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

2014/0180(COD) - 07/10/2015 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 645 votes to 16, with 27 abstentions, a legislative resolution 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 European Parliament's position adopted in first reading following the ordinary legislative procedure amend the Commission proposal. The main amendments adopted in plenary concerning the following issues:

Public procurement: it is stipulated that the term "procurement" shall mean the acquisition by means of a contract of works, supplies or services and the acquisition or rental of land, existing buildings or other immovable property, by one or more contracting authorities from economic operators chosen by those contracting authorities.

Obligations in the areas of environmental, social and labour law: minimum requirements shall include compliance with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

It has been clarified how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development, while ensuring that they can obtain the best value for money for their contracts, in particular through requiring specific labels and/or through the use of appropriate award methods.

Single early detection system: the Commission should set up and operate a single early detection and exclusion system. The purpose of such a system shall be to facilitate: (i) the early detection of risks threatening the Union's financial interests; (ii) the exclusion of an economic operator which is in one of the exclusion situations; (iii) the imposition of a financial penalty on an economic operator.

Information exchanged within the early detection system shall be **centralised in a database** set up by the Commission and shall be managed in full compliance with the right to privacy and other rights.

The decision to exclude and/or to impose a financial penalty shall be taken by the contracting authority. Such a decision shall be **based on a final judgment** or on a final administrative decision.

In the absence of a final judgment or final administrative decision and in cases related to a serious breach of contract, the contracting authority should take its decision having regard to the recommendation of a panel on the basis of a preliminary classification in law of the conduct of the economic operator concerned. The role of the panel should be to **ensure the coherent operation of the exclusion system**. The panel should be composed of a standing chair, representatives of the Commission and a representative of the relevant contracting authority. The panel should also assess the duration of an exclusion in the cases where the duration has not been set by the final judgment or the final administrative decision.

Criteria for exclusion: an economic operator should be excluded by the contracting authority when a final judgment or a final administrative decision has been taken in the case of: (i) grave professional misconduct, (ii) non-compliance, whether intentional or not, with the obligations related to the payment of

social security contributions or the payment of taxes, (iii) fraud affecting the general budget of the Union, (iv) corruption, (v) participation in a criminal organisation, (vi) money laundering, terrorist financing, terrorist related offences, (vii) child labour or other forms of trafficking in human beings or irregularity. It should also be excluded in the case of a **serious breach of contract or bankruptcy**.

The contracting authority should also be able to exclude an economic operator **where a natural or legal person assuming unlimited liability for the debts of that economic operator is bankrupt** or in a similar situation of insolvency or where that natural or legal person fails to comply with its obligations to pay social security contributions or taxes, where such situations impact the financial situation of the economic operator.

An economic operator should not be subject to a decision of exclusion when it has taken **remedial measures**, thus demonstrating its reliability.

Conflict of interest and grave professional misconduct: the amended Regulation makes a distinction between different cases usually referred to as situations of conflict of interest. The notion of a "conflict of interest" should be solely used for cases where an official or an agent of a Union institution is in such a situation.

On the other hand, **grave professional misconduct** includes, in particular, any of the following:

- fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
- entering into agreement with other economic operators with the aim of distorting competition;
- violating intellectual property rights;
- **attempting to influence the decision-making process** of the contracting authority and attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure.

Financial penalties: the contracting authority may impose a financial penalty on an economic operator who has attempted to obtain access to Union funds by participating or requesting to participate in a procurement procedure while being, without having declared it, in one of the exclusion situations. The amount of the financial penalty shall represent b**etween 2% and 10% of the total value of the contract**.

The decision of exclusion of an economic operator from participation in procurement procedures or the imposition of a financial penalty and the decision to **publish the related information** should be taken by the relevant contracting authority, in view of its autonomy in administrative matters.

Rejection of a procurement procedure: before taking a decision to reject an economic operator from a given procurement procedure, the contracting authority shall give the economic operator the opportunity to submit its observations, unless the rejection has been justified by an exclusion decision taken with regard to the economic operator, following an examination of its observations.

Presentation and evaluation of offers: according to the Regulation, the contracting authority may require tenderers to submit a guarantee in advance to make sure that the tenders submitted are not withdrawn. The required guarantee shall be **proportionate to the estimated value of the contract** and shall be set at an appropriate level in order to prevent discrimination against diverse economic operators.

Parliament also lays down the cases in which a contract or a specific contract under a framework contract may be modified without a new procurement procedure.

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