appoint a director to head the office. Under this act, the OSDBU is responsible for helping to oversee the agency's functions and duties related to the awarding of contracts and subcontracts to small and disadvantaged businesses. Paragraphs (4)-(10) of section 15(k) of the act specify a number of functions that OSDBU directors are responsible for carrying out in their roles as advocates for small businesses.

Three significant acquisition reforms enacted in the 1990s continue to affect small businesses in the government procurement marketplace. These are the Federal Acquisition Streamlining Act of 1994 (FASA), the Federal Acquisition Reform Act (FARA) or the Clinger-Cohen Act of 1996, and the Small Business Reauthorization Act of 1997. These reforms had an impact on small business involvement in procurement. As explained above, FASA introduced multiple award contracts and created a new category of micro-purchases exempted from the requirement for competition. The Clinger-Cohen Act authorised the use of credit cards for small purchases and specified no small business requirement for such purchases. The Small Business Reauthorization Act, on the other hand, increased the annual goal for small business procurements by federal agencies from 20% to 23%.

In 2002, the President announced a strong and clear small business agenda, stating that "Small businesses are the backbone of the American economy. Small businesses are the path to success for many Americans. Small businesses embody the American values of hard work, risk-

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<sup>65</sup> SBA's Office of Size Standards develops and recommends small business size standards to the Size Policy Board and to the Administrator of SBA. These include recommendations on small business definitions that other Federal agencies propose. Under the Small Business Act, Federal agencies must obtain the approval of the SBA Administrator before adopting a size standard different from SBA's size standard.

taking, and independence. Government contracting must be more open and fairer to small businesses.”

Historically, small businesses in the United States have received a share of federal procurement dollars not quite proportionate to their relative importance in the U.S. economy. As mentioned above, while 99.7 percent of all employer firms are small, they receive about 23 percent of direct federal procurement dollars. Subcontracting is also part of the federal procurement framework, although it has not received the same focus and attention as the prime contracting programme. Small firms receive almost 40 percent of subcontracting dollars<sup>66</sup>.

There are a wide number of initiatives in the US at federal level to promote the involvement of SMEs in the procurement process. Some of these are targeted at SMEs in general, and others at specific targets (SME types or geographic locations). Again, some are active programmes and others are monitoring or follow-up initiatives to ensure participation.

These programmes targeting specific groups within the small business area include:

- § Women's Procurement Program – aimed at increasing federal contracting opportunities for women-owned small business (WOSB), and the number of WOSB that successfully compete in the federal marketplace.
- § Service-Disabled Veteran-Owned Small Business Concern Program – allows authorities to restrict some of their small business set-aside acquisitions to such businesses.
- § The HUBZone Empowerment Contracting Program, which provides Federal contracting preferences to small businesses. These preferences go to small businesses that obtain HUBZone (Historically Underutilized Business Zone) certification in part by employing staff who live in a HUBZone. The company must also maintain a "principal office" in one of these specially designated areas.

These programmes may involve a small business reserve or set-aside or the use of a price evaluation preference.

Support, monitoring and other follow-up or implementation actions include:

- § The Certificate of Competency Program which allows a small business to appeal against a contracting officer's decision that it is unable to fulfil the requirements of a specific government contract on which it is the apparent lowest bidder.
- § Small Business Size Determination – if an interested party contests the size status of a business in procurements under the small business set-aside, the Office of Government Contracting determines whether the particular business qualifies as a small business under the size standards set out in the Code of Federal Regulations.
- § The Bundling Report aims to provide a system to alert SBA's Office of Government Contracting of contract bundling practices on the part of federal agencies that prevent a small business from successfully competing for a contract. There is also a Non Set-Aside Report, which provides a system to alert SBA's Office of Government Contracting when Government Acquisition Offices do not set aside requirements for Small Business.
- § National Goaling Program – to foster an equitable federal procurement policy, government-wide small business goals, in terms of a percentage of annual expenditure, are established for federal agencies. SBA negotiates the goals annually with each federal agency on an

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<sup>66</sup> Data from SBA

individual basis. Statutory goals have been established for Federal Executive Agencies overall. They are:

- § 23 percent of prime contracts for small businesses;
- § 5 percent of prime and subcontracts for small disadvantaged businesses;
- § 5 percent of prime and subcontracts for women-owned small businesses;
- § 3 percent of prime contracts for HUBZone small businesses;
- § 3 percent of prime and subcontracts for service-disabled veteran-owned small businesses.

In addition to the goals established, the Small Business Act requires each agency to have its own annual goal that represents the maximum practicable opportunity for small business concerns in each of these categories. The SBA negotiates goals with the Federal agencies to establish individual agency goals such that in the aggregate, the Government-wide goals are established. The SBA then uses the procurement data in the Federal Procurement Data System (FPDS) to monitor agencies' achievements against goals.

There are issues of how to co-ordinate the various different goals, it not always clear how they should be reconciled. Some procurement officers have also used "cascading procurements" where a call is issued open to disadvantaged small businesses with a cascading order of priority set out in the call.

Over the years, several laws have been passed covering subcontracting to small business. All of these are now incorporated into Section 8(d) of the Small Business Act and, in most cases, FAR 19.7. These laws require prime contractors having contracts that exceed the simplified acquisition threshold (SAT) to provide maximum practicable subcontracting opportunities to small business, HUBZone small business, small disadvantaged business, women-owned small business, veteran-owned small business (VOSB), and service-disabled VOSB. The clause "Utilization of Small Business Concerns," must be included in all federal contracts exceeding the SAT.

