



STATUTORY INSTRUMENTS.

**S.I. No. 284 of 2016**



EUROPEAN UNION (AWARD OF PUBLIC AUTHORITY  
CONTRACTS) REGULATIONS 2016

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EUROPEAN UNION (AWARD OF PUBLIC AUTHORITY  
CONTRACTS) REGULATIONS 2016

The Minister for Public Expenditure and Reform, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC<sup>1</sup>, hereby makes the following regulations:

## Part 1

## SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

## Chapter 1

*Scope and definitions*

## Subject matter and definitions

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Award of Public Authority Contracts) Regulations 2016.

(2) These Regulations are deemed to have come into operation on 18 April 2016.

*Interpretation*

2. (1) In these Regulations—

“accelerated procedure” means—

- (a) an open procedure in which the contracting authority has exercised the power conferred by Regulation 27(3) to fix a time limit for the receipt of tenders that is shorter than the minimum specified in Regulation 27(1)(b),
- (b) a restricted procedure in which the contracting authority has exercised the power conferred by Regulation 28(5) to fix a time limit—
  - (i) for the receipt of requests to participate that is shorter than the minimum specified in Regulation 28(1)(b); or

<sup>1</sup>OJ L94, 28.3.2014, p.65

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 3rd June, 2016.*



- (ii) for the receipt of tenders that is shorter than the minimum specified in Regulation 28(1)(e), or
- (c) a competitive procedure with negotiation in which the contracting authority has exercised the power conferred by Regulation 28(5) to fix a time limit—
  - (i) for the receipt of requests to participate that is shorter than the minimum specified in Regulation 29(4), or
  - (ii) for the receipt of initial tenders that is shorter than the minimum specified in Regulation 29(5);

“advanced electronic signature” has the same meaning as it has in the Electronic Commerce Act 2000 (No. 27 of 2000);

“ancillary purchasing activity” means an activity consisting of the provision of support to purchasing activities, in particular in the following forms:

- (a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;
- (b) advice on the conduct or design of procurement procedures;
- (c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;

“Award of Contracts by Utilities Regulations” means the European Union (Award of Contracts by Utility Undertakings) Regulations 2016;

“body governed by public law” means a body that has the following characteristics:

- (a) it is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) it has legal personality;
- (c) it has any of the following characteristics:
  - (i) it is financed, for the most part, by the State, a regional or local authority, or by another body governed by public law;
  - (ii) it is subject to management supervision by an authority or body referred to in clause (i);
  - (iii) it has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, a regional or a local authority, or by another body governed by public law;

“candidate” means an economic operator that has sought an invitation or has been invited to take part in a restricted or negotiated procedure, in a competitive dialogue or in an innovation partnership;

“central government authority” means a central government authority specified in Annex I to the Public Authorities Contracts Directive;

“centralised purchasing activity” means an activity conducted on a permanent basis, in one of the following forms:

- (a) the acquisition of supplies or services, or the acquisition of supplies and services, intended for contracting authorities;
- (b) the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

“central purchasing body” means a contracting authority or a contracting entity within the meaning of Regulation 2(1) of the Award of Contracts by Utilities Regulations providing centralised purchasing activities and, possibly, ancillary purchasing activities;

“Commission” means the European Commission;

“Commission Decision 2009/767/EC” means Commission Decision of 16 October 2009 setting out measures facilitating the use of procedures by electronic means through the points of single contact under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market<sup>2</sup>, as amended by Commission Decision of 28 July 2010<sup>3</sup>, Commission Implementing Decision of 14 October 2013<sup>4</sup> and Commission Regulation (EU) No 519/2013 of 21 February 2013<sup>5</sup>;

“Commission Decision 2011/130/EU” means Commission Decision 2011/130/EU of 25 February 2011 establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market<sup>6</sup>;

“common technical specification” means a technical specification in the field of ICT specified in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of 25 October 2012<sup>7</sup>;

“company number” means the registration number of a company assigned to that company by the Companies Registration Office;

“competent authority” means—

<sup>2</sup>OJ L274, 20.10.2009, p.36.

<sup>3</sup>OJ L199, 31.7.2010, p.30.

<sup>4</sup>OJ L306, 16.11.2013, p.21.

<sup>5</sup>OJ L158, 10.6.2013, p.74.

<sup>6</sup>OJ L53, 26.2.2011, p.66.

<sup>7</sup>OJ L316, 14.11.2012, p.12.

- (a) in relation to the State, an authority that is required or authorised to perform or exercise a particular function or power under a law or administrative provision of the State, or
- (b) in relation to a Member State other than the State, an authority of that Member State that is required or authorised to perform or exercise a particular function or power under a law or administrative provision of that Member State;

“contracting authority” means—

- (a) a State, regional or local authority,
- (b) a body governed by public law, or
- (c) an association formed by one or more such authorities or one or more such bodies governed by public law;

“contracting entity” means a person that—

- (a) is a contracting authority or public undertaking which pursues one of the activities referred to in Regulations 10 to 16 of the Award of Contracts by Utilities Regulations 2016, or
- (b) is not a contracting authority or public undertaking, but pursues one of the activities referred to in Regulations 10 to 16 of the Award of Contracts by Utilities Regulations 2016 or any combination thereof and has been granted special or exclusive rights by a competent authority of a Member State;

“corruption”, other than in Regulation 57, has the meaning given to it by the Convention drawn up on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union drawn up under the Council Act of 26 May 1997<sup>8</sup>;

“CPV” means the Common Procurement Vocabulary established by Regulation (EC) No 2195/2002;

“Defence Contract Regulations” means the European Union (Award of Contracts relating to Defence and Security) Regulations 2012 (S.I. No. 62 of 2012);

“design contests” means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

“Directive 2002/21/EC” means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002<sup>9</sup> on a common regulatory framework for electronic communications networks and services (Framework Directive);

<sup>8</sup>OJ C195, 25.6.1997, p.1.

<sup>9</sup>OJ L108, 24.04.2002 p.33.

“Directive 2004/39/EC” means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004<sup>10</sup> on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006<sup>11</sup>, Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007<sup>12</sup>, Directive 2008/10/EC of the European Parliament and of the Council of 11 March 2008<sup>13</sup>, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009<sup>14</sup> and Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010<sup>15</sup>;

“Directive 2009/81/EC” means Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or authorities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC<sup>16</sup>, as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009<sup>17</sup>, Commission Regulation (EU) No 1251/2011 of 30 November 2011<sup>18</sup>, Council Directive 2013/16/EU of 13 May 2013<sup>19</sup>, Commission Regulation (EU) No 1336/2013 of 13 December 2013<sup>20</sup> and Commission Regulation (EU) 2015/2340 of 15 December 2015<sup>21</sup>;

“Directive 2010/13/EU” means Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services<sup>22</sup>;

“Directive 2012/34/EU” means Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area<sup>23</sup>;

“Directive 77/249/EEC” means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services<sup>24</sup>;

“disability” has the same meaning as it has in the Disability Act 2005 (No. 14 of 2005);

“disabled” means a disability in relation to a natural person;

<sup>10</sup>OJ L145, 30.4.2004, p.1.

<sup>11</sup>OJ L114, 27.4.2006, p.60.

<sup>12</sup>OJ L247, 21.9.2007, p.1.

<sup>13</sup>OJ L76, 19.3.2008, p.33.

<sup>14</sup>OJ L302, 17.11.2009, p.32.

<sup>15</sup>OJ L331, 15.12.2010, p.120.

<sup>16</sup>OJ L216, 20.8.2009, p.76.

<sup>17</sup>OJ L314, 1.12.2009, p.64.

<sup>18</sup>OJ L319, 2.12.2011, p.43.

<sup>19</sup>OJ L158, 10.6.2013, p.184.

<sup>20</sup>OJ L335, 14.2.2013, p.17.

<sup>21</sup>OJ L330, 16.12.2015, p.14.

<sup>22</sup>OJ L95, 15.4.2010, p.1.

<sup>23</sup>OJ L343, 14.12.2012, p.32.

<sup>24</sup>OJ L78, 26.3.1977, p.17.

“dynamic purchasing system” means the system referred to in Regulation 34;

“economic operator” means any natural or legal person or contracting authority, or a group of such persons or authorities, including temporary associations of undertakings, who or which offers—

(a) the execution of works or a work, or both, or

(b) the supply of products or the provision of services, on the market;

“electronic means” means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

“ESPD” means the European Single Procurement Document referred to in Regulation 59(1);

“Europe 2020 strategy” means the Communication from the Commission of 3 March 2010 — Europe 2020 A strategy for smart, sustainable and inclusive growth (COM(2010) 2020 final);

“European Financial Stability Facility” means the société anonyme incorporated in Luxembourg (R.C.S. Luxembourg B153.414);

“European Stability Mechanism” means the international financial institution established as the European Stability Mechanism by Article 1 of the Treaty establishing the European Stability Mechanism done at Brussels on 2 February 2012 between the Euro Area Member States of the European Union;

“European standard” means a standard adopted by a European standardisation organisation and made available to the general public;

“European Technical Assessment” means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document, as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011<sup>25</sup>;

“framework agreement” means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged;

“GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation done at Marrakesh on 15 April 1994, as amended by the Protocol Amending the Agreement on Government Procurement done at Geneva on 30 March 2012;

<sup>25</sup>OJ L88, 04.04.2011, p.5.

“innovation” means the implementation of a new or significantly improved product, service or process, including production, building or construction processes, a new marketing method or a new organisational method in business practices, workplace organisation or external relations, amongst other things, with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy for smart, sustainable and inclusive growth;

“innovation partnership” shall be construed in accordance with Regulation 31;

“international standard” means a standard adopted by an international standardisation organisation and made available to the general public;

“invitation to confirm interest” means the invitation described in Regulation 54;

“label” means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

“label requirements” means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;

“life cycle” means all consecutive or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

“local authority”, in relation to the State, has the same meaning as it has in the Local Government Act 2001 (No. 37 of 2001);

“Member State” means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

“Minister” means the Minister for Public Expenditure and Reform;

“money laundering” has the meaning given to it by Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005<sup>26</sup> on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

“national standard” means a standard adopted by a national standardisation organisation and made available to the general public;

“negotiated procedure” means a procedure in accordance with Regulation 29 or 32;

“Official Journal” means the Official Journal of the European Union;

<sup>26</sup>OJ L309, 25.11.2005, p.15.

“open procedure” shall be construed in accordance with Regulation 27;

“prescribed civil engineering activities” means civil engineering activities listed in Schedule 1;

“prior information notice” means the notice referred to in Regulations 48 or 75(1)(b);

“procurement” means the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose;

“procurement document” means any document produced or referred to by a contracting authority to describe or determine elements of a procurement or a procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

“procurement service provider” means a public or private body, which offers ancillary purchasing activities on the market;

“Public Authorities Contracts Directive” means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC<sup>27</sup>;

“public authority” means any body corporate, not having an industrial or commercial character that is established for a public purpose and—

- (a) is financed wholly or substantially by the State, a local or regional authority or another public authority; or
- (b) is subject to management supervision by such a body, or
- (c) has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, a local or regional authority or another public authority, and, in particular, includes any body listed in Annex I to the Public Authorities Contracts Directive;

“public contract” means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services;

“public service contract” means a public contract having as its object the provision of services other than those referred to in the definition of “public works contract”;

<sup>27</sup>OJ L94, 28.3.2014, p.65.

“public supply contract” means a public contract having as its object the purchase, lease, rental or hire-purchase, with or without an option to buy, of a product and, for the purposes of this definition may include siting and installation operations;

“public undertaking” has the meaning given by Regulation 2 of the Award of Contracts by Utilities Regulations;

“public works contract” means a public contract having as its object one or more of the following:

- (a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 1;
- (b) the execution, or both the design and execution, of a work;
- (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

“Publications Office” means the Publications Office of the European Union;

“quarter” means a period of 3 months ending in March, June, September or December in any year;

“regional authority” includes an authority of an administrative unit classified as NUTS level 1 or 2 in accordance with Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS);<sup>28</sup>

“Regulation (EC) No 2195/2002” means Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV)<sup>29</sup>, as amended by Commission Regulation (EC) No 2151/2003 of 16 December 2003<sup>30</sup>, Commission Regulation (EC) No 213/2008 of 28 November 2007<sup>31</sup> and Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009<sup>32</sup>;

“Regulations of 2006” mean the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329 of 2006);

“selection criteria” means the criteria established by a contracting authority in accordance with Regulation 58;

“standard” means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:

<sup>28</sup>OJ L154, 21.6.2003, p.1.

<sup>29</sup>OJ L340, 16.12.2002, p.1.

<sup>30</sup>OJ L329, 17.12.2003, p.1.

<sup>31</sup>OJ L74, 15.3.2008, p.1.

<sup>32</sup>OJ L188, 18.7.2009, p.14.



- (a) an international standard;
- (b) a European standard;
- (c) a national standard;

“sub-central contracting authority” means a contracting authority that is not a central government authority;

“technical reference” means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs;

“technical specification” means—

- (a) in the case of public service contracts or public supply contracts a specification in a document defining the required characteristics of a product or a service, including quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures, or
- (b) in the case of public works contracts, the totality of the technical prescriptions contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works; those characteristics also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

“tenderer” means an economic operator that has submitted a tender;

“TFEU” means the Treaty on the Functioning of the European Union;

“Treaties” means the Treaty on European Union and the TFEU;

“Utilities Directive” means Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC<sup>33</sup>;

“VAT” means value-added tax;

“work” where used as a singular noun, means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;

“works contracts” means contracts having as their object one of the following:

- (a) the execution, or both the design and execution, of works related to one of the activities within the meaning of Schedule 1;
- (b) the execution, or both the design and execution, of a work;
- (c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

“working day” means a day which is not a Saturday, Sunday, Good Friday or a Bank Holiday;

“written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

(2) A word or expression which is used in these Regulations and which is also used in the Public Authorities Contracts Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Directive.

*Subject matter and scope*

3. (1) These Regulations make provision in respect of the procedures for procurement by contracting authorities with respect to public contracts and design contests which—

- (a) have a value estimated to be not less than the relevant threshold specified in Regulation 5, and
- (b) are not excluded from the scope of these Regulations by any other provision of these Regulations.

(2) These Regulations are subject to Article 346 of the TFEU.

<sup>33</sup>OJ L94, 28.3.2014, p.243.

*Mixed procurement*

4. (1) Paragraphs (2) and (3) apply to mixed contracts which have as their subject matter 2 or more types of procurement (works, services or supplies) all of which are subject to these Regulations.

(2) Contracts referred to in paragraph (1) shall be awarded in accordance with the Regulations applicable to the type of procurement that characterises the main subject of the contract.

(3) Where a contract referred to in paragraph (1) consists—

(a) partly of services referred to in Regulation 74 and partly of other services, or

(b) partly of services and partly of supplies,

the main subject of the contract shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

(4) Paragraphs (5) to (10) apply to mixed contracts that have as their subject matter both procurement to which these Regulations apply and procurement to which these Regulations do not apply.

(5) Where the different parts of a contract referred to in paragraph (4) are objectively separable and the contracting authority chooses to award separate contracts for the separate parts of the contract, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(6) Subject to Regulation 16, where the different parts of a contract referred to in paragraph (4) are objectively separable and the contracting authority chooses to award a single contract, these Regulations shall apply to the contract, irrespective of the value of the parts that would otherwise fall under a different legal regime and irrespective of which legal regime those parts would otherwise have been subject to.

(7) Where the different parts of a contract referred to in paragraph (4) are objectively separable and the contract contains elements of supply, works and service contracts and also contains elements of concessions, the contract shall be awarded in accordance with these Regulations, where the estimated value of the part of the contract the subject matter of which is subject to these Regulations, calculated in accordance with Regulation 6, is equal to or greater than the relevant threshold specified in Regulation 5.

(8) Where the different parts of a contract referred to in paragraph (4) are not objectively separable, the applicable legal regime shall be determined on the basis of the main subject matter of that contract.

(9) Where part of a contract referred to in paragraph (4) is subject to Article 346 of the TFEU or Directive 2009/81/EC, Regulation 16 shall apply.

(10) Where the different parts of a contract referred to in paragraph (4) have as their subject both procurement covered by these Regulations and procurement for the pursuit of an activity which is covered by the Award of Contracts by Utilities Regulations, Regulations 6 to 8 of the Award of Contracts by Utilities Regulations shall apply.

