

Commission updates the standard forms with a view to the new Remedies Directive

The European Commission has modified the Regulation on standard forms for the publication of certain information in the framework of public procurement procedures, in order to take account of the new Remedies Directive. The forms are available in all EU languages since the beginning of December on the SIMAP website at: simap.europa.eu.

The EU Procurement Directives require that contracts above certain thresholds must be advertised EU-wide in the Supplement to the Official Journal of the European Union providing all relevant information for a given call for tender. Currently, to fulfil this obligation, public authorities use the standard forms contained in Commission Regulation 1564/2005. The greatest advantage of these forms comes with their online use.

This Regulation had to be amended pursuant to the new Directive 2007/66/EC which aims at improving the effectiveness of review procedures concerning the award of public contracts and must be transposed into national law by 20.12.2009. It requires the adoption of a new standard form for a voluntary "ex ante" transparency notice (VEAT), and necessitates the adjustment of the two existing contract award notices, one concerning the classic sector and the other the Utilities.

Firstly, the new Remedies Directive foresees a new standard form which can be used on a voluntary basis by a contracting authority or entity in order to provide pre-contractual transparency by making known its intention to conclude a contract which has been awarded directly without prior publication of a notice in the OJEU. The Directive defines in its Article 3a the content of the VEAT. Only the information strictly required therein is mandatory, whereas the remaining fields in the notice are optional. To facilitate the use of the notice, this distinction is clearly visible in the online form.

It is recalled that if the VEAT– duly completed – is published in the OJEU, and no economic operator challenges the validity of the direct award during a waiting period of at least 10 days, the contract can be concluded and its effectiveness can no longer be challenged.

The VEAT is shaped on the basis of the format of the current contract award notices, as they require information which can, to a large extent, also be relevant for the purposes of the VEAT. Furthermore, the notice is shaped in such a way that it can be used both by contracting authorities and contracting entities.

The notice contains an Annex D by which the justification for the award of the contract without prior call for competition can be provided. This Annex consists of two elements. First, a number of pre-defined categories of justifications have to be ticked in boxes. Then, additional information has to be given in free text, in order to make sure that a meaningful justification is provided as to why the intended direct award is considered lawful.

Secondly, the new Remedies Directive allows Member States to reduce the time limit within which economic operators can challenge the effectiveness of a public contract where the contracting authority/entity has published a contract award notice which includes justification of the decision to award the contract without prior publication of a contract notice in the OJEU. In order to ensure the full effectiveness of the new Remedies Directive, the standard forms of those notices had to be adapted. Notably, the existing Annex D of these two notices needed to be adjusted in order to allow contracting authorities/entities to provide a meaningful justification. This has been done by the inclusion of a box for free text for additional information why the direct award concerned is being considered lawful. This free text will have to be provided, if a reduction of time limits for review as referred to above is being sought.

It should be emphasised in relation to the contract award notices, that no new publication obligations are introduced e.g. for contracts considered not to be covered by the EU Procurement Directives, but that for such contracts the notice can be used on a completely voluntary basis in order to ensure transparency and legal certainty.

The Commission Regulation (EC) No 1150/2009 of 10 November 2009 amending Regulation (EC) No 1564/2005 as regards the standard forms for the publication of notices in the framework of public procurement in accordance with Council Directives 89/665/EEC and 92/13/EEC is available here:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:313:0003:0035:EN:PDF>