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(Legislative acts)

REGULATIONS

REGULATION (EU, EURATOM) No 966/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

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- (c) contests;
- (d) the negotiated procedure;
- (e) the competitive dialogue.

Where a public contract or a framework contract is of interest to two or more institutions, executive agencies or bodies referred to in Article 208 and 209, and whenever there is a possibility for realising efficiency gains, the contracting authorities concerned shall seek to carry out the procurement procedure on an interinstitutional basis.

Where a public contract or framework contract is necessary for the implementation of a joint action between an institution and one or more contracting authorities from Member States, the procurement procedure may be carried out jointly by the institution and the contracting authorities, in certain situations, which are to be specified in the delegated acts adopted pursuant to this Regulation.

Joint procurement may be conducted with EFTA states, and Union candidate countries, if this possibility has been specifically provided for in a bilateral or multilateral treaty.

2. For contracts where the value exceeds the thresholds provided for in Articles 118 or 190, use of the negotiated procedure shall be authorised only in cases provided for in the delegated acts adopted pursuant to this Regulation.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the types of procurement procedure, joint procurement, low value contracts and payment against invoices.

Article 105

Content of tender documents

Tender documents shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the content of tender documents, including the possibility of, and the conditions for, revision of the price and the technical specifications.

Article 106

Exclusion criteria applicable for participation in procurement procedures

1. Candidates or tenderers shall be excluded from participation in procurement procedures if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an

arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;

- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the EIB and international organisations;

- (d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

- (e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;

- (f) they are subject to an administrative penalty referred to in Article 109(1).

Points (a) to (d) of the first subparagraph shall not apply in the case of the purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

Points (b) and (e) of the first subparagraph shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision making or control over them, who are subject to a judgement as referred to in points (b) or (e) of the first subparagraph.

2. In the case of a negotiated procedure where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator, the institution may decide not to exclude the economic operator concerned on the grounds referred to in points (a), (c) and (d) of the first subparagraph of paragraph 1, if it is indispensable to do so in order to ensure the continuity of service of the institution. In such cases, the institution shall duly justify its decision.

3. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the contracting authority may refrain from requiring such certification for very low value contracts.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the contracting authority, shall:

(a) where the candidate or tenderer is a legal person, provide information on the ownership or on the management, control and power of representation of the legal person and certify that they are not in one of the situations referred to in paragraph 1;

(b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on:

(a) the exclusion criteria applicable for participation in calls for tenders, including rules on illegal activities giving rise to exclusion;

(b) what evidence may be satisfactory to show that an exclusion situation does not exist;

(c) the duration of an exclusion. Such exclusion shall not exceed 10 years.

Article 107

Exclusion criteria applicable to awards

1. A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for that contract:

(a) are subject to a conflict of interests;

(b) are guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply that information;

(c) find themselves in one of the situations of exclusion, referred to in Article 106(1), for the procurement procedure.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the exclusion criteria applicable during the procurement procedure, and the establishment of what evidence may be considered satisfactory to show that an exclusion situation

does not exist. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the duration of an exclusion.

Article 108

Central exclusion database

1. The central exclusion database set up and operated by the Commission, shall contain details of candidates and tenderers which are in one of the situations referred to in Article 106, point (b) of the first subparagraph of Article 109(1) and point (a) of Article 109(2). That database shall be common to the institutions, executive agencies and the bodies referred to in Article 208. The European Parliament and the Council shall be annually informed of the number of new cases and of the total number of cases entered into the database.

2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 58 and 61, shall communicate to the authorising officer responsible information on candidates and tenderers that are in one of the situations referred to in point (e) of the first subparagraph of Article 106(1), where the conduct of the operator concerned was detrimental to the Union's financial interests. That authorising officer shall receive this information and request the accounting officer to enter it into the database.

The authorities and bodies referred to in the first subparagraph shall have access to the information contained in the database and may take it into account, as appropriate and on their own responsibility, when awarding contracts associated with the implementation of the budget.

3. The ECB, the EIB and the European Investment Fund shall have access to the information contained in the database for the purpose of protecting their own funds and may take it into account, as appropriate and on their own responsibility, when awarding contracts in accordance with their procurement rules.

They shall communicate to the Commission information on candidates and tenderers that are in one of the situations referred to in point (e) of the first subparagraph of Article 106(1), where the conduct of the operators concerned was detrimental to the Union's financial interests.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the central exclusion database, including the definition of standardised procedures and technical specifications for the operation of the database.

5. Access may be granted to authorities of third countries only when the rules laid down in Article 9 of Regulation (EC) No 45/2001 are fulfilled and after an evaluation on a case-by-case basis.

CHAPTER 3

Award procedure

Article 131

Applications for grants

1. Grant applications shall be submitted in writing, including, where appropriate, in a secure electronic format.

The Commission shall provide, where it deems it feasible, the possibility of making online grant applications.

2. Grant applications shall be eligible if submitted by the following:

- (a) legal persons; or
- (b) natural persons, in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

For the purposes of point (a) of the first subparagraph, grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on behalf of the entity and offer guarantees for the protection of the Union's financial interests equivalent to those offered by legal persons.

3. The application shall state the legal status of the applicant and demonstrate his or her financial and operational capacity to carry out the proposed action or work programme.

For that purpose the applicant shall submit a declaration on his or her honour and, unless the grant is a low value grant, any supporting documents requested, on the basis of a risk assessment, by the authorising officer responsible. The prerequisite documents shall be indicated in the call for proposals.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships, to natural persons most in need and in receipt of direct support, to public bodies or international organisations. The authorising officer responsible may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies or international organisations.

4. Article 106(1) and Articles 107, 108 and 109 shall also apply to grant applicants. Applicants shall certify that they are not in one of the situations referred to in those Articles. However, the authorising officer responsible shall not require such certification in the following cases:

- (a) low value grants;

- (b) when such certification has recently been provided in another award procedure.

5. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer responsible, in accordance with Article 109.

Those penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer responsible or fail to supply that information.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the arrangements for grant applications, evidence of not falling within an exclusion situation, applicants without legal personality, legal persons forming one applicant, financial and administrative penalties, eligibility criteria and low value grants.

Article 132

Selection and award criteria

1. The selection criteria announced in advance in the call for proposals shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.

2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on selection and award criteria.

Article 133

Evaluation procedure

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.

2. The authorising officer responsible shall, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.

3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution concerned shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria.