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## FoodServiceEurope Position on the reform of the EU Public Procurement Directive

### Towards Trilogue Negotiations

Ahead of Trilogue Negotiations, FoodServiceEurope hereby expresses its position on key areas of concern for the contract catering industry in view of the IMCO Committee's report and of the "General Approach" agreed by the Competitiveness Council.

The Commission's proposal aimed to increase the efficiency of public spending to ensure the best value for money and ensure the best possible conditions for the provision of high quality social services. In addition, the Europe 2020 strategy further stresses that procurement markets must be kept open Union-wide.

In view of these objectives, FoodServiceEurope asks both the European Parliament and the Council to rethink their approach in the course of the Trilogue Negotiations to ensure public procurement will effectively guarantee quality and value of services provided.

#### FoodServiceEurope's Key Positions

- **Scope:** FoodServiceEurope welcomes the IMCO report's support for the European Commission's proposal to abolish the current distinction between priority and non-priority services and thereby include services offered by contract catering companies under the full scope of the proposed directive.
- **Award criteria:** FoodServiceEurope welcomes the IMCO report's provision that the sole award criterion shall be the Most Economically Advantageous Tender. However, it calls for an adequate definition of the MEAT criterion that necessarily includes quality criteria other than price.
- **Abnormally low tenders:** FoodServiceEurope welcomes the IMCO report maintaining the mandatory explanation requirements in case of abnormally low tenders, but calls for the inclusion of an objective definition.
- **Public-public cooperation exemptions:** FoodServiceEurope strongly maintains that public-public cooperation exemptions should be narrowly defined in order to give private enterprises fair and equal access to public contracts, thus avoiding distortions to competition in the internal market.

## Scope of the Directive

FOODSERVICEEUROPE supports the European Commission proposal to abolish the current distinction between priority and non-priority services insofar as catering services offered by contract catering companies are covered by the full scope of the proposed directive. FOODSERVICEEUROPE therefore very much **welcomes that this approach has been confirmed in the IMCO report**.

The new EU provisions on public procurement are a valuable opportunity to define a harmonised set of rules for public procurement in the contract catering sector, which would help create the level playing field across the EU while ensuring legal certainty, that contract catering companies are seeking for in this area. **FOODSERVICEEUROPE thus urges the Council to accept this solution.**

## Contract Award Criteria (Article 66)

FOODSERVICEEUROPE strongly believes that **public contracts should not be awarded on the basis of the mere price considerations** in order to enable contracting authorities to choose the best value for money offer in their public procurement decisions.

Therefore, FOODSERVICEEUROPE welcomes the IMCO report providing that the Most Economically Advantageous tender shall be the sole award criterion. Moreover it fully supports the explicit recognition in recital 38 (a) of the need to ensure that passive consumers in hospitals, schools, care for children and older people, have full access to quality and nutritional products providing the best value for money.

However FOODSERVICEEUROPE would like to point out that the wording used to define MEAT, would ultimately re-introduce through the back door the possibility for contracting authorities to award contracts to the lowest bidder. According to amendment 186, the MEAT criterion "*may include, in addition to the price or costs, qualitative, environmental and social considerations*". This definition therefore not only allows for tenders to be awarded on the basis of price only but actually allows contracting authorities to claim they are basing their decisions on a MEAT criterion when their decision is explicitly based only on price.

The solution adopted in the IMCO report would therefore paradoxically represent a step backwards in relation to the Commission's proposal. In fact, in view of the artifice created, the European Parliament deletes from the European Commission's proposal the express possibility for at least Member States to provide that the award of certain types of contracts shall mandatorily be based on a genuine MEAT criterion (which necessarily goes beyond price only). Provision which the Council even considers extending to cover the possibility of Member States doing so for all public procurement contracts and not just certain types of contracts.

FOODSERVICEEUROPE therefore **calls upon the European Parliament to adopt an adequate definition of the MEAT criterion that necessarily includes qualitative criteria linked to the subject matter of the contract other than price.**

FOODSERVICEEUROPE is fully aware of the budget constraints facing public authorities and that in markets where price is the main competitive driver the lowest price criterion might provide a clear and objective basis for their decision. However, FOODSERVICEEUROPE strongly reaffirms that this is definitely not an adequate solution for contract catering and other services, where quality has to be ensured in the public interest.

This is particularly true in the case of schools, hospitals and retirement homes, where contract catering companies must be enabled to meet their responsibility to provide health-promoting meals, as acknowledged in the IMCO Committee report. This should therefore be expressly safeguarded at EU level.

### Abnormally Low Tenders (Article 69)

FOODSERVICEEUROPE welcomes that the IMCO report confirms the Commission's approach obliging contracting authorities to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. We therefore strongly demand the Council to follow the Parliament in accepting the Commission's stance against abnormally low tenders based on technically, economically or legally unsound assumptions.

FOODSERVICEEUROPE is however disappointed that the IMCO committee has abandoned the definition at EU level of objective criteria for the identification of abnormally low tenders which would bring clarity and additional legal certainty.

**FOODSERVICEEUROPE therefore asks the Parliament and the Council to adopt a definition of abnormally low tenders at EU level by which an offer is to be considered abnormally low when the price or costs charged is more than 20% lower than the average cost or price of the other tenders. In addition, where tenders appear to be abnormally low for any other reason, contracting authorities should still be required to request economic operators to explain the price or costs charged.**

### Public-Public Cooperation (Article 11)

FOODSERVICEEUROPE regrets that the IMCO committee report extends the exemptions for public-public cooperation arrangements provided by the Commission's proposal.

**FOODSERVICEEUROPE strongly maintains that in-house and public-public cooperation exemptions should be narrowly defined in order to give private enterprises fair and equal access to public contracts, thus avoiding distortions to competition in the internal market.**

FOODSERVICEEUROPE believes that the criteria proposed by the Commission to define 'in-house' exemptions under Art 11 are already too wide in that they do not ensure that the essential part of the in-house entity's activities are confined to the tasks conferred by the controlling entity. In FOODSERVICEEUROPE's view, the reform of the EU Public Procurement Directives should be an opportunity to limit such exemptions to contracts awarded to a legal person that is 100% publicly owned and does not perform any activity on the open market.