



# ENTERPRISE DEVELOPMENT AND MARKET COMPETITIVENESS (EDMC)

## PROMOTING SME ACCESS TO PUBLIC PROCUREMENT

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## **DISCUSSION PAPER: PROMOTING SME ACCESS TO PUBLIC PROCUREMENT**

The reform recommendations noted in this discussion paper are aligned with European Union (EU) best practices on promoting the access of small and medium enterprises (SME) to public procurements.

A closer alignment of Armenian procurement legislation with EU rules is advisable since EU recommended best practices and procurement rules are closely tied into SME development: *“SMEs are generally considered to be the backbone of the EU economy, and in order to make the most of their potential for job creation, growth and innovation, SMEs access to public procurement markets should be facilitated.”*<sup>1</sup>

The European Commission is providing user-friendly guidance on EC Public Procurement Directives and Member States’ national rules and practices on promoting SMEs access to public procurements based on the realization that *“a more competitive and transparent public procurement practices will allow SMEs to unlock their growth and innovation potential with a positive impact on the European Economy.”*<sup>2</sup>

This discussion paper provides a review of Armenian public procurement legislation in light of adopting recommended best practices. The reform recommendations focus primarily on shifting the focus of public procurement contracting authorities to a more SME-friendly approach for the purpose of promoting a more diverse mix of companies participating in public tenders. Such an approach would promote the involvement in public tenders of SMEs that offer more innovative, functional or user friendly solutions, which will open the path to developing goods or services that would better serve the needs of the contracting authorities.

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<sup>1</sup>Page 4, European Commission Staff Working Document: *“European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts”* SEC (2008) 2193, Brussels 25.06.2008.

<sup>2</sup> *Ibid.* Page 2

## **A. DIVIDING CONTRACTS INTO LOTS AND FORMING CONSORTIA**

Contracting authorities prefer to award procurement contracts to a single entity capable of supplying all the products or services under the procurement notice.

### **I. Dividing Procurement Contracts into Lots**

SMEs interested in public procurements often cannot take part in the tender because they do not have the capacity to bid for the entire procurement contract.

#### **1. Issue**

The size of typical government procurements discourages smaller businesses from bidding for them. One avenue to promoting SME access to public tenders is to divide procurement contracts into smaller pieces, or lots, so that smaller companies could participate in the bidding process.

#### **2. Law**

With a procurement notice, published in the procurement newsletter<sup>3</sup> contracting authorities invite bidders to participate in an open tender.<sup>4</sup> The content of such notice (or announcement) is defined by law: it must contain information about name and location of the customer, code of the open process, brief and precise description of the contract and the specifications of the object of procurement, notices to participants to prepare bids for open tendering, conditions of receiving hard copy invitations and the fees charged, language used for submitting the bids, brief description of qualification criteria of participants, criteria to be applied for selecting the selected bidder, the form, place and timing for submitting bids.<sup>5</sup>

By law, provisions defining the content of invitations to participate in a public tender should contain also references on dividing procurements in to lots: *“if the procurement is carried out in lots and bidders are allowed to submit bids for a part of goods, works or services tendered, the terms and conditions thereof.”*<sup>6</sup>

However, it is not defined by law that procurement notices should provide information on opportunities for sub-dividing procurement contracts into separate lots.

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<sup>3</sup> Newsletter is an electronic guide on procurements published by the authorized person.

<sup>4</sup> Article 7 of the Law establishes that a procurement notice can be issued in an electronic form and also the bids can be submitted in an electronic form. The means used for electronic correspondence should be non-discriminatory and should be accessible for a bidder.

<sup>5</sup> Article 24, Law on Procurements.

<sup>6</sup> Article 25, paragraph, item 7, Law on Procurements

Current legislation also does not contain provisions as to when procurement contracts should be subdivided into lots; nor does it define the criteria for such subdivision. The resulting practice is that tender notices offer no information to potential bidders about such possibility and *de facto* exclude SMEs from the tendering process as they do not have the capacity to bid for the entire procurement contract.

