



# New EU-rules on public procurement - ensuring better value for money

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**New EU-rules on public procurement will ensure better quality and value for money when public authorities buy works, goods or services, thanks to new award criteria which will put more emphasis on quality, environmental considerations, social aspects and innovation. The new rules will also make it easier for small and medium-sized firms to bid and include tougher rules on subcontracting.**

Public procurement rules govern the way public authorities buy goods, works and services by establishing the criteria for awarding contracts. They ensure that public purchases are made in a transparent manner so as to ensure fair competition and that contracting authorities get the best value for taxpayers' money.

The new EU public procurement rules are part of a legislative package comprising three directives and one regulation. Two of the directives deal with "classic" and "utilities" public procurement, described in this background note and the third with concession contracts (see separate Q&A). The regulation governs access for non-EU markets to the EU's public procurement market and is still under negotiation.

Public authorities spend around 18% of GDP on works, goods and services, making public procurement a powerful lever for achieving specific societal goals. The public procurement package is one of the 12 priorities in the "Single Market Act I" which aims to unlock the growth potential of the single market and is a key component of the EU 2020 strategy for smart, sustainable and inclusive growth.

See the Q&A below for more information about public procurement, the award criteria, the thresholds, what the new rules will mean for small and medium-sized enterprises, what the European Parliament fought for during negotiations with the member states and the significance of public procurement to the European economy.

## 1. What is public procurement?

Public procurement rules exist at both national and EU level. All public contracts must be advertised regardless of what is being bought, above a certain threshold. The thresholds for EU procurement are higher than the national thresholds, which means that only the largest contracts have to be advertised across the EU.

Under public contracts, the authorities remain economically liable for all works, goods or services procured. This is not the case for concession contracts, which public authorities use to engage private firms to supply services or to perform works.

## 2. What will the new rules cover?

The new rules will replace Directive 2004/18/EC on public works, supply and service contracts and Directive 2004/17/EC on procurement in the water, energy, transport and postal service sectors.

## 3. What are the aims of the new rules?

Current procurement rules may not always allow public contractors to make the best use of their resources and might also be unduly burdensome, an EU Commission impact assessment shows.

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To remedy these problems, the award criteria in the new rules will be based on the principle of the "most economically advantageous tender" (the "MEAT" - criteria) which aim to ensure quality and best value for money by putting more emphasis on environmental considerations, social aspects or innovative characteristics, the experience of the staff performing the contract or offers of after-sales service and technical assistance, while still taking into account the price or life cycle costs of the work, good or service procured.

In particular, the new rules seek to open procurement contracts up to more innovative solutions to ensure that the money that goes into procurement is spent in a way that stimulates development.

The rules will also cut red tape for companies bidding and make it easier for small and medium-sized firms to participate.

## **4. What does public procurement mean to the EU economy?**

Public procurement is a major item of expenditure for contracting authorities in the EU. In 2009, contracts governed by EU public procurement rules accounted for 3.6% of EU GDP, amounting to €420bn (EU27). The overall value of the calls for tenders published in the Official Journal of the EU represents around 19% of the total expenditure on public works, goods and services.

A well-functioning procurement market in the EU can provide huge business opportunities for European companies and stimulate competition, better value for money and growth. At the same time, the strategic use of public expenditure can be a powerful lever for achieving specific societal goals.

## **5. How will the rules guarantee fairness and transparency?**

The new rules clearly define a number of critical issues which should lead to the exclusion of economic operators from the tendering procedure, such as conflicts of interest, or significant underperformance under a prior public contract. Possibilities for modifying contracts during their execution without new tender procedures will be limited.

Abnormally low tenders will be investigated and violations of social and labour law or environmental law could lead to the exclusion of the bidder. The new directives will also introduce tougher rules on subcontracting.

## **6. What are the thresholds?**

The thresholds remain unchanged from the current directives meaning that, at today's prices, calls for tenders will have to be made for all contracts costing more than:

- EUR 134 000 for supply and service contracts as well as for design contests
- EUR 5 186 000 for works contracts
- EUR 750 000 for contracts for social and other specific services such as health care, educational, cultural or religious services.

The thresholds remain at the levels imposed on the EU by the international WTO framework agreement on procurement. Any increase in the thresholds would have meant that a larger proportion of procurement would cease to be advertised at EU level, resulting in less competition.

## **7. What were the priorities of the European Parliament?**

Since the 2011 Rühle Report on recommendations for the upcoming overhaul of public procurement, the internal market committee has been championing a new procedure to encourage bidders to offer innovative solutions.

This "innovation partnership", which will now become reality, will make it possible for

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contractors and tenderers to negotiate new, innovative solutions together during the tendering procedure, rather than being committed to a specific solution already when the call for tenders is issued. This new procedure will help ensure that the best solutions are found and support new developments for the overall benefit of the EU economy.

Throughout the negotiations, Parliament's rapporteur Marc Tarabella (S&D, BE) stressed the need to toughen up rules on subcontracting and social responsibility in public procurement. Contractors that do not abide by EU labour laws can be excluded from bidding.

MEPs also ensured that member states will have to introduce in their national systems all the tendering procedures listed in the directives (the entire "toolbox") so as to ensure a level playing field across the EU.

## 8. How will the new rules help small firms?

To cut red tape, bidding will be simplified by the introduction of a standard "European Single Procurement Document" available in all EU languages, Authorities will be obliged to share the details of eligible bidders from national databases to ensure that bidders will not be asked to submit the same information more than once.

The system will be based on self-declarations and only the winning bidder will have to provide original documentation. This should reduce the administrative burden on companies by over 80%, according to the European Commission.

The new rules will also encourage the division of contracts into lots, so as to improve access to public procurement for small and medium-sized enterprises.

Finally, annual turnover requirements may not exceed two times the estimated contract value to avoid public contractors imposing exaggerated turnover requirements on small firms.

## 9. When will the new rules enter into force?

The directives will enter into force 20 days after publication in the *Official Journal of the European Union*. After this date, member states will have 24 months to implement the provisions of the new rules into national law.

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