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Committee on the Environment, Public Health and Food Safety

2011/0438(COD)

4.5.2012

DRAFT OPINION

of the Committee on the Environment, Public Health and Food Safety

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 public procurement
(COM(2011)0896 – C7-0006/2012 – 2011/0438(COD))

Rapporteur: Åsa Westlund

PA_Legam

SHORT JUSTIFICATION

Public Procurement is an important factor in our common society; economically, socially and environmentally. Public authorities in Europe spend around 18 percent of GDP on goods and services through procurement. Public Procurement can, and should, be used as an instrument for implementing the objectives of the European Union.

Public procurement is an important tool for contracting authorities to make the best use of taxpayers' money. That includes using public procurement to create sustainable development including enhance positive development in the areas of environment, climate, anti-discrimination, animal welfare and youth employment for example. Since sustainable development is an objective in the Lisbon treaty it is important to enable and encourage all public authorities to use public procurement as a tool to reach this goal.

The Committee for Environment, Public Health and Food Safety will give this opinion to the Committee for Internal Market and Consumer Protection. The opinion will focus on issues regarding sustainable public procurement, in the areas of environmental, economic, and social matters.

The Rapporteur welcomes the Commission's proposal for a new directive on public procurement. The proposal focuses on increasing the efficiency of public spending, implies simplification and flexibility of existing rules and stresses the importance of environmental considerations. Further suggestions focus on making public procurement more useful in supporting common societal goals.

The Rapporteur wants to put extra focus on the following important issues:

- There should not be any ambiguity that contracting authorities are allowed to set demands that are stricter or go further than current EU-legislation in specific areas.
- Innovative solutions should be promoted in public procurement. Public purchasers should be encouraged to buy innovative products and services in order to achieve the goals of sustainable development. New innovative solutions and ideas are necessary in the area of environment and public procurement should be used as a tool to meet such needs.
- The criteria of life cycle considerations should be upgraded. The social and environmental effects of the entire production process must be taken into consideration. Therefore contracting authorities should have further possibilities to impose demands on the production process and not only on the specific product. This will lead to a more sustainable procurement.
- Based on public health considerations, the application of collective agreements and international conventions on employment should not be an option but a requirement on assigned contractors. To safeguard workers' health and their work environment it should be possible to exclude and penalize tenderers who do not follow social and labour legislation.

Countries that have ratified ILO Convention 94 should not be hindered in implementing the convention.

- The use of standards should be preferred over of the use of labels. Standards are useful as they are well understood by tenderers in the relevant area and will help avoid making contracting authorities re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.
- The Directive must not reduce the possibility for municipalities to cooperate in order to provide some services of general interest, as for example waste and water treatment.
- The Directive should increase the possibility to impose demands on the entire contractors chain, i.e. also on sub-contractors. Not only the main contractor/tenderer must follow the rules and regulations set out by the contracting authority but also sub-contractors should be required to do so. There is need for a control system which covers all parts of the contractors' chain.

The Rapporteur is committed to preserve self-determination and autonomy of municipalities, regions and other local contracting authorities. The regulation must be clear in order to avoid interpretation disputes. Simplification of the Directive will also encourage and enable contracting authorities to incorporate clear sustainability objectives into their public procurement policies.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety 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 2

Text proposed by the Commission

(2) 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

Amendment

(2) Public procurement, ***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,*** plays a key role in the Europe 2020 strategy ***and in fulfilling the objective of sustainable development stated in the Treaty of Lisbon.*** 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

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.

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Or. en

Justification

Text relating to the Treaty of Lisbon is needed to underline the importance of sustainable development.

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

(2) 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

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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. ***Contracting authorities are encouraged to set demands that are stricter or go further than current EU-legislation in specific areas, in order to reach these common objectives.*** 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

Justification

There should not be any ambiguity about that contracting authorities are allowed to set demands that are stricter or go further than current EU-legislation in specific areas. An early declaration of the directive's role in achieving climate, environmental and social cohesion will account for articles relating to these issues later.

Amendment 3

Proposal for a directive Recital 43

Text proposed by the Commission

(43) 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

Amendment

(43) 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 contract notice, the prior information notice used as a means of calling for competition or 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 instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to recruit long-term job-seekers or to implement training measures for the unemployed or 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.

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Or. en

Justification

This amendment stresses the importance of ILO Convention 94 on Labour Clauses (Public Contracts) which specifically regulates public procurement. The EU must commit itself to ILO standards.

