



PUBLIC PROCUREMENT NETWORK

Complain in good time!

Guidance for companies prevented from competing in foreign markets because of discriminatory public procurement practices.

Suspicious of discrimination should be investigated early

Have your case examined quickly, informally, and without charge

A complaint system for public procurement procedures without the red tape

07 March 2005

A supplement to the courts

This booklet summarises how the Public Procurement Network (PPN) can help a company facing problems with a procurement procedure abroad. It is aimed at suppliers familiar with procurement procedures abroad and at those about to submit their first cross-border tender.

The total value of the works, services and supplies subject to public procurement procedures in EU Member States has now exceeded €1,500bn per annum. These public procurement procedures are open to all businesses in the EU. However, companies may face barriers when taking part in public procurements abroad. Among other things, these can include illegal requirements in tender documentation or otherwise place foreign suppliers at a disadvantage to national suppliers, whether intentionally or not. Also barriers can arise over simple misunderstandings in relation to the tender documentation, the forms required, or over the specifics of national regulation.

Suppliers who had felt discriminated against may pursue their complaint by mounting a challenge in a national court or any other kind of review body. But such procedures may be protracted and resource intensive. Moreover, where the courts do find for a complainant, it is often too late to make a difference to the outcome of the procurement, especially where businesses are reluctant to challenge contracting authorities' actions and to ask for compulsory interim measures before competent review bodies.

To address these problems, a fast and informal system has been established to clarify misunderstandings and suspicions of infringements to the public procurement rules in the early stages of procurement procedures. This is a network of central government procurement policy officials in 30 European countries called the PPN (Public Procurement Network). Members have agreed common rules on how to informally pursue suspicions of irregularities before contracts are signed thereby saving legal fees.

A three-facet approach:

1. Companies should get in touch with their national PPN contact point as soon as possible if they feel they have been harmed or risk being harmed in a procurement procedure abroad.
2. Their PPN contact will then approach the PPN counterpart in the participant state concerned, on an informal basis, who will get in touch with the relevant Contracting Authority to clarify the situation. It should then be possible to clarify the matter quickly, i.e. within a matter of days.
3. This system relies on the supplier making contact with his national PPN contact - or with his SOLVIT¹ national contact who would swiftly involve the PPN national contact - as soon as he suspects discrimination.

¹ Since July 2002 the [SOLVIT network](#) operates through SOLVIT Centres based in the administration of the EU Member States, Norway, Liechtenstein and Iceland. It tries to find quick and informal solutions to practical problems when public authorities misapply [Internal Market rules](#) including Public Procurement Rules (see : <http://europa.eu.int/solvit/site/index.htm>.)

How the PPN can help - Examples

Based on real cases, the following three examples demonstrate some of the typical problems facing suppliers taking part in public procurement procedures in other countries.

- **Unreasonable request for documentation?**

A Danish supplier submits a tender for IT services in another country and, as part of the pre-qualification procedures, sends a completed "serviceattest" (a form containing all information and declarations required from public authorities for a public procurement procedure) from the Danish Commerce and Companies Agency. The "serviceattest" is submitted in English and confirms that the Danish company has paid all the taxes and charges due. Despite submitting the "serviceattest", the foreign Contracting Authority claims that the documentation for tax payments in Denmark is insufficient. This additional request is illegal and must be cancelled.

- **Technical obstacles to trade?**

A company wants to take part in a procurement procedure in another country. The enterprise finds that the tender documentation requires parts to be supplied by a specific manufacturer. This is a discriminatory and illegal practice.

- **Obligation to invite tenders?**

A Contracting Authority wants to procure maintenance and repair services. The value of these services is above the threshold value in the EU Services Directive. Accordingly there is an obligation to carry out a full public procurement procedure in accordance with the Directive. However, the Contracting Authority decides to contact a number of companies without an invitation to tender which excludes an interested foreign company from competing. This is illegal under the public procurement rules.

Action in the PPN can quickly ensure that aggrieved suppliers are not prevented from taking part in procurement procedures on an equal footing. This informal system has been successfully tested for three years and it enjoys the full support of the European Commission. To date, the members of the Network have processed a steadily growing number of cases (around 50 at 1st March 2005). Momentum is increasing as the system is more widely publicised and becomes better known.