### **3. Discussion**

European best practice suggests that subdividing procurement contracts into smaller lots is crucial for SME participation in tenders. Under Europe's Small Business Act<sup>7</sup> "*the most widespread SME-friendly measures in the public procurement area remain cutting tenders into lots, whenever possible*".<sup>8</sup>

The practice of EU Member States shows that this recommendation is followed. For instance, in France, the general rule is to award contracts in the form of separate lots in order to attract more participants in the competition. This does not prevent contracting authorities from awarding global contracts if they consider that a subdivision into lots would restrict competition, or there is a risk that splitting the contract into smaller lots would make the execution of the contract technically difficult or expensive.<sup>9</sup> In Lithuania, the public procurement office carries out an *ex-ante* analysis of contract notices before they are sent for publication. As part of this analysis the procurement office issues a recommendation to the contracting authority whether it should consider subdividing the contract into lots.<sup>10</sup>

The participation of Armenian SMEs in procurements could be increased by mandating that the procurement notice provides information whether the contract can be subdivided into lots. Information to potential bidders whether or not they can bid for the whole or part of the contract increases SME access to public tenders.

### **4. Recommendations**

Amend the corresponding provisions of the Law on Procurements to define that:

- The procurement notice for each tender defines whether bidding for separate lots is allowed. Subject of further discussion with representative from the private sector and government and

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<sup>7</sup> The Small Business Act (SBA) for Europe, adopted in June 2008, reflects the Commission's political will to recognize the central role of SMEs in the EU's economy and establishes a comprehensive SME policy framework.

<sup>8</sup> European Commission: "Review of the "Small Business Act" for Europe." COM (2011) 78 final; Brussels, 23.2.2011

<sup>9</sup>Page 5; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

<sup>10</sup> *Ibid.* Page 5

donors should be defining the text of corresponding amendments for subdividing tenders into lots to promote greater participation of SMEs in public procurements.

- A requirement that the contracting authorities (or the Procurement Support Center) must carry out an *ex-ante* analysis of procurement notices before they are sent for publication. Part of this analysis should be the recommendation as to the feasibility of subdividing the procurement contracts into lots. Subject of further discussion with representative from the private sector and government and donors should be defining the methodology for conducting *ex-ante* assessments on the feasibility of subdividing tenders into lots, as well as defining the text corresponding legal amendments.

## **II. Forming Consortia for Joint Bids**

Often procurement contracts exceed the capacities of typical SMEs in terms of required products or services to be supplied under the procurement, available financial resources and manpower of the SME that can be devoted under such contract, the experience of the SME experts, etc. For the same reason SMEs do not meet the tender participation criteria required by the contracting authorities.

### **1. Issue**

When SMEs join forces as a group of economic operators, i.e., consortia, they can gain entry to government procurement market by bidding for large procurement contracts together.

### **2. Law**

Joint application by several economic operators, i.e., consortium of bidding companies, is permissible under the Law on Procurement, provided that the submitted joint bid contains a contract evidencing that the companies will perform the activities required under the contract jointly and that all participants bear jointly and equally responsibility. During the bid evaluation process,<sup>11</sup> the contracting authority considers whether the qualifications, capacities and abilities of all companies' participating in the joint bid meet the tender requirements and whether the joined companies are capable to deliver the required output under the contract.<sup>12</sup>

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<sup>11</sup> The Law addresses also the appeals in the procurement process, meaning that any person is entitled to appeal the actions (inaction) or decisions of the contracting authority, the evaluating committee and the appeals committee. The appeals committee members are representing the state administration bodies, municipalities, the Central Bank of Armenia and the NGOs. A panel of three persons is formed on a rotation principle to hear each appeal. The Law clearly defines the procedure of filing the appeal. The parties engaged in the appeal process are entitled to participate and to express their opinion at the committee sessions. See: Article 45-49 Law on Public Procurements.

<sup>12</sup> The bids are opened at the bid opening session. The Law defines the timing of opening the bids, as well as information that needs to be published at the bid opening session. Subject to publishing at the bid opening session are: name of the bidder, information

What is unclear, however, is whether economic operators can group together and bid jointly in every case or only in certain contracts. In addition, provisions defining the procedures for bid evaluation do not define the criteria or approaches that are applied in evaluating joint activities of consortia, i.e., groups of economic operators. In this context, despite declarative provisions in the legislation it is unclear whether or not the SMEs can actually submit joint bids for each and every procurement contract.

### **3. Discussion**

There needs to be a clear indication that SMEs are welcome to form consortia and submit joint bids in accordance with the recommended best practice: *“in order to facilitate the widest possible competition, it is advisable that contracting authorities draw attention to this possibility in the contracting notice.”*<sup>13</sup>

Adopting such practice in Armenia will promote greater participation of the SMEs in the procurement process.

### **4. Recommendation**

Amend the Law on Procurement to clearly define the option of joint bidding by economic operators. The subject of further discussions with representatives from the private sector, government and donors should be to define the text of Article 24 of the Law on Procurement: *Procurement notice and invitation to bid* to mandate that the procurement notices should indicate that economic operators can bid jointly.