Amendment 4

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Procurement within the meaning of this Directive is the purchase *or other forms of acquisition* of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, *whether or not the works, supplies or services are intended*

Amendment

2. Procurement within the meaning of this Directive is the purchase of works, supplies or services *via public contracts* by one or more contracting authorities from economic operators chosen by those contracting authorities.

for a public purpose.

Or. en

Justification

This change is necessary to allow for municipalities to cooperate in an effective way in order to provide certain services of general interest, as for example in waste and water treatment.

Amendment 5

Proposal for a directive

Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.

deleted

Or. en

Justification

This change is necessary to allow for municipalities to cooperate in an effective way in order to provide certain services of general interest, as for example waste and water treatment.

Amendment 6

Proposal for a directive

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:

a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.

b) the essential part of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;

c) there is no active private participation in the controlled legal person.

Or. en

(Text from Article 11, para 1 of Commission proposal - with modifications)

Justification

This change is necessary to allow for municipalities to cooperate in an effective way in order to provide certain services of general interest, as for example waste and water treatment. This is a matter of scope and, therefore, Article 11 of the Commission proposal is moved to Article 1 with amendments.

Amendment 7

**Proposal for a directive
Article 1 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. Paragraph 2 a (new) also applies where a controlled entity or entities which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.

Or. en

(Text from Article 11, para 2 of Commission proposal - with modifications)

Justification

cf. to amendment to Article 1, para 2 a (new).

Amendment 8

Proposal for a directive

Article 1 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 3, may nevertheless award a public contract outside the scope of this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:

a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;

b) the essential part of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;

c) there is no active private participation in the controlled legal person.

Or. en

(Text from Article 11, para 3 of Commission proposal - with modifications)

Justification

cf. to amendment to Article 1, para 2 a (new).

Amendment 9

Proposal for a directive

Article 1 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(7) of this

Directive, and thus fall out of the scope of the Directive, where the following cumulative conditions are fulfilled:

a) the purpose of the partnership is the provision of a public-service task conferred on all the public authorities;

b) the task is carried out solely by the public authorities concerned i.e. without the involvement of active private capital.

Or. en

(Text from Article 11, para 4 of Commission proposal - with modifications)

Justification

cf. to amendment to Article 1, para 2 a (new)

Amendment 10

Proposal for a directive

Article 1 – paragraph 2 e (new)

Text proposed by the Commission

Amendment

2e. Contracts for social and other specific services listed in Annex XVI are exclusively regulated by articles 74-76 in this Directive.

Or. en

Justification

The form of the proposed directive is such that social and other services are regulated only by Articles 74-76. This should be stated as early as possible in the text of the proposal.

Amendment 11

Proposal for a directive

Article 2 – point 22 a (new)

Text proposed by the Commission

Amendment

22a. 'socially sustainable production process' means the production process in

which the provision of works, services and supplies, respects health and safety, social and labour law, rules and standards, in particular with regard to the principle of equal treatment at the workplace. The principle of equal treatment at the workplace refers to the respect of the applicable terms and conditions of employment, including health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place;

Or. en

Justification

It is important to enable contracting authorities to encourage good working conditions and to halt social dumping in order to protect public health. The purpose of this definition is to be able to refer to socially sustainable production process later, for example in Article 40, 41, 55, 56, 60, 61, 66, 70 and 71.

Amendment 12

**Proposal for a directive
Article 11**

Text proposed by the Commission

Amendment

Article 11

deleted

Or. en

(Text from Article 11 partly moved to Article 1 - see amendments on Article 1, para 2a-d (new))

Justification

The content of Article 11 of the Commission proposal is important for the scope of the Directive and is thus moved, with modifications, to Article 1. Correspondingly, Article 11 of the Commission proposal is deleted.

Amendment 13

Proposal for a directive Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11 a

Service contracts awarded on the basis of exclusive right.

This Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the treaty.

Or. en

Justification

Reintroducing Article 18 from the current Directive 2004/18/EC. This Article is important for operations of general interest, for example gaming (state-authorized lotteries) and waste disposal. The Article makes it possible for authorities to reserve some operations for specific in-house companies. The European Court has applied this provision in C-360/96.

Amendment 14

Proposal for a directive Article 40 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. The technical specifications ***as defined in point 1 of Annex VIII*** shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.