In addition, there are various other aspects of the policy that are of importance – for example, all federal agencies are required to have an office dealing with small business procurement issues. Large companies are also required to have a small business plan as part of their proposals to show how they intend to involve small business in the performance of the contract. In practice many have permanent small business offices to deal with these requirements.

## 6.5 Results and implications on SMEs' access to public contracts

Since the FASA came into force in 1994, small businesses have reached a point where they account for 34% of the contracts by value, and 78% by volume on the GSA schedules<sup>67</sup>. However, within the global targets those for women-owned small businesses and service-disabled veteran-owned and HUBZone business have not been achieved. The level of involvement of WOSBs remained fairly constant at around 2.9% between 2001 and 2003, but reached 3.3% in 2005. In 2002 the share for minority owned small businesses had risen to 6.75%

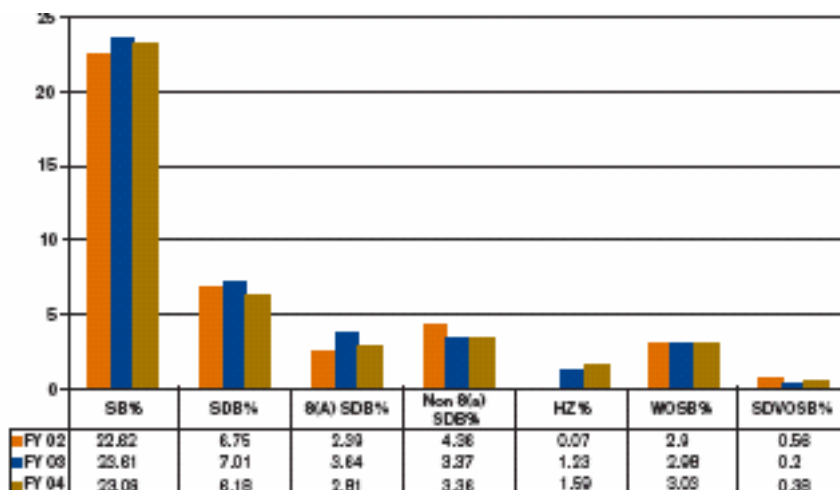
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<sup>67</sup> GSA is the main federal acquisition and procurement force offering a central procurement function for equipment, supplies, telecommunications, and integrated information technology solutions to customer agencies. Under the GSA Schedules (also referred to as Multiple Award Schedules and Federal Supply Schedules) Program, GSA establishes long-term government-wide contracts with commercial firms to provide access to over 10 million commercial supplies and services that can be ordered directly from GSA Schedule contractors or through the GSA Advantage!<sup>®</sup> online shopping and ordering system. While the mandatory small business preference programs in FAR Part 19 do not apply to orders placed against GSA Schedule contracts, such orders may be credited toward an ordering activity's small business goals.



from 6.1% in 2001. Veteran owned businesses received 0.25% in 2001, 0.23% in 2002 and 0.6% in 2005. HUBZone businesses have risen from 0.72% in 2001 to 1.94% in 2005 with a substantial growth in the dollar value but still well short of the target set.

**Figure 6.4 Small Business percent of total federal prime contracting dollars 2002-2004<sup>68</sup>**



However, it does seem that small businesses have been adversely affected by some of the wider procurement reforms. For example, the goal of reducing administrative costs for the administrations has meant that the bundling of contracts has become increasingly popular – a trend also being seen in the EU. A study for the SBA Advocacy Office<sup>69</sup> found that the number of bundled contracts rose 19% between 1992 and 2001. In addition contracts being renewed were more likely to be bundled and small firms were not receiving a large proportion of these awards. The report estimates that “for every increase of 100 bundled contracts there is a decrease of 60 contracts to small business, and for every additional \$100 awarded on bundled contracts there was a decrease of \$12 to small business. At a level of \$109 billion in 2001, bundled contracts cost small businesses \$13 billion annually” which represents a substantial decrease in small business involvement in procurement. Given that 44.5% of all prime contracts were bundled in this period this represents a large potential loss of small business involvement. The administration has responded to these findings by making changes to how agencies can put several contracts together into a single vehicle and, for example, instructing the DoD to seek offers from all contractors offering the required services under multiple award contracts. There have also been changes in the registration processes and streamlining of databases to make the participation process less burdensome for SMEs. In all an aggressive policy of supporting in SMEs has been followed to minimise the impact of bundling on SMEs.

The counterpart of having specific set-asides for SMEs and regulatory support for the involvement of SMEs is that there is a process for the challenging of contracting actions. This too has been amended recently, with SMEs now having to submit appeals to the federal court in Washington, rather than to any competent federal court (local to the business). There have also been changes in terms of what can be appealed. For example the FASA generally excluded the right of appeal over task orders, except where this significantly increases the scope, period or maximum value of a contract. This means that agencies have a great deal of freedom to use task orders (single supplier non tendered orders for contracts of low value) to acquire goods and services that were

<sup>68</sup> From FPDS annual reports

<sup>69</sup> *Eagle Eye publishers, Inc (2002) the impact of contract bundling on Small Business*

very generally described in the original request for proposals. Case law now makes it very difficult for SMEs to succeed in challenges to this type of contracting. There has also been a strong move to the use of arbitration to settle disputes. While this may be beneficial for individual businesses, not least on grounds of speed and cost, it does mean that the decisions are not recorded, may not be enforceable and are difficult to follow for monitoring purposes. Finally the creation of “innovative procurement tools” for large businesses, like the use of procurement processes falling into the category of “other transactions” that lie outside the remit of the FAR and its small business requirements but involve large contract values also eroded the position of small businesses.

