

Public procurement

2011/0438(COD) - 11/01/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection adopted the report by Marc TARABELLA (S&D, BE) on the proposal for a directive of the European Parliament and of the Council on public procurement.

The committee recommends that Parliament adopt its position in first reading following the ordinary legislative procedure, and amend the Commission proposal. The main amendments are as follows:

Public procurement principles: with a view to promoting socially and environmentally sustainable development in public procurement, Members want economic operators to comply with the **environmental, social and labour law provisions** which apply at the place where the works are executed, services provided or goods produced or supplied.

The amended text states that contracting authorities **shall not award a contract** to the tenderer submitting the best tender where it has been established, based on clear and sufficient evidence that the tender does not comply with environmental, social and labour law provisions.

Where contracting authorities lay down environmental, social or other requirements or criteria in the technical specifications, the award criteria or the contract performance clauses, they may require a specific **label or certificate** as means of proof that these works, services or supplies correspond to such requirements or criteria.

For all procurements, **technical specifications** shall be drawn up so as to ensure that the products, services and works subject to the contract meet the requirements of **data protection** law at the time of the design of the processing of personal data (data protection by design).

The technical specifications must be non-discriminatory and **technologically neutral**.

Grounds for exclusion: Members add to the list of grounds for exclusion **participation in exploitation of human trafficking and child labour** covered by Directive 2011/36/EU of the European Parliament and of the Council. Furthermore, they propose that a contracting authority may exclude an economic operator from participation in the market where it is aware of any **serious or repeated violations** of obligations in the field of social, environmental or labour law or where a **conflict of interests** could not have been effectively remedied.

Criteria for award: Members consider that the notion of “lowest cost” should give way to the notion of **most economically advantageous tender**. The contracting authority shall assess the most economically advantageous tender, on the basis of criteria linked to the subject matter of the public contract in question.

Those criteria shall include, in addition to the price or costs, qualitative, environmental and social considerations. They may also include cost-effectiveness of short-distance procurement where relevant, and the **costs over the life-cycle** and delivery conditions.

SME participation: Members insist that public procurement should be adapted to the needs of small and medium-sized enterprises (SMEs). Contracting authorities should make use of the [Code of Best Practices set out in the Commission Staff Working Document](#) of 25 June 2008.

In order to foster the involvement of SMEs in the public procurement market, they propose to give consideration to dividing **contracts into lots**, especially for products that require quality for welfare, such as food for passive consumers in hospitals, schools, care for children and other people.

In addition, it should be possible for groups or consortia of economic operators, particularly of SMEs, to submit tenders or to put themselves forward together as candidates.

Sub-contracting: in order to clarify the sub-contracting chain, Members propose providing for a **system of liability throughout the subcontracting chain** so that the direct contractor of a subcontractor is liable in the event that the subcontractor fails to comply with mandatory legal, regulatory and administrative provisions in force in the Member States of contract performance or is insolvent.

The contracting authority shall ask the tenderer to **indicate in its tender any share of the contract** it may intend to subcontract to third parties.

Procedures: in order to make procedures faster and more efficient, **time limits for participation in procurement procedures should be kept as short as possible** without creating undue barriers to access for economic operators from across the internal market, in particular SMEs.

The amendments made by the committee confer a certain degree of **flexibility** on the rules, allowing for negotiations in all procedures. Certain safeguards are provided to ensure that the added flexibility in the use of procedures does not result in misuse.

Furthermore, the report recommends encouraging the submission of **building information electronic modelling tools** for works contracts in order to modernise the procurement process and ensure greater efficiencies are achieved in the public procurement of works covered by the Directive, in particular in relation to taking into account life cycle costs and sustainability criteria.

Innovation partnership: an amendment explains in detail how the new innovation partnerships procedure should be used, adding to the Commission's original proposal, specifically by linking this new tool to the principles applying to the competitive procedure, where most relevant. It also clarifies that pre-commercial procurement continues to apply, irrespective of this new innovation partnerships procedure.

Social services: Members consider that the creation of a special regime for social services given their specific characteristics and in order to guarantee the strategic use of public procurement. However, they wish to make the scheme less stringent by transforming the requirement for ex-ante publication into a **prior information notice**, while stressing the need to comply with the principles of transparency and equal treatment. They also propose to establish a higher threshold of **EUR 750 000** (rather than EUR 500 000) for social services contracts.

Tenders comprising products originating in third countries: pending the adoption of a regulation on reciprocity, it is appropriate to maintain the current provisions of the public procurement legislation.

Governance: Member States should ensure that competent authorities or structures are in charge of monitoring, implementation and control of public procurement. Member States shall transmit to the Commission every two years a general overview of their national sustainable procurement policies, and indicate the success rate of SMEs in public procurement.

Lastly, Member States shall ensure that guidance on the interpretation and application of Union public procurement law is available free of charge to assist contracting authorities and economic operators, in particular SMEs, in correctly applying the Union public procurement rules.