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2009 - 2014

Committee on Employment and Social Affairs

2011/0439(COD)

11.6.2012

DRAFT OPINION

of the Committee on Employment and Social Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council
on procurement by entities operating in the water, energy, transport and postal
services sectors

(COM(2011)0895 – C7-0007/2012 – 2011/0439(COD))

Rapporteur: Ramona Nicole Mănescu

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SHORT JUSTIFICATION

The Commission proposal for a directive on procurement plays a key role in the ‘Europe 2020’ strategy for smart, sustainable, and inclusive growth (COM(2010)2020). It is one of the market-based instruments to be used to achieve the Europe 2020 objectives by improving the conditions for business to innovate and by encouraging the wider use of green procurement supporting the shift towards a resource efficient and low-carbon economy. At the same time, the Europe 2020 strategy stresses that public procurement policy must ensure the most efficient use of public funds and that procurement markets must be kept open Union-wide (all the more in times of financial crisis).

Public procurement is a key market-based instrument geared to the needs of society which, in addition to meeting other objectives, can play a role in fostering sustainable employment, working conditions, innovation particularly for businesses, above all SMEs, promoting social inclusion, and addressing the employment needs of vulnerable and disadvantaged social groups and can make an important contribution towards meeting the EU 2020 targets. The public procurement can also play an important role in promoting a European social model based on quality jobs, equal opportunities, non-discrimination and social inclusion.

The modernisation of the public procurement directives should strike a balance between simplifications of the rules, on the one hand, and, on the other, sound, effective procedures related to innovative, sustainable award criteria, while also securing a higher rate of SME participation and making wider use of e-procurement.

The aim should be to exploit the potential of public procurement to the full within the single market in order to foster sustainable growth, high employment level, and social inclusion. The successful revision and enforcement of public procurement rules would do much to revitalise investment in the real economy and overcome Europe’s economic crisis.

The rapporteur for opinion welcomes the Commission's proposal, which put forward some interesting new principles and ideas. The legislative proposal should result in simpler and more flexible procurement procedures for contracting authorities and provide easier access for companies, especially SMEs.

Given that the money involved is public money, it should not be spent on short-term goals, but should, on the contrary, be viewed as a long-term investment in society; to that extent, the onus on the authorities is all the greater.

The public procurement, if used effectively, could be a real driver to promoting quality jobs, equality, developing skills, training, promoting environmental policies and providing incentives for research and innovation. Hence, the costs that companies incur in tendering for a public procurement contract be minimised, with a view to making companies more competitive and boosting employment.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

Amendment

(4) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts have to be revised and modernised in order to increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals, ***leading to the creation of new sustainable jobs.*** There is also a need to clarify basic notions and concepts to ensure better legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.

Or. en

Amendment 2

Proposal for a directive Recital 17

Text proposed by the Commission

(17) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. *A* specific regime should *therefore* be established *for contracts for those services*, with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities *are able to* apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public

Amendment

(17) Other categories of services continue by their very nature to have a limited cross-border dimension, namely what are known as services to the person such as certain social, health and educational services. Those services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. ***For a better quality of those services in contracts***, a specific regime should be established with a higher threshold of EUR 1 000 000. In the particular context of procurement in those sectors, services to the person with values below this threshold will typically not be of interest to providers from other Member States unless there are concrete indications to the contrary, such as Union financing for transborder projects. Contracts for services to the person above this threshold should be subject to Union-wide transparency. Given the importance of the cultural context and the sensitivity of those services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. ***The essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general interest is also in line with Protocol (No 26) on Services of general interest, Article 14 of the Treaty on the Functioning of the European Union and Article 36 of the Charter of Fundamental Rights.*** The rules of this directive take account of that imperative, imposing only observance of basic principles of transparency and equal treatment and making sure that contracting entities apply specific quality criteria for

contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or contracting entities remain free to provide those services themselves or to organise social services in a way that does not entail the conclusion of public contracts, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting entity, without any limits or quotas, provided such a system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Or. en

Amendment 3

Proposal for a directive

Recital 27

Text proposed by the Commission

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. **They** should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect

Amendment

(27) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. **It is necessary that they** should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting

and correct errors that occur during procurement procedures.

authorities to prevent, detect and correct errors that occur during procurement procedures.