### Thresholds

#### *Threshold amounts*

5. These Regulations shall apply to procurements with a value, net of VAT, estimated to be equal to or greater than the following thresholds:

- (a) €5,225,000 for public works contracts;
- (b) €135,000 for—
  - (i) subject to paragraph (f), public supply contracts awarded by central government authorities,
  - (ii) public service contracts awarded by central government authorities, and
  - (iii) design contests organised by central government authorities;
- (c) €209,000 for—
  - (i) public supply contracts awarded by sub-central contracting authorities,
  - (ii) public service contracts awarded by sub-central contracting authorities, and
  - (iii) design contests organised by sub-central contracting authorities;
- (d) €209,000 for public supply contracts awarded by a central government authority in the field of defence and where the products supplied under the contract involve products not covered by Annex III to the Public Authorities Contracts Directive;
- (e) €750,000 for public service contracts for social and other specific services listed in Annex XIV to the Public Authorities Contracts Directive;
- (f) €135,000 for public supply contracts awarded by contracting authorities operating in the field of defence, but only where those contracts concern products covered by Annex III to the Public Authorities Contracts Directive.

*Methods for calculating the estimated value of procurement*

6. (1) The calculation of the estimated value of a procurement shall be based on the total amount payable, net of VAT, as estimated by the contracting authority, including any form of option and any renewal of a contract as explicitly specified in the procurement documents.

(2) Where the contracting authority provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the procurement.

(3) Where a contracting authority is comprised of separate operational units, account shall be taken of the total estimated value for all those units when calculating the estimated value of the procurement.

(4) Notwithstanding paragraph (3), where a separate operational unit is independently responsible for its procurement, or certain categories of its procurement, the value of the procurement may be estimated at the level of the unit concerned.

(5) The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of these Regulations.

(6) A procurement shall not be subdivided with the effect of preventing it from falling within the scope of these Regulations, other than where the subdivision is justified by objective reasons.

(7) The estimated value of the procurement shall be the value at the moment at which the call for competition is sent or, in cases where such a call for competition is not foreseen, at the moment at which the contracting authority commences the contract procurement procedure, including, where appropriate, by contacting economic operators in relation to the procurement.

(8) In the case of framework agreements and dynamic purchasing systems, the estimated value of the procurement to be taken into consideration shall be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system, as the case may be.

(9) In the case of innovation partnerships, the estimated value of the procurement to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

(10) In the case of public works contracts, the calculation of the estimated value of such contracts shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authority where those supplies and services are necessary for executing the works.

- (11) (a) Where a proposed work or a proposed provision of services may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots.
- (b) Where the aggregate value of the lots is equal to or greater than the relevant threshold specified in Regulation 5, these Regulations shall apply to the awarding of each lot.
- (12) (a) Where a proposal for the acquisition of similar supplies may result in contracts being awarded in the form of separate lots, account shall be taken of the total estimated value of all such lots when applying subparagraphs (b), (c), (d) and (f) of Regulation 5.
- (b) Where the aggregate value of the lots referred to in subparagraph (a) is equal to or greater than the relevant threshold specified in Regulation 5, these Regulations shall apply to the awarding of each lot.
- (13) Notwithstanding paragraphs (11) and (12), a contracting authority may award contracts for individual lots without applying the procedures provided for under these Regulations, where—
- (a) the estimated value, net of VAT, of the lot concerned is less than—
- (i) in the case of supplies or services, €80,000, or
- (ii) in the case of works, €1,000,000,
- and
- (b) the aggregate value of the lots awarded without applying these Regulations does not exceed 20% of the aggregate value of all the lots into which the proposed work, the proposed acquisition of similar supplies, or the proposed provision of services, has been divided.
- (14) In the case of public supply or service contracts which are regular in nature or which are intended to be renewed within a given period, the calculation of the estimated contract value shall be based on either of the following:
- (a) the total actual value of the successive contracts of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;
- (b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery or during the financial year where that is longer than 12 months.
- (15) In the case of public supply contracts relating to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated contract value shall be as follows:

- (a) in the case of fixed-term public contracts, where the term of the contract is less than or equal to 12 months, the total estimated value for the term of the contract or, where the term of the contract is greater than 12 months, the total value including the estimated residual value;
- (b) in the case of public contracts without a fixed term, or public contracts the term of which cannot be defined, the monthly value multiplied by 48.

(16) In the case of public service contracts, the basis for calculating the estimated contract value shall, where appropriate, be the following:

- (a) in the case of insurance services, the premium payable and other forms of remuneration payable for those services;
- (b) in the case of banking and other financial services, the fees, commissions payable, interest and other forms of remuneration payable for those services;
- (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration payable under the contracts.

(17) In the case of public service contracts which do not indicate a total price, the basis for calculating the estimated contract value shall be the following:

- (a) in the case of fixed-term contracts where that term is less than or equal to 48 months, the total value for their full term;
- (b) in the case of contracts without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48.

#### Exclusions

*Contracts in the water, energy, transport and postal services sectors*

7. These Regulations do not apply to the following:

- (a) a public contract or design contest that, in accordance with the Award of Contracts by Utilities Regulations, is awarded or organised by a contracting authority that carries on an activity of the kind specified in Regulations 10 to 16 of those Regulations and that is awarded for the purposes of enabling the contracting authority to carry out that activity;
- (b) a public contract or design contest that is excluded from the scope of the Award of Contracts by Utilities Regulations by virtue of Articles 18, 23 and 34 of the Utilities Directive;
- (c) a contracting authority that provides postal services, within the meaning of Regulation 15(2)(b) of the Award of Contracts by Utilities Regulations, to contracts awarded for the pursuit of—

- (i) added value services linked to and provided entirely by electronic means, including secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail,
- (ii) financial services covered by CPV codes 66100000-1 to 66720000-3 and by Regulation 22(1)(d) of the Award of Contracts by Utilities Regulations and including postal money orders and postal giro transfers,
- (iii) philatelic services, or
- (iv) logistics services that combine physical delivery or warehousing with other non-postal functions.

*Specific exclusions in the field of electronic communications*

8. (1) These Regulations do not apply to public contracts or design contests for the principal purpose of permitting a contracting authority to provide or exploit public communications networks or to provide to the public one or more electronic communications services.

(2) In this Regulation, “public communications network” and “electronic communications service” have the same meanings as they have in Directive 2002/21/EC.

*Public contracts awarded, and design contests organised, pursuant to international rules*

9. (1) These Regulations do not apply to public contracts or design contests which the contracting authority is obliged to award or organise in accordance with procurement procedures which are different from those specified by these Regulations and are established by any of the following:

- (a) a legal instrument creating international law obligations, such as an international agreement, concluded in conformity with the Treaties, between a Member State and one or more third countries, or subdivisions of such countries, and covering works, supplies or services intended for the joint implementation or exploitation of a project by its signatories;
- (b) an international organisation.

(2) These Regulations do not apply to public contracts, or design contests, which the contracting authority awards or organises in accordance with procurement rules provided by an international organisation or international financing institution where the public contracts or design contests concerned are fully financed by that organisation or institution.

(3) In the case of public contracts, or design contests, the majority of the finance for which is provided by an international organisation or international financing institution, the contracting authority and the international organisation



or international financial institution, as appropriate, shall agree on applicable procurement procedures.

(4) (a) Paragraphs (1) to (3) shall not apply in the case of contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules.

(b) Regulation 17 shall apply to contracts and design contests referred to in subparagraph (a).

*Specific exclusions for service contracts*

10. (1) These Regulations do not apply to public service contracts for—

(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or any interest in or right over any such land, existing buildings or immovable property,

(b) (i) the acquisition, development, production or co-production of programme material intended for audiovisual media services or radio media services, that are awarded by audiovisual or radio media service providers, or

(ii) contracts for broadcasting time or programme provision that are awarded to audiovisual or radio media service providers,

(c) arbitration or conciliation services,

(d) any of the following legal services:

(i) legal representation of a client by a lawyer within the meaning of Article 1 of Directive 77/249/EEC, in—

(I) an arbitration or conciliation held in a Member State, a third country or before an international arbitration or conciliation instance, or

(II) judicial proceedings before the courts, tribunals or public authorities of a Member State or a third country, or before international courts, tribunals or institutions;

(ii) legal advice given—

(I) in preparation of any of the proceedings referred to in clause (i), or

(II) where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings,

and where the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;

- (iii) document certification and authentication services which must be provided by notaries;
  - (iv) legal services provided by trustees or appointed guardians or other legal services the providers of which are designated by a court or tribunal in the Member State concerned or are designated by law to carry out specific tasks under the supervision of such tribunals or courts;
  - (v) other legal services which in the Member State concerned are connected, even occasionally, with the exercise of official authority,
- (e) any of the following:
- (i) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC;
  - (ii) central bank services;
  - (iii) operations conducted with the European Financial Stability Facility and the European Stability Mechanism,
- (f) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments,
- (g) employment contracts,
- (h) civil defence, civil protection, and danger prevention services that are provided by non-profit organisations or associations, and which are covered by CPV codes 75250000-3, 75251000-0, 75251100-1, 75251110-4, 75251120-7, 75252000-7, 75222000-8, 98113100-9 and 85143000-3 except patient transport ambulance services,
- (i) public passenger transport services by rail or metro, or
- (j) political campaign services covered by CPV codes 79341400-0, 92111230-3 and 92111240-6, when awarded by a political party in the context of an election campaign.
- (2) For the purposes of this Regulation—
- (a) ‘audiovisual media services’ and ‘media service providers’ shall, respectively, have the same meaning as they have in Article 1(1)(a) and (d) of Directive 2010/13/EU, and
  - (b) ‘programme’ means a programme within the meaning of Article 1(1)(b) of Directive 2010/13/EU, or a radio programme.

*Service contracts awarded on the basis of an exclusive right*

11. These Regulations do not apply to public service contracts awarded to an authority which is itself a contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a law, regulation or published administrative provision which is compatible with the TFEU.

*Public contracts between entities within the public sector*

12. (1) A public contract awarded by a contracting authority to a legal person governed by private or public law shall fall outside the scope of these Regulations where all of the following conditions are fulfilled:

- (a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- (b) more than 80% of the activities of the controlled legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authority or by other legal persons controlled by that contracting authority;
- (c) there is no direct private capital participation in the controlled legal person, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(2) A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of paragraph (1)(a) where—

- (a) it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person, or
- (b) the control may also be exercised by another legal person which is itself controlled in the same way by the contracting authority.

(3) A public contract falls outside the scope of these Regulations where a controlled legal person which is a contracting authority awards the contract to—

- (a) its controlling contracting authority, or
- (b) another legal person controlled by the same contracting authority,

where there is no direct private capital participation in the legal person being awarded the public contract with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person being awarded the contract.

(4) A contracting authority which does not exercise over a legal person governed by private or public law control within the meaning of paragraph (1) or (2) may nevertheless award a public contract to that legal person without applying these Regulations where the following conditions are fulfilled:

- (a) the contracting authority exercises jointly with other contracting authorities a control over that legal person which is similar to that which they exercise over their own departments;
- (b) more than 80% of the activities of that legal person are carried out in the performance of tasks entrusted to it by the controlling contracting authorities or by other legal persons controlled by the same contracting authorities;
- (c) there is no direct private capital participation in the controlled legal person with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the controlled legal person.

(5) For the purposes of paragraph (4)(a), contracting authorities exercise joint control over a legal person where the following conditions are fulfilled:

- (a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;
- (b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;
- (c) the controlled legal person does not pursue any interests which are contrary to those of the controlling contracting authorities.

(6) For the purposes of paragraph (5)(a), individual representatives may represent one or more of the participating contracting authorities.

(7) A contract concluded exclusively between 2 or more contracting authorities shall fall outside the scope of these Regulations where the following conditions are fulfilled:

- (a) the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that co-operation is governed solely by considerations relating to the public interest;
- (c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

(8) For the determination of the percentage of activities referred to in paragraphs (1)(b), (4)(b) and (7)(c), the average total turnover, or an appropriate alternative activity-based measure such as costs incurred by the relevant legal person or contracting authority with respect to services, supplies and works for the 3 years preceding the contract award shall be taken into consideration.

(9) Where, because of—

- (a) the date on which the relevant legal person or contracting authority was created or commenced activities, or
- (b) a reorganisation of its activities,

the turnover, or alternative activity-based measure such as costs, is either not available for the preceding 3 years or no longer relevant, it shall be sufficient to show that the measurement of activity is credible, particularly by means of business projections.

### Specific situations

#### *Contracts subsidised by contracting authorities*

13. (1) These Regulations shall apply to the awarding of the following contracts:

- (a) works contracts which are subsidised directly by a contracting authority by more than 50% and the estimated value of which, net of VAT, is equal to or greater than €5,225,000 where those contracts involve any one of the following activities:
  - (i) civil engineering activities as listed in Schedule 1;
  - (ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university buildings and buildings used for administrative purposes;
- (b) service contracts which are subsidised directly by a contracting authority by more than 50% and the estimated value of which, net of VAT, is equal to or greater than €209,000 and which are connected to a works contract referred to in paragraph (a).

(2) The contracting authority providing the subsidies referred to in paragraph (1) shall ensure compliance with these Regulations where they do not themselves award the subsidised contract or where they award that contract for and on behalf of other entities.

#### *Research and development services*

14. These Regulations shall only apply to public service contracts for research and development services which are covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 where both of the following conditions are fulfilled—

- (a) the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and
- (b) the service provided is wholly remunerated by the contracting authority.

*Defence and security*

15. (1) These Regulations shall apply to the awarding of public contracts and to design contests organised in the fields of defence and security, with the exception of the following contracts:

- (a) contracts falling within the scope of Directive 2009/81/EC;
- (b) contracts to which Directive 2009/81/EC does not apply pursuant to Articles 8, 12 and 13 of that Directive.

(2) These Regulations do not apply to public contracts and design contests not otherwise exempted under paragraph (1) to the extent that the protection of the essential security interests of the State or another Member State cannot be guaranteed by less intrusive measures, including by imposing requirements aimed at protecting the confidential nature of information which the contracting authority makes available in a contract award procedure under these Regulations.

(3) In conformity with paragraph (a) of Article 346(1) of the TFEU, these Regulations do not apply to contracts awarded and design contests organised in the fields of defence and security not otherwise exempted under paragraph (1) to the extent that the application of these Regulations would oblige the State to supply information the disclosure of which it considers contrary to the essential interests of its security.

(4) Where the procurement and performance of a public contract or design contest are declared to be secret or must be accompanied by special security measures in accordance with the laws of, or administrative provisions in force in, the State, these Regulations do not apply where the State has determined that the essential interests concerned cannot be guaranteed by less intrusive measures, including those referred to in paragraph (2).

*Mixed procurement involving defence or security aspects*

16. (1) This Regulation applies to mixed contracts which have as their subject matter procurement to which these Regulations apply and procurement to which Article 346 of the TFEU or the Defence Contract Regulations apply.

(2) Where the different parts of a public contract to which this Regulation applies are objectively separable, a contracting authority may choose to award separate contracts for the separate parts or to award a single contract.

(3) Where a contracting authority chooses to award separate contracts for separate parts of a contract to which this Regulation applies, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned.

(4) Where a contracting authority chooses to award a single contract in respect of a contract to which this Regulation applies, the following criteria shall apply to determine the applicable legal regime:

- (a) where part of a contract is covered by Article 346 of the TFEU, the contract may be awarded without applying these Regulations, where the award of a single contract is justified for objective reasons;
- (b) where the Defence Contract Regulations apply to part of a contract, the contract may be awarded in accordance with those Regulations, subject to any exclusions and thresholds specified in those Regulations, where the award of a single contract is justified by objective reasons;
- (c) where both subparagraphs (a) and (b) would otherwise apply to a contract, the contract may be awarded without applying these Regulations where the award of a single contract is justified for objective reasons.

(5) A contracting authority shall not choose to award a contract to which this Regulation applies as a single contract where the purpose of so choosing is to exclude the award from the application of either these Regulations or the Defence Contract Regulations.

(6) Where the different parts of a contract to which this Regulation applies are objectively not separable, the contract may be awarded—

- (a) without applying these Regulations where the contract includes elements to which Article 346 of the TFEU applies, and
- (b) in accordance with the Defence Contract Regulations where the contract does not include elements to which Article 346 of the TFEU applies.

*Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules*

17. (1) These Regulations do not apply to public contracts and design contests involving defence or security aspects which the contracting authority is obliged to award or organise in accordance with procurement procedures different from those specified in these Regulations that have been established by any of the following:

- (a) an international agreement or arrangement, concluded in conformity with the Treaties governing the European Union between a Member State and one or more third countries or subdivisions of such countries and covering works, supplies or services intended for the joint implementation or exploitation of a project by its signatories;
- (b) an international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a Member State or a third country;

(c) an international organisation.