If dialogue within the PPN *does not* solve the problem, companies may decide to follow more formal complaint procedures, or may otherwise decide to use the SOLVIT system. The PPN is a mechanism to be used prior to contract conclusion. The PPN *supplements* the Commission's SOLVIT system and the formal complaint system. The *How to complain process* section on the following page explains the options available.

Note: Lodging a complaint with a PPN contact does **not** have any suspensive effect on award procedures or on time limits applicable for referring cases to formal review bodies. It is important to keep this in mind, especially for any supplier who may want to seek **compulsory** interim measures from such bodies with the aim of correcting the alleged infringement or preventing further damage to the interests concerned.

How to complain

The service is free of charge. The PPN contact acts on behalf of the supplier company concerned contacting the national authority responsible for procurement procedures in the contracting authorities' country. For example, a Danish supplier suspecting discrimination by a Contracting Authority in another country should refer to the Danish Competition Authority, UK companies should approach the OGC's procurement policy unit.

In order to assess the case, the PPN contact will require the following specific information:

1. The name, address, telephone number, and email address of the complainant company, and a named contact.
2. To know whether the complainant wishes to remain anonymous from the Contracting Authority?
3. Detail on the alleged breach of the EU procurement rules.
4. If a procurement procedure has commenced, then
 - Date the procurement procedure was made public (preferably with a copy or reference number of the published contract notice).
 - How far the procurement exercise has progressed?
 - a. The time limit for submission of tenders?
 - b. Whether the contract has been signed?
 - The estimated value of the contract.

If the procurement procedure has not commenced, then

 - Any details available about the contract.
 - Its estimated value.
5. Name of the Contracting Authority?
6. Name and address of any other suppliers/organisations involved.

Many complainants prefer to remain anonymous because of concerns about damaging relationships. Although PPN contacts preserve anonymity where requested, it might still be possible for the procuring authority to guess who the complainant is. The PPN operates an informal and friendly no blame, no shame culture. Enquiries and discussions through the PPN do not lead to damaging relationships. PPN dealings are discreet, aimed at clarifying misunderstandings while avoiding exposing complainants or Contracting Authorities to difficult situations. The PPN seeks firstly to clarify procedures and practices and, where relevant, to informally solve breaches of the EU rules.

How the Network deals with complaints

When a supplier submits a complaint with the required information, the PPN contact in his home country reviews the case as soon as possible.

In some cases, the PPN contact may realise that the procurement rules have in fact been followed and be in a position to explain why it would be inappropriate to take the case further. On the contrary, if there is reason to suspect that the public procurement rules have been breached, the PPN contact will approach the relevant counterpart abroad and send his assessment of the case requesting that it be examined. If it becomes clear that the complaint is justified, the PPN counterpart will endeavour to ensure that the procurement procedure is corrected to allow all companies to compete on an equal footing.

Contact is rapid and informal, usually by phone and email. Problems can be solved through dialogue, in many instances more quickly and flexibly than with traditional case processing with extensive formal correspondence. The PPN has already dealt with a number of cases. It has often been possible to correct procurement procedures quickly, to ensure that foreign suppliers are fairly treated.

Where the PPN does not deliver a satisfactory outcome, suppliers may choose to bring their complaints before the courts in the country concerned, or take cases directly to the European Commission. PPN contacts will advise about these procedures, but they are not in a position to provide legal support in such cases. Companies must seek their own legal advice.

PPN - History

The Public Procurement Network was established at the initiative of the Danish Competition Authority in 2003 following very positive results from a three-year pilot project. The scheme has now been made permanent. Reflecting this success, the number of participants has risen to include all 25 EU Members, all EU candidate countries, as well as the EEA countries and Switzerland.

The Network has two primary functions:

- To provide practical assistance to individual companies facing barriers in public procurement procedures abroad.
- To enable countries to exchange experience and best practice in public procurement.

Members of the PPN have agreed a simple set of guidelines on the cooperation process. The environment is practical and efficient, cheap, informal and avoids any time wasting and red tape. The Network functions with the least possible bureaucracy.

PPN contacts gather once a year at a conference. Dialogue also takes place over the Internet or in small working groups on special issues. Most PPN contacts have been working together for many years and know each other very well. National PPN contacts are listed on the next page.

Further information on the PPN and complaints regarding public procurement procedures

The European Commission's website on procurement - www.simap.eu.int includes all relevant information on public procurement in the EU, including information about PPN and SOLVIT.