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Ethics clauses in specifications of public calls for tenders

The local administrations in Flanders will be instructed to include an ethics clause in their specifications of public calls for tenders. Such a clause will also be included in the framework contracts that the Administrative Affairs committee will provide to local administrations. This was announced yesterday by Flemish Minister Liesbeth Homans, responsible for Local Government and Administrative Affairs, in the plenary session of the Flemish Parliament.

The De Standaard newspaper recently published a story revealing that on the Belgian market one can find paving stones that have been cut in India by children or in illegal quarries. It appeared that such stones have also been used in the execution of public procurement contracts. In the Flemish Parliament Minister Homans was questioned about what measures the government intends to take so as to prevent this from occurring in the future.

In addition to consultation with the sector involved, the Minister also promised to take whatever measures were within her powers. Amongst other things, she said the following:

"We have already frequently discussed within the Administrative Affairs committee that we will be providing certain framework contracts to the local administrations. This means that local administrations can benefit from contracts that we make available, and each of these contracts will include an ethics clause.

(...)

I have decided - and I shall do so immediately - to instruct all local administrations to include such an ethics clause whenever they issue specifications."

The Brussels-Capital Region already has an ordinance on the inclusion of environmental and ethics clauses in public procurement contracts (Ordinance of 8 May 2014, Belgian Official Journal 6 June 2014). Article 8 of this ordinance provides that contracting authorities can include ethics clauses in the special specifications of their public procurement contracts.

Attention is also devoted to this issue in the new Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 28 March 2014). Article 18, 2 of the Directive prescribes that Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective

agreements or by the international environmental, social and labour law provisions listed in Annex X. This also includes regulations on the minimum age for workers and illegal employment. Account will thus have to be taken of this when the Directive is transposed into Belgian law, something which must be done by 18 April 2016 at the latest.

For more information on this specific subject, please contact Sofie Marnef (the author) and Kris Lemmens (the author & head of department).

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