Or. en

Amendment 4

Proposal for a directive

Recital 35

Text proposed by the Commission

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted *in such a way* to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test

Amendment

(35) The technical specifications drawn up by purchasers need to allow public procurement to be opened up to competition. To that end, it should be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted *and applied in conformity with the principles of transparency, non-discrimination and equality of opportunity* to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on other equivalent arrangements which meet the requirements of the contracting entities and are equivalent in terms of safety must be considered by the contracting entities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier

reports, or no possibility of obtaining them within the relevant time limits.

of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

Or. en

Amendment 5

Proposal for a directive Recital 36

Text proposed by the Commission

(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and that the label is accessible and available to all interested parties.

Amendment

(36) Contracting entities that wish to purchase works, supplies or services with specific environmental, social or other characteristics should be able to refer to particular labels, such as the European Eco-label, (multi-) national eco-labels or any other label provided that the requirements for the label are linked to the subject-matter of the contract, such as the description of the product and its presentation, including packaging requirements. It is furthermore essential that those requirements are drawn up and adopted on the basis of objectively verifiable criteria, using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors, ***social organisations*** and environmental organisations can participate, and that the label is accessible and available to all interested parties.

Or. en

Amendment 6

Proposal for a directive Recital 40

Text proposed by the Commission

(40) 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 or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Given that contracting entities, which are not contracting authorities, might not have access to indisputable proof on the matter, it is appropriate to leave the choice of whether or not to apply the exclusion criteria listed in Directive [2004/18] to such contracting entities. The obligation to apply Article 55(1) and (2) of Directive [2004/18] should therefore be limited to contracting entities that are contracting authorities. Furthermore, contracting entities should be given the possibility to exclude candidates or tenderers for violations of environmental or social obligations, including rules on accessibility for disabled persons or other forms of grave professional misconduct, such as violations of competition rules or of intellectual property rights.

Amendment

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Or. en

Amendment 7

Proposal for a directive

Recital 44

Text proposed by the Commission

(44) Where contracting entities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which

Amendment

(44) Where contracting entities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which

they will assess tenders in order to identify which one offers the best value for money. The determination of those criteria depends on the subject-matter of the contract, since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

they will assess tenders in order to identify which one offers the best value for money, ***economic and social sustainability***. The determination of those criteria depends on the subject-matter of the contract, since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured. Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting entity and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

Or. en

Amendment 8

Proposal for a directive Recital 50

Text proposed by the Commission

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers or to implement training

Amendment

(50) Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory, are linked to the subject-matter of the contract and are indicated in the notice used to make the call for competition, or in the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For example, mention may be made of the requirements applicable during the performance of the contract to recruit long-term job-seekers, ***unemployed young***

measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

persons or persons with disabilities or to implement training measures for the unemployed or for young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

Or. en

Amendment 9

Proposal for a directive Recital 55

Text proposed by the Commission

(55) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that undertaking.

Amendment

(55) In line with the principles of equal treatment, *objectivity* and transparency, the successful tenderer should not be replaced by another economic operator without reopening the contract to competition. However, the successful tenderer performing the contract may undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that undertaking.

Or. en

Amendment 10

Proposal for a directive Recital 59

Text proposed by the Commission

(59) Not all contracting entities may have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support would be an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting entities; on the other hand, business, **not least** SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.

Amendment

(59) Not all contracting entities may have the internal expertise to deal with economically or technically complex contracts. Against this background, appropriate professional support would be an effective complement to monitoring and control activities. On the one hand, this objective can be achieved by knowledge sharing tools (knowledge centres) offering technical assistance to contracting entities; on the other hand, business, **especially** SMEs, should benefit from administrative assistance, in particular when participating in procurement procedures on a cross-border basis.