One of the major issues has been the role of procurement professionals in the implementation of the various measures. Bearing in mind that there was a large reduction in the number of procurement officers in the agencies at the time of these reforms, and the fact that different agencies have different procurement cultures and practices, the role of the procurement officers is important. Given the dispersed nature of contracting in the EU, this must be even more the case.

In addition to prime contracts small businesses also benefit from subcontracts for federal procurement contracts. These subcontracts had a value of about \$50 billion in 2004. However, although this value has risen from around \$22 billion in 1994, the subcontracting percentage has remained (subject to some fluctuations over time) unchanged. There has been a long tradition of promoting the involvement of SMEs in subcontracts – including examples of set-aside measures, and also the section of Public Law 95-507 that states that “no contract shall be awarded to any offer unless the procurement authority determines that the plan of the proposed prime contractors offers such maximum practicable opportunity” and placing an affirmative duty on the contracting officer to ensure full compliance.

The FAR, part 19.7 sets out the structure for a subcontracting programme which requires businesses other than small businesses to set out a sub-contracting plan if the contract exceeds \$500,000 (\$1m for construction of a public facility) and offers further subcontracting opportunities. This requirement does not apply in the case of federal contracts where the work is being performed outside the United States. There could therefore be an incentive for large firms to favour this approach rather than to go through the processes required for domestic subcontracting. The content of the subcontracting plan is formally defined and there are strong reporting requirements and potential follow-up/audit of the conformity of activities to the plan.

The SBA and the Office of Federal Procurement Policy are the primary agencies responsible for the follow-up of SME measures

## 6.6 Summary

The American experience shows that small businesses can be helped to compete with large businesses with the support of affirmative action programmes. One consequence of the affirmative action programmes, the participation targets and the associated monitoring systems is that there is a large amount of data available. While there are still some problems with the reliability of this data,<sup>70</sup> compared to that available at the EU level it is extremely comprehensive, and can provide a level of information that is extremely difficult to achieve in Europe.

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<sup>70</sup> Report of the OMB (insert ref)

What it cannot, of course, do without further analysis is to show to what extent the levels of participation are directly related to the affirmative action approach. Neither can it measure benefits from procurement. The approach has also been in place for an extremely long time, so identifying short-term trends does not necessarily indicate the causal link with the policies. However, a tentative comparison between, on the one hand, the share of SMEs in the value of the largest EU public contracts without any affirmative/discriminatory measure (42%) and, on the other hand, the 23% of the value of US Federal procurement awarded to small businesses, might suggest that the historical US quota policy has had only limited impact.

One of the drawbacks of the US system has been that although it has developed a successful group of small businesses who operate within government contracting arena, there are problems associated with success – a small firm that succeeds in this market may – indeed should – grow to the point where it can no longer benefit from the small business set-aside. However, without that access they sometimes feel unable to compete successfully for contracts against big organisations. There seems to be a trend among successful businesses approaching the edge of their size category, either to stop growing or to actively seek acquisition by a large company that will be able to compete in the larger market pace. This might have an impact on competition, best value for money purchases and on employment.

As contracts get larger and last longer, the whole issue of definition of small business and the frequency of review of business size will become more important. There is an issue, therefore about the extent to which the rules encourage businesses to grow and evolve.

As the economy has become more global, there has been recognition that there is a need for greater flexibility in small business programmes, especially to take account of changes in procurement policies and practices.

Other issues that have been identified with the system include the relative complexity of having several different schemes and target groups, and the resulting implications for the procurement officers given the range of requirements and the volume of regulation and case-law with which they have to contend. Difficulties have also been identified in promoting small business participation in consolidated contracts. Again this partly relates to the complicated statutory provisions including the reporting and review requirements.

#### **Adaptability of US practices to the EU**

Clearly there are fundamental differences of approach and policy between the US and the EU. Nevertheless there are some interesting similarities both in terms of the recognition of the problem, and the difficulties encountered in the monitoring and follow-up.

Clearly the EU legal framework precludes the affirmative action approach, and this limits substantially the types of compulsory actions that can be proposed. It is also suggested that the fragmentation of markets in the EU compared to the situation in the US necessarily requires a different approach.

The US federal programmes are supported in two ways – by a procurement budget and process administered at federal level over which there is a degree of control, and by a national network of support facilities through the SBA local offices. Neither of these exist at EU level, although clearly the Member States themselves have procurement programmes and a range of small business support mechanisms.

The extent to which this type of action can be translated to a European context is, therefore, limited.

However, what is of specific interest is the impact of regulatory changes on the small business community since many of these changes are now appearing as a result of the latest changes to the procurement directives and the way these are applied by the contracting authorities. The level of data collected in the US, partly because of their contractor registration system (which could, in principle be emulated in Europe and is used either wholly or partially in several Member States,) means that they have been able to track the impact of the changes in a way that would be extremely difficult in the EU. The key issues therefore are:

- § A central registration system for contractors would potentially reduce the administrative burden for suppliers at the same time as improving the quality and quantity of data available for evaluation and monitoring. It would also assist with cross-border procurement. Registration systems are being introduced in many Member States but at present these are relatively fragmented, often involving multiple different systems each of which has different requirements that, perversely, increase the burden on suppliers.
- § The trend to larger, longer contracts – multiple or framework has had an impact on SME participation in the US. This trend, driven on the one hand by the modernisation of public management and cost-saving initiatives, and on the other by changes in the directives is now appearing in Europe. It would be surprising if there were not a similar impact on SME participation as a result.
- § Following on from this, the issue of subcontracting is becoming more important. The extent to which SMEs benefit from this in Europe is not known – but if it represents 40% of US subcontracting dollars, it is also likely to be very significant in Europe. Changes in contracting patterns in the US may also be reflected in Europe – away from a major role for the prime contractor to much more fragmented groups of contractors reflecting the wider scope of contracts.
- § The European directives have two sets of objectives – those relating to the internal market and international contracting, and those concerning equality of opportunity at the Member State level. There is an argument that at the national level, SMEs in Europe are less disadvantaged than at the US federal level since they can operate relatively well in their national markets where the dominance of large firms is less marked. There is therefore less of an imperative for specific SME initiatives. On the other hand, the fragmentation of markets has been one of the drivers behind initiatives to encourage SMEs to contract (or subcontract) internationally where they are potentially more disadvantaged than is the case in the US. It is perhaps worth noting that the changes in procurement policies in the US, despite the aims and expectations when the changes were introduced, have not affected the dominant participation of the hundred or so key federal contractors.
- § There is a balance between the need for collection of information – by whatever means – and the resulting burden on firms. Similarly the drive to use SME sub-contractors potentially has implications for the prime contractors. However, in the US – at least at an overall level – few specific problems were reported by suppliers themselves. This may, however, be a reflection of the fact that the system has been in place for such a long time and is therefore part of the general business culture. That being said, the fact that there are still efforts to streamline many of the reporting functions, and the effect of driving large firms to use contractors outside the US to avoid some of the requirements, do suggest that there are still some problems in achieving this balance. It remains, however, an area where there is a shortage of good data.
- § A final point is the role of the individual procuring entities. The practical implementation of the rules – especially where there is a wide degree of freedom, the nature of the contracting

procedures down to the construction of the individual calls for tenders and the evaluation procedures have an extremely important effect on the potential for SMEs to participate in competitions which may go beyond the effect of the SME support measures – in either direction. This was commented on in the US – especially in the context of increasing workloads for procurement officers.

## 7 EVALUATION CONCLUSIONS AND RECOMMENDATIONS

### 7.1 Key findings

#### **The EU public procurement market and policy objectives**

It is estimated that in 2002 the total value of public procurement was €1,500 billion, representing 16% of the EU-15's GDP. Since then EU public procurement will have increased as a consequence of enlargement and economic growth. The majority of public procurement takes place at national and lower levels of government, only a small proportion is done by EU institutions. An estimated 16% of public procurement is above 'EU thresholds' where EU directives specify the procedures that should be undertaken. The EU policy objectives are targeted at ensuring transparency, efficiency, the single market and equal access between large enterprises and SMEs.

EU policies concern public procurement both above and below EU thresholds.

#### **Trends in the access of SMEs to public procurement**

It was estimated that, in 2001, the proportion of the value of public procurement above EU thresholds secured by SMEs was between 29% and 43%. This study has found that, in 2005, this proportion stood at 42%. Since the 2001 report used a range it is difficult to ascertain whether there was an increase in SME access to public procurement between 2001 and 2005, though the 2005 figure is at the upper end of the scale used in 2001. The data also suggest that SMEs tend to be more successful when bidding for central government contracts, and less successful in securing public contracts in the EU-15 compared with the EU-10.

It should be remembered that the 42% figure may well be an underestimate since this does not take into account the value of contracts subcontracted to SMEs. Interestingly, statistics from the US federal public procurement markets (see Section 6) indicate that small businesses received almost 40% of US subcontracting dollars in 2006, although the total value of contracts directly awarded to them by the Federal agencies was only 23%.

It is important to consider the relative importance of the SME sector when analysing SME access to public procurement. In 2004, 99.8% of all companies in the EU were SMEs, which suggests that SMEs are underperforming in terms of securing public contracts. However, in 2004 SMEs accounted for 56% of gross value added (GVA), 67% of employees within the business sector (excluding agriculture, fisheries and financial services) and 58% of combined company turnover. However, when comparing the value of contracts awarded to SMEs (42%) with the share of the latter in total company turnover in the EU-25 (58%), it should be kept in mind that this latter figure relates to 'public and private contracts' of all sizes in the EU economy, while the 42% figure relates only to large public contracts in the EU.

There are also important differences within the category of SME. Medium-sized enterprises (broadly those firms employing between 50 and 250 people) secured a slightly higher share of public contracts (23%) than their role in the economy would suggest – measured by their share in combined company turnover (19%). This was not the case of micro and small enterprises which have a much worse performance.

Although comparisons with the US are problematic because there is not a common definition of SME, it is estimated that small businesses (who may employ up to 500, 1000 or even 1500 people in certain sectors) supplied just 23% of the total value of Federal prime contracts in 2005, while they provide around half of private sector employment and GVA. The comparison with the estimate of 42% for the share of SMEs above EU threshold public procurement suggests that SMEs in the EU are performing well. Particularly so since larger contracts account for a greater share in above-threshold procurement in the EU than in the US: 93% of the total value of above EU threshold public procurement was in contracts (some of which were broken down into lots) of over 1 million dollars (corresponding approximately to € 802 thousand at 2006 exchange rates), whilst the equivalent figure for the US Federal public procurement was 74%. But the comparison raises further issues. The fragmented EU public procurement market and the relatively small amount of cross border public procurement (see below) appears to favour SME participation and the EU public procurement market can certainly not be characterised as one dominated by a small number of big players that have been able to develop economies of scale at the European level. In the US Federal public procurement market, scale appears to be a more important aspect of competitiveness. This raises issues of whether the further development of the single market in public procurement could disadvantage SMEs.