1. The technical specifications shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply ***in order to achieve both use and sustainability objectives of the contracting authority.***

Or. en

Justification

This amendment aims to enhance the taking into account of sustainability considerations within this Directive.

Amendment 15

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 2

Text proposed by the Commission

These characteristics **may** also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.

Amendment

These characteristics also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle **and socially sustainable production process** as referred to in point (22) **and 22 a (new)** of Article 2.

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 16

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

Technical specifications may for instance also include requirements relating to:

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 17

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new) – point a (new)

Text proposed by the Commission

Amendment

(a) performance, including levels of environmental and climate performance;

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 18

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new) – point b (new)

Text proposed by the Commission

Amendment

(b) the organisation, qualification and experience of the staff assigned to performing the contract in question;

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 19

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new) – point c (new)

Text proposed by the Commission

Amendment

(c) safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions;

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 20

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new) – point d (new)

Text proposed by the Commission

Amendment

(d) life cycle characteristics (as defined in point 22 of Article 2);

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 21

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new) – point e (new)

Text proposed by the Commission

Amendment

(e) socially sustainable production process characteristics (as defined in point 23 of Article 2);

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 22

Proposal for a directive

Article 40 – paragraph 1 – subparagraph 5 a (new) – point f (new)

Text proposed by the Commission

Amendment

(f) rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 23

Proposal for a directive

Article 40 – paragraph 3 – point (a)

Text proposed by the Commission

(a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;

Amendment

(a) in terms of performance or functional requirements, including **social and** environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract; ***in accordance with paragraph 1 above, technical specifications can be formulated in terms of performance or functional requirements relating to life cycle or socially sustainable production process characteristics of the requested works, supplies or services, in addition to technical specifications in terms of the performance or functional requirements of the works, supplies, or services in use;***

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 24

Proposal for a directive

Article 40 – paragraph 3 – point (b)

Text proposed by the Commission

(b) by reference to **technical** specifications and, in **order of preference**, to **national standards transposing** European standards, **European technical approvals, common technical specifications**, international standards, **other technical**

Amendment

(b) by reference to specifications and **standards, as defined in point 2 of Annex VIII, with preference given** to European **and** international standards, **and only in the absence thereof** to national standards; each reference shall be accompanied by the

reference systems established by the European standardisation bodies or – when those do not exist – national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies; each reference shall be accompanied by the words ‘or equivalent’;

words 'or equivalent';

Or. en

Justification

It is important to enable contracting authorities to encourage environmental considerations, good working conditions and to halt social dumping in order to protect public health. A contracting authority can already in the technical specifications set high environmental and social demands.

Amendment 25

Proposal for a directive

Article 40 – paragraph 3 – point (c)

Text proposed by the Commission

(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

Amendment

(c) in terms of performance or functional requirements as referred to in point (a), with reference to the technical specifications **and standards** referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 26

Proposal for a directive

Article 40 – paragraph 3 – point (d)

Text proposed by the Commission

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

Amendment

(d) by reference to the technical specifications **and standards** referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 27

Proposal for a directive

Article 40 – paragraph 5

Text proposed by the Commission

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Amendment

5. Where a contracting authority uses the option of referring to the specifications **and standards** referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications **and standards** to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 28

Proposal for a directive

Article 40 – paragraph 6 – subparagraph 1

Text proposed by the Commission

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard ***transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications*** address the performance or functional requirements which it has laid down.

Amendment

6. Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard, ***where the criteria for that*** standard address the performance or functional requirements which it has laid down.

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 29

Proposal for a directive Article 41 – title

Text proposed by the Commission

Amendment

Labels

Labels *and certificates of a third party
verified standard*

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 30

Proposal for a directive Article 41 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Where contracting authorities lay down environmental, social or other characteristics of a works, service or supply in terms of performance or functional requirements as referred to in point (a) of Article 40(3) they may require that these works, services or supplies bear a specific label, provided that all of the following conditions are fulfilled: ***deleted***

(a) the requirements for the label only concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;

(b) the requirements for the label are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

(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,

(d) the labels are accessible to all interested parties;

(e) the criteria of the label are set by a third party which is independent from the economic operator applying for the label.

Or. en

Justification

Standards are often useful as they are well understood by tenderers and avoid contracting authorities (CA) needing to re-invent the wheel. Where the CA has introduced environmental or social criteria in its technical specifications, whether as life cycle characteristics or otherwise, the same arguments apply in relation to third party verified standards addressing those concerns.