Or. en

Amendment 11

**Proposal for a directive
Article 2 – point 22**

Text proposed by the Commission

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation;

Amendment

(22) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, **installation**, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation;

Or. en

Amendment 12

**Proposal for a directive
Article 27 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. The protection of the intellectual property of the tenderers shall be ensured.

Or. en

Amendment 13

Proposal for a directive

Article 30 – paragraph 1 – subparagraph 2

Text proposed by the Commission

However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the ***names and*** relevant professional qualifications of the staff responsible for the performance of the contract in question.

Amendment

However, in the case of service and works contracts as well as supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate, in the tender or the request to participate, the relevant professional qualifications of the staff responsible for the performance of the contract in question.

Or. en

Amendment 14

Proposal for a directive

Article 30 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting entities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting entities to

Amendment

Groups of economic operators may submit tenders or put themselves forward as candidates. ***Groups of economic operators, particularly small and medium-sized enterprises (SMEs), may take the form of a consortium of enterprises.*** Contracting entities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order

assume a specific legal form.

to submit a tender or a request to participate, those groups shall not be required by the contracting entities to assume a specific legal form.

Or. en

Amendment 15

Proposal for a directive Article 31 – paragraph 1

Text proposed by the Commission

Member States may reserve the right to participate in procurement procedures *to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.*

Amendment

Member States may reserve the right to participate in public procurement procedures *for:*

Or. en

Amendment 16

Proposal for a directive Article 31 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) sheltered workshops, or provide for such contracts to be performed in the context of sheltered employment programmes, provided that the majority of the employees concerned are disabled persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under

*normal conditions or easily find
employment on the ordinary market;*

Or. en

Amendment 17

Proposal for a directive Article 31 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

*(b) social enterprises and programmes
whose main aim is the social and
professional integration of disadvantaged
workers, provided that more than 30 % of
the employees of those economic
operators or programmes are disabled or
disadvantaged workers.*

Or. en

Amendment 18

Proposal for a directive Article 31 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

*1a. The protection of the intellectual
property of the tenderers shall be ensured.*

Or. en

Amendment 19

Proposal for a directive Article 32 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The contracting entity shall not use in

other competitive procedures the information forwarded to it by economic operators during an earlier competitive procedure.

Or. en

Amendment 20

Proposal for a directive

Article 43 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a).

Amendment

Only those economic operators invited by the contracting entity following its assessment of the requested information may submit research and innovation projects, aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions. The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 76 (1)(a) **and Article 76(2)**.

Or. en

Amendment 21

Proposal for a directive

Article 54 – paragraph 1 – subparagraph 4

Text proposed by the Commission

For all procurement, the subject of which is intended for use by persons, whether general public or staff of the contracting entity, those technical specifications shall, ***except in duly justified cases***, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Amendment

For all procurement, the subject of which is intended for use by persons, whether general public or staff of the contracting entity, those technical specifications shall be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users ***in duly justified exceptional cases, which shall be***

stated in the call for competition and the tender documents.

Or. en

Amendment 22

Proposal for a directive Article 55 – paragraph 1 – point c

Text proposed by the Commission

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors and environmental organisations may participate,

Amendment

(c) the labels are established in an open and transparent procedure in which all stakeholders, including government bodies, consumers, manufacturers, distributors, ***social organisations*** and environmental organisations may participate,

Or. en

Amendment 23

Proposal for a directive Article 58 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Contracting entities ***may*** take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Amendment

Contracting entities ***shall*** take account of variants which are submitted by a tenderer and meet the minimum requirements specified by the contracting entities.

