

Public procurement

2011/0438(COD) - 26/02/2014 - Final act

PURPOSE: to revise and modernise the rules on public procurement in the EU.

LEGISLATIVE ACT: Directive 2014/24/EU of the European Parliament and of the Council
on public procurement and repealing Directive 2004/18/EC

CONTENT: the Directive is part of a legislative package for modernisation of public procurement in the EU, which is also made up of:

- a [Directive on procurement](#) by entities operating in the utilities sectors: water, energy, transport and postal services (replacing directive 2004/17/EC).
- a [Directive on the award of concession contracts](#).

The Directive applies to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

- **EUR 5 186 000** for public works contracts;
- **EUR 134 000** for public supply and service contracts awarded by central government authorities and design contests organised by such authorities;
- **EUR 207 000** for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities;
- **EUR 750 000** for public service contracts for social services.

The Directive does not affect the freedom of Member States to define what they consider to be **services of general economic interest**, how those services should be organised and financed, in compliance with the State aid rules, and to what specific obligations they should be subject.

The review is a **major overhaul of public procurement rules** across the EU, the main points of which are as follows:

Simplification of procedures: Member State systems will provide two basic forms of procedure, open and restricted procedure. They may, in addition, provide, subject to certain conditions, the competitive procedure with negotiation, the competitive dialogue and/or the innovation partnership, a new form of procedure for innovative procurement.

Time-limits for participations and submission of offers have been shortened and the **grounds for exclusion** of candidates and tenderers have been reviewed and clarified.

The documentation required is reduced, notably through the compulsory acceptance of **self-declarations from bidders (through a standardised European Single Procurement Document)** consisting of a

formal statement by the economic operator that the relevant ground for exclusion does not apply and/or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority.

The promotion of **on line public procurement** is a more user-friendly feature and a key factor in the simplification process.

Better price-quality ratio: the criterion of '**most economically advantageous tender**' is the overriding concept in the award process.

The most economically advantageous tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, **such as life-cycle costing**, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects,

Strategic use of public procurement: in response to new challenges, the new rules seek to ensure greater inclusion of **common societal goals** in the procurement process. These goals include environmental protection, social responsibility, innovation, combating climate change, employment, public health and other social and environmental considerations.

Innovative solutions and innovation partnerships: Parliament had 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.

Innovation will be specifically encouraged, through the new innovation partnership introduced by Parliament. This procedure aims 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** is 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.

Better access for SME participation: Parliament had stressed the need to give particular attention to small and medium sized enterprises.

The Directive provides for concrete measures to remove barriers for market access by small and medium-sized enterprises (SMEs), such as simplification of documentation obligations in procurement procedures, the creation of a standardised document for selection purposes, an incitation for contracting authorities to consider the **division of contracts into smaller lots** that are more accessible for SMEs, and a reduction on requirements for participation.

Clear procedures: contracting authorities must take appropriate measures to effectively prevent, identify and remedy **conflicts of interest** arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

The new Directive introduces **more stringent requirements regarding subcontracting**. 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.

Furthermore, to fight social dumping and ensure that workers' rights are respected, stricter rules are introduced regarding **abnormally low bids**.

Governance: the Directive contains obligations for Member States to monitor and report on public procurement activity in order to improve the efficacy and uniform application of EU law in this field.

ENTRY INTO FORCE: 17/04/2014.

TRANSPOSITION: 18/04/2016.

DELEGATED ACTS: the Commission is empowered to adopt delegated acts in order to adapt to rapid technical, economic and regulatory developments. The power to adopt such acts is conferred on the Commission for an indeterminate period from 17 April 2014. The European Parliament or the Council may object to a delegated act within two months from the date of notification (which may be extended by two months.) If the European Parliament or Council express objections, the delegated act will not enter into force.