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

2014/0180(COD) - 28/10/2015 - Final act

PURPOSE: to align the Financial Regulation to new procurement rules.

LEGISLATIVE ACT: Regulation (EU, Euratom) 2015/1929 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.

CONTENT: the Regulation **amends the financial rules applicable to the general budget of the Union**. The aim of the new Regulation is to align the procurement procedures used by the EU institutions for awarding contracts to the new procurement rules applicable to member states, set out in directives 2014/24/EU and 2014/23.

In addition, **concessions for works and services** are introduced for the first time in the Financial Regulation and are subject to the same types of procedures as public contracts.

The revised Financial Regulation provides for the following:

Respect for environmental, social and labour law obligations: the Regulation stipulated that the contracting authorities may 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.

Economic operators shall comply with the 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.

Such obligations should be part of the **minimum requirements defined by the contracting authority** and should be integrated in the contracts signed by the contracting authority.

Single early detection system: in order to protect the Union's financial interests, a single early detection and exclusion system should be set up by the Commission, and the rules for exclusion from participation in procurement procedures should be improved in order to strengthen the protection of those interests. 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.

Exclusion of economic operators: 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.

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 panel should also assess the duration of an **exclusion** in cases where the duration has not been set by the final judgment or the final administrative decision.

Reasons for exclusion: the Regulation provides that 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 grave professional misconduct, non-compliance, whether intentional or not, with the obligations related to the payment of social security contributions or the payment of taxes, fraud affecting the general budget of the Union, corruption, participation in a criminal organisation, money laundering, terrorist financing, terrorist related offences, 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.

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

The information related to an exclusion or a financial penalty should only be **published in the case of grave professional misconduct, fraud, a significant deficiency** in complying with the main obligations of a contract financed by the budget or an irregularity.

Conflicts of interest and grave professional misconduct: the new Regulation states that it is appropriate that different cases usually referred to as situations of conflict of interest are identified and treated distinctly. 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.

In cases where an economic operator attempts to **unduly influence a procedure or obtain confidential information**, this should be treated as grave professional misconduct.

ENTRY INTO FORCE: 31.10.2015. The Regulation shall apply from 1.1.2016.