This comparison, and the good performance of medium sized companies suggests that the EU is, in general, succeeding in ensuring reasonable access of SMEs to public procurement in above EU-threshold contracts. The average value of above EU-threshold contracts for which CANs have been published is relatively low – though this can not explain the EU's advantage, as the median value is considered to be even lower in the US. For all CANs, the median value was 335,000 euro (it was considerably higher for public works and lower for supply and service contracts). Contracts of less value than this would not normally pose capacity challenges to medium sized companies, nor indeed to many small companies employing less than 50 people. However, as mentioned already, the major part of the value of all contracts comes from larger contracts.

#### **Cross-border public procurement**

In 2001 it was estimated that at least 1.1% of above threshold public procurement contracts were cross (EU internal) border – without the intervention of any local distributor or subsidiary. The incidence appears to have increased since 2001 and was 1.9% in 2004. However, the tendencies of companies operating in several member states to maintain offices/addresses in the countries in which they are active, means that the estimates are likely to considerably understate the actual level of cross border trading in above EU threshold public procurement. Indeed, while it was out of the scope of this study to provide figures on indirect cross-border procurement, a previous study on the impact of the public procurement directives<sup>71</sup> showed that around 3% of bids submitted by firms in a sample would be direct cross-border procurement while around 30% of them would be proposals from the subsidiaries of foreign companies. Interestingly, small countries tend to award more contracts to foreign companies than larger countries.

#### **The experience and perceptions of companies in public procurement**

A selection of businesses and awarding authorities were surveyed in order to explore barriers to accessing public procurement opportunities and the ways in which the authorities go about contracting work to firms.

The survey of SMEs indicated that the most frequent problem faced by small businesses when bidding for public procurement tenders is an emphasis placed on the price of the bid by the

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<sup>71</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/docs/final\\_report\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/final_report_en.pdf)

awarding authorities (52% of the companies encountered this either 'regularly' or 'often'). It was perceived that the evaluation criteria used by awarding bodies often neglect non-price factors such as quality and flexibility, often seen as more characteristic of bids submitted by smaller firms.

This finding supports the commonly held opinion that the risk-averse behaviour of awarding authorities, and their focus on short-term financial considerations, is probably the biggest barrier to SMEs in winning public contracts.

Onerous paperwork requirements were also mentioned as a common problem (46%).

With regard to bidding arrangements, SMEs stressed that: the use of e-mail as a preferred channel of communication, improving tender specifications and documentation, as well as improving information on tenders in general were seen as the three most helpful actions that awarding authorities could do. Training for companies, the use of framework agreements and contracts, and more time to draw up tenders were less frequently emphasised.

### **The experience and perceptions of awarding authorities**

There are marked variations in the experiences and perceptions of awarding authorities on issues affecting SMEs' access to public procurement. There are also some contrasts in the perceptions of awarding authorities and SMEs as to what is or would be useful.

Of the possibilities for enabling SMEs access to public procurement, the cooperation between smaller companies in order to jointly fulfil technical or financial requirements is used 'always' or 'often' by 60% of awarding authorities (this is obligatory in procurement above EU-thresholds, but not always employed in below-threshold procurement). The emphasis on this option is justified and endorsed by SMEs. However, 31% of awarding authorities did not, or only infrequently used this possibility.

Breaking down contracts into lots is 'always' or 'often' done by 38% of awarding authorities, and also emphasised by SMEs, especially micro-enterprises, as an action that would enable the access of smaller companies to public contracts.

Only 10% of the awarding authorities surveyed published prior information notices 'always' or 'often' even though it is considered important by SMEs. Also 23% of awarding authorities said that they never awarded framework contracts and agreements to SMEs.

The full potential of e-procurement is not widely exploited. Only 30% of awarding authorities saw it as 'helpful' or 'very helpful' in enabling SMEs access to public procurement. In contrast SMEs considered it rather more beneficial. However, 58% of awarding authorities employed some form of e-procurement, 36% of these accepted tenders in full electronic form, including electronic signatures, 40% accepted parts of the tenders in electronic form, 48% took advantage of systems storing and/or retrieving companies' administrative information (usually after some pre-selection procedure), and 65% provided electronic tools (e.g. calculation sheets) for tenderers.

Amongst the weaknesses perceived by awarding authorities of SMEs, capacity and financial guarantee were most often cited. The narrower product range of SMEs, their inability to meet all requests and the lack of references that could make the contracting of an SME a risk were also mentioned.



### **The key aspects of Member State approaches to SMEs' participation in public procurement**

There are a diversity of approaches towards public procurement across and within EU Member States in respect of public procurement below the EU thresholds. Member States operate different systems of legislation and governance, a legacy of years spent building up structures in isolation. On the contrary, for public procurement above the EU thresholds, the EU Directives have standardised approaches and there is some evidence from the Member States – particularly the new Member States – that, at least, the principles underpinning these Directives have filtered into national legislation governing sub-EU threshold public procurement.

All the case study Member States acknowledge that there are issues surrounding SMEs' access to public procurement, though approaches vary significantly. Very few countries have explicit aims to increase the share of public procurement contracts won by SMEs, and most aim to concentrate on ensuring a level playing field. Nevertheless there are now a range of strategies, good practice guides, concordats and codes of conduct in use that aim to influence procurement bodies and encourage them to be more 'SME-friendly'.

