

PUBLIC PROCUREMENT REFORM

FACT SHEET No 10: TRANSPARENCY AND ANTI-CORRUPTION

- **Stronger guarantees for sound procedures:** transparency guarantees fair, equitable and non-discriminatory procedures. Conflicts of interest and unlawful conduct are detrimental to the proper conduct of award procedures and the correct application of the rules. Corruption in public procurement costs society about EUR 2 billion. It was therefore essential to strengthen legislation in this area. Regarding '**conflict of interests**':
 - this is now defined as a situation in which persons involved in, or able to influence, the procedure by which a purchaser awards a contract have a direct or indirect financial, economic or other personal interest that could jeopardise their impartiality and independence in that procedure;
 - Member States should take steps to prevent, identify and address conflicts of interest.

- **Prior consultations:** as part of the preparation of a call for tenders, public purchasers may be required to consult companies first. Such consultations can lead to situations that favour the companies involved, thus distorting competition. These consultations are now better regulated, as follows:
 - the public purchaser must take the necessary steps to ensure that the participation of a previously consulted company does not affect competition within the tender procedure concerned;
 - any information to which the company may be party as a result of its prior involvement must be sent to the other participating companies;
 - however, this company may be excluded only as a last resort and if it is impossible to guarantee equal treatment for participating companies by any other means.

- The **grounds for exclusion** from public procurement procedures have been strengthened and extended. In addition to conviction for fraud and corruption, grounds for exclusion include:
 - situations where a company has unduly influenced the decision-making process leading to the award of a contract;
 - false statements in connection with the procedure for the award of a public contract, whether these relate to the absence of grounds for exclusion, the possession of professional, technical and financial capacities, or failure to send the necessary certificates;
 - agreements to distort competition.

Public purchasers can then exclude the company concerned. Exclusion may also be imposed by the Member State.

However, any excluded company may demonstrate its trustworthiness by providing evidence of the steps taken to correct the problem or repair the damage caused, unless a court has ruled otherwise.

- **Modifying contracts** during their term without calling a new tender procedure may breach the rules on public procurement. The applicable rules have been clarified and simplified to remove any doubt in this regard. A new call for tenders is not required for any modifications
 - that are not substantive, i.e. do not change the nature or the economic balance of the contract;
 - the value of which does not exceed the thresholds for application of the directives and is less than 10 % of the value of the original contract for goods and services and 15 % for work;
 - specified in the contract, regardless of their value;
 - arising from unforeseen events or relating to additional work, products or services needed but which, for technical reasons of interchangeability or interoperability or cost, can be provided only by the company holding the current contract. In both cases, the corresponding increase in price may not exceed 50 % of the initial contract.

- **Transparency** is enhanced through public procurement 'governance' measures:
 - Member States have monitoring requirements and must therefore draw up certain reports. They must:
 - report violations of public procurement rules to national audit authorities or to any other competent national authority (courts, parliaments, etc.) and make the results of their monitoring activities public;
 - submit a report to the Commission every 3 years on the most common sources of misapplication or legal uncertainty, including any problems in the application of rules; the level of participation by small and medium-sized businesses; and the prevention, detection and monitoring of cases of fraud, corruption, conflicts of interest and other serious irregularities;
 - public purchasers must keep copies of contracts for amounts greater than EUR 1 million for service and supply contracts and EUR 10 million for works contracts, for the entire duration of the relevant contracts. These documents must be available to the public unless national rules on access to documents and protection of personal data prevent this.
 - Any public procurement award procedure must be covered by a specific report by the public purchaser. The report must:
 - explain the main decisions relating to the procedure concerned;

- if necessary, report any conflict of interests detected and steps taken in this regard;
- be forwarded to the Commission/national authorities if they so request.