



**COUNCIL OF
THE EUROPEAN UNION**

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2011/0438 (COD)**

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CORRIGENDUM TO THE NOTE

from: General Secretariat

to: Delegations

No Cion prop.: 18966/11 MAP 10 MI 686 + ADD 1 + ADD 2

Subject: Proposal for a Directive of the European Parliament and of the Council on public procurement
- Consideration of IMCO amendments

Delegations are informed that the European Parliament published on 11 January 2013 a final report on the proposal for a Directive on public procurement with the revised text of the amendments that have been submitted to the vote in the IMCO Committee on 18 December 2012.

Delegations will find in the Annex the changes between the draft amendments presented in doc. 18135/12 and the final report (marked double underlined) that the Presidency believes are of the nature that should be considered by the delegations. Other changes in the final draft are of the purely linguistic nature and should have no impact on the discussion on the Working party on Public procurement on 22 January 2013.

The new revised text will be in entirety presented in the next version of the document.

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Proposal for a Directive of the European Parliament and of the Council on public procurement

2011/0438 (COD)

COMMISSION PROPOSAL	EP IMCO AMENDMENTS - text submitted to the vote	EP IMCO AMENDMENTS - final report	COUNCIL GENERAL APPROACH
<p>(38) Where contracting authorities choose to award a contract to the most economically advantageous tender, they must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured.</p>	<p>(38) Contracting authorities awarding a contract according to the most economically advantageous tender criterion, must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria, which may include economic, environmental and social characteristics, depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured.</p>	<p>(38) Contracting authorities awarding a contract <u>on the basis of</u> the most economically advantageous tender criterion, must determine the award criteria on the basis of which they will assess tenders in order to identify which one offers the best value for money. The determination of these criteria, which may include economic, environmental and social <u>sustainability</u>, depends on the subject-matter of the contract since they must allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the contract, as defined in the technical specifications, and the value for money of each tender to be measured.</p>	<p>(38) Where contracting authorities award a contract to the most economically advantageous tender, they should determine the economic and qualitative criteria linked to the subject-matter of the contract on the basis of which they will assess tenders in order to identify the most economically advantageous tender from the view of the contracting authority. These criteria should thus allow for a comparative assessment of the level of performance offered by each tender in the light of the subject-matter of the contract, as defined in the technical specifications.</p> <p>In the context of the most economically advantageous tender, a non-exhaustive list of possible award criteria is set out</p>

<p>Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.</p>	<p>Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective and fair competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.</p>	<p>Furthermore, the chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective and fair competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.</p>	<p>in this Directive. Contracting authorities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.</p> <p>The chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective competition and be accompanied by arrangements that allow the information provided by the tenderers to be effectively verified.</p> <p>In order to ensure best value for money, the contract award decision should not be based on non-cost criteria only. The qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting authority, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.</p>
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Article 11, paragraph 1 (c)			
(c) there is no private participation in the controlled legal person.	(c) there is no private participation in the controlled legal person with the exception of legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority.	(c) there is no private participation in the controlled legal person, with the exception of <u>non-controlling or</u> legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority.	(c) there is no private capital participation in the controlled legal entity.
Article 11, paragraph 2			
2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.	2. Paragraph 1 also applies where a controlled entity, or entities , which is a contracting authority awards a contract to its controlling entity, or entities , or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract with the exception of legally enforced forms of private participation in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority or entity.	2. Paragraph 1 also applies where a controlled entity, or entities , which is/ are (a) contracting authority/ authorities award(s) a contract to its controlling entity, or entities , or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract, with the exception of <u>non-controlling or</u> legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authority.	2.Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal entity controlled by the same contracting authority, provided that there is no private capital participation in the legal entity being awarded the public contract.

Article 11, paragraph 3 (c)			
(c) there is no private participation in the controlled legal person.	(c) there is no private participation in the controlled legal person with the exception of legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.	(c) there is no private participation in the controlled legal person, with the exception of <u>non-controlling</u> or legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.	(c) there is no private capital participation in the controlled legal entity .
Article 11, paragraph 4 (e)			
(e) there is no private participation in any of the contracting authorities involved.	(c) there is no private participation in any of the contracting authorities involved with the exception of legally enforced forms of private participation in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.	(c) there is no private participation in any of the contracting authorities involved. with the exception of <u>non-controlling</u> or legally enforced forms of private participation, in conformity with the Treaties, and which do not exert any influence on the decisions of the controlling contracting authorities.	(e) there is no private capital participation in any of the contracting authorities involved.

Article 43, paragraph 2

<p>2. Contracting authorities authorising variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.</p>	<p>2. Variants shall be authorised in the procurement documents which define the minimum requirements to be met by the variants and any requirements for their presentation. These minimum requirements are mandatory to ensure that variants will not affect the subject matter of the contract. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.</p>	<p>2. <u>Contracting authorities may authorise variants</u> in the procurement documents which define the minimum requirements to be met by the variants and any requirements for their presentation. Those minimum requirements shall be mandatory in order to ensure that variants will not affect the subject matter of the contract. They shall also ensure that the chosen award criteria can be usefully applied to variants meeting those requirements as well as to conforming tenders which are not variants.</p>	<p>2. Contracting authorities authorising or requiring variants shall state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where a tender, which is not a variant, has also been submitted. They shall also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to conforming tenders which are not variants.</p>
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Article 73, paragraph 1 (a)

<p>(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4);</p>	<p>(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4), except for legally enforced forms of private participation;</p>	<p>(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4), except for <u>non-controlling or legally enforced forms of private participation;</u></p>	<p>(a) the exceptions provided for in Article 11 cease to apply following a participation by private undertakings in the legal person awarded the contract pursuant to Article 11(5);</p>
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