Unfortunately, data on SMEs' share of public procurement are limited to a small number of countries. Those data reviewed as part of this study show a wide range in terms of the proportion of public contracts awarded to SMEs, though other factors – not least the importance of SMEs within the national economies – affect this, making direct comparison between countries of below EU threshold, SMEs' public procurement performance problematic.

Across the case study countries there is a wide range of good practice and experience concerning approaches to breaking down the barriers to SMEs' access to public procurement. Activities cover a number of areas, including: providing information, training and support; simplified pre-qualification requirements; e-procurement systems; improved payment systems; debriefing arrangements; the use of smaller lots and framework agreements; and, the adoption of economically advantageous criteria as part of the bid appraisal process.

Assessing the effectiveness and impact of these measures is problematic, however. Many have either been implemented only recently, or are in the process of being implemented. There is almost nothing in the way of published evaluation material available, or even monitoring on the part of the awarding authorities. Furthermore, there is little mandatory policy with regard to SMEs and public procurement. In the main the measures mentioned above are voluntary examples of good practice (with the exception of some of the e-procurement activity, for instance). There is, by definition, no obligation for public procurement bodies to follow all, or even, any of the recommendations. Moreover, public procurement is generally decentralised, making it hard for central government to influence decisions made at a regional and local level. Thus it is likely that there will continue to be a wide diversity of approaches.

### **Similarities, differences and lessons from the US**

In contrast to the EU and EU Member States there are and have been for a considerable time targets and affirmative action programmes for small business access to Federal public procurement in the US. One consequence of the affirmative action programmes, the participation targets and the associated monitoring systems, is that there is a large amount of data available. While there are still some problems with the reliability of this data, compared to that available at the EU level it is comprehensive, and provides more detail than is possible in Europe. However, there is only limited evidence as to whether the affirmative action programmes work and what costs and benefits they generate. (On the contrary, the comparison between, on the one hand, the share of SMEs in the value of the largest EU public contracts without any affirmative/discriminatory measure (42%) and, on the other hand, the 23% of the value of US

Federal procurement awarded to small businesses, might suggest that the historical US quota policy has had little impact.

In this respect, research by the University of Washington<sup>72</sup> indicates a number of drawbacks associated with the implementation of the US 'set-aside' system. One of the drawbacks is considered to be that although it has developed a successful group of small businesses who operate within government contracting arena, there are problems associated with success – a small firm that succeeds in this market may – indeed should – grow to the point where it can no longer benefit from the small business 'set-aside'. However, without that access they sometimes feel unable to compete successfully for contracts against large organisations. There is therefore a trend among successful businesses approaching the limit of their size category either to stop growing or to seek to be acquired by a larger company that will be able to compete for larger contracts. This has an impact on competition, best value for money purchases and on employment.

As contracts get larger and last longer, the whole issue of definition of small business and the frequency of review of business size will become more important. There is an issue, therefore about the extent to which the rules encourage businesses to grow and evolve.

In any case, the EU legal framework precludes such an affirmative action approach, and this limits substantially the types of compulsory actions that could be applied. In addition, the fragmentation of markets in the EU compared to the situation in the US, may require varied actions in different areas.

The US federal programmes are supported in two ways – by a procurement budget and process administered at federal level over which there is a degree of control, and by a national network of support facilities through the SBA local offices. Neither of these exists at the EU level but there are analogies at the Member States level.

The data collected in the US, partly because of the US contractor registration system (which could, in principle be replicated in Europe and exists either wholly or partially in several Member States) means that in the US it has been possible to track the impact of the system in a way that would be extremely difficult in the EU.

## 7.2 The responses to the evaluation questions addressed

The Task Specifications for the assignment posed six evaluation questions concerning effectiveness and efficiency. The evidence from the analysis of CANs, surveys of companies, Member state case studies and comparisons with the US Federal procurement policies provides the basis for the following replies.

### **Effectiveness**

*To what extent have existing practices helped to address market gaps in SMEs' access to public procurement?*

Medium-sized enterprises are performing relatively well when considering their access to public procurement contracts above threshold (securing 23% of public contracts in terms of value, which is to be compared with their share of 19% in the economy in terms of company turnover),

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<sup>72</sup> in the context of the forty years old 'Government Procurement Law Program'

whereas this is not the case of small and micro enterprises (accounting for only 11% and 7% of public contracts, but 19% and 19% of company turnover, respectively).

Whilst the overall picture is, therefore, of some success in improving SME access to public procurement, it is difficult to assess the extent to which this can be attributed to the practices employed by Member States to address these market gaps. Survey and case study evidence from the Member States has provided information about the practices employed by public procurement bodies to address market gaps in SMEs' access to contracts. However, it is impossible to build up an aggregate picture of these practices since there is simply too much diversity across and within Member States. SME policy is largely voluntary and affected by competing agendas facing procurement bodies. Furthermore, there is almost no empirical evidence of the impact of these practices, and Member States tend not to even monitor SME access to public procurement.

Survey evidence suggests that, in many cases the barriers faced by businesses are not addressed by awarding authorities.

Existing practices that improve information flows, reduce the transaction costs of bidding for public contracts and improve the quality of calls for tender appear to be improving access of SME to public procurement according to the results of the surveys. These include *inter alia* searchable information websites that contain national procurement tenders, efficient company registry or pre-selection systems, as well as training of, and consultation for awarding authorities. However, there is little hard empirical evidence to assess the precise causality links and effects of existing practices.