“Standard” is defined in Annex VIII. The amendment meets the simplification objective to treat all standards, including those on environmental and social criteria, in the same way.

Amendment 31

Proposal for a directive Article 41 – paragraph 2

Text proposed by the Commission

2. Where a **label fulfils** the **conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also** sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to **those** of the detailed specifications of that **label**, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Amendment

2. Where a **third party verified standard does not meet** the **definition** in **point 6 of Annex VIII because its criteria** sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to of the detailed specifications of that, **standard** or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

Justification

This amendment aims to highlight the use of third party standards in public procurement. By

using third party verified standards contracting authorities and tenderers have a clear, eligible and useful tool. The fact that a product or service meets a third party verified standard serves as evidence that the contracting authority's criteria are met.

Amendment 32

Proposal for a directive

Article 41 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The contracting authority may state in its technical specifications that works, supplies or services that comply with such a standard shall be deemed to satisfy the technical specifications. Contracting authorities shall also accept all equivalent standards that fulfil the specifications indicated by the contracting authorities. For works, supplies or services that have not been verified by a third party to comply with such a standard, contracting authorities shall also accept a technical dossier of the manufacturer or other appropriate means of proof such as certificates and declarations.

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 33

Proposal for a directive

Article 54 – paragraph 1 – point (b)

Text proposed by the Commission

Amendment

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority

(b) the tender comes from a tenderer that is not excluded in accordance with Articles 21 and 55 and that meets the selection criteria set out by the contracting authority

in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64.

in accordance with Article 56 and, where appropriate, the non-discriminatory rules and criteria referred to in Article 64 **and Article 71.**

Or. en

Justification

Article 71 relates to sub-contracting which also should be taken into consideration.

Amendment 34

**Proposal for a directive
Article 54 – paragraph 2**

Text proposed by the Commission

2. Contracting authorities 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 XI.

Amendment

2. Contracting authorities 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 **and national laws, regulations and other binding provisions** in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.

Or. en

Justification

Needless to say, contracting authorities should have the right to refuse giving a contract to a tender that does not comply with laws and regulations. The reference to regulations in this article should not be limited to Union legislation in specific regulatory fields. The article should be extended to include national legislation and systems for regulating the labour market.

Amendment 35

Proposal for a directive

Article 55 – paragraph 3 – point (a)

Text proposed by the Commission

(a) where it is aware of any violation of 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 XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner.

Amendment

(a) where it is aware of any violation of obligations established by Union legislation **or national laws, regulations and other binding provisions** in the field of **gender**, social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI. Compliance with Union legislation or with international provisions also includes compliance in an equivalent manner;

Or. en

Justification

The reference to regulations in this article is limited to Union legislation in specific regulatory fields. This reference should be extended in such a way that national legislation and systems for regulating the labour market are taken into account.

Amendment 36

Proposal for a directive

Article 56 – paragraph 1 – point (c a) (new)

Text proposed by the Commission

Amendment

(ca) respect of standards in the field of health and safety, social and labour and environmental law defined by EU and national legislation as well by collective agreements.

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive

facilitates for contracting authorities to set environmental and social demands.

Amendment 37

Proposal for a directive

Article 56 – paragraph 4 – subparagraph 1

Text proposed by the Commission

With regard to technical and professional ability, contracting authorities may require that economic operators possess the necessary human and technical resources and experience to **perform** the contract to an appropriate quality standard. Contracting authorities may conclude that economic operators will not **perform** the **contract to an appropriate quality standard** where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

Amendment

With regard to technical and professional ability, contracting authorities may require that economic operators possess **or have made provisions to access or acquire** the necessary human and technical resources and experience to **ensure the performance of the** contract to an appropriate quality standard **and, where so requested by the contracting authority, in accordance with any contract performance clause specified in accordance with Article 70**. Contracting authorities may conclude that economic operators will not **ensure the required performance** where the contracting authority established that they have conflicting interests which may negatively affect the performance of the contract.

Or. en

Justification

The use of labels should be deleted in favour of the use of standards. Standards are useful as they are well understood by tenderers in the relevant area and also to avoid contracting authorities needing to re-invent the wheel. By stressing the use of standards the Directive facilitates for contracting authorities to set environmental and social demands.

Amendment 38

Proposal for a directive

Article 56 – paragraph 5 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Provisions set in paragraphs 1, 2, 3, 4 and 5 apply to subcontracting procedures and subcontracting operators.

Justification

The aim is to give contracting authorities better possibilities to take subcontracting into account.

Amendment 39

Proposal for a directive

Article 66 – paragraph 1 – point (a)

Text proposed by the Commission

(a) the most economically advantageous tender;

Amendment

(a) the most economically, ***socially and environmentally*** advantageous tender;

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 40

Proposal for a directive

Article 66 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The most economically advantageous tender referred to in point (a) of paragraph 1 ***from the point of view of the contracting authority*** shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

Amendment

2. The most economically, ***socially and environmentally*** advantageous tender referred to in point (a) of paragraph 1 shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and

environmental concerns in award criteria.

Amendment 41

Proposal for a directive

Article 66 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

Amendment

2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter ***or the production of the subject-matter*** of the public contract in question, such as:

Or. en

Justification

It should be made clear that a contracting authority is able to take the entire production process into account in the award criteria.

Amendment 42

Proposal for a directive

Article 66 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) life-cycle process criteria;

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 43

Proposal for a directive

Article 66 – paragraph 2 – point a b (new)

Text proposed by the Commission

Amendment

(ab) socially sustainable production process criteria, which may also involve the employment of disadvantaged individuals or members of vulnerable groups;

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 44

Proposal for a directive

Article 66 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question ***as well as the capacities, abilities and professional conduct of any subcontractor*** may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced ***and further subcontracting will only be permitted*** with the consent of the contracting authority, which must verify that replacements ***or further subcontracting*** ensure equivalent organisation and quality;

Or. en

Justification

The aim is to give contracting authorities better possibilities to take subcontracting into account.

Amendment 45

Proposal for a directive Article 66 – paragraph 3

Text proposed by the Commission

3. Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

Amendment

3. Member States may provide that the award of certain types of contracts shall be based on the most economically, ***socially and environmentally*** advantageous tender as referred to in point (a) of paragraph 1 and in paragraph 2.

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 46

Proposal for a directive Article 66 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Amendment

5. In the case referred to in point (a) of paragraph 1 the contracting authority shall specify, in the contract notice, in the invitation to confirm interest, in the procurement documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically, ***socially and environmentally*** advantageous tender.

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 47

Proposal for a directive Article 69 – 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 XI or, where not applicable, with other provisions ensuring an equivalent level of protection*;

Amendment

(d) compliance with *the provisions relating to employment protection and working conditions in force at the place where the work , service or supply is to be performed*;

Or. en

Justification

This amendment reintroduces Article 55, paragraph 1, point d from the present public procurement Directive (2004/18/EC). Needless to say, contracting authorities should have the right to refuse giving a contract to a tender that does not comply with laws and regulations. The reference to regulations in this article should not be limited to Union legislation in specific regulatory fields. The article should be extended to include national legislation and systems for regulating the labour market.

Amendment 48

Proposal for a directive Article 69 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Contracting authorities 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

Amendment

Contracting authorities 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 *or national laws, regulations and other binding provisions* in the field of social and labour law or

provisions listed in Annex XI.

environmental law or by the international social and environmental law provisions listed in Annex XI.

Or. en

Justification

Contracting authorities should have the right to refuse giving a contract to a tender that does not comply with laws and regulations. The reference to regulations in this article should not be limited to Union legislation in specific regulatory fields. The article should be extended to include national legislation and systems for regulating the labour market.

Amendment 49

Proposal for a directive

Article 70 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

A contracting authority may state in the contract documents, or be obliged by a Member State so to state, the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are normally applied in the place where the works are to be carried out or services are to be provided and which shall be applicable to the works carried out on site or to the services provided during the performance of the contract.

Or. en

Justification

This amendment reintroduces, with some minor changes, Article 27, paragraph 1, from the present Directive 2004/18/EC. from the present directive on public procurement (EC 2004/18). This Article should not be deleted because of its importance in supporting tenderers from other countries to participate in procurement and to endorse cross-border trade.

Amendment 50

Proposal for a directive Article 70 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

A contracting authority which supplies the information referred to in paragraph 1 shall request the tenderers or candidates in the contract award procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to environment and employment protection provisions and the working conditions which are normally applied in the place where the works are to be carried out or the service is to be provided.

Or. en

Justification

This amendment reintroduces, with some minor changes, Article 27, paragraph 2, from the present Directive 2004/18/EC. This Article should not be deleted because of its importance in supporting tenderers from other countries to participate in procurement and to endorse cross-border trade.

Amendment 51

Proposal for a directive Article 71 – paragraph 3

Text proposed by the Commission

Amendment

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.

3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability. ***A system of joint and several liability shall stipulate that the whole subcontracting chain is jointly held liable as regards respect of fundamental rights, environmental, health and safety, social and labour rules (as defined in Articles 2, 22 a (new), 40, 54, 55 and 56).***

Justification

The aim is to give contracting authorities better possibilities to take subcontracting into account.

Amendment 52

Proposal for a directive
Article 76 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In contracts for social and other specific services listed in Annex XVI, contracting authorities may require economic operators to re-invest in the specific operation any profit gained in the same operation or only allow non-profit entities as tenderers.

Or. en

Justification

To emphasize that contracting authorities have the right to impose demands that ensure that tax-payers money for social services is used for this purpose, also when they use public procurement and not only in in-house operations.

Amendment 53

Proposal for a directive
Annex VIII – point (1)

Text proposed by the Commission

Amendment

(1) "technical specification" means one of the following: ***deleted***

(a) in the case of public works contracts the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting

authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

(b) in the case of public supply or service contracts a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures;

Or. en

Justification

Modification due to amendments made in Article 40.

Amendment 54

Proposal for a directive Annex VIII – point (2)

Text proposed by the Commission

(2) "standard" means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

- (a)** international standard: a standard adopted by an international standards organisation and made available to the general public,
- (b)** European standard: a standard adopted by a European standards organisation and made available to the general public,
- (c)** national standard: a standard adopted by a national standards organisation and made available to the general public;

Amendment

(2) "standard" means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

- (i)** international standard: a standard adopted by an international standards organisation and made available to the general public,
- (ii)** European standard: a standard adopted by a European standards organisation and made available to the general public,
- (iii)** national standard: a standard adopted by a national standards organisation and made available to the general public;
- (b) *European technical approvals;***
- (c) *common technical specification;***
- (d) *technical reference;***
- (e) *third party verified standard and certification.***

Or. en

Justification

Modification due to changes regarding standards.

Amendment 55

Proposal for a directive Annex VIII – point (3)

Text proposed by the Commission

Amendment

(3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State; **deleted**

Or. en

Justification

Modification due to changes regarding standards.

Amendment 56

Proposal for a directive Annex VIII – point (4)

Text proposed by the Commission

Amendment

(4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the Official Journal of the European Union; **deleted**

Justification

Modification due to changes regarding standards.

Amendment 57

**Proposal for a directive
Annex VIII – point (5)**

Text proposed by the Commission

Amendment

(5) "Technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

deleted

Justification

Modification due to amendments made in Article 40.

Amendment 58

**Proposal for a directive
Annex VIII – point 5 a (new)**

Text proposed by the Commission

Amendment

(5a) "Third party verified standard" means a specification established in relation to environmental, social or other characteristics of a works, service or supply (including life cycle and social sustainable production process characteristics) that is accessible to all interested parties and requires compliance to be verified by a third party which is independent from the tenders and where the criteria for the specification:

(i) only concern characteristics which are linked to the subject-matter of the

contract;

(ii) are drawn up on the basis of scientific information or based on other objectively verifiable and non-discriminatory criteria;

(iii) are established in an open and transparent procedure in which all stakeholders, including government bodies, trade unions, consumers, manufacturers, distributors and environmental organisations, may participate;

(iv) are set by a third party which is independent from any economic operator applying for the verification of compliance.

Or. en

Justification

Modification due to changes regarding standards.

Amendment 59

**Proposal for a directive
Annex XIV – Part II – point e a (new)**

Text proposed by the Commission

Amendment

(ea) a declaration/certification proving/showing the respect of standards in the field of health and safety, social and labour law defined by EU and national legislation as well by collective agreements;

Or. en

Justification

Modification due to changes regarding standards

Amendment 60

**Proposal for a directive
Annex XIV – Part II – point f a (new)**

Text proposed by the Commission

Amendment

(fa) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;

Or. en

Amendment 61

**Proposal for a directive
Annex XVI – row 8 a – column 2 (new)**

Text proposed by the Commission

Amendment

Educational services

Or. en

Justification

Not only administrative educational services but also educational services shall be mentioned in the annex of services referred to in Article 74.