## **III. Prior Information Notices**

In exploring the option of promoting SME access to the procurement market through joint bid proposals it should be noted that the process of forming consortia, i.e., the grouping economic operators, takes time.

### **1. Issue**

SMEs need advance information on upcoming procurement contracts so they have time come together, agree to join efforts to and then prepare a joint bid to pursue the procurement opportunity.

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whether the bids comply with bid requirements, availability of documents required by the invitation to bid, whether the documents meet the required criteria and the price offered by each participant and information about taking back and making amendments to the bids. The bidders and their representatives can participate in the evaluation committee sessions and they can also ask for copies of minutes of the evaluation committee sessions. See: Article 27, paragraph 6, Law on Public Procurements.

<sup>13</sup> Page 8; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

## **2. Law**

In an open procurement process the legally defined timeframe for bid submissions is no less than forty calendar days, calculated from the date publication of the procurement notice and the tender invitation in the newsletter.<sup>14</sup> This timeframe is set aside for the preparation and submission of bids.

This timeframe is not sufficient to form a group of SMEs that have the capacities, manpower, resources and expertise meeting the requirements of the procurement notice so that in the *“evaluation of the bid the joint qualification of all the members of the joint activity is considered.”*<sup>15</sup>

## **3. Discussion**

In cases where SMEs need to join efforts and form a consortium to pursue the procurement opportunity, prior to preparing a bid for submission they need time to identify and negotiate with potential business partners. European recommended best practice recognizes this distinctive characteristic of consortia of SMEs participating in procurements and notes: *“that establishing these forms of co-operation between SMEs takes time; contracting authorities should make use of the possibility to prepare the market for future procurements by publishing prior information notices which give economic operators enough time to prepare for joint bidding.”*<sup>16</sup>

Adopting an approach aligned with the European recommended best practice is crucial for promoting SME access to procurement market in Armenia. In this context, it should be required by law to publish advance notice of procurement contracts as *“these practices obviously make it easier to constitute groups of independent SMEs to be tenderers or candidates in big procurement contracts, especially in the case of complex contracts involving a variety of skills.”*<sup>17</sup>

## **4. Recommendation**

Amend the text of the provisions defining procurement notices and bid invitations of the Law on Procurements to provide that prior information notices are published in case of large and complex contracts. The subject of further discussions with representatives from the private sector, government and donors should be to define the text of corresponding amendments to ensure that contracting authorities provide advance notice of upcoming procurement contracts.

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<sup>14</sup> Article 24, paragraph 2, Law on Procurement

<sup>15</sup> Article 27, paragraph 6, point 2, Law on Procurement

<sup>16</sup> Page 8; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

<sup>17</sup> *Ibid.* Page 8

## **B. IMPROVING THE QUALITY INFORMATION ON PROCURMENTS**

SME access to the procurement market is often constrained because the procurement-related information is provided in manner that SME do not understand. The cause of the problem lies in the quality of procurement notices, as well as the lacking understanding of SMEs of the procurement process.

### **I. Training and Guidance for Contracting Authorities**

SMEs complain about the lack of sufficient, relevant and clear information received through procurement notices, which means that they do not understand the needs of the contracting authority and cannot prepare appropriate bids.

#### **1. Issue**

This raises concerns not only regarding the capability of SME staff to understand procurement notices, but also regarding the capabilities of the staff of the contracting authorities to develop procurement notices that are understandable and informative to SMEs.

#### **2. Law**

The issue of the training of the staff of contracting authorities is defined by law: the authorized body *“should secure availability of the system of professional education and continuous trainings for coordinators of contracting authorities.”*<sup>18</sup> In addition, the National Procurement Support Center (PSC) is required by law *“to implement professional education and continuous trainings for coordinators of contracting authorities.”*<sup>19</sup>

#### **3. Discussion**

Despite the legally defined requirements to train procurement coordinators, SMEs still complain that procurement notices do not provide the necessary information. Following recommended best practice this issue *“should be addressed through training and guidance for contracting authorities/entities, by putting special emphasis on the situation of SMEs and on how to design an award procedure in a way that ensures that SMEs can participate on an equal footing with large enterprises.”*<sup>20</sup>

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<sup>18</sup> Article 15, paragraph 2, point 3, Law on Procurements

<sup>19</sup> Article 16, paragraph 1, point 1, Law on Procurements

<sup>20</sup> Page 13; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

When designing education and training programs for the staff of the contracting authorities it is important to focus on educating them how to design procurement notices and specifications that are clear, precise and understandable to small economic operators, i.e. SMEs and micro enterprises. In this context, it is necessary to provide focused education and trainings to the staff of the contracting authorities on how to reach such small operators. Such focused training should also aim to develop the skills of the procurement staff engaged in the evaluation of bids developed SME consortia.