Or. en

Amendment 24

Proposal for a directive Article 58 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Contracting entities shall indicate in the specifications ***whether or not they authorise variants and, if so***, the minimum requirements to be met by the variants and any specific requirements for their presentation. ***Where variants are authorised***, they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Amendment

Contracting entities shall indicate in the specifications the minimum requirements to be met by the variants, any specific requirements for their presentation ***and*** they shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.

Or. en

Amendment 25

Proposal for a directive

Article 58 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Contracting entities may indicate in the specifications that the variants are not authorised and the related specific reason for such prohibition.

Or. en

Amendment 26

Proposal for a directive

Article 58 – paragraph 2

Text proposed by the Commission

Amendment

2. In procedures for awarding supply or service contracts, contracting entities ***that have authorised variants*** shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to

2. In procedures for awarding supply or service contracts, contracting entities shall not reject a variant on the sole ground that it would, where successful, lead either to a service contract rather than a supply contract or to a supply contract rather than

a supply contract rather than a service contract.

a service contract.

Or. en

Amendment 27

Proposal for a directive Article 70 – paragraph 5

Text proposed by the Commission

5. Contracting entities **may decide** not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, **at least in an equivalent manner**, with obligations established by Union legislation **in the field of social and labour law or environmental law** or **of** the international social and environmental law provisions listed in Annex XIV.

Amendment

5. Contracting entities **shall** not award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with obligations **in the field of social and labour law or environmental law** established by Union **or national** legislation or **by** the international social and environmental law provisions listed in Annex XIV **or with obligations in the field of intellectual property law**.

Or. en

Amendment 28

Proposal for a directive Article 77 – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

2. Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:

Amendment

2. Where contracting entities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs. The methodology used **must be simplified in order to be accessible for SMEs and it** must fulfil all of the following conditions:

Or. en

Amendment 29

Proposal for a directive Article 79 – paragraph 3 – point (d)

Text proposed by the Commission

(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;

Amendment

(d) compliance, at least in an equivalent manner, with obligations established by Union and ***national*** legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XIV or, where not applicable, with other provisions ensuring an equivalent level of protection;

Or. en

Amendment 30

Proposal for a directive Article 79 – paragraph 4 – subparagraph 2

Text proposed by the Commission

It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

Amendment

It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3, ***or when the received justification is not sufficient.***

Or. en

Amendment 31

Proposal for a directive Article 79 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Contracting entities shall reject the tender,

Amendment

Contracting entities shall reject the tender,

where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XIV.

where they have established that the tender is abnormally low because it does not comply with obligations established by Union **and national** legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XIV.

Or. en

Amendment 32

Proposal for a directive Article 86 – paragraph 1

Text proposed by the Commission

1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency and equal treatment of economic operators and allowing contracting entities to take into account the specificities of the services in question.

Amendment

1. Member States shall put in place appropriate procedures for the award of contracts subject to this Chapter, ensuring full compliance with the principles of transparency, **non-discrimination** and equal treatment of economic operators and allowing contracting entities to take into account the specificities of the services in question.

Or. en

Amendment 33

Proposal for a directive Article 86 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment

Amendment

2. Member States shall ensure that contracting entities may take into account the need to ensure **a high level of** quality, **safety**, continuity, accessibility, **affordability**, availability and comprehensiveness of the services, the specific needs of different categories of

of users and innovation. Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.

users, ***including disadvantaged and vulnerable groups, the necessity to promote the participation of SMEs***, the involvement and empowerment of users and innovation. Member States may also provide that the choice of the service provider shall not be made solely on the basis of the price for the provision of the service.

Or. en

Amendment 34

Proposal for a directive

Article 93 – paragraph 3 – subparagraph 1 – point f

Text proposed by the Commission

(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting entities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;

Amendment

(f) examining complaints from citizens and businesses ***and from professional associations or similar bodies*** on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting entities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;

Or. en

Amendment 35

Proposal for a directive

Article 93 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. The annual report shall also include an annual comparison between the prices submitted and the actual cost of contracts that have already been performed and the potential influence over the number of

staff employed by suppliers.

Or. en