*What other measures could be envisaged?*

Further measures to improve the quality of invitations to tender, together with further moves towards e procurement and central registration systems would reduce further perceived disadvantages experienced by in particular small and micro enterprises.

*Are there barriers to effective transfer of good practices from one Member State to another, and from the US to Member States? If so, what are these barriers? How could any such barriers be overcome?*

There no major legal or institutional constraints on the transfer of good practices from one Member State to another. However, there are practical challenges. The structure of public procurement varies markedly. In some countries procurement is centralised, in others it is very decentralised. In most countries there are many different agencies involved with different traditions and practices. Furthermore, it was not clear that good practices were necessarily transferred effectively within Member States in part because of the obvious lack of leverage through which policies and practices could be 'enforced'. In these circumstances it is likely that the transfer of good practices between Member States would be best organised through the formation of 'clusters' of policy makers and practitioners who operate in similar institutional contexts, and including those with good and 'well evidenced' experience, working closely together over a period of time focussed on particular aspects of good practice of mutual interest.

There is less scope for transferring good practices from the US to Member States because of the differing institutional and legal frameworks.

Having said this, the practice in the US of monitoring whether or not 'small businesses' are successful in securing federal public procurement contracts, and whether or not contracts awarded to large companies lead to sub contracting to 'small businesses', could feasibly be

adopted in the EU. Such a system would considerably increase the breadth and depth of the information available on SME access to public procurement (for instance an assessment of sub-contracting would provide a definitive figure on the proportion of public procurement secured by SMEs). The most appropriate system for collecting this information at an EU level would need to be investigated in more detail, but it could be a central register maintained within each Member State by the relevant public procurement supervisory body, or another government authority. Transaction costs for SMEs would need to be minimised.

*Are there any aspects/means/actors that render certain aspects of good practices more or less effective than others, and – if there are – what lessons can be drawn from this?*

The evidence of this evaluation suggests that good practices are likely to be more effective if: they focus on addressing the needs of small and micro enterprises; they focus on SMEs within sectors where they appear to be performing sub-optimally compared to large companies (the analysis in Section 3 suggested that such sectors include construction and hotel and catering); they improve the quality of invitations to tender, through for example, ensuring that procurement agencies are well resourced and staff well trained; and, they minimise transaction costs of preparing and submitting tenders by, for example, maximising the application of e-Procurement opportunities.

### **Efficiency**

*What aspects of these practices are the most efficient or inefficient, especially in terms of resources that are mobilised by stakeholders during the different phases of the process?*

The limited evaluative evidence available on the costs and outputs of specific practices to enable and improve the access of SMEs to public procurement limits the extent to which observations can be made on aspects of efficiency. At present no Member State systematically monitors the effectiveness or efficiency of its policies and practices intended to facilitate SME access to public procurement. However, intuitively the practices that improve information flows and reduce transaction costs incurred by tenders are likely to be efficient. Practices that ensure high quality invitations to tender and good practice tender procedures, such as the adequate resourcing and training of the staff of awarding authorities are likely to be the most resource intensive. Practices involving support for consultancy services for SMEs new to public procurement markets could also be expensive given the very large number of potential players.

*What does this represent in terms of administrative burdens on stakeholders and/or other actors?*

There is a potential danger that some practices, pursued with the intention to even the 'playing field' for those SMEs with little or no public procurement experience and hence to improve their access, could increase both administrative burdens for awarding authorities and generate costs for SMEs. For example, 'restricted' calls for tender that are sent to a large number of potential tenderers (including SMEs) for relative small and specialised services could have the consequence of generating a large number of bids of which few are credible, resulting in large aggregate costs to tenderers and administrative burdens on the awarding authorities. The evidence base for this assignment has been based in a large part on the feedback from SMEs and large enterprises successful in public procurement that, by definition, are likely to 'know the ropes' and indeed reported good success rates. No account has been taken in this study of the potential costs to SMEs of ill advisably pursuing public procurement opportunities where they have little or no chance of success, or where the costs arguably outweigh the benefits. This information could be drawn from a more detailed evaluation and impact assessment at a Member State level, exploring the effectiveness and efficiency of specific practices.

### 7.3 Conclusions

When comparing the value of public procurement contracts above thresholds awarded to SMEs with the share of the latter in total company turnover, it appears that medium-sized companies are performing well, while this is not the case for small and micro enterprises. However, there are marked variations in the activities and approaches of Member States and awarding authorities and contrasts in the perceptions of the problem and on what should be done amongst awarding authorities and between awarding authorities and companies.

Several factors improve the performance of SMEs:

- § Improvements in information flows enabled by telecommunications. The use of the internet and email can help improve the extent to which SMEs are aware of tendering opportunities, can access tender documents and be informed of the results of tenders in a timely manner and at low cost.
- § The possibilities and use of e-procurement tools. SMEs would benefit from being able to submit tenders electronically and avoid the repeated production of background information through centralised registration systems.
- § Moves to encourage awarding authorities to allow the joint fulfilment of technical and financial criteria in below-threshold procurement, and, where appropriate, the breaking of contracts into lots.
- § Training of the staff of awarding authorities and SME support initiatives.

The main factors that constrain SMEs access to public procurement include:

- § The growth in public procurement and pressures on the resources of awarding authorities that lead to preferences for larger contracts that in turn augur towards, poorer tender documents and awards being made on the basis of price rather than quality both of which are likely to favour larger and more experienced tenderers.