#### **4. Recommendations**

- Focus continuing education programs and trainings for procurement coordinators on developing the abilities of contracting authorities to develop clear and precise procurement notices and specifications that would be understandable to SMEs.
- Focused trainings on developing the skills of the staff of contracting authorities to evaluate joint applications developed by group of SME bidders, i.e., SME consortia.

## **II. Training and Guidance for SMEs**

SMEs typically do not hire experts that are well-acquainted with public procurement language and procedures and for this reason lack the specialized knowledge and capacities necessary to take advantage of the procurement market.

### **1. Issue**

Lacking knowledge and expertise in the area of procurement place SME in a disadvantaged position compared to larger enterprises participating in the bidding process.

### **2. Law**

Procurement legislation addresses this issue: the PSC is required by law to provide advice and offer paid consultations to bidders.<sup>21</sup> It appears, however, that SMEs do not advantage of this opportunity.

### **3. Discussion**

Apart from providing consultations upon request, the Procurement Support Center could develop guidelines for SMEs on how to access information on procurement opportunities, how to familiarize themselves with the relevant regulatory framework, how to understand the real needs of

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<sup>21</sup> Article 16, paragraph 1, item 1, Law on Public Procurement

contracting authorities on the basis of published procurement information, how to self-evaluate whether they have the capacity to actually implement the contract.

International best-practice suggests that SMEs should adopt a strategy for bidding:<sup>22</sup> Armenian SMEs would need guidance in this area. Also, it is important to develop the partnering skills of SMEs so they can develop joint bids for procurement opportunities. There is a need for capacity building assistance and support in this area as well.

#### **4. Recommendation**

- Develop guidelines for SMEs on how to access information on procurement opportunities, understand the needs of the contracting authorities, how to self-evaluate their capacity and adopt a strategy for bidding; as well as provide focused consultations on improving the skills of SMEs in this area.
- Provide practical information to SMEs, such as check lists, guidelines, sample agreements, on how to form partnerships to pursue procurement opportunities.

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<sup>22</sup> For detailed discussion see: <http://www.pme.gouv.fr/essentiel/vicentreprese/guidepratique-050208.pdf>

## C. PROPORTIONATE BID ELIGIBILITY CRITERIA

SMEs typically do not have at their disposal a large workforce, extensive technical and financial resources, nor does their staff fit into narrowly defined areas of specialization. For this reason they are discouraged from taking advantage of procurement opportunities as they are hard pressed to meet the minimum qualifications, i.e. bid eligibility criteria, defined in the tender invitations.

A recommended international best practice for contracting authorities on how to address these concerns and encourage SME participation in public tenders is to ensure that the qualification criteria, in terms of financial capacities and on technical abilities of the staff of the bidders, are closely aligned and proportionate to the subject-matter of the procurement, i.e., the goods or services required under the contract.

### I. Eligibility Criteria on Capacities and Technical Abilities

The most critical area is the wording of the bid eligibility criteria so that it does not narrow the field of competition by addressing irrelevant matters: too strict and too narrow definitions on required financial capabilities and technical qualifications limit competition and distort the procurement process.<sup>23</sup>

#### 1. Issue

Eligibility criteria for bid participation regarding the capacities and technical abilities of bidders that are disproportionate to the services or goods to be provided under the procurement contract block the participation of micro and SMEs in public tenders.

#### 2. Law

Bidder eligibility criteria are defined by law: i.e., the technical and financial resources of the bidder, as well as the professional qualifications and experience of the workforce at their disposal.<sup>24</sup> The law clearly states that additional criteria for bid participation are illegal, specifically such that are “*discriminatory and limit the competition by unduly complicating or simplifying potential participation in the procurement process.*”<sup>25</sup>

#### 3. Discussion

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<sup>23</sup> “A requirement that only experience acquired in dealing with the public sector will be taken into account is, as such, irrelevant and limits competition.” Page 14; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

<sup>24</sup> Article 5, paragraph 3, Law on Procurements

<sup>25</sup> Article 5, paragraph 4, item 2, Law on Procurements

In order to promote SME access to the procurement market it is imperative that the bid eligibility criteria are proportionate to the required goods or services. This is aligned with best practice recommendations: *“keeping selection criteria proportionate is of core importance for SMEs, since contracting authorities that fix too high capacity and ability levels exclude de facto a high proportion of SMEs from participating in tender procedures.”*<sup>26</sup>

The wording of the bid qualification criteria should follow legal requirements but not limit competition by defining irrelevant or overtly strict eligibility criteria.<sup>27</sup> It is imperative that the procurement staff of the contracting authorities develops such skills through appropriate continuing education and trainings.

