

Brussels, 15 November 2007

Public procurement: Commission welcomes adoption of Directive improving rights of rejected bidders

The European Commission has welcomed the adoption by the Council and the European Parliament of the Commission's proposal for a Directive reviewing EU rules on remedies in the area of public procurement. This new Directive improves the national review procedures that businesses can use when they consider that a public authority has awarded a contract unfairly. The Commission proposed the Directive in May 2006 ([IP/06/601](#)). An agreement at first reading between Commission, Council and the European Parliament was reached in June 2007 ([IP/07/861](#)).

Internal Market and Services Commissioner Charlie McCreevy said: "I am pleased that this Directive has been adopted so rapidly. We need effective procedures for seeking review in all EU member states in order to make sure that public contracts ultimately go to the company which has made the best offer. By strengthening national review procedures in line with this Directive, businesses will have stronger incentives to bid for public contracts anywhere in the EU."

How the Directive improves bidders' rights

According to the Directive, contracting authorities need to wait for at least 10 days after deciding who has won the public contract before the contract can actually be signed. This "standstill period" is designed to give bidders time to examine the decision and to assess whether it is appropriate to initiate a review procedure. If this standstill period has not been respected, the Directive requires national courts under certain conditions to set aside a signed contract, by rendering the contract "ineffective".

The Directive also seeks to combat illegal direct awards of public contracts, which is the most serious infringement of EU procurement law. National courts will also be able to render these public contracts ineffective if they have been illegally awarded without transparency and prior competitive tendering. In these cases the contract will need to be tendered again, this time according to the appropriate rules. National courts may decide that these contracts remain in force only if required by overriding reasons relating to a general interest. In those cases, alternative penalties must be applied instead. These alternative penalties must be effective, proportionate and dissuasive, and may entail the shortening of the duration of the contract or the imposition of fines on the contracting authority.

For contracts based on framework agreements and dynamic purchasing systems, where speed and efficiency may be particularly relevant, the Directive provides for a specific review mechanism. For these types of contracts, Member States may choose to replace the standstill obligation by a post-contractual review procedure.

The Directive will soon be published in the EU's Official Journal. EU Member States will then have 24 months to implement it in their national laws.

Objectives of the review of the Remedies Directives

The review of the Remedies Directives, which was based on extensive consultations with contracting authorities and businesses, seeks to strengthen legal review procedures in the area of public procurement.

Effective procedures for seeking redress are essential in making sure that public contracts ultimately go to the company which has made the best offer. Such procedures will also help make businesses and citizens more confident that public procurement procedures are being conducted in a fair and competitive manner throughout the EU.

Public procurement is a cornerstone of the internal market and accounts for some 16% of EU GDP. Adoption of this Directive should stimulate a further opening up of public procurement markets, providing stronger incentives for businesses to bid for public contracts in EU Member States.

More information is available at:

http://ec.europa.eu/internal_market/publicprocurement/remedies/remedies_en.htm