(2) These Regulations do not apply to public contracts and design contests involving defence or security aspects which the contracting authority awards in accordance with procurement rules provided by an international organisation or international financing institution, where the public contracts or design contests concerned are fully financed by that organisation or institution.

(3) In the case of public contracts, or design contests, the majority of the finance for which is provided by an international organisation or international financing institution the contracting authority and the international organisation or international financing institution, as appropriate, shall agree on applicable procurement procedures.

## Chapter 2

### *General rules*

#### *Principles of procurement*

18. (1) A contracting authority shall, in procuring, treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

(2) The design of a procurement shall not be made with the intention of excluding it from the scope of these Regulations or of artificially narrowing competition.

(3) For the purposes of paragraph (2), competition shall be considered to be artificially narrowed where the design of a procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

(4) (a) In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by European Union law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7.

(b) A contracting authority shall ensure that public contracts entered into by it require that the obligations referred to in subparagraph (a) are complied with.

#### *Economic operators*

19. (1) An economic operator that, under the law of the Member State in which it is established, is entitled to provide the relevant service, shall not be rejected solely on the ground that, under the law of the State, it would be required to be either a natural or a legal person.

(2) Notwithstanding paragraph (1), in the case of public service contracts, public works contracts, and public supply contracts covering in addition services or siting and installation operations, legal persons may be required to indicate,



in the tender or the request to participate, the names and relevant professional qualifications of the staff responsible for the performance of the contract in question.

(3) Groups of economic operators, including temporary associations, may participate in procurement procedures and shall not be required by a contracting authority to have a specific legal form in order to submit a tender or a request to participate.

(4) Where necessary, a contracting authority may clarify in the procurement documents how groups of economic operators are to meet the requirements as to economic and financial standing or technical and professional ability referred to in Regulation 58 where this is justified by objective reasons and is proportionate.

(5) Any conditions for the performance of a contract by such groups of economic operators that are different from those imposed on individual participants shall also be justified by objective reasons and shall be proportionate.

(6) Notwithstanding paragraphs (3), (4) and (5), a contracting authority may require groups of economic operators to assume a specific legal form once they have been awarded the contract, to the extent that such a change is necessary for the satisfactory performance of the contract.

#### *Reserved contracts*

20. (1) A contracting authority may—

- (a) reserve the right to participate in a procurement procedure to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or
- (b) provide for contracts awarded under such a procurement procedure to be performed in the context of sheltered employment programmes,

where at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

(2) In a case referred to in paragraph (1), the call for competition shall make reference to Article 20 of the Public Authorities Contracts Directive.

#### *Confidentiality*

21. (1) A contracting authority shall not disclose information which has been forwarded to it by an economic operator and designated by that economic operator as confidential, including, but not limited to technical or trade secrets and the confidential aspects of tenders.

(2) Paragraph (1) is without prejudice to—

- (a) any other provision of these Regulations, including the obligations relating to the advertising of awarded contracts and the information

to candidates and tenderers specified in Regulations 50 and 55 respectively, and

(b) the Freedom of Information Act 2014 (No. 30 of 2014).

(3) A contracting authority may impose on an economic operator requirements aimed at protecting the confidential nature of information which the contracting authority makes available throughout the procurement procedure.

*Rules applicable to communication*

22. (1) All communication and information exchange under these Regulations, in particular electronic submission, shall be performed using electronic means of communication in accordance with the requirements of this Regulation.

(2) The tools and devices to be used for communicating by electronic means, as well as their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communications technology products in general use and shall not restrict economic operators' access to the procurement procedure.

(3) Notwithstanding paragraphs (1) and (2), contracting authorities shall not be obliged to require electronic means of communication in the submission process where—

- (a) due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications,
- (b) the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority,
- (c) the use of electronic means of communication would require specialised office equipment that is not generally available to a contracting authority, or
- (d) the procurement documents require the submission of physical or scale models which cannot be transmitted using electronic means.

(4) In respect of communications for which electronic means of communication are not used, pursuant to paragraph (3), communication shall be carried out by post or other suitable carrier or by a combination of post or other suitable carrier and electronic means.

(5) Notwithstanding paragraphs (1) and (2), contracting authorities are not obliged to require electronic means of communication in the submission process

to the extent that the use of means of communication other than electronic means is necessary either—

- (a) because of a breach of security of the electronic means of communications, or
  - (b) for the protection of information of a particularly sensitive nature requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators or can be made available to them by alternative means of access within the meaning of paragraph (10).
- (6) (a) Where a contracting authority requires, in accordance with paragraph (3), means of communication other than electronic means, in the submission process, it shall indicate in the information kept in accordance with Regulation 84 the reasons for this requirement.
- (b) Where applicable, contracting authorities shall indicate in the information kept in accordance with Regulation 84 the reasons why use of means of communication other than electronic means has been considered necessary in accordance with paragraph (5).
- (7) (a) Notwithstanding paragraphs (1) to (6), oral communication may be used in respect of communications other than those concerning the essential elements of a procurement procedure, where the content of the oral communication is documented to a sufficient degree.
- (b) For the purposes of subparagraph (a), the essential elements of the procurement procedure include the procurement documents, requests for participation, confirmations of interest and tenders.
- (c) In particular, oral communications with tenderers which could have a substantial impact on the content and assessment of the tenders shall be documented to a sufficient extent and by appropriate means.
- (d) For the purpose of subparagraph (c), appropriate means includes written or audio records or summaries of the main elements of communication.
- (8) (a) Contracting authorities shall ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved in all communication, exchange and storage of information.
- (b) Contracting authorities shall examine the content of tenders and requests to participate only after the time limit set for submitting them has expired.
- (9) (a) A contracting authority may, in respect of public works contracts and design contests, require the use of specific electronic tools, such as of building information electronic modelling tools or similar.

- (b) Where a contracting authority requires the use of specific electronic tools in accordance with subparagraph (a), the contracting authority shall offer alternative means of access as provided for in paragraph (10), until such time as those tools become generally available within the meaning of paragraph (2).
- (10)
  - (a) A contracting authority may, where necessary, require the use of tools and devices which are not generally available, where the contracting authority offers alternative means of access.
  - (b) A contracting authority shall be deemed to offer suitable alternative means of access where it—
    - (i) offers unrestricted and full direct access free of charge by electronic means to those tools and devices from the date—
      - (I) of publication of the notice in accordance with Schedule 5, or
      - (II) on which the invitation to confirm interest is sent,
    - (ii) ensures that tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, may access the procurement procedure through the use of provisional tokens made available free of charge online, where the lack of access is not attributable to the tenderer concerned, or
    - (iii) supports an alternative channel for electronic submission of tenders.
  - (c) The text of the notice or the invitation to confirm interest, referred to in subparagraph (b)(i), shall specify the internet address at which those tools and devices are accessible.
- (11) In addition to the requirements specified in Schedule 2, the following rules apply to tools and devices for the electronic transmission and receipt of tenders and for the electronic receipt of requests to participate:
  - (a) information on specifications for the electronic submission of tenders and requests to participate, including encryption and time-stamping, shall be available to interested parties;
  - (b) a contracting authority shall, acting in accordance with paragraphs (13) and (14), specify the level of security required for the electronic means of communication in the various stages of the specific procurement procedure, and that level shall be proportionate to the risks attached;
  - (c) where a contracting authority concludes that the level of risk assessed in accordance with (13) and (14), is such that an advanced electronic signature is required, the contracting authority shall accept advanced

electronic signatures supported by a qualified certificate, taking into account whether the certificate is provided by a certificate services provider which is on a trusted list provided for in Commission Decision 2009/767/EC, created with or without a secure signature creation device, subject to compliance with the following conditions:

- (i) the contracting authority shall establish the required advanced signature format on the basis of formats established in Commission Decision 2011/130/EU and shall put in place necessary measures to be able to process these formats technically;
  - (ii) where a different format of electronic signature is used, the electronic signature or the electronic document carrier shall include information on existing validation possibilities;
  - (iii) the validation possibilities shall allow the contracting authority to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature as an advanced electronic signature supported by a qualified certificate;
  - (iv) where a tender is signed with the support of a qualified certificate that is included on a trusted list, a contracting authority shall not apply additional requirements that may hinder the use of those signatures by tenderers.
- (12) (a) In respect of a document used in the context of a procurement procedure that is signed by a competent authority of a Member State or by another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance with the requirements specified in Article 1(2) of Commission Decision 2011/130/EU.
- (b) The competent authority or entity referred to in subparagraph (a) shall put in place the necessary measures to be able to process that format technically by including the information required for the purpose of processing the signature in the document concerned.
- (c) The document concerned shall contain in the electronic signature or in the electronic document carrier information on existing validation possibilities that allow the validation of the received electronic signature online, free of charge and in a way that is understandable for non-native speakers.
- (13) In deciding the level of security required at each stage of a procurement procedure, and in concluding whether the level of risk is such that advanced electronic signatures are required, a contracting authority shall assess the risks having regard to both the likelihood that particular risks will materialise and the potential adverse consequences if those risks materialise.

(14) In carrying out the assessment referred to in paragraph (13), a contracting authority shall, in particular, have regard to the need for proportionality between—

- (a) the expected benefits of any particular security requirements, and
- (b) the costs, burdens and obligations which those requirements may impose on economic operators.

(15) (a) Subject to paragraph (16), paragraphs (1) to (6) do not apply until 18 October 2018, except where the use of electronic means is mandatory pursuant to Regulation 34, 35, 36, 51(2) or 53.

(b) Prior to the date referred to in subparagraph (a), contracting entities may choose between the following means of communication for all communication and information exchange:

- (i) electronic means in accordance with this Regulation;
- (ii) post or other suitable carrier;
- (iii) fax;
- (iv) a combination of the means referred to in clauses (i) to (iii).

(16) Paragraphs (1) to (6) do not apply to a central purchasing body pursuant to Regulation 37(6) until 18 April 2017.

#### *Nomenclatures*

23. Any references to nomenclatures in the context of public procurement shall be made using the CPV.

#### *Conflicts of interest*

24. (1) Contracting authorities shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

(2) For the purposes of this Regulation, “conflicts of interest” includes any situation where a relevant staff member has directly or indirectly a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of the procurement procedure.

(3) In paragraph (2), “relevant staff member” means a staff member of the contracting authority or a procurement service provider acting on behalf of the contracting authority who is involved in the conduct of the procurement procedure or may influence the outcome of that procedure.

## Part 2

## RULES ON PUBLIC CONTRACTS

## Chapter 1

*Procedures**Conditions relating to the GPA and other international agreements*

25. In so far as it is covered by Annexes 1, 2, 4 and 5 and the General Notes to the European Union's Appendix 1 to the GPA and by the other international agreements by which the European Union is bound, a contracting authority shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the European Union.

*Choice of procedures*

26. (1) When awarding public contracts, a contracting authority shall apply procedures that conform to these Regulations where, without prejudice to Regulation 32, a call for competition has been published in accordance with these Regulations.

(2) A contracting authority may apply—

- (a) open or restricted procedures, or
- (b) innovation partnerships,

as provided for in these Regulations.

(3) A contracting authority may apply a competitive procedure with negotiation or a competitive dialogue in the following situations:

- (a) with regard to works, supplies or services fulfilling one or more of the following criteria:
  - (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;
  - (ii) they include design or innovative solutions;
  - (iii) the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
  - (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference;

(b) with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted.

(4) Where paragraph (3)(b) applies, a contracting authority shall not be required to publish a contract notice where it includes in the procedure all of, and only, the tenderers which satisfy the criteria specified in Regulations 57 to 64 and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

(5) For the purposes of paragraph (3)(b), tenders—

(a) which do not comply with the procurement documents,

(b) which were received late,

(c) in relation to which there is evidence of collusion or corruption, or

(d) which have been found by the contracting authority to be abnormally low,

shall be considered irregular.

(6) For the purposes of paragraph (3)(b), tenders—

(a) submitted by tenderers that do not have the required qualifications, and

(b) in relation to which the price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure,

shall be considered unacceptable.

(7) The call for competition shall be made by means of a contract notice in accordance with Regulation 49.

(8) Where the contract is awarded by restricted procedure or competitive procedure with negotiation, a sub-central contracting authority or a specific category of sub-central contracting authority may make the call for competition by means of a prior information notice in accordance with Regulation 48(5) and (6).

(9) Where a call for competition is made by means of a prior information notice pursuant to Regulation 48(5) and (6), an economic operator which has expressed its interest following the publication of the prior information notice shall subsequently be invited to confirm its interest in writing by means of an invitation to confirm interest.

(10) A contracting authority may only apply the negotiated procedure without prior publication of a call for competition in the cases referred to in Regulation 32.



*Open procedure*

27. (1) In an open procedure—

- (a) an interested economic operator may submit a tender in response to a call for competition,
- (b) the minimum time limit for the receipt of tenders is 35 days from the date on which the contract notice was sent, and
- (c) the tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

(2) Where a contracting authority using the open procedure has published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders as specified in paragraph (1)(b) may be shortened to 15 days, where—

- (a) the prior information notice included all the information required by Part 2 of Schedule 3 insofar as that information was available at the time the prior information notice was published, and
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

(3) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in paragraph (1)(b), the contracting authority may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent.

(4) The contracting authority may reduce by 5 days the time limit for receipt of tenders specified in paragraph (1)(b) where it accepts that tenders may be submitted by electronic means in accordance with Regulation 22(1) to (6), (10) and (11).

*Restricted procedure*

28. (1) In a restricted procedure—

- (a) an economic operator may submit a request to participate in response to a call for competition containing the information specified in Parts 2 or 3 of Schedule 3, as the case may be, by providing the information for qualitative selection that is requested by the contracting authority,
- (b) the minimum time limit for the receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest, is sent,
- (c) only those economic operators invited to do so by the contracting authority following its assessment of the information provided may submit a tender,

(d) a contracting authority may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 65, and

(e) the minimum time limit for the receipt of tenders shall be 30 days from the date on which the invitation to tender was sent.

(2) Where a contracting authority has published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders specified in paragraph (1)(e) may be shortened to 10 days, where both of the following conditions are fulfilled—

(a) the prior information notice included all the information required in paragraphs 1 to 11 of Part 2 of Schedule 3, insofar as that information was available at the time the prior information notice was published, and

(b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

(3) (a) A sub-central contracting authority, or specific categories of sub-central contracting authorities, may set the time limit for the receipt of tenders by mutual agreement between the contracting authority and the selected candidates, where all selected candidates have the same time to prepare and submit their tenders.

(b) In the absence of an agreement on the time limit referred to in subparagraph (a), the time limit shall be not less than 10 days from the date on which the invitation to tender was sent.

(4) The time limit for receipt of tenders provided for by paragraph (1)(e) may be reduced by 5 days where the contracting authority accepts that tenders may be submitted by electronic means in accordance with Regulation 22(1) to (6), (10) and (11).

(5) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limits specified in this Regulation, the authority may fix:

(a) a time limit for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent;

(b) a time limit for the receipt of tenders which shall not be less than 10 days from the date on which the invitation to tender was sent.

#### *Competitive procedure with negotiation*

29. (1) In competitive procedures with negotiation, an economic operator may submit a request to participate in response to a call for competition containing the information specified in Parts 2 and 3 of Schedule 3 by providing the information for qualitative selection that is requested by the contracting authority.

(2) In the procurement documents, a contracting authority shall—

- (a) identify the subject matter of the procurement by providing a description of its needs and the characteristics required of the supplies, works or services to be procured,
- (b) specify the contract award criteria, and
- (c) indicate which elements of the description referred to in subparagraph (a) define the minimum requirements to be met by all tenders.

(3) The information provided under paragraph (2) shall be sufficiently precise to enable an economic operator to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

(4) The minimum time limit for receipt of requests to participate shall be 30 days from—

- (a) the date on which the contract notice was sent, or
- (b) where a prior information notice is used as a means of calling for competition, the date on which the invitation to confirm interest was sent.

(5) The minimum time limit for the receipt of initial tenders shall, subject to Regulation 28(2) to (5), be 30 days from the date on which the invitation was sent.

(6) Only those economic operators invited by the contracting authority following its assessment of the information provided may submit an initial tender which shall be the basis for the subsequent negotiations.

(7) A contracting authority may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 65.