Furthermore, there is an absence of reliable information to assess the impact of public procurement policies and practices on SMEs' access. For example, even a tendency towards larger contracts won by larger companies may not necessarily exclude SMEs as they play a role through subcontracting. However, the magnitude of this role is not known.

### 7.4 Recommendations

Overall the study findings suggest that there is still scope for improvement in the performance of SMEs in public procurement. In the light of this, steps should be taken to: reduce differentials in access between SMEs - in particular small and micro-enterprises - and larger companies; exchange experience and encourage peer learning activity amongst Member States and awarding authorities; finally, improving the information and research base would allow to measure improvement and adapt if necessary..

#### **Steps to reduce differentials in access between SMEs and larger companies**

The following steps should be pursued:

- § The further development of Central Registration Systems should be encouraged so that the potential tenderers are only required to provide information on eligibility criteria to one register that can be referred to by different awarding authorities. In Slovakia, such a company register has been developed and is operated by the Public Procurement Office since 2001<sup>73</sup>. The EU could itself provide a lead in this respect. There may be a case, in due course for a central register for all companies wishing to bid for above EU threshold contracts. Such registers should include information on the size category of the company to facilitate the monitoring of SMEs' access to public procurement.
- § The further promotion and adoption of e-procurement should take place. E-procurement can reduce the transaction costs of preparing and submitting tenders which are disproportionate for SMEs compared to larger companies able to maintain procurement specialists and departments.<sup>74</sup>
- § The encouragement of initiatives – such as trainings, supporting material (guidance, templates), advisory activities (e.g. by the public procurement office, or non-profit actors) - that enhance the capacity of awarding authorities to generate high quality invitations to tender that increase the likelihood that factors other than price can be properly taken account of in award decisions, should take place.
- § The further promotion and adoption of measures perceived by SMEs, especially small and micro enterprises, and proven to be beneficial (for example, the enabling of cooperation between companies to fulfil technical and financial criteria) should be encouraged.

#### **Steps to encourage the exchange of experience between Member States and awarding authorities**

A series of meetings of Member State procurement policy actors and relevant stakeholders should take place in order to identify and oversee a programme of Peer Learning Activities (PLA). DG Enterprise and Industry would be well-placed to initiate this activity.

The PLA could include: clusters of Member State representatives from countries with similar procurement structures and policies working together to identify successful approaches to improve the access to public procurement of SMEs; study visits to Member States by actors from other countries to assess in detail the mechanisms used and their applicability and transferability; evaluation studies; and, seminars and conferences of awarding authorities at the EU level.

#### **Steps to improve the information and research base**

In order to: provide an informed backdrop to the exchange of experience activity; assess the performance of SMEs in public procurement; and evaluate the impact of relevant policies and practices, there would be benefit in the following:

- § Monitoring at the EU, national and sectoral levels on an annual basis the access of SME to above threshold EU public procurement.

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<sup>73</sup> The register stores information e.g. on companies' insurance status, eventual criminal record, fulfilment of tax obligations, to be updated annually. Based on the information stored, the Office issues certification that the company fulfils the legal requirements to participate in public tenders.

<sup>74</sup> The Commission published an Action Plan for the Implementation of a legal framework in 2004. A review of this is anticipated in 2007

- § Awarding authorities being required to issue CAN for all public procurement tenders above EU thresholds. The voluntary publication of CANs for tenders below the thresholds may also be encouraged. Such information is of value to potential future tenderers as it can assist them in making rational and informed decisions on the state of the market and their potential to compete within it. Such data would also improve the reliability of studies replicating the approach to the analysis of CAN made in this evaluation.
- § The quality of information on the identification of the company awarded the contract and the value of contracts awarded on CANs being improved. (During this assignment only 64% of all CAN provided sufficient information on these two parameters to be used in the analysis, while the proportion of invitations to tender for which contract award notices were later published was less than 35%, limiting the information that could be used in the analysis to around 22% of the tenders above EU thresholds).
- § The contract award notices actually indicating the category of company. In the short term tenderers could be requested to self assess the category to which they belong when bidding, in the longer term centralised registration would enable reliable classification.
- § Tenderers being asked to indicate the proportion of the tender price that is planned to be subcontracted to SME. (Data are available from the US which indicates the significance of subcontracting overall and to small businesses). EU institutions could usefully take a lead on this.
- § Data on the concentration of employment and output within sectors, and the sector of activity of companies winning public tenders being collected in a manner that enables valid an regular comparisons between the performance of SMEs (and medium, small and micro enterprises) in public procurement and their contribution to the economy as a whole. The analysis that has been possible in this study has indicated important differences amongst types of SMEs, but more accurate information on the main sector of activity of companies, as well as more detailed statistical data on the size-class distribution of companies in different industry sub-sectors would enable better analyses.
- § Data on the concentration of employment and output within sectors being developed in a manner that enables valid comparisons between the performance of SMEs (and medium, small and micro enterprises) in public procurement and their contribution to the economy as a whole. The analysis that has been possible in this study has indicated important differences amongst types of SMEs.

As discussed above the findings of this evaluation and the comparisons with the US raise interesting questions about the state of the EU public procurement market and the role of SME and larger companies within it. It can be conjectured that the relative fragmentation of the market may limit the extent to which public procurement is generating innovation and efficiencies and the development of EU companies (large companies as well as SME) that are able to compete in public procurement markets outside the EU. The improvements in the information base could help inform and research such questions and help assess whether the relative decentralisation of public procurement markets in the EU and lack of a 'single market' is advantageous to SME and the EU economy.