

EUROPEAN COMMISSION'S QUESTIONNAIRE TO EU INDUSTRY ON

PUBLIC PROCUREMENT BY EUROPEAN BUSINESSES IN THE U.S. (SEPTEMBER 2013)

IN THE CONTEXT OF THE EU/US FTA NEGOTIATIONS, THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP), THE EUROPEAN COMMISSION WOULD BE GRATEFUL FOR YOUR REPLIES TO THE FOLLOWING QUESTIONS.*

1. In what sector(s) is your company active/has a commercial interest?
2. Has your company taken part in public tenders in the US? If so, how economically interesting is the US Public Procurement Market currently to your company (in percentage of your total business activity)? What is the potential for further business activity would the US Public Procurement Market open up further?
3. Please specify:
 - 3.1 In which US States do you currently have your main economic interests? In which States would you have an interest in further market openings?
 - 3.2 Which type of public procurement contracts (services, goods, works/construction services) in the US, are interesting for your company and for which specific products/services? For the types of contracts just identified which are the procuring entities of most interest to you (if possible, please identify the level of public bodies - Government authority (if possible, specify which Federal agencies if possible)/State/Municipality/Utility)?
 - 3.3 In the case your company do not participate *directly* in tendering procedures, what would be the sectors for goods/services, works/construction services of particular interest to you for example as a subcontractor?
4. Can you please specify if your company has:
 - 4.1 participated *directly* in calls for tender of public procurement contracts, and/or
 - 4.2 concluded public procurement contracts in the U.S. with the following public bodies:
 - a) Central Government entities? (please identify the Federal agencies if possible)
 - b) Federal States? (please identify the State central agencies if possible)
 - c) Municipalities?
 - d) Utilities/special purpose entities - such as in water, energy and transport sectors)?
 - 4.3 In the case your company does not participate *directly* in tendering procedures, what would be the sectors for goods/services, works/construction services of particular interest to you for example as a subcontractor?

5. Has your company encountered particular obstacles while trying to participate/win public procurement contracts in the US? If, yes can you specify the particular difficulties you encountered?

Please specify the level of procuring entity where you met with difficulties (see 4.2 above). Please specify if you experienced difficulties with any specific Federal agency or State central agency which handles procurement on behalf of several entities.

6. Please specify what type of negative experiences you have had in the U.S. public procurement market with regard to the following aspects:

6.1 Transparency on procurement opportunities (for example access to information on calls for tender, source and user friendliness of the information and the level of detail)?

6.2 Clarity of applicable rules (for example availability of information and its level of detail)?

6.3 Have technical specifications been clear, transparent and non-discriminatory? Have you for example encountered technical specifications that are overly broad or even vague?

6.4 Have you been confronted with local content requirements or domestic preferences in calls for tender or contract awards (for example preferential treatment given to in-state manufacturers, preferential regime for national SMEs, or more general Buy America(n) provisions)?

6.5 Have you been required to establish a branch of your company in the US in order to participate in the US government procurement? Have you experienced any difficulties while trying to establish a branch of your company in the US?

6.6 Do you have experience of other discriminatory practices in calls for tender/contract award?

6.7 Remedies/access to justice (for example accessibility and efficiency of bid protest mechanisms; availability of information and its level of detail and the functioning of such mechanisms)?

7. Please explain what type of experiences (either positive or negative) you have with the following types of procurement methods/schemes in the U.S.:

7.1 The system of central agencies which handle procurement on behalf of various government entities (for example a number of States designate a central agency to carry out all their procurement – such as the Department of General Services for California).

7.2 Cooperative Purchasing Agreements; a number of States or local and/or State authorities joining together to carry out their procurement (there are major

cooperatives such as the Western States Cooperative, US Communities, the National Joint Powers Alliance and the Minnesota Contracting Alliance for Pharmacy).

7.3 Multiple award or framework contracts such as "multiple award schedules" or "General Service Administration (GSA)-contracts" within which a larger number of procuring entities carry out their procurement. The answer should ideally cover:

- Both the initial award of the umbrella contract and the award of the specific contracts.);
- The degree of discretion left to contract officer to "streamline the procedures",
- The use of the "fair opportunity standard" to determine the degree of competition for actual orders
- Timeframes for submitting proposals for orders
- The use of exception to justify "sole source acquisition"
- The absence of a possibility to contest the decision to place a particular order with an awardee of the framework contract

7.4 Please specify your experiences with any other form of procurement schemes (for example for the purchasing of pharmaceutical products).

8. Please identify the changes of the current US procurement rules, and/or restrictions on market access that would be the most important, in order to facilitate access for European companies to the U.S. public procurement market? (For example rules related to bidding or to award of contract; rules on local requirements; rules related to transparency; access to remedies, etc.). Please rank, to the extent possible, your priorities.

9. Are you aware of any recent or planned amendments of legislation which may restrict the US procurement market further, either at Federal or State level? Please explain which amendments risk affecting you in particular and what are your main concerns.

10. Please submit any additional comments/suggestions you may have including information on experiences you have had that are not covered by this questionnaire.

* The US use the following terminology

Acquisition = Procurement

Solicitation = Call for tender

Formation of Contract = Award

Tenderer = Vendor