Financial rules applicable to the general budget of the Union: procurement procedure

2014/0180(COD) - 12/03/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgets adopted the report by Ingeborg GRÄSSLE (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966 /2012 on the financial rules applicable to the general budget of the Union.

The proposal under consideration aimed at aligning the financial regulation with the new directives on public procurement and on the award of concession contracts awarded by the European institutions on their own account.

The committee recommended that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the commission proposal as follows:

Principles applicable to public procurement: the estimated value of a contract may not be determined with a view to **circumventing the applicable rules**, nor may a contract be split up for that purpose. The contracting authority shall give reasons when it decides not to divide a contract into lots.

In accordance with the principle of sustainability, contracting authorities shall take suitable measures to ensure that, when executing contracts, economic operators comply with the **environmental, social and labour law** obligations established by Union or national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.

Exclusion criteria: in order to protect the financial interests of the Union, Members proposed integrating tax fraud, tax evasion - including tax evasion via untaxed offshore structures - misuse of corporate assets, embezzlement of public funds in the criteria for exclusion from participation in procurement procedures of EU institutions.

Conflicts of interests and grave professional misconduct: the report aimed to distinguish different kinds of ‘conflict of interests’ and treat them differently. Accordingly, the term ‘conflict of interest’ should be solely used for cases where an official or agent of an EU institution is in such situation.

On the other hand, grave professional misconduct would mean:

- fraudulently or negligently misrepresenting information;
- entering into agreement with other economic operators with the aim of distorting competition or violating intellectual property rights;
- attempting to influence the decision-making process of the contracting authority during the procedure;
- attempting to obtain confidential information on the procedure.

Before taking a decision to reject an economic operator from a given procedure, the contracting authority should give the economic operator the **opportunity to submit its observations,** unless the rejection had been justified, by an exclusion decision taken with regard to the economic operator, following the examination of its observations.

The early detection and exclusion system: for cases of grave professional misconduct, fraud, corruption, participation in a criminal organisation, money laundering, terrorist financing, or serious breach of

contract, a panel should be set up by the Commission at the request of an authorising officer of the Commission or of an executive agency.

- Where the request of the authorising officer was based, inter alia, on the information provided by OLAF, the Office should cooperate with the panel in accordance with Regulation (EU, Euratom) No 883/2013, with **due regard to the respect for procedural and fundamental rights, and to the protection of whistle-blowers.**
- The panel might take an exclusion decision including as regards the duration of the exclusion and/or may impose a financial penalty which should represent **between 2 % and 10 %** of the total value of the contract, without prejudice to the application of liquidated damages or other contractual penalties.
- In cases of corruption, terrorist financing, human trafficking, etc. – the panel would have the **option of permanently excluding the economic operator**.
- Where the exclusion or financial penalty was not published, the Commission should regularly inform the European Parliament and the Council of those decisions, using appropriate measures to ensure confidentiality.
- The limitation period for excluding or imposing financial penalties on an economic operator should be five years calculated from the date on which the wrongdoing was committed or the date of the final judgment of a national jurisdiction.
- Members introduced an additional **sanction mechanism for Member States** who failed to cooperate with the Commission on the early detection and exclusion system.

Submission and evaluation: the proposal stated that the contracting authority might require tenderers to submit a guarantee in advance to make sure that the tenders submitted would not be withdrawn. In such cases, Members considered that the **guarantee required should be proportionate** to the estimated value of the contract and be set at a very low level in order to prevent discrimination against diverse economic operators.

Members also set out the cases where a contract or a specific contract might be modified without a new procurement procedure.

Electronic procurement: the report stressed that Union public procurement should serve to ensure that Union funds are used in an effective, transparent, and appropriate way and, in that regard, electronic procurement should contribute to better use of public funds and enhance access to public contracts for all economic operators.

Framework contracts: for framework contracts with reopening of competition, Members felt that it was appropriate to waive the obligation to provide the characteristics and relative advantages of the successful tender to an unsuccessful contractor, on the basis that the receipt of such information by parties to the same framework contract each time a competition was reopened might prejudice fair competition between them.

Separate discharge: Members introduced an amendment implementing the Joint Statement of 29 May 2014 made by the European Parliament, the Council and the Commission on the separate discharge for **Joint Undertakings** under Article 209 of the Financial Regulation, as confirmed by all stakeholders at the Round Table of 13 November 2014 on audit and discharge for Joint Undertakings.