#### **4. Recommendation**

Amend the text of Article 5 paragraph 3 of the Law on Procurement to define:

- That the eligibility criteria for tender participation with respect to the financial capacities and on technical abilities of the bidders must be proportionate to the goods or services to be delivered under the procurement contract. Such practice will promote the SME access to the procurement contracts.
- The eligibility criteria *“professional activity and professional experience”* should examine the experience of the staff of the company participating in the tender rather than the company itself.

Subject of further discussion with representative from the private sector and government and donors should be defining the text of corresponding legal amendments.

## **II. Eligibility Criteria on Financial Guarantees**

Financial guarantees required by the contracting authorities include: financial security for bid submission, financial guarantees to cover risk related to the award procedure and financial security for the performance of the contract. These limit the pool of tender participants as they must have the necessary funds to cover the financial guarantees, either in the form of own financial reserves or credit lines provided by lending institutions.

### **1. Issue**

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<sup>26</sup> Page 14; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

<sup>27</sup> In France the mere fact that a bidder cannot provide proof that he has performed similar contracts in the past is not a reason for the elimination from the tender. In Latvia, the contracting authorities are expected to specify that the staff of the bidder, not the company itself, should meet the experience qualification criteria in the tender invitation in order not to limit the tender to incumbent players and exclude young SMEs with highly qualified experts from bidding for the procurement contract. For further discussion see : *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

Disproportionately high financial guarantees required by the contracting authorities are an obstacle to promote SME access to public procurements.

## **2. Law**

By law, bidders must provide a financial security in order to participate in the public tender. Such guarantee cannot be less than 2 percent of the price offered in the bid.<sup>28</sup> Financial securities are required also after awarding the procurement contract to a successful bidder. The amount of the provided financial security must be between 5 and 10 percent of the contract price.<sup>29</sup> In addition, the basic price of procurement (or procurement base unit) is also established by law: one million Armenian drams.<sup>30</sup>

## **3. Discussion**

Best practice recommendations note that *“contracting authorities might consider not requiring financial guarantees automatically, but on the basis of consideration relating to risk assessment.”* Armenian law diverges from recommended best practice as it requires bidders to provide a financial security for contract performance automatically without prior any analysis or risk assessment. Alignment with recommended best practice requires defining financial security for contract performance based on risk assessment.

Another discrepancy with recommended best practice is the high percentage of the required financial security for contract performance i.e., 5 to 10 percent of the value of awarded contracts.<sup>31</sup> Anecdotal information suggests that the high amount of the performance guarantees discourages SMEs to take advantage of procurement opportunities. In addition, current procurement legislation does not provide any guidance as to the application of this 5 to 10 percent financial security on awarded contracts. It appears that the percentage of the security is set solely upon discretion of the contracting authority.

To further promote SME access to public procurements the requirement that bidders provide a financial security for contract bids below the AMD one million basic price of procurement, i.e. AMD 1 million, should be eliminated.<sup>32</sup> This segment of the procurement market is occupied mostly by SMEs, requiring financial security strains their limited resources.

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<sup>28</sup> Article 29, Law on Procurements

<sup>29</sup> Article 32, Law on Procurements

<sup>30</sup> Article 2, point 23, Law on Procurements

<sup>31</sup> In Bulgaria the amount of the contract performance guarantee may not exceed 5 percent of the value of the procurement contract.

<sup>32</sup> In Malta there is no bank guarantee for tenders below the EU thresholds. Since many SMEs bid for such contracts, the bank guarantee requirement has been eliminated to reduce barriers to SME access to the procurement market. For detailed discussion see: *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

#### **4. Recommendation**

Amend the Law on Procurement to:

- Define that bidders provide financial security (performance guarantees) not automatically, but on the basis of risk assessment.
- Eliminate the requirement of providing financial security for bids below the basic price of procurement (AMD 1 million).
- Define that the amount of the financial security provided to guarantee contract performance does not exceed 5 percent of the value of the procurement contract.

