

Procurement in the water, energy, transport and postal services sectors

2011/0439(COD) - 26/02/2014 - Final act

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

LEGISLATIVE ACT: Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/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 public procurement](#) (replacing Directive 2004/18/EC) ; and
- 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 414 000** for supply and service contracts as well as for design contests;
- **EUR 5 186 000** for works contracts;
- **EUR 1 000 000** for service contracts for social and other specific 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.

Member States are free to organise the provision of compulsory social services or of other services such as postal services either as services of general economic interest or as non-economic services of general interest or as a mixture of these.

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. Public contracts should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, terrorist offences, money laundering or terrorist financing. Similarly, the non-payment of taxes or social security contributions should also lead to mandatory exclusion at the level of the Union.

Furthermore, contracting entities may exclude economic operators which have proven unreliable, for instance **because of violations of environmental or social obligations**, including rules on accessibility for disabled persons

Simplification includes the fact that 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.

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.

In the performance of public contracts economic operators **comply with 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 listed in Annex XIV.

Encourage innovation: 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.

Groups of economic operators, including temporary associations, may participate in procurement procedures. They shall not be required by contracting entities to have a specific legal form in order to submit a tender or a request to participate.

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.