

Public procurement

2011/0438(COD) - 15/01/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 620 votes to 31 with 30 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on public procurement.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement between Parliament and Council. They amend the proposal as follows:

Public services: it is clarified that **nothing in the Directive obliges Member States to contract out or externalise the provision of services** that they wish to provide themselves or to organise by means other than public contracts. The Directive does not affect the social security legislation of the Member States. Nor does it deal with the liberalisation of services of general economic interest, reserved to public or private entities, or with the privatisation of public entities providing services.

Exclusion grounds: Parliament added to the grounds for exclusion **terrorist financing and child labour and other forms of trafficking in human beings** as defined in Directive 2011/36/EU. Furthermore, contracting authorities may exclude from participation in a procurement procedure any economic operator where it has sufficiently plausible indications to conclude that the economic operator has entered into **agreements** with other economic operators aimed at distorting competition or where a conflict of interest cannot be effectively remedied.

Best price-quality ratio: the criteria of ‘most economically advantageous tender’ is the overriding one in the awards procedure.

The most economically advantageous tender from the point of view of the contracting authority shall be identified **on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle, and may include the best price-quality ratio**, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance trading and delivery conditions.

Social and environmental requirements: in order to ensure efficient and socially sustainable public procurement, Member States and contracting authorities may adopt the measures necessary to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed or the services provided.

Control of the observance of the environmental, social and labour law provisions should be performed at the relevant stages of the procurement procedure, when applying the general principles governing the choice of participants and the award of contracts, when applying the exclusion criteria and when applying the provisions concerning abnormally low tenders.

Innovative solutions and innovation partnerships: Parliament introduced a new procedure to encourage tenders proposing innovative solutions where a need for the development of an innovative product or service or innovative works and the subsequent purchase of the resulting supplies, services or works cannot be met by solutions already available on the market.

The new innovation partnership should be based on the procedural rules that apply to the competitive procedure with negotiation and contracts should be awarded on the sole basis of the best price-quality ratio, which is most suitable for comparing tenders for innovative solutions.

Allow SME participation: Parliament stressed the need to give particular attention to small and medium sized enterprises.

In order to further the possibilities for SMEs to participate in a large contracts, the latter may be **divided into lots**.

Furthermore, time limits for participation in procurement procedures should be kept as short as possible.

European Single Procurement Document (ESPD): in order to avoid the administrative deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria, the amended text offers the chance of producing a European Single Procurement Document (ESPD) consisting of an **updated self-declaration** by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and he shall provide the relevant information as required by the contracting authority.

The tenderer to whom the contract has been awarded may, nevertheless be required to provide relevant proof without which the award will not be made.

Subcontracting: the new Directive introduces stricter rules on subcontracting. The amended text states that the conditions relating to the enforcement of observance of applicable obligations in the fields of environmental, social and labour law, established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions should be applied whenever the national law of a Member State provides for a mechanism of joint liability between subcontractors and the main contractor.

Abnormally low offers: to fight social dumping and ensure that workers' rights are respected, stricter rules are introduced regarding abnormally low bids. Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

Electronic communications: contracting authorities should, except in certain specific situations, use electronic means of communication which are non-discriminatory, generally available and interoperable with the ICT products in general use and which do not restrict economic operators' access to the procurement procedure.

Social services: the amended text provides that contracting authorities intending to award a public contract for social services shall make known their intention either by means of a contract notice, or by means of a prior information notice, which shall be published continuously. The threshold for social services contracts is raised to **EUR 750 000**.