Subject of further discussion with representative from the private sector and government and donors should discussing the viability of the recommendations and defining the text of corresponding legal amendments.

## D. FOCUSING ON QUALITY RATHER THAN ONLY ON PRICE

Awarding contracts based on lowest price is not necessarily the most economically viable solution. **Providing the lowest fixed-cost price does not guarantee the best value for money**, as hidden costs and other non-financials will shape what constitutes the true final cost. Often the most advantageous offer and the best possible solution is not part of the lowest bid.

### I. Economically Advantageous Offer

Procurement contracts should be awards not solely based on lowest price offered but also taking into account other criteria to be able to select the most advantageous offer.

#### 1. Issue

The issue at hand is to shift the focus of bid evaluation from purely lowest price offered method to a bid selection practice that takes into account best price offered and non-price criteria, such as cost effectiveness, functionality, long-term viability, novel technical solutions etc., to ensure that the offer selected is the economically most advantageous one.

This would promote SME access to the procurement market as smaller companies tend to provide goods and services that do not fall into the lowest possible price category, but offer solutions, goods and services that are more technically advanced, more cost effective in the longer term, more user friendly, easily customizable based on demand fluctuations etc.

#### 2. Law

Under Armenian law procurement contracts are awarded to bidders that have offered the lowest price or the bidder who rates the highest in terms of the price and non-price criteria.<sup>33</sup> In this context there are no legal constraints preventing contracting authorities from selecting what they perceive as the most economically adventurous offer, rather the offer that with the lowest fixed price.

#### 3. Discussion

Recommended best practice gives preference to selection based on price and non-price criteria as it *“allows contracting authorities to take account of various elements relating to the subject-matter of the contract, like e.g. quality, technical merit, functional characteristics, cost effectiveness and etc.”*<sup>34</sup> Armenian procurement legislation is aligned with recommended best practice; however,

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<sup>33</sup> Article 31, paragraph 2, Law on Procurements

<sup>34</sup> Page 18; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

special emphasis should be placed on awarding procurement contracts based on price and non-price criteria.<sup>35</sup> Evaluating bids and awarding contracts based on such approach will have “a *positive impact on innovation, as it represents an incentive for economic operators to develop better and sustainable products.*”<sup>36</sup>

#### **4. Recommendation**

Develop clear guidelines on selection of contract awardees based on value of price and non-price criteria. Subject of further discussion with representative from the private sector and government and donors should defining more flexible and adaptive bid evaluation criteria and defining the text of corresponding guidelines.

## **II. Diversity of Technical Solutions**

Contracting authorities should develop technical qualification criteria, which consider new, innovative solutions rather than standards. Such an approach would both promote involvement of the innovative SMEs in the procurement market and open the path to developing goods or services that would better serve the needs of the contracting authorities.

### **1. Issue**

Evaluating bids based on proposed innovative solution rather than such based on established technical standards or solutions allows bidders to develop new innovative goods or services which might better correspond to the actual need of the contracting authority. It is generally perceived that such an approach will benefit SMEs, innovative ones in particular, that would be hard pressed to offer a lowest possible price for services or goods that meet established technical specifications or specifications approved by the recognized standards bodies.

### **2. Law**

Armenian law does not prevent contracting authorities to award contracts to bidders that rate highest in terms of the price and non-price criteria,<sup>37</sup> including innovative solutions.

### **3. Discussion**

One of the options for bid evaluation under Armenian law is selecting the winning bidder based on the lowest price offer. The problem with this approach is that often best possible technical solutions are not selected as they typically are not part of the bid that offers the lowest price. Recommended

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<sup>35</sup> This approach should be applied to all procurements in the IT and pharmaceutical sectors to promote R&D and innovation

<sup>36</sup> *Ibid.* Page 18

<sup>37</sup> Article 31, paragraph 2, Law on Procurement

best practice is to open the door to tenders “*which reflect the diversity of the technical solutions available in the marketplace.*”<sup>38</sup>

#### 4. **Recommendation**

- Develop qualification criteria in a way that enable diversity of technical solutions available in the marketplace. Subject of further discussion with representative from the private sector and government and donors should designing such criteria and text of proposed guidelines.
- Educate the staff of the contracting authorities to develop qualification criteria in a way that consider new and innovative solutions, rather than established standards.

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<sup>38</sup> Page 18; *Code of Best Practices*, SEC (2008) 2193 (for full reference see footnote 1)

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