(8) Unless otherwise provided for in this Regulation, a contracting authority shall negotiate with a tenderer the initial and all subsequent tenders submitted by that tenderer, except for the final tenders within the meaning of paragraph (16), to improve the content of the tenders.

(9) The minimum requirements and the award criteria shall not be subject to negotiation.

(10) A contracting authority may award contracts on the basis of the initial tenders without negotiation where the authority has indicated, in the contract notice or in the invitation to confirm interest, that it reserves the possibility of doing so.

(11) During the negotiations referred to in paragraph (8), a contracting authority shall ensure equal treatment of all tenderers and shall—

- (a) not provide information in a discriminatory manner which may give some tenderers an advantage over others,
- (b) inform all tenderers whose tenders have not been eliminated under paragraph (14), in writing, of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements, and
- (c) following any such changes, provide sufficient time for tenderers to modify and re-submit amended tenders, as appropriate.

(12) In accordance with Regulation 21, a contracting authority shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without the agreement of the candidate or tenderer concerned.

(13) The agreement referred to in paragraph (12) shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(14) Competitive procedures with negotiation may take place in successive stages of the procedure in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document.

(15) In the contract notice, the invitation to confirm interest or in another procurement document, the contracting authority shall indicate whether it will use the option specified in paragraph (14).

(16) Where the contracting authority intends to conclude the negotiations, it shall—

- (a) inform the remaining tenderers and set a common deadline to submit any new or revised tenders,
- (b) verify that the final tenders are in conformity with the minimum requirements and comply with Regulation 56(1) and (2),
- (c) assess the final tenders on the basis of the award criteria, and
- (d) award the contract in accordance with Regulations 66 to 69.

#### *Competitive dialogue*

30. (1) In a competitive dialogue:

- (a) an economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority;
- (b) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice was sent;

- (c) only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue;
  - (d) a contracting authority may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 65;
  - (e) the contract shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Regulation 67(2), (3) and (4);
  - (f) a contracting authority shall set out and define its needs and requirements in the contract notice or in a descriptive document, or in both;
  - (g) a contracting authority shall, at the same time and in the documents referred to in subparagraph (f), set out and define the chosen award criteria and set out an indicative timeframe in respect of the dialogue;
  - (h) a contracting authority—
    - (i) shall open, with the participants selected in accordance with the relevant provisions of Regulations 56 to 66, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs, and
    - (ii) may discuss all aspects of the procurement with the chosen participants during the dialogue referred to in clause (i);
  - (i) during the dialogue referred to in subparagraph (h), a contracting authority shall ensure equality of treatment among all participants;
  - (j) during the dialogue referred to in subparagraph (h), a contracting authority shall not provide information in a discriminatory manner which may give some participants an advantage over others;
  - (k) in accordance with Regulation 21, a contracting authority shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without the agreement of that candidate or tenderer;
  - (l) the agreement referred to in subparagraph (k) shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.
- (2) (a) A competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document.

- (b) In the contract notice or descriptive document, the contracting authority shall indicate whether it will use the option specified in subparagraph (a).
- (3) In a competitive dialogue, the contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.
- (4)
  - (a) Where a contracting authority has declared that a dialogue is concluded and has so informed the remaining participants, the contracting authority shall ask the remaining participants to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.
  - (b) The tenders submitted in accordance with subparagraph (a) shall contain all the elements required and necessary for the performance of the project.
  - (c) The tenders submitted in accordance with subparagraph (a) may be clarified, specified and optimised at the request of the contracting authority, but such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements specified in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.
- (5) In a competitive dialogue:
  - (a) a contracting authority shall assess the tenders received on the basis of the award criteria laid down in the contract notice or in the descriptive document;
  - (b) at the request of the contracting authority, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with Regulation 67 may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, where such negotiations do not—
    - (i) have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements specified in the contract notice or in the descriptive document, or
    - (ii) risk distorting competition or causing discrimination.
- (6) A contracting authority may specify prizes or payments to the participants in the dialogue.

*Innovation partnership*

31. (1) In an innovation partnership:

- (a) an economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority;
- (b) in the procurement documents, the contracting authority shall—
  - (i) identify the need for an innovative product, service or works that cannot be met by purchasing products, services or works already available on the market, and
  - (ii) indicate which elements of the needs identified in clause (i) define the minimum requirements to be met by all tenders;
- (c) the information referred to in subparagraph (b) shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure;
- (d) the contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities;
- (e) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice is sent;
- (f) only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the procedure;
- (g) a contracting authority may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 65;
- (h) the contracts shall be awarded on the sole basis of the award criterion of the best price-quality ratio in accordance with Regulation 67;
- (i) the minimum requirements and the award criteria shall not be subject to negotiations.

(2) An innovation partnership shall aim to develop an innovative product, service or works with a view to the subsequent purchasing by the contracting authority of the resulting supplies, services or works, where the resulting supplies, services or works correspond to the performance levels and maximum costs agreed between the contracting authority and the participants.

(3) An innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may

include the manufacturing of the products, the provision of the services or the completion of the works.

(4) An innovation partnership shall set intermediate targets to be attained by the partners and provide for payment of the remuneration in appropriate instalments.

(5) Based on the targets referred to in paragraph (4), the contracting authority may decide, after each phase, to—

- (a) terminate the innovation partnership, or
- (b) in the case of an innovation partnership with several partners, reduce the number of partners by terminating individual contracts,

where the contracting authority has indicated in the procurement documents that such action may be taken and the conditions under which such action may be taken.

(6) Unless otherwise provided for in this Regulation, a contracting authority procuring through an innovation partnership shall negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, in order to improve the content of those tenders.

(7) During the negotiations referred to in paragraph (6), a contracting authority shall ensure the equal treatment of all tenderers including by—

- (a) not providing information in a discriminatory manner which may give some tenderers an advantage over others,
  - (b) informing all tenderers whose tenders have not been eliminated pursuant to paragraph (9), in writing, of any changes to the technical specifications or other procurement documents, other than those setting out the minimum requirements, and
  - (c) providing sufficient time for tenderers following those changes to modify and re-submit amended tenders, as appropriate.
- (8) (a) In accordance with Regulation 21, a contracting authority, procuring through an innovation partnership, shall not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without the agreement of that candidate or tenderer.
- (b) An agreement referred to in subparagraph (a) shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.
- (9) (a) Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract



notice, in the invitation to confirm interest or in the procurement documents.

- (b) A contracting authority shall indicate whether it will use the option described in subparagraph (a) in the contract notice relating to an innovation partnership, the invitation to confirm interest or the procurement documents.

(10) A contracting authority shall, in selecting candidates for the purposes of an innovation partnership, apply criteria concerning the capacity of the candidate in the field of research and development and of developing and implementing innovative solutions.

(11) Only those economic operators invited by the contracting authority following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting authority that cannot be met by existing solutions.

(12) In the procurement documents relating to the innovation partnership, the contracting authority shall define the arrangements applicable to intellectual property rights.

(13) (a) In accordance with Regulation 21, in the case of an innovation partnership with several partners, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner in the framework of the partnership without that partner's agreement.

(b) An agreement referred to in subparagraph (a) shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(14) A contracting authority procuring through an innovation partnership shall ensure that the structure of the innovation partnership including the duration and value of the different phases reflects the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market.

(15) The estimated value of supplies, services or works purchased through an innovation partnership shall not be disproportionate in relation to the investment required for their development.

*Use of the negotiated procedure without prior publication*

32. (1) A contracting authority may award public contracts by a negotiated procedure without prior publication in accordance with this Regulation.

(2) A negotiated procedure without prior publication may only be used for public works contracts, public supply contracts and public service contracts in any of the following cases:

- (a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, where the initial conditions of the contract are not substantially altered and a report is sent to the Commission where it so requests;
  - (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
    - (i) the purpose of the procurement is the creation or acquisition of a unique work of art or artistic performance;
    - (ii) competition is absent for technical reasons;
    - (iii) the protection of exclusive rights, including intellectual property rights;
  - (c) insofar as is strictly necessary where, for reasons of extreme urgency not attributable to the contracting authority and brought about by events unforeseeable by the contracting authority, the time limits specified for the open procedures or restricted procedures or competitive procedures with negotiation cannot be complied with.
- (3) Paragraphs (2)(b)(ii) and (iii) apply only where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
- (4) For the purposes of paragraph (2)(a)—
- (a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents;
  - (b) a request for participation shall be considered not to be suitable where the economic operator concerned—
    - (i) is to be or may be excluded pursuant to Regulation 57, or
    - (ii) does not meet the selection criteria specified by the contracting authority pursuant to Regulation 58.
- (5) A negotiated procedure without prior publication may be used for public supply contracts:
- (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but contracts awarded pursuant to this subparagraph shall not include quantity production to establish commercial viability or to recover research and development costs;

- (b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (c) for supplies quoted and purchased on a commodity market;
- (d) for the purchase of supplies or services on particularly advantageous terms, from a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under the laws of the State.

(6) Where subparagraph (b) of paragraph (5) applies, the duration of the contract referred to in that subparagraph, as well as that of recurrent contracts shall not, as a general rule, exceed 3 years.

(7) A negotiated procedure without prior publication may be used for public service contracts where the contract concerned—

- (a) follows a design contest organised in accordance with these Regulations, and
- (b) is to be awarded, under the rules provided for in the design contest, to—
  - (i) the winner of the design contest, or
  - (ii) one of the winners of the design contest.

(8) Where paragraph (7)(b)(ii) applies, all winners shall be invited to participate in the negotiations.

(9) The negotiated procedure without prior publication may be used for new works or services consisting of repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, where such works or services are in conformity with a basic project for which the original contract was awarded pursuant to a procedure in accordance with Regulation 26(1).

(10) The basic project referred to in paragraph (9) shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

(11) Where paragraph (9) applies—

- (a) the possible use of the procedure referred to in that paragraph shall be disclosed as soon as the first project is put up for tender, and

- (b) the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority when it applies Regulation 5.

(12) The procedure referred to in paragraph (9) may be used only during the 3 years immediately following the conclusion of the original contract.

## Chapter 2

### *Techniques and instruments for electronic and aggregated procurement*

#### *Framework agreements*

33. (1) A contracting authority may conclude a framework agreement, where the procedures provided for in these Regulations are complied with.

(2) The term of a framework agreement shall not exceed 4 years, other than in exceptional cases, duly justified, in particular by the subject of the framework agreement.

(3) Contracts based on a framework agreement shall be awarded in accordance with the procedures specified in paragraphs (6) to (10).

(4) The procedures specified in paragraphs (6) to (10) may be applied only between those contracting authorities clearly identified for that purpose in the call for competition or the invitation to confirm interest and those economic operators party to the framework agreement, as concluded.

(5) Contracts based on a framework agreement shall not entail substantial modifications to the terms specified in that framework agreement, in particular where paragraphs (6) and (7) apply.

(6) Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms specified in that framework agreement.

(7) A contracting authority may, for the award of contracts referred to in paragraph (6), consult, in writing, the economic operator who is party to the framework agreement to request that economic operator to supplement its tender, as necessary.

(8) Where a framework agreement is concluded with more than one economic operator, that framework agreement shall be performed in one of the following ways:

- (a) in compliance with the terms and conditions of the framework agreement, without reopening competition, where it sets out—
  - (i) all the terms governing the provision of the works, services and supplies concerned, and

- (ii) the objective conditions for determining which of the economic operators who are party to the framework agreement shall perform the works, services and supplies and those conditions shall be indicated in the procurement documents for the framework agreement;
  - (b) where the framework agreement specifies all the terms governing the provision of the works, services and supplies concerned—
    - (i) partly without reopening of competition in accordance with subparagraph (a), and
    - (ii) partly with reopening competition amongst the economic operators who are party to the framework agreement in accordance with subparagraph (c) where it has been stipulated, by the contracting authority in the procurement documents for the framework agreement, that it may be performed in this manner;
  - (c) where not all the terms governing the provision of the works, services and supplies concerned are laid down in the framework agreement, through reopening competition amongst the economic operators which are party to the framework agreement.
- (9) For the purposes of paragraph (8)(b)—
- (a) the choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms specified in the framework agreement shall be made pursuant to objective criteria, which shall be specified in the procurement documents for the framework agreement;
  - (b) the procurement documents for the framework agreement shall specify which terms may be subject to reopening of competition.
- (10) Paragraph (8)(b) shall also apply to any lot of a framework agreement for which all the terms governing the provision of the works, services and supplies concerned are specified in the framework agreement, regardless of whether all the terms governing the provision of the works, services and supplies concerned under other lots have been specified.
- (11) The competitions referred to in paragraph (8)(b) and (c) shall be conducted on the same terms as applied for the award of the framework agreement, and where:
- (a) necessary, more precisely formulated terms, and
  - (b) appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:

- (i) for every contract to be awarded, a contracting authority shall consult, in writing, the economic operators capable of performing the contract;
- (ii) a contracting authority shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders;
- (iii) tenders shall be submitted in writing and shall not be opened until the stipulated time limit for reply has expired;
- (iv) a contracting authority shall award each contract to the tenderer that has submitted the best tender on the basis of the award criteria specified in the procurement documents for the framework agreement.

*Dynamic purchasing systems*

34. (1) A contracting authority may use a dynamic purchasing system for commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority.

(2) When procuring under a dynamic purchasing system, a contracting authority shall, subject to this Regulation, comply with the provisions of these Regulations applicable to procuring under a restricted procedure.

(3) A dynamic purchasing system shall be—

(a) operated as a completely electronic process, and

(b) open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria.

(4) A dynamic purchasing system may be divided into categories of products, works or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned.

(5) The characteristics referred to in paragraph (4) may include reference to the maximum allowable size of the subsequent specific contracts or to a specific geographic area in which subsequent specific contracts will be performed.

(6) All candidates satisfying the selection criteria of a dynamic purchasing system shall be admitted to that system.

(7) The number of candidates to be admitted to a dynamic purchasing system shall not be limited in accordance with Regulation 65.

(8) Where a contracting authority has divided a dynamic purchasing system into categories of products, works or services in accordance with paragraph (4), the contracting authority shall specify the applicable selection criteria for each category.

- (9) The following time limits shall, notwithstanding Regulation 28, apply to a procurement under a dynamic purchasing system:
- (a) the minimum time limit for receipt of requests to participate shall be 30 days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent;
  - (b) subject to paragraph (10), the minimum time limit for receipt of tenders shall be not less than 10 days from the date on which the invitation to tender is sent.
- (10) Where appropriate, in the case of paragraph (9)(b), paragraph (3) of Regulation 28 shall apply and paragraphs (2) and (4) of that Regulation shall not apply.
- (11) No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.
- (12) All communications in the context of a dynamic purchasing system shall be made only by electronic means in accordance with Regulation 22(1) to (6), (8), (10), (11) and (12).
- (13) For the purposes of awarding contracts under a dynamic purchasing system, a contracting authority shall—
- (a) publish a call for competition making it clear that a dynamic purchasing system is involved,
  - (b) indicate in the procurement documents, at a minimum, the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the dynamic purchasing system operates, the electronic equipment used and the technical connection arrangements and specifications,
  - (c) indicate any division into categories of products, works or services and the characteristics defining them, and
  - (d) offer unrestricted and full direct access, as long as the system is valid, to the procurement documents in accordance with Regulation 53.
- (14) A contracting authority shall give all economic operators, throughout the entire period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system in accordance with paragraphs (6) to (11).
- (15) A contracting authority shall finalise its assessment of a request made under paragraph (14) in accordance with the selection criteria within 10 working days following the receipt of the request.

(16) The time limit referred to in paragraph (15) may be extended to 15 working days in individual cases where justified, including where there is a need to examine additional documentation or to otherwise verify whether the selection criteria are met.

(17) Notwithstanding paragraphs (14) and (16), a contracting authority may extend the period for assessment of a request made under paragraph (14) where—

- (a) the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, and
- (b) no invitation to tender is issued during the extended evaluation period.

(18) Where a contracting authority intends to extend the evaluation period in accordance with paragraph (17), the authority shall indicate, in the procurement documents, the length of the extended period it intends to apply.

(19) A contracting authority shall, at the earliest possible opportunity, inform an economic operator that has requested to participate in a dynamic purchasing system whether or not it has been admitted to a dynamic purchasing system.

(20) A contracting authority shall invite all admitted participants to submit a tender for each specific procurement under a dynamic purchasing system, in accordance with Regulation 54.

(21) Where a dynamic purchasing system has been divided into categories of works, products or services, a contracting authority shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender.

(22) A contracting authority shall award a contract to the tenderer that submitted the best tender on the basis of the award criteria specified in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest.

(23) The criteria referred to in paragraph (22) may, where appropriate, be formulated more precisely in the invitation to tender.

(24) A contracting authority may, at any time during the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed and updated self-declaration as provided for in Regulation 59(1) to (6) within 5 working days from the date on which that request is transmitted.

(25) Regulation 59(8) to (12) shall apply throughout the entire period of validity of the dynamic purchasing system.

(26) A contracting authority shall, in the call for competition, indicate the period of validity of the dynamic purchasing system.



(27) A contracting authority shall notify the Commission of any change in the period of validity referred to in paragraph (26), using the following standard forms—

- (a) where the period of validity is changed without terminating the dynamic purchasing system, the form used initially for the call for competition for the system, or
- (b) where the dynamic purchasing system is terminated, a contract award notice referred to in Regulation 50.

(28) No charges may be billed, prior to or during the period of validity of the dynamic purchasing system, to the economic operators which are interested in or party to the dynamic purchasing system.

*Electronic auctions*

35. (1) Subject to paragraph (3), a contracting authority may use electronic auctions in which—

- (a) new prices, revised downwards, or
- (b) new values concerning certain elements of tenders,

or both, are presented.

(2) For the purposes of paragraph (1), a contracting authority shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

(3) Public service contracts, and public works contracts, which have as their subject matter intellectual performances, including contracts for the design of works, which cannot be ranked using automatic evaluation methods, shall not be the subject of electronic auctions.

(4) In open or restricted procedures or competitive procedures with negotiation, a contracting authority may decide that the award of a public contract shall be preceded by an electronic auction when the content of the procurement documents, in particular the technical specifications, can be established with precision.

(5) In procurements where the content of the procurement documents, in particular the technical specifications, can be established with precision, an electronic auction may be held—

- (a) on the reopening of competition among the parties to a framework agreement as provided for in Regulation 33(8)(b) or (c), and
- (b) on the opening for competition of contracts to be awarded under a dynamic purchasing system referred to in Regulation 34.

- (6) An electronic auction shall be conducted in accordance with one of the following elements of the tenders:
- (a) solely on prices where the contract is awarded on the basis of price only;
  - (b) on prices or on the new values of the features of the tenders indicated in the procurement documents, or on both, where the contract is awarded—
    - (i) on the basis of the best price-quality ratio, or
    - (ii) to the tender with the lowest cost using a cost-effectiveness approach.
- (7) Where a contracting authority decides to hold an electronic auction, the authority shall state that fact in the contract notice or in the invitation to confirm interest.
- (8) Where a contracting authority has decided to hold an electronic auction, the procurement documents shall include at least the information specified in Schedule 4.
- (9) Prior to proceeding with an electronic auction, a contracting authority shall make a full initial evaluation of the tenders in accordance with the award criteria and with the weighting fixed for them.
- (10) A tender shall be considered admissible where—
- (a) it has been submitted by a tenderer who has not been excluded pursuant to Regulation 57 and which meets the selection criteria under Regulation 58, and
  - (b) it is in conformity with the technical specifications without being irregular, unacceptable or unsuitable.
- (11) Tenders—
- (a) that do not comply with the procurement documents,
  - (b) that were received late,
  - (c) where there is evidence of collusion or corruption, or
  - (d) that have been found by the contracting authority to be abnormally low,
- shall be considered irregular.
- (12) Tenders—
- (a) submitted by tenderers that do not have the required qualifications, or

- (b) whose price exceeds the contracting authority's budget as determined and documented prior to the launching of the procurement procedure,

shall be considered unacceptable for the purposes of paragraph (10)(b).

(13) For the purposes of paragraph (10)(b)—

- (a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents, and
- (b) a request to participate shall be considered not to be suitable where the economic operator concerned—
  - (i) is to be or may be excluded under Regulation 57, or
  - (ii) does not meet the selection criteria in Regulation 58.

(14) All tenderers that have submitted admissible tenders shall be invited simultaneously to participate in the electronic auction using, as of the date and time specified in the invitation, the connections in accordance with the instructions specified in the invitation.

(15) An electronic auction may take place in a number of successive phases.

(16) An electronic auction shall not start sooner than 2 working days after the date on which invitations referred to in paragraph (14) are sent.

(17) An invitation shall—

- (a) be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in Regulation 67(9), and
- (b) state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices or new values submitted, or both.

(18) Except where the most economically advantageous offer is identified on the basis of price alone, that formula referred to in paragraph (17)(b) shall incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents.

(19) For the purposes of paragraph (18), any ranges of weightings shall be reduced beforehand to a specified value.

(20) Where variants are authorised, a separate formula shall be provided for each variant.

(21) Throughout each phase of an electronic auction the contracting authority shall instantaneously communicate to all tenderers sufficient information to enable them to ascertain their relative rankings.

(22) A contracting authority may, notwithstanding paragraph (21), communicate other information concerning other prices or values submitted.

(23) A contracting authority may, during any phase of the electronic auction, announce the number of participants in that phase.

(24) Notwithstanding paragraphs (21) to (23), a contracting authority shall not disclose the identity of a tenderer during any phase of an electronic auction.

(25) A contracting authority shall close an electronic auction in one or more of the following manners:

(a) at the previously indicated date and time;

(b) when it receives no more new prices or new values which meet the requirements concerning minimum differences, where it has previously stated the time which it will allow to elapse after receiving the last submission before it closes the electronic auction;

(c) when the previously indicated number of phases in the auction has been completed.

(26) Where a contracting authority intends to close an electronic auction in accordance with paragraph (25)(c), including where it is intended to close the auction in combination with the arrangements specified in paragraph (25)(b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(27) After closing an electronic auction, the contracting authority shall award the contract in accordance with Regulation 67 on the basis of the results of the electronic auction.

#### *Electronic catalogues*

36. (1) Where the use of electronic means of communication is required under these Regulations, a contracting authority may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

(2) Tenders presented in the form of an electronic catalogue may be accompanied by other documents completing the tender.

(3) An electronic catalogue shall—

(a) be established by the candidates or tenderers with a view to participating in a given procurement procedure in accordance with the technical specifications and format established by the contracting authority, and

(b) comply with—

- (i) the requirements for electronic communication tools specified in Regulation 22, and
- (ii) any additional requirements set by the contracting authority in accordance with Regulation 22.

(4) Where the presentation of tenders in the form of an electronic catalogue is accepted or required, a contracting authority shall—

- (a) state that fact in the contract notice or where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest, and
- (b) indicate in the procurement documents all the necessary information relating to the matters in Regulation 22(11) and (12) so far as they concern the—
  - (i) format,
  - (ii) electronic equipment used, and
  - (iii) technical connection arrangements and specifications for the catalogue.

(5) Where a framework agreement has been concluded with more than one economic operator following the submission of tenders in the form of an electronic catalogue, a contracting authority may provide that the reopening of competition for specific contracts is to take place on the basis of an updated catalogue.

(6) In the case of a reopening of competition under paragraph (5), a contracting authority shall use one of the following methods:

- (a) invite tenderers to resubmit an electronic catalogue, adapted to the requirements of the contract in question;
- (b) notify tenderers that the authority intends to collect from the electronic catalogue which has already been submitted the information required to constitute tenders adapted to the requirements of the contract in question, where the use of that method has been indicated in the procurement documents for the framework agreement.

(7) Where a contracting authority reopens competition for specific contracts in accordance with paragraph (6)(b), the authority shall use one of the following methods:

- (a) notify tenderers of the date and time at which it intends to collect the information required to constitute tenders adapted to the requirements of the specific contract in question;

(b) allow tenderers the possibility of refusing such collection of information.

(8) A contracting authority shall allow for an adequate period between the notification under paragraph (7) and the actual collection of information.

(9) A contracting authority shall, before awarding a contract, present the information collected under this Regulation to the tenderer concerned so as to give the tenderer the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

(10) A contracting authority may award contracts based on a dynamic purchasing system by requiring that offers for a specific contract are to be presented in the format of an electronic catalogue.

(11) A contracting authority may award contracts based on a dynamic purchasing system in accordance with paragraphs (6)(b) and (7) to (9) where the request to participate in the dynamic purchasing system is accompanied by an electronic catalogue in accordance with the technical specifications and format established by the contracting authority.

(12) For the purposes of paragraph (11), the electronic catalogue shall be completed by the candidates after they have been informed of the contracting authority's intention to constitute tenders by means of the procedure specified in paragraph (6)(b).

*Centralised purchasing activities and central purchasing bodies*

37. (1) A contracting authority may acquire works, supplies or services, or any one or more of them—

(a) from a central purchasing body offering the centralised purchasing activity referred to in paragraph (a) of the definition of “centralised purchasing activity”,

(b) by using—

(i) contracts awarded by a central purchasing body,

(ii) dynamic purchasing systems operated by a central purchasing body, or

(iii) a framework agreement concluded by a central purchasing body offering the centralised purchasing activity referred to in paragraph (b) of the definition of “centralised purchasing activity”.

(2) Where a dynamic purchasing system which is operated by a central purchasing body may be used by other contracting authorities, that fact shall be mentioned in the call for competition setting up that dynamic purchasing system.

(3) (a) The Minister may, having had regard to the need to—

- (i) give further effect to the Public Authorities Contracts Directive,
- (ii) ensure the most efficient use of public funds, and
- (iii) ensure public purchasing is conducted in a more professional manner,

by direction in writing require contracting authorities to make specified classes of procurements either through central purchasing bodies or through one or more specified central purchasing bodies.

- (b) As soon as practicable after giving a direction under subparagraph (a), the Minister shall publish in *Iris Oifigiúil* a notice giving particulars of the direction.

(4) A contracting authority fulfils its obligations under these Regulations:

- (a) when it acquires supplies or services from a central purchasing body offering the centralised purchasing activity referred to in paragraph (a) of the definition of “centralised purchasing activity”;
- (b) where it acquires works, supplies or services by using—
  - (i) contracts awarded by a central purchasing body,
  - (ii) a dynamic purchasing system operated by the central purchasing body, or
  - (iii) a framework agreement concluded by the central purchasing body offering the centralised purchasing activity referred to in paragraph (b) of the definition of “centralised purchasing activity”.

(5) Notwithstanding paragraph (4), the contracting authority concerned shall be responsible for fulfilling the obligations imposed by these Regulations in respect of any part of the procedure that is conducted by the authority itself, including:

- (a) awarding a contract under a dynamic purchasing system which is operated by a central purchasing body;
- (b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body;
- (c) determining, under Regulation 33(8)(a) or (b), which of the economic operators party to a framework agreement that has been concluded by a central purchasing body shall perform a given task under the framework agreement.

(6) All procurement procedures conducted by a central purchasing body shall be performed using electronic means of communication, in accordance with the requirements specified in Regulation 22.

(7) A contracting authority may, without applying the procedures provided for in these Regulations, award a public service contract for the provision of centralised purchasing activities to a central purchasing body.

(8) Public service contracts awarded in accordance with paragraph (7) may include the provision of ancillary purchasing activities.

*Occasional joint procurement*

38. (1) Two or more contracting authorities may agree to perform certain specific procurements jointly.

(2) Where the conduct of a procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting authorities concerned, they shall be jointly, or equally if more than 2, responsible for fulfilling their obligations under these Regulations.

(3) The joint responsibility referred to in paragraph (2) applies also in cases where one contracting authority manages the procedure on its own behalf and on the behalf of the other contracting authorities concerned.

(4) Where the conduct of a procurement procedure is not in its entirety carried out in the name and on behalf of the contracting authorities concerned—

(a) they shall be jointly responsible only for those parts carried out jointly, and

(b) each contracting authority shall have sole responsibility for fulfilling its obligations under these Regulations in respect of the parts it conducts in its own name and on its own behalf.

*Procurement involving contracting authorities from different Member States*

39. (1) Without prejudice to Regulation 12 and subject to paragraph (2), a contracting authority in the State may act jointly with a contracting authority from another Member State in the award of public contracts in accordance with this Regulation.

(2) A contracting authority shall not use this Regulation for the purpose of avoiding the application of mandatory European Union law.

(3) A contracting authority in the State may use centralised purchasing activities offered by central purchasing bodies located in another Member State.

(4) The use of centralised purchasing activities, under paragraph (3), by a central purchasing body located in another Member State shall be conducted in accordance with the national provisions of that other Member State.

(5) The national provisions of the other Member State referred to in paragraph (4) shall apply to the following:

(a) the award of a contract under a dynamic purchasing system;



- (b) the conduct of a reopening of competition under a framework agreement;
- (c) the determination, for the purposes of Regulation 33(8)(a) or (b), of which of the economic operators that are party to the framework agreement shall perform a given task.

(6) Nothing in these Regulations shall prevent a contracting authority in the State—

- (a) from—
  - (i) awarding a public contract,
  - (ii) concluding a framework agreement, or
  - (iii) operating a dynamic purchasing system, jointly with a contracting authority from another Member State, or
- (b) subject to Regulation 33(4), from awarding contracts based on the framework agreement or the dynamic purchasing system referred to in subparagraph (a).

(7) No contracts may be awarded under paragraph (6) unless the necessary elements have been regulated by an international agreement concluded between—

- (a) the State and the other Member State concerned, or
- (b) the participating contracting authorities concerned determining the matters specified in paragraph (8).

(8) An international agreement referred to in paragraph (7) shall contain provisions setting out—

- (a) the responsibilities of the parties and the relevant applicable national law provisions, and
- (b) the internal organisation of the procurement procedure of the Member State concerned, including—
  - (i) the management of the procedure,
  - (ii) the distribution of the works, supplies or services to be procured, and
  - (iii) the conclusion of contracts.

(9) A participating contracting authority fulfils its obligations pursuant to these Regulations when it purchases works, supplies and services from a contracting authority which is responsible for the procurement procedure.

(10) When determining responsibilities and the applicable national law provisions referred to in paragraph (8)(a), the participating contracting authority may allocate specific responsibilities among them and determine the applicable provisions of the national law of any of their respective Member States.

(11) The allocation of responsibilities and the applicable national law provisions referred to in paragraph (8)(a) shall be referred to in the procurement documents for jointly awarded public contracts.

(12) Where a contracting authority in the State has set up a joint entity, including European Groupings of territorial cooperation established under Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006<sup>34</sup>, or other entities established under European Union law, with one or more contracting authorities from other Member States, that contracting authority shall, by decision of the competent body of the joint entity, agree on the applicable national procurement rules regarding the following:

- (a) the national provisions of the Member States where the joint entity has its registered office;
- (b) the national provisions of the Member States where the joint entity is carrying out its activities.

(13) The agreement referred to in paragraph (12) may either apply—

- (a) for an indeterminate period, when fixed in the constitutive act of the joint entity, or
- (b) may be limited to a certain period of time, certain types of contracts or to one or more individual contract awards.

### Chapter 3

#### *Conduct of the procedure*

#### Preparation

##### *Preliminary market consultations*

40. (1) Before commencing a procurement procedure, a contracting authority may conduct market consultations with a view to preparing the procurement and informing economic operators of the authority's procurement plans and requirements.

(2) For the purposes of paragraph (1), a contracting authority may seek or accept advice from independent experts or authorities or from market participants.

(3) The advice referred to in paragraph (2) may be used in the planning and conduct of the procurement procedure, where the use of such advice does not—

<sup>34</sup>OJ L 210, 31.07.2006, p.19.

- (a) have the effect of distorting competition, or
- (b) result in a violation of the principles of non-discrimination and transparency.

*Prior involvement of candidates or tenderers*

41. (1) Where, in a procurement procedure, a candidate or tenderer, or an undertaking related to a candidate or tenderer—

- (a) has advised the contracting authority, whether in the context of Regulation 40 or not, or
- (b) has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

(2) The appropriate measures referred to in paragraph (1) shall include—

- (a) communication to the other candidates and tenderers of relevant information exchanged in the context of, or resulting from, the involvement of the candidate or tenderer referred to in that paragraph in the preparation of the procurement procedure, and
- (b) fixing of adequate time limits for the receipt of tenders.

(3) A candidate or tenderer shall only be excluded from a procurement procedure under this Regulation where there are no other means to ensure compliance with the duty to treat economic operators equally in accordance with Regulation 18(1).

(4) Prior to any exclusion in accordance with paragraph (3), a candidate or tenderer shall be given the opportunity to prove that the involvement of that candidate or tenderer in the preparation of the procurement procedure is not capable of distorting competition.

(5) The measures taken under this Regulation shall be documented in the report referred to in Regulation 84.

*Technical specifications*

42. (1) The technical specifications shall be specified in the procurement documents and shall lay down the required characteristics of works, services or supplies.

(2) The required characteristics referred to in paragraph (1) may also refer to—

- (a) the specific process or method of production or provision of the requested works, supplies or services, or

- (b) a specific process for another stage of its life cycle, even where such factors do not form part of their material substance where they are linked to the subject matter of the contract and proportionate to its value and its objectives.
  - (3) The technical specifications may specify whether the transfer of intellectual property rights will be required.
  - (4) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.
  - (5) Where mandatory accessibility requirements are adopted by a legal act of the European Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.
  - (6) Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.
  - (7) Without prejudice to mandatory national technical rules in the State, to the extent that they are compatible with European Union law, the technical specifications shall be formulated in one of the following ways:
    - (a) in terms of performance or functional requirements, including environmental characteristics, where the parameters are sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow a contracting authority to award the contract;
    - (b) by reference to technical specifications in the following order of preference:
      - (i) firstly, national standards transposing European standards;
      - (ii) secondly, European Technical Assessments;
      - (iii) thirdly, common technical specifications;
      - (iv) fourthly, international standards;
      - (v) fifthly, other technical reference systems established by the European standardisation bodies;
      - (vi) when none of the technical specifications referred to in clauses (i) to (v) exist, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies,
- and each reference shall be accompanied by the words ‘or equivalent’;

- (c) in terms of performance or functional requirements referred to in subparagraph (a), with reference to the technical specifications referred to in subparagraph (b) as a means of presuming conformity with such performance or functional requirements;
- (d) by reference to the technical specifications referred to in subparagraph (b) for certain characteristics, and by reference to the performance or functional requirements referred to in subparagraph (a) for other characteristics.

(8) Unless justified by the subject matter of the contract, technical specifications shall not, subject to paragraph (9), refer to—

- (a) a specific make or source,
- (b) a particular process which characterises the products or services provided by a specific economic operator,
- (c) trade marks,
- (d) patents,
- (e) types, or
- (f) a specific origin or production,

with the effect of favouring or eliminating certain undertakings or certain products.

(9) The references referred to in paragraph (8) shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject matter of the contract in accordance with paragraph (7) is not possible, in which case the reference shall be accompanied by the words ‘or equivalent’.

(10) Where a contracting authority uses the option of referring to the technical specifications referred to in paragraph (7)(b), it shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender, by any appropriate means, including the means of proof referred to in Regulation 44, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

(11) Where a contracting authority uses the option referred to in paragraph (7)(a) to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system where those specifications address the performance or functional requirements which it has specified.

(12) In a tender, the tenderer concerned shall prove by any appropriate means, including those referred to in Regulation 44, that the works, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

### *Labels*

43. (1) Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics the authority may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, where the following conditions are fulfilled:

- (a) the label requirements concern only criteria which are linked to the subject matter of the contract and are appropriate to define the characteristics of the works, supplies or services that are the subject matter of the contract;
- (b) the label requirements are based on objectively verifiable and non-discriminatory criteria;
- (c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- (d) the labels are accessible to all interested parties;
- (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

(2) Where a contracting authority does not require the works, supplies or services to meet all of the label requirements, the authority shall indicate which label requirements are referred to.

(3) A contracting authority requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.

(4) Where an economic operator has demonstrably no possibility of obtaining the specific label indicated by the contracting authority, or an equivalent label, within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier of the manufacturer, where the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

(5) Where a label—

(a) fulfils the conditions referred to in paragraph (1)(b) to (e), and

(b) sets out requirements not linked to the subject matter of the contract,

a contracting authority shall not require the label but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts of it, that are linked to the subject matter of the contract and are appropriate to define characteristics of that subject matter.

*Test reports, certificates and other means of proof*

44. (1) In this Regulation, a “conformity assessment body” means a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008.<sup>35</sup>

(2) A contracting authority may require that economic operators provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria specified in—

(a) the technical specifications,

(b) the award criteria, or

(c) the contract performance conditions.

(3) Where a contracting authority requires the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall also be accepted by the contracting authority concerned.

(4) A contracting authority shall accept appropriate means of proof other than those referred to in paragraphs (2) and (3), including a technical dossier of the manufacturer, where the economic operator concerned had no access to the certificates or test reports referred to in those paragraphs, or no possibility of obtaining them within the relevant time limits, where the—

(a) lack of access is not attributable to the economic operator concerned, and

(b) economic operator concerned thereby proves that the works, supplies or services meet the requirements or criteria specified in the technical specifications, the award criteria or the contract performance conditions.

*Variants*

45. (1) (a) A contracting authority may authorise or require tenderers to submit variants.

<sup>35</sup>OJ L 218, 13.08.2008, p.30.

(b) A contracting authority shall only take into consideration variants submitted under subparagraph (a) which meet the minimum requirements specified by that contracting authority.

(2) A contracting authority shall indicate, in the contract notice or where a prior information notice is used as a means for calling for competition in the invitation to confirm interest, whether or not the authority authorises or requires variants.

(3) Variants shall not be authorised without an indication referred to in paragraph (2) and shall be linked to the subject matter of the contract.

(4) A contracting authority 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 been submitted.

(5) Where variants are authorised or required, a contracting authority shall 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.

(6) In procedures for awarding public supply or service contracts, a contracting authority that has authorised or required variants shall not reject a variant on the sole ground that it would, where successful, lead either to a public service contract rather than a public supply contract or a public supply contract rather than a public service contract.

#### *Division of contracts into lots*

46. (1) A contracting authority may decide to award a contract in the form of separate lots and may determine the size and subject matter of those lots.

(2) A contracting authority shall, in the procurement documents or in the report referred to in Regulation 84(1), provide an indication of the main reasons for the decision not to subdivide into lots.

(3) A contracting authority shall indicate, in the relevant contract notice or in the relevant invitation to confirm interest, whether tenders may be submitted for one, for several or for all of the lots.

(4) A contracting authority may, where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, where the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest.

(5) A contracting authority shall indicate in the procurement documents the objective and non-discriminatory criteria or rules the authority intends to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.



(6) Where more than one lot may be awarded to the same tenderer, a contracting authority may award a contract combining several or all lots where the authority has specified in the contract notice or in the invitation to confirm interest that it reserves the possibility of doing so and indicates the lots or groups of lots that may be combined.

*Setting time limits*

47. (1) Without prejudice to the minimum time limits specified in Regulations 27 to 31, when fixing the time limits for the receipt of tenders and requests to participate, a contracting authority shall take account of the complexity of the contract and the time required for drawing up tenders.

(2) Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which shall be longer than the minimum time limits specified in Regulations 27 to 31, shall be fixed so that all economic operators concerned may be aware of all the information necessary to produce tenders.

(3) A contracting authority shall extend the time limits for the receipt of tenders so that all economic operators concerned may be aware of all the information needed to produce tenders in the following cases:

(a) where, for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest 6 days before the time limit fixed for the receipt of tenders;

(b) where significant changes are made to the procurement documents.

(4) The length of the extension under paragraph (3) shall be proportionate to the importance of the information or change.

(5) In the event of an accelerated procedure referred to in Regulations 27(3) and 28(5), that period shall be 4 days.

(6) A contracting authority is not required to extend the time limits under this Regulation where—

(a) additional information has not been requested in good time, or

(b) the importance of the additional information concerned with a view to preparing responsive tenders is insignificant.

Publication and transparency

*Prior information notices*

48. (1) A contracting authority may make known its intentions with respect to planned procurements through the publication of a prior information notice.

(2) A prior information notice shall contain the information specified in Part 2 of Schedule 3.

- (3) A prior information notice shall be published—
  - (a) by the Publications Office, or
  - (b) in the contracting authority's buyer profile in accordance with paragraph 2 of Part 2 of Schedule 5.
- (4) Where a prior information notice is published by the contracting authority on the authority's buyer profile—
  - (a) the authority concerned shall send a notice of the publication of the prior information notice to the Publications Office in accordance with Schedule 5, and
  - (b) the prior information notice shall contain the information specified in paragraphs 1 to 11 of Part 2 of Schedule 3.
- (5) When a call for competition is made by means of a prior information notice in respect of a restricted procedure or a competitive procedure with negotiation, a sub-central contracting authority may use a prior information notice as a call for competition in accordance with Regulation 26(7) to (9) where the notice fulfills the following requirements:
  - (a) it shall refer specifically to the supplies, works or services that will be the subject matter of the contract to be awarded;
  - (b) it shall indicate that the contract will be awarded by restricted procedure or competitive procedure with negotiation without further publication of a call for competition and shall invite interested economic operators to express their interest;
  - (c) it shall contain, in addition to the information specified in paragraphs 1 to 11 of Part 2 of Schedule 3, the information specified in paragraphs 12 to 24 of Part 2 of Schedule 3;
  - (d) it shall be sent for publication between 35 days and 12 months prior to the date on which an invitation referred to in Regulation 54(2) is sent.
- (6) A notice referred to in paragraph (5) shall not be published on a buyer profile.
- (7) Notwithstanding paragraph (6), the additional publication, in the State, under Regulation 52, if any, may be made on the buyer profile of the contracting authority concerned.
- (8) The period covered by the prior information notice shall be not more than 12 months from the date on which the notice is transmitted for publication.

(9) In the case of public contracts for social and other specific services, the prior information notice referred to in Regulation 75(1)(b) may cover a period which is longer than 12 months.

*Contract notices*

49. (1) Without prejudice to Regulations 26(8) and 32, contract notices shall be used as a means of calling for competition in respect of all procedures.

(2) Contract notices, where used, shall contain the information specified in Part 3 of Schedule 3 and shall be published in accordance with Regulation 51.

*Contract award notices*

50. (1) A contracting authority shall, not later than 30 days after the award of a contract or the conclusion of a framework agreement, following the decision to award or conclude it, send for publication a contract award notice on the results of the procurement procedure.

(2) A contract award notice referred to in paragraph (1) shall contain the information specified in Part 4 of Schedule 3 and shall be sent for publication in accordance with Regulation 51.

(3) Where a call for competition for the contract concerned has been made in the form of a prior information notice and a contracting authority has decided that it will not award further contracts during the period covered by the prior information notice, the relevant contract award notice shall contain a specific indication to that effect.

(4) Where a framework agreement has been concluded in accordance with Regulation 33, a contracting authority shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement.

(5) A contracting authority shall send a contract award notice no later than 30 days following the award of each contract based on a dynamic purchasing system.

(6) Notwithstanding paragraph (5), a contracting authority may group together notices referred to in paragraph (5) on a quarterly basis subject to the authority concerned sending those grouped notices no later than 30 days following the end of each quarter.

(7) Information on the award of the contract or the conclusion of the framework agreement may be withheld from publication where its release—

- (a) would impede law enforcement or otherwise be contrary to the public interest,
- (b) would harm the legitimate commercial interests of a particular economic operator, whether public or private, or
- (c) might prejudice fair competition between economic operators.

*Form and manner of publication of notices*

51. (1) The notices referred to in Regulations 48 to 50 shall include the information specified in Schedule 3 in the format of standard forms established by the Commission, including standard forms for corrigenda.

(2) The notices referred to in paragraph (1) shall be drawn up by the contracting authority concerned and—

(a) transmitted by electronic means to the Publications Office, and

(b) published in accordance with Schedule 5 no later than 5 days after they are transmitted under subparagraph (a).

(3) (a) Notices referred to in Regulations 48 to 50 shall be published in full in one or more of the official languages of the institutions of the European Union, as chosen by the contracting authority.

(b) The version of a notice referred to in subparagraph (a) shall constitute the sole authentic text or texts.

(c) A summary of the important elements of a notice referred to in subparagraph (a) shall be published in the other official languages of the institutions of the European Union.

(4) A contracting authority shall retain proof of the transmission of notices under paragraph (2), including the date of that transmission, and shall be able to supply proof of such dates where required.

(5) A confirmation of the publication of a notice under this Regulation given by the Publications Office under Article 51(5) of the Public Authorities Contracts Directive shall constitute proof of publication.

(6) A contracting authority may publish notices for public contracts that are not subject to the publication requirements specified in these Regulations where those notices are sent to the Publications Office by electronic means in accordance with the format and procedure for transmission referred to in Schedule 5.

*Publication in the State*

52. (1) A notice referred to in Regulations 48 to 50 and the information contained therein shall not be published, in the State or another Member State before the publication in accordance with Article 51 of the Public Authorities Contracts Directive.

(2) Notwithstanding paragraph (1), publication of the notice in the State or another Member State may take place where a contracting authority has not received confirmation of publication of the notice from the Publications Office under Article 51(5) of the Public Authorities Contracts Directive within 48 hours after receipt of confirmation of the receipt of the notice in accordance with Article 51(5) of the Public Authorities Contracts Directive.

(3) When published in the State, a notice referred to in Regulations 48 to 50 shall not contain information other than that contained in the notice dispatched to the Publications Office or published on a buyer profile and shall indicate the date of—

- (a) dispatch of the notice to the Publications Office, or
- (b) its publication on the buyer profile.

(4) A prior information notice shall—

- (a) not be published on a buyer profile before the dispatch to the Publications Office of the notice of its publication in that form, and
- (b) indicate the date of that dispatch.

*Electronic availability of procurement documents*

53. (1) A contracting authority shall, by electronic means offer unrestricted and full direct access free of charge to the procurement documents from the date—

- (a) of publication of a notice in accordance with Regulation 51, or
- (b) on which an invitation to confirm interest is sent.

(2) The text of the notice or invitation to confirm interest referred to in paragraph (1) shall specify the internet address at which the procurement documents are accessible.

(3) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons specified in Regulation 22(3), a contracting authority may indicate in the notice or invitation to confirm interest that the procurement documents concerned shall be transmitted by means other than electronic means in accordance with paragraphs (6) and (7).

(4) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because a contracting authority intends to apply Regulation 21(3), the contracting authority shall indicate in the notice or invitation to confirm interest which measures aimed at protecting the confidential nature of the information it requires and how access can be obtained to the documents concerned.

(5) In the cases referred to in paragraphs (3) and (4), the time limit for the submission of tenders shall be extended by 5 days, other than in cases of duly substantiated urgency referred to in Regulation 27(3) and 28(5).

(6) Where it has been requested in good time, a contracting authority shall supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents no later than 6 days before the time limit fixed for the receipt of tenders.

(7) In the case of an accelerated procedure referred to in Regulations 27(3) and 28(5), the period referred to in paragraph (6) shall be 4 days.

*Invitations to candidates*

54. (1) In restricted procedures, competitive dialogue procedures, innovation partnerships and competitive procedures with negotiation, a contracting authority shall simultaneously and in writing invite the selected candidates to submit their tenders or, in the case of a competitive dialogue, to take part in the dialogue.

(2) Where a prior information notice is used as a call for competition in accordance with Regulation 48(5), a contracting authority shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.

(3) The invitations required by paragraphs (1) and (2) shall—

- (a) include a reference to the electronic address at which the procurement documents have been made directly available by electronic means,
- (b) be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons referred to in Regulation 53(3) or (4) and have not already been made otherwise available, and
- (c) include the information specified in Schedule 6.

*Informing candidates and tenderers*

55. (1) A contracting authority shall, as soon as possible, inform each candidate and tenderer of a decision reached concerning the—

- (a) conclusion of a framework agreement,
- (b) award of a contract, or
- (c) admittance to a dynamic purchasing system, including, where applicable, the grounds for any decision—
  - (i) not to conclude a framework agreement,
  - (ii) not to award a contract for which there has been a call for competition,
  - (iii) to recommence the procedure, or
  - (iv) not to implement a dynamic purchasing system.

(2) A contracting authority shall, as soon as possible but no later than 15 days following the receipt of a request in writing from the candidate or tenderer concerned, inform:

- (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;
- (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Regulation 42(10) and (11), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;
- (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement;
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

(3) A contracting authority may withhold information referred to in this Regulation regarding the contract award, conclusion of framework agreements or admittance to a dynamic purchasing system, where the release of such information—

- (a) would impede law enforcement or would otherwise be contrary to the public interest,
- (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or
- (c) might prejudice fair competition between economic operators.

#### Choice of participants and award of contracts

##### *General principles*

56. (1) Contracts shall be awarded on the basis of criteria laid down in accordance with Regulations 67 to 69, where the contracting authority has verified, in accordance with Regulations 59 to 61, that the tender—

- (a) complies with the requirements, conditions and criteria specified in the contract notice or invitation to confirm interest and in the procurement documents, taking into account, where applicable, Regulation 45,
- (b) has been submitted by a tenderer that is not excluded in accordance with Regulation 57 and meets the selection criteria specified by the contracting authority in accordance with Regulation 58, and
- (c) where applicable, meets the non-discriminatory rules and criteria referred to in Regulation 65.

(2) A contracting authority may decide not to award a contract to the tenderer submitting the most economically advantageous tender where the authority has established that the tender does not comply with applicable obligations referred to in Regulation 18(4).

## (3) In open procedures—

- (a) a contracting authority may decide to examine tenders before verifying the absence of grounds for exclusion and the fulfilment of the selection criteria in accordance with Regulations 57 to 64, and
- (b) where a contracting authority avails of the option under subparagraph (a), the authority shall ensure that the verification of absence of grounds for exclusion and of fulfilment of the selection criteria is carried out in an impartial and transparent manner so that no contract is awarded to a tenderer that—
  - (i) should have been excluded under Regulation 57, or
  - (ii) does not meet the selection criteria specified by the contracting authority.

(4) Where information or documentation submitted by an economic operator is, or appears to a contracting authority, to be incomplete or erroneous, or where specific documents are missing, the authority may request the economic operator concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, where any such request is made in full compliance with the principles of equal treatment and transparency.

*Exclusion grounds*

57. (1) Subject to paragraphs (6), (7), (13) and (18), a contracting authority shall exclude an economic operator from participation in a procurement procedure where it has established, by verifying in accordance with Regulations 59, 60 and 61, or is otherwise aware that the economic operator concerned has been convicted of one or more of the following offences:

- (a) participation in a criminal organisation, within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008<sup>36</sup> on the fight against organised crime;
- (b) corruption, which, in this Regulation, means corruption within the meaning of the following:
  - (i) Regulation 2;
  - (ii) Article 2(1) of Council Framework Decision 2003/568/JHA<sup>37</sup> of 22 July 2003 on combating corruption in the private sector;
  - (iii) the law of the State, where the contracting authority or the economic operator concerned is established in the State;

<sup>36</sup>OJ L 300, 11.11.2008, p.42.

<sup>37</sup>OJ L 192, 31.07.2003, p.54.



- (iv) the law of the Member State, other than the State, in which the contracting authority or the economic operator concerned is established;
- (c) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests drawn up under the Council Act of 26 July 1995<sup>38</sup>;
- (d) terrorist offences or offences linked to terrorist activities, within the meaning of Articles 1 and 3 respectively of Council Framework Decision 2002/475/JHA of 13 June 2002<sup>39</sup> on combating terrorism or inciting or aiding or abetting or attempting to commit an offence referred to in Article 4 of that Council Framework Decision;
- (e) money laundering or terrorist financing, within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005<sup>40</sup> on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;
- (f) child labour and other forms of trafficking in human beings, within the meaning of Article 2 of Directive 2011/36/EU<sup>41</sup> of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

(2) The obligation of a contracting authority to exclude an economic operator under paragraph (1) also applies (but subject to paragraphs (6), (7), (13) and (18)) where the person convicted is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator.

(3) Subject to paragraphs (5) to (7), (13) and (19), an economic operator shall be excluded from participation in a procurement procedure where—

- (a) the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions, and
- (b) the breach referred to in subparagraph (a) has been established by a judicial or administrative decision having final and binding effect in accordance with the law of the country in which the operator is established or the Member State of the contracting authority.

(4) Subject to paragraph (5), a contracting authority may exclude an economic operator from participation in a procurement procedure where the contracting authority can demonstrate, by any appropriate means, that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

<sup>38</sup>OJ C 316, 27.11.1995, p.48.

<sup>39</sup>OJ L 164, 22.06.2002, p.3.

<sup>40</sup>OJ L 309, 25.11.2005, p.15.

<sup>41</sup>OJ L 101, 15.04.2011, p.11.

(5) Paragraphs (3) and (4) shall not apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

(6) A contracting authority shall not be obliged to exclude an economic operator under this Regulation where, on an exceptional basis, there are overriding reasons relating to the public interest such as public health or protection of the environment.

(7) A contracting authority shall not be obliged to exclude an economic operator under this Regulation where such an exclusion would be disproportionate, including where—

- (a) only minor amounts of taxes or social security contributions referred to in paragraph (3)(a) are unpaid, or
- (b) the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions referred to in paragraph (3)(a) at such time that it did not have the possibility of taking measures as provided for in paragraph (5) before the expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

(8) Subject to paragraphs (13) and (20), a contracting authority may exclude from participation in a procurement procedure any economic operator in one or more of the following situations:

- (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in Regulation 18(4);
- (b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the law of the State;
- (c) where the contracting authority can demonstrate, by appropriate means, that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- (d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- (e) where a conflict of interest within the meaning of Regulation 24 cannot be effectively remedied by other, less intrusive, measures;

- (f) where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in Regulation 41, cannot be remedied by other, less intrusive, measures;
- (g) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
- (h) where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit supporting documents required under Regulation 59;
- (i) where the economic operator has undertaken to unduly influence the decision-making process of the contracting authority, or obtain confidential information that may confer upon it undue advantages in the procurement procedure or where the economic operator has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

(9) Notwithstanding paragraph (8)(b), a contracting authority may decide not to exclude an economic operator that is in any of the situations referred to in that paragraph where the contracting authority has established that the economic operator will be able to perform the contract taking into account the national rules and measures of the Member State of establishment of the economic operator or the law of the State, as appropriate, on the continuation of business in those situations.

(10) A contracting authority shall, at any time during the procurement procedure, exclude an economic operator where the authority becomes aware that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs (1) to (3).

(11) A contracting authority may, at any time during the procurement procedure, exclude an economic operator where the authority becomes aware that that economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph (8).

(12) An economic operator that is in one of the situations referred to in paragraphs (1), (2) or (8) may provide evidence to the effect that measures taken by the economic operator concerned are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.

(13) Where the evidence provided under paragraph (12) is considered sufficient the economic operator concerned shall not be excluded from the procurement procedure.

- (14) For the purposes of paragraphs (12) and (13) the economic operator shall show that it has—
- (a) paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct concerned,
  - (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities, and
  - (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.
- (15) The contracting authority shall, when evaluating the measures shown to be taken by the economic operator under paragraph (14), take into account the gravity and particular circumstances of the criminal offence or misconduct concerned.
- (16) Where the contracting authority considers that the measures shown to be taken by the economic operator under paragraph (14) are insufficient, the contracting authority shall give the economic operator a statement of the reasons for that decision.
- (17) An economic operator that is excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for in paragraphs (12) to (16) during the period of exclusion resulting from that judgment in the Member State where the judgement is effective.
- (18) Paragraphs (1) and (2) shall be construed so that the requirement under either of those paragraphs that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date of conviction of the economic operator or person, as the case may be, for the offence concerned referred to in the relevant paragraph.
- (19) Paragraph (3) shall be construed so that the requirement under that paragraph that the economic operator be excluded, in the manner there mentioned, shall cease to apply on the expiration of the period of 5 years from the date the relevant breach is established by the judicial or administrative decision concerned referred to in subparagraph (b) of that paragraph.
- (20) Paragraph (8) shall be construed so that the power under that paragraph to exclude an economic operator, in the manner there mentioned, shall not be exercisable where the contracting authority establishes that 3 or more years have elapsed since the date that the economic operator concerned was in the relevant situation referred to in that paragraph.
- (21) The reference in paragraph (18) to the requirement under paragraph (1) or (2) includes a reference to the requirement under either such paragraph as it operates by virtue of paragraph (10).

(22) The reference in paragraph (19) to the requirement under paragraph (3) includes a reference to the requirement under that paragraph as it operates by virtue of paragraph (10).

(23) The reference in paragraph (20) to the power under paragraph (8) includes a reference to the power under that paragraph as that paragraph operates by virtue of paragraph (11).

*Selection criteria*

58. (1) Selection criteria to be imposed on an economic operator as requirements for participation in a procurement procedure may relate to the following:

- (a) suitability to pursue a professional activity;
- (b) economic and financial standing;
- (c) technical and professional ability.

(2) Notwithstanding paragraph (1), a contracting authority may impose on an economic operator, as requirements for participation in a procurement procedure, only the criteria referred to in paragraphs (5) to (19).

(3) A contracting authority shall limit requirements for participation in a procurement procedure to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded.

(4) All requirements for participation in a procurement procedure shall be related, and proportionate, to the subject matter of the contract concerned.

(5) With regard to suitability to pursue a professional activity, a contracting authority may require an economic operator to be enrolled in one of the professional or trade registers kept in the Member State of establishment of the economic operator, as specified in Annex XI to the Public Authorities Contracts Directive, or to comply with any other request specified in that Annex.

(6) In procurement procedures for services, in so far as an economic operator is required to possess a particular authorisation or to be a member of a particular organisation in order to be able to perform in its country of origin the service concerned, a contracting authority may require the economic operator concerned to prove that it holds such authorisation or membership.

(7) With regard to economic and financial standing, a contracting authority may impose requirements ensuring that an economic operator possesses the necessary economic and financial capacity to perform the contract.

(8) For the purposes of paragraph (7), a contracting authority may require that the economic operator—

- (a) has a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract,

(b) provides information on its annual accounts showing ratios, including ratios between assets and liabilities, and

(c) has an appropriate level of professional risk indemnity insurance.

(9) The minimum yearly turnover that an economic operator is required to have under paragraph (8)(a) shall not exceed twice the estimated contract value, except in duly justified cases, including by reference to special risks attached to the nature of the works, services or supplies, in which case the contracting authority shall indicate its main reasons for such a requirement in the procurement documents or in the report referred to in Regulation 84(1).

(10) The ratio between assets and liabilities referred to in paragraph (8)(b) may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents.

(11) The methods and criteria referred to in paragraph (10) shall be transparent, objective and non-discriminatory.

(12) Where a contract is divided into lots this Regulation shall apply in relation to each individual lot.

(13) Notwithstanding paragraph (12), a contracting authority may set the minimum yearly turnover that an economic operator is required to have by reference to groups of lots in the event that the successful tenderer is awarded several lots to be executed at the same time.

(14) Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in paragraph (9) shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement.

(15) In the case of a dynamic group purchasing system, the maximum yearly turnover requirement referred to in paragraph (9) shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

(16) With regard to technical and professional ability, a contracting authority may impose requirements ensuring that an economic operator possesses the necessary human and technical resources and experience to perform the contract concerned to an appropriate quality standard.

(17) A contracting authority may require that an economic operator has a sufficient level of experience demonstrated by suitable references from contracts performed in the past.

(18) A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has

established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

(19) In procurement procedures for supplies requiring siting or installation work, or for services or works, the professional ability of an economic operator to provide the service or to execute the installation or the work may be evaluated with regard to the skills, efficiency, experience and reliability of the economic operator concerned.

(20) A contracting authority shall indicate the requirements for participation in a procurement procedure, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

*European Single Procurement Document*

59. (1) At the time of submission of requests to participate or of tenders, a contracting authority shall accept the ESPD, consisting of an updated self-declaration, as preliminary evidence instead of certificates issued by public authorities or third parties confirming that the economic operator concerned fulfils the following conditions:

- (a) it is not in one or more of the situations referred to in Regulation 57 in which an economic operator shall or may be excluded;
- (b) it meets the relevant selection criteria that have been specified in Regulation 58;
- (c) where applicable, it fulfils the objective rules and criteria that have been specified in Regulation 65.

(2) Where the economic operator relies on the capacities of other entities under Regulation 63, the ESPD shall also contain the information referred to in paragraph (1) in respect of such entities.

(3) The ESPD shall consist of a formal statement by the economic operator concerned that the relevant grounds for exclusion do not apply or that the relevant selection criterion is fulfilled and shall provide the relevant information as required by the contracting authority.

(4) The ESPD shall further identify the public authority or third party responsible for establishing the supporting documents and shall contain a formal statement to the effect that the economic operator will be able, upon request and without delay, to provide those supporting documents.

(5) Where the contracting authority can obtain the supporting documents directly by accessing a database referred to in paragraph (11), the ESPD shall also contain the information required for this purpose, such as the internet address of the database, any identification data and, where applicable, the necessary declaration of consent.

(6) An economic operator may reuse an ESPD, which has already been used in a previous procurement procedure, where it confirms that the information contained in it continues to be correct.

(7) The ESPD shall be provided exclusively in electronic form and shall be drawn up on the basis of a standard form established by the Commission.

(8) A contracting authority may ask a candidate or tenderer at any time during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

(9) Before awarding the contract, the contracting authority shall, except in respect of contracts based on framework agreements where such contracts are concluded in accordance with Regulation 33(7) or (8)(a), require the tenderer to which it has decided to award the contract to submit up to date supporting documents in accordance with Regulation 60 and, where appropriate, Regulation 62.

(10) The contracting authority may invite an economic operator to supplement or clarify the certificates received under Regulations 60 and 62.

(11) Notwithstanding paragraphs (8) and (9), an economic operator shall not be required to submit supporting documents or other documentary evidence where and in so far as the contracting authority has the possibility of obtaining the certificates or the relevant information directly by accessing a national database in any Member State that is available free of charge, such as a national procurement register, a virtual company dossier, an electronic document storage system or a prequalification system.

(12) Notwithstanding paragraphs (8) and (9), an economic operator shall not be required to submit supporting documents where the contracting authority having awarded the contract or concluded the framework agreement already possesses these documents.

(13) Paragraph (7) shall not apply until 18 April 2018.

(14) Paragraph (12) shall not apply until 18 October 2018.

#### *Means of proof*

60. (1) A contracting authority may require the certificates, statements and other means of proof referred to in this Regulation and in Schedule 8 as evidence for the—

(a) absence of grounds for exclusion under Regulation 57, and

(b) fulfilment of the selection criteria in accordance with Regulation 58.

(2) A contracting authority shall not require from an economic operator means of proof other than those referred to in this Regulation and in Regulation 62.



(3) An economic operator may rely on any appropriate means to prove to the contracting authority that they will have the necessary resources at their disposal to comply with Regulation 63.

(4) A contracting authority shall accept the following as sufficient evidence from an economic operator that it should not be excluded under Regulation 57:

(a) in respect of Regulation 57(1) and (2), the production of an extract from the relevant register, including judicial records or an equivalent document issued by a competent judicial or administrative authority in the Member State, country of origin or country where the economic operator is established;

(b) in respect of Regulations 57(3) to (5) and (8)(b), a certificate issued by the competent authority in the Member State or country where the economic operator is established.

(5) Where the Member State or country referred to in paragraph (4) does not issue a document or certificate referred to in that paragraph, or where such document or certificate does not cover all the cases specified in Regulation 57(1) to (5) and (8)(b), the document or certificate may be replaced by—

(a) a declaration on oath, or

(b) in Member States or countries where there is no provision for declarations on oath, a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State, country of origin or country where the economic operator is established.

(6) Proof of an economic operator's economic and financial standing may be provided by one or more of the references specified in Part 1 of Schedule 8.

(7) Where, for any valid reason, an economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial standing by any other document which the contracting authority considers appropriate.

(8) Evidence of the economic operator's technical abilities may be provided by one or more of the means specified in Part 2 of Schedule 8.

#### *e-Certis*

61. (1) A contracting authority shall, have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.

(2) In this Regulation, "e-Certis" means the online repository established by the Commission and referred to as "e-Certis" in the Public Authorities Contracts Directive.

(3) Paragraph (1) shall not apply until 18 October 2018.

*Quality assurance standards and environmental management standards*

62. (1) A contracting authority shall, where it requires the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies.

(2) A contracting authority shall recognise equivalent certificates from bodies established in other Member States.

(3) A contracting authority shall accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator, where the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

(4) Where a contracting authority requires the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, it shall refer to—

- (a) the Eco-Management and Audit Scheme of the European Union "EMAS",
- (b) other environmental management systems recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009<sup>42</sup>, or
- (c) other environmental management standards based on the relevant European or international standards by accredited bodies,

and it shall recognise equivalent certificates from bodies established in other Member States.

(5) Where an economic operator had demonstrably no access to the certificates referred to in paragraph (4), or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other evidence of environmental management measures, where the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

*Reliance on the capacities of other entities*

63. (1) With regard to criteria relating to—

- (a) economic and financial standing specified in Regulation 58(7) to (15), and
- (b) technical and professional ability specified in Regulation 58(16) to (19),

<sup>42</sup>OJ L342, 22.12.2009, p.1.

an economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them.

(2) Notwithstanding paragraph (1), with regard to criteria relating to the educational and professional qualifications referred to in subparagraph (f) of Part 2 of Schedule 8, or to relevant professional experience, an economic operator may only rely on the capacities of other entities where those entities will perform the works or services for which these capacities are required.

(3) Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, including by producing a commitment by those entities to that effect.

(4) The contracting authority shall, in accordance with Regulations 59 to 61, verify whether the entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria and whether there are grounds for exclusion under Regulation 57, and the contracting authority—

- (a) shall require that the economic operator replaces an entity which does not meet a relevant selection criterion, or in respect of which there are compulsory grounds for exclusion, and
- (b) may require that the economic operator substitutes an entity in respect of which there are non-compulsory grounds for exclusion.

(5) Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting authority may require that the economic operator and those entities be jointly liable for the execution of the contract.

(6) A group of economic operators within the meaning of Regulation 19(3) may rely on the capacities of participants in the group or of other entities, and paragraphs (1) to (5) apply in relation to such a group as they apply in relation to an economic operator.

(7) In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, contracting authorities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators within the meaning of Regulation 19(3), by a participant in that group.

*Recognition of official lists of approved economic operators and certification by certification bodies*

64. (1) (a) An economic operator registered on an official list or having a certificate may, for each contract, submit to the contracting authority a certificate of registration issued by the competent authority or the certificate issued by the competent certification body.

(b) The certificates referred to in subparagraph (a) shall state—

- (i) the references which enabled the economic operator to be registered on the official list or to obtain certification, and
  - (ii) the classification given in that list.
- (2) Certified registration on an official list or a certificate issued by the certification body shall constitute a presumption of suitability with regard to requirements for qualitative selection encompassed by the official list or certificate.
- (3) Information that can be deduced from registration on official lists or certification shall not be questioned without justification.
- (4) With regard to the payment of social security contributions and taxes, an additional certificate may be required of any registered economic operator when a contract is to be awarded.
- (5) In relation to an official list established or maintained by a Member State other than the State, paragraphs (1) and (3) apply only to economic operators established in the Member State in which the official list is established or maintained.
- (6) The requirements of proof for the criteria for qualitative selection encompassed by the official list or certificate shall comply with Regulation 60 and, where appropriate, Regulation 62.
- (7) For any registration of economic operators of other Member States on an official list or for their certification, no further proof or statements shall be required other than those requested of national economic operators.
- (8)
  - (a) An economic operator may request, at any time, its registration on an official list or the issuance of a certificate.
  - (b) The economic operator referred to in subparagraph (a) shall be informed within a reasonable period of time of the decision of the authority drawing up the official list or of the competent certification body.
- (9) An economic operator from a Member State other than the State shall not be obliged to be registered on an official list or to provide a certificate issued by a certification body in order to participate in a public contract.
- (10) A contracting authority shall—
  - (a) recognise equivalent certificates from bodies established in Member States other than the State, and
  - (b) accept other equivalent means of proof.

*Reduction of the number of otherwise qualified candidates to be invited to participate*

65. (1) In restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships, a contracting authority may limit the number of candidates who have met the selection criteria that it will invite to tender or to conduct a dialogue, where the minimum number of qualified candidates is available, in accordance with this Regulation.

(2) Where a contracting authority intends to apply paragraph (1), the contracting authority shall indicate, in the contract notice or in the invitation to confirm interest, the objective and non-discriminatory criteria or rules it intends to apply, the minimum number of candidates it intends to invite and, where applicable, the maximum number.

(3) In restricted procedures the minimum number of candidates shall be 5.

(4) In competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships the minimum number of candidates shall be 3.

(5) Notwithstanding paragraphs (3) and (4), the number of candidates invited shall be sufficient to ensure genuine competition.

(6) A contracting authority shall invite a number of candidates at least equal to the minimum number.

(7) Notwithstanding paragraphs (3) and (4), where the number of candidates meeting the selection criteria and the minimum levels of ability specified in Regulation 58(19) is below the minimum number the contracting authority may continue the procedure by inviting the candidates with the required capabilities.

(8) The procedure referred to in paragraph (7) shall not include economic operators that did not request to participate, or candidates that do not have the required capabilities.

*Reduction of the number of tenders and solutions*

66. (1) Where a contracting authority exercises the option of reducing the number of tenders to be negotiated in accordance with Regulation 29(15) or (16) or of solutions to be discussed in accordance with Regulation 30(2)(a) and (b), the authority shall do so by applying the award criteria stated in the procurement documents.

(2) In the final stage, the number arrived at shall make for genuine competition in so far as there are enough tenders, solutions or qualified candidates.

*Contract award criteria*

67. (1) Without prejudice to any law in the State on the price of certain supplies or the remuneration of certain services, a contracting authority shall base an award of public contracts on the most economically advantageous tender.

(2) The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, including life-cycle costing in accordance with Regulation 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental or social aspects, linked to the subject matter of the public contract in question.

(3) The criteria referred to in paragraph (2) may comprise, amongst other things—

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions,
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract, or
- (c) after-sales service and technical assistance, delivery conditions, including delivery date, delivery process and delivery period or period of completion.

(4) The cost element under this Regulation may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

(5) Award criteria shall be considered to be linked to the subject matter of the public contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in—

- (a) the specific process of production, provision or trading of those works, supplies or services, or
- (b) a specific process for another stage of their life cycle,

where those factors do not form part of their material substance.

(6) Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority concerned.

(7) Award criteria shall—

- (a) ensure the possibility of effective competition, and
- (b) be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria.

(8) In case of doubt, a contracting authority shall verify effectively the accuracy of the information and proof provided by the tenderers.

(9) The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, other than where this is identified on the basis of price alone.

(10) The weighting referred to in paragraph (9) may be expressed by providing for a range with an appropriate maximum spread.

(11) Where the weighting referred to at paragraph (9) is not possible for objective reasons, the contracting authority shall indicate the criteria in descending order of importance.

*Life-cycle costing*

68. (1) Life-cycle costing shall, to the extent relevant, apply to part or all of the following costs over the life cycle of a product, service or works:

- (a) costs borne by the contracting authority or other users, including but not limited to—
  - (i) costs relating to acquisition,
  - (ii) costs of use, including consumption of energy and other resources,
  - (iii) maintenance costs, and
  - (iv) end of life costs, including collection and recycling costs;
- (b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified.

(2) The costs referred to in paragraph (1)(b) may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(3) The method used for the assessment of costs imputed to environmental externalities shall fulfil the following conditions:

- (a) it shall be based on objectively verifiable and non-discriminatory criteria and, where it has not been established for repeated or continuous application, shall not unduly favour or disadvantage certain economic operators;
- (b) it shall be accessible to all interested parties;
- (c) the data required can be provided with reasonable effort by normally diligent economic operators, including economic operators from third countries party to the GPA or other international agreements by which the European Union is bound.

(4) Where a contracting authority assesses costs using a life-cycle costing approach, the authority shall indicate in the procurement documents—

- (a) the data to be provided by the tenderers, and
- (b) the method which the contracting authority will use to determine the life-cycle costs on the basis of that data.

(5) Whenever a common method for the calculation of life-cycle costs has been made mandatory by a legislative act of the European Union specified in Schedule 9, that common method shall be applied for the assessment of life-cycle costs.

*Abnormally low tenders*

69. (1) A contracting authority shall require economic operators to explain the price or costs proposed in a tender which appears to be abnormally low in relation to the works, supplies or services.

(2) The explanations given in accordance with paragraph (1) may relate to, amongst other things, the following:

- (a) the economics of the manufacturing process, of the services provided or of the construction method;
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
- (c) the originality of the work, supplies or services proposed by the tenderer;
- (d) compliance with applicable obligations referred to in Regulation 18(4);
- (e) compliance with obligations referred to in Regulation 71;
- (f) the possibility of the tenderer obtaining State aid.

(3) The contracting authority shall assess the information provided under this Regulation by consulting the tenderer.

(4) A contracting authority may only reject a tender where the evidence supplied under this Regulation does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph (2).

(5) A contracting authority shall reject a tender where it has established that the tender is abnormally low because it does not comply with applicable obligations referred to in Regulation 18(4).

(6) Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only—

- (a) after consultation with the tenderer concerned, and



- (b) where the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the TFEU.

(7) Where a contracting authority rejects a tender in the circumstances referred to in paragraph (6), it shall inform the Commission in writing.

## Chapter 4

### *Contract performance*

#### *Conditions for performance of contracts*

70. (1) A contracting authority may lay down special conditions relating to the performance of a contract, where those conditions are—

- (a) linked to the subject matter of the contract within the meaning of Regulation 67(5), and
- (b) indicated in the call for competition or in the procurement documents.

(2) The conditions referred to in paragraph (1) may include economic, innovation related, environmental, social or employment related considerations.

#### *Subcontracting*

71. (1) In procurement documents, a contracting authority may ask a tenderer to indicate, in its tender, any share of the contract that it may intend to subcontract to third parties and any proposed subcontractors.

(2) Paragraph (1) is without prejudice to the main contractor's liability.

(3) In the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the contracting authority, after the award of the contract and no later than when the performance of the contract commences, the contracting authority shall require the main contractor to indicate to the contracting authority the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at the relevant time.

(4) A contracting authority shall require the main contractor to notify the contracting authority of—

- (a) any changes to the information notified during the course of the contract, and
- (b) the name, contact details and legal representatives of any new subcontractors which the main contractor subsequently involves in such works or services.

(5) Where necessary for the purposes of paragraph (8), the required information shall be accompanied by the subcontractors' self-declarations as provided for in Regulation 59 and subcontractors which are presented after the award of the contract shall provide the certificates and other supporting documents instead of the self-declaration.

(6) Paragraphs (3) and (4) do not apply to suppliers.

(7) Where a contracting authority determines that such compliance in the following cases or by the following persons is required (and makes it a requirement accordingly), the obligations provided for in paragraphs (3) and (4) shall also fall to be complied with in such cases or by such persons as it determines, including, but not limited to—

- (a) cases of supply contracts, services contracts, other than those concerning services to be provided at the facilities under the direct oversight of the contracting authority, or to suppliers involved in works or services contracts, and
- (b) subcontractors of the main contractor's subcontractors or subcontractors further down the subcontracting chain.

(8) To avoid contraventions of the obligations referred to in Regulation 18(4), a contracting authority may take appropriate measures by, amongst other things, verifying in accordance with Regulations 59, 60 and 61, whether there are grounds for exclusion of subcontractors under Regulation 57.

(9) In the case of verification under paragraph (8), the contracting authority—

- (a) shall require that an economic operator replaces a subcontractor in respect of which the verification has shown that there are compulsory grounds for exclusion, or
- (b) may require that the economic operator replaces a subcontractor in respect of which the verification has shown that there are non-compulsory grounds for exclusion.

*Modification of contracts during their term*

72. (1) Contracts and framework agreements, including contracts awarded in accordance with Regulation 74, may be modified without a new procurement procedure in accordance with these Regulations in any of the following cases:

- (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, where such clauses—
  - (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
  - (ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

- (b) for additional works, services or supplies by the original contractor, irrespective of their value, that have become necessary and were not included in the initial procurement where a change of contractor—
    - (i) cannot be made for economic or technical reasons, including requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and
    - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority;
  - (c) where the following conditions are fulfilled:
    - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
    - (ii) the modification does not alter the overall nature of the contract;
  - (d) where a new contractor replaces the contractor to which the contracting authority had initially awarded the contract as a consequence of—
    - (i) an unequivocal review clause or option in conformity with subparagraph (a), or
    - (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, where this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of these Regulations;
  - (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (7).
- (2) (a) Notwithstanding paragraph (1)(b)—
- (i) any increase in price shall not exceed 50% of the value of the original contract,
  - (ii) where several successive modifications are made, that limitation shall apply to the value of each modification, and
  - (iii) consecutive modifications referred to in clause (ii) shall not be aimed at circumventing these Regulations.
- (b) Notwithstanding paragraph (1)(c)—

- (i) any increase in price shall not exceed 50% of the value of the original contract or framework agreement,
- (ii) where several successive modifications are made, that limitation shall apply to the value of each modification, and
- (iii) consecutive modifications referred to in clause (ii) shall not be aimed at circumventing these Regulations.

(3) A contracting authority which has modified a contract in either of the cases described in paragraph (1)(b) or (c) shall publish a notice to that effect, in the Official Journal and that notice shall—

- (a) contain the information specified in Part 7 of Schedule 3, and
- (b) be published in accordance with Regulation 51.

(4) Furthermore and without any need to verify that the conditions set out under paragraph (7)(a) to (d) are met, contracts may equally be modified without a new procurement procedure in accordance with these Regulations being necessary where the value of the modifications is less than either of the following values:

- (a) the thresholds specified in Regulation 5;
- (b) 10 per cent of the initial contract value for service and supply contracts or 15 per cent of the initial contract value for works contracts.

(5) For the purposes of paragraph (4) the modification may not alter the overall nature of the contract or framework agreement and where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

(6) For the purpose of the calculation of the value referred to in paragraph (4)(b), the updated value shall be the reference value when the contract includes an indexation clause.

(7) A modification of a contract or framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where the modification renders the contract or framework agreement, as the case may be, materially different in character from the contract or framework agreement initially concluded, and, in any event, without prejudice to paragraphs (1) to (5) a modification shall be considered to be substantial where one or more of the following conditions is met:

- (a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—
  - (i) allowed for the admission of other candidates than those initially selected,

- (ii) allowed for the acceptance of a tender other than that originally accepted, or
- (iii) attracted additional participants in the procurement procedure;
- (b) the modification changes the economic balance of the contract or framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- (c) the modification extends the scope of the contract or framework agreement considerably;
- (d) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those specified in paragraph (1)(d).

(8) A new procurement procedure in accordance with these Regulations shall be required for other modifications of the provisions of a public contract or a framework agreement during its term in circumstances other than those provided for in paragraphs (1) to (5).

#### *Termination of contracts*

73. A contracting authority shall ensure that every contract which it awards contains provisions enabling it to terminate a public contract during its term where the—

- (a) contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72,
- (b) contractor has, at the time of the award of the contract, been in one of the situations referred to in Regulation 57(1) or (2) and should therefore have been excluded from the procurement procedure, or
- (c) contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties governing the European Union or these Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

### Part 3

## PARTICULAR PROCUREMENT REGIMES

### Chapter 1

#### *Social and other specific services*

##### *Award of contracts for social and other specific services*

74. Public contracts for social and other specific services listed in Annex XIV to the Public Authorities Contracts Directive shall be awarded in accordance

with this Chapter where the value of the contracts is equal to or greater than the threshold indicated in Regulation 5(e).

*Publication of notices*

75. (1) Subject to paragraph (2), a contracting authority intending to award a public contract for the services referred to in Regulation 74 shall make known its intention:

- (a) by means of a contract notice, which shall contain the information referred to in Part 8 of Schedule 3 in accordance with the standard forms referred to in Regulation 51;
- (b) by means of a prior information notice, which shall—
  - (i) be published continuously,
  - (ii) contain the information set out in Part 1 to 9 of Schedule 3,
  - (iii) refer specifically to the types of services that will be the subject matter of the contract to be awarded, and
  - (iv) indicate that the contract will be awarded without further publication and invite interested economic operators to express their interest in writing.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could have been used, in accordance with Regulation 32, for the award of a public service contract.

(3) A contracting authority that has awarded a public contract for the services referred to in Regulation 74 shall make known the results by means of a contract award notice, which shall contain the information referred to in Part 10 of Schedule 3 in accordance with the standard forms referred to in Regulation 51.

(4) A contracting authority may group contract award notices referred to in paragraph (3) on a quarterly basis, in which case it shall send the grouped notices not later than 30 days after the end of the quarter concerned.

(5) A contracting authority shall send the notices referred to in this Regulation for publication in accordance with Regulation 51.

*Principles of awarding contracts*

76. (1) A contracting authority shall determine the procedures that are to be applied in connection with the award of contracts in accordance with this Chapter and may take into account the specificities of the services in question as it relates to services referred to in this Chapter.

(2) The procedures referred to in paragraph (1) shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) Where, in accordance with Regulation 75, a contract notice or prior information notice has been published in relation to a given procurement, the contracting authority shall conduct that procurement, and award any resulting contract, in conformity with the information contained in the relevant notice, as required by Part 8 or 9 of Schedule 3, including the—

- (a) conditions for participation,
- (b) time limits