

Legislative proposal to make public procurement contracts more accessible for SME's

While awaiting the bills for full transposition of the new European directives on public procurement contracts, the opposition parties Ecolo and Groen submitted a bill on 22 June 2015 in order to already adapt the current public procurement contracts legislation so as to make public procurement contracts more accessible for small and medium-sized enterprises (SME's)¹.

The 22 June 2015 bill limits itself to achieving two objectives: (1) administrative simplification and (2) easier access to and opening up of the contracts for SME's.

In order to be able to accomplish these goals, the bill's backers are suggesting three amendments to be made to the current Public Procurements Act of 15 June 2006 (nos. 1-3) and a single amendment to the Royal Decree of 15 July 2011 on the Award of Public Procurement Contracts in the Classical Sectors ["Award RD"] (no. 4):

1. In accordance with the new European Directive 2014/24/EU, the contracting authority may not demand from a tenderer any minimum annual turnover amounting to more than twice the estimated value of the contract, except in properly-justified circumstances, e.g. relating to the special risks attaching to the nature of the works, services or products. The decision to go over the maximum of twice the estimated value must be clearly explained by the contracting authority in the contract documents.

2. The rule is that the contract should be divided up into lots for each separate job. One can only depart from this rule when such subdivision into lots has a negative impact on the competition and/or the object of the contract by its very nature makes it impossible to distinguish separate jobs. The contracting authority must justify this exception in the contract documents.

3. The tenderers fulfil the identification requirements simply by furnishing their enterprisenumber obtained via the Crossroads Bank for Enterprises to the contracting authority. Moreover the legislative bill – while awaiting the so-called "European Single Procurement Document" – wishes to generalise the use of declarations on honour with regard to the grounds for exclusion and the technical, economic and financial capacity. Only when the contract has actually been awarded would the tenderer, within a period of 20 days, have to provide the necessary documents about the aforementioned selection criteria to the contracting authority.

4. Finally, the provisions on qualitative selection in the Award RD of 15 July 2011 would be supplemented by the obligation for the contracting authority to take account, when evaluating the financial and economic capacity of a group of tenderers (e.g. a temporary commercial company), of all candidates forming part of this group. With this provision, the bill primarily wishes to ensure that enterprises in a joint venture may add their revenue figures together so as to be able to more easily satisfy the imposed minimum annual turnover requirement.

The above legal amendments are inspired by the new European public procurement directives, but cover only a limited part of these new public procurement directives, which have to be transposed into the national law by 18 April 2016 at the latest. For the moment we are still waiting to see the bills from the Government for the transposition of these new European directives. We will keep you informed of further developments.

¹Legislative proposal to make public procurement contracts more accessible for small and medium-sized enterprises (M. Gerken et al.), Parl.St. Kamer 2014-15, no. 06128, <http://www.dekamer.be/FLWB/PDF/54/1196/54K1196001.pdf> (last consulted on 24 June 2015).

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

Mechelsesteenweg 127A, b1 - 2018 Antwerp

t. +32 3 260 98 60 | +32 2 790 44 44

Regentschapsstraat 58 PO box 8 - 1000 Brussels

info@schoups.be

www.schoups.com