



Mr. M. Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
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Email: Michel.Barnier@ec.europa.eu

Date	05 December 2011
Subject	Evaluation EU Public Procurement Directives: relinquishment three year reference period
Our reference	EUA/b111205/nvt
Direct number	620

Dear Mr. Barnier,

In light of the evaluation of the European Public Procurement Directive 2004/18/EC by the European Commission, we, the Union of Dutch Architects (BNA), the Dutch association of consulting engineers (NLingenieurs), the European Federation of Engineering Consultancy Associations (EFCA), the independent national centre of expertise and information devoted to commissioning building development in the Netherlands Architectuur Lokaal, Architects and Consulting Engineers of Luxembourg (OAI), and the Union of Flemish Architects (BVA), Architects in Brussels (Arib) and the Union of Walloon Architects (UWA) united in the Federation of Belgian Architect associations (FAB), would like to draw your attention to the following. The three year reference period for services - as it has currently been formulated in the European Directive - blocks the factual competition in design services for architects and engineers. May we therefore suggest to lift this time limit for architects and engineers. To relinquish the three year period will benefit competition and innovation. We have shone more light on this in what follows.

No time limit references

In article 48 paragraph 2 under ii of the Directive 2004/18/EC it has been stipulated that "*The technical competence of the contractor can (...) be demonstrated (...) using a list of the main deliveries or services performed over the past three years*". This stipulation is unnecessarily limitative because the period is too short.

European tenders for architects and engineering services invariably request reference projects, in view of both compatibility demands and further selection. These reference projects must i) have been realised or accepted for realisation, ii) be comparable to the tender at hand and iii) not be older than three years, based on the Directive. This causes issues. Architects and engineering consultancies carry out a limited number of assignments each year. Any project usually takes more than three years to design, build and deliver. The project lead time is low. The service delivered is complex, requires considerable knowledge and skill, is spread out over several years and is highly dependent on third parties. In addition, the crisis has caused numerous projects to not (yet) have been accepted. That renders too many offices incapable of including relevant reference projects of the past three years when answering a tender. This issue is all the more poignant for small and medium enterprises (who are the vast majority in the architects and engineers branch). The period of three years undeservedly excludes too many offices from the market.

The three year reference period tightens the market. Offices are forced to withdraw because it has been too long since they handled a specific type of project. High value innovative services are in decline. Some public clients are increasingly aware of the issues caused by the three year period.



Capers are used to reinforce competition and innovation, such as declaring applicable the legal period of five years for works in design services. This causes friction with article 48 paragraph 2 under ii of the Directive, but does match the general principles of proportionality and equality. Furthermore, ignoring the three year reference period is also compatible with the goal of the tender rules, i.e. actual competition for government assignments.

The prescribed three year period leads to blocking out competition. If this period is relinquished for architects and engineers, then the block is lifted and actual competition stimulated. To the benefit of both clients and architects / engineers.

Summary

By no longer putting a time limit on the reference period for architects and engineers services, actual competition is stimulated, increasing the odds of reaching optimal competition and innovation.

Naturally we are more than willing to shed more light on our points of view.

Sincerely,

Willem Hein Schenk
Chair BNA

Ed Nijpels
Chair NLingenieurs

Luc Deleuze
Chair FAB

Philémon Wachtelaer
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Jan Bosschem
President EFCA

Cilly Jansen
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Sylvie Bruyninckx
President BVA

Jean-Marie Fauconnier
President UWA

Bob Strotz
President OAI





For the sake of completeness we have sent a copy of this letter to:

- Mr. M. Harbour, (Chair, Committee on the Internal Market and Consumer Protection)
- Mr. J. Faull (Director General, DG Internal Market and Services)
- Mr. A. Deckers (Head of Unit, MARKT C4, Internal Market and Services)
- Mr. E. Nooteboom (Head of Unit, Director, International Dimension of Public Procurement)
- Mr. K. Wiedner (Head of Unit, Public Procurement Legislation II)
- Mr. M.J.M. Verhagen (Minister of Economic Affairs, Agriculture & Innovation, The Netherlands)
- Mr. W.J.M. Van de Camp, substituting member of the Commission Internal Market and Consumer Protection
- the Architects' Council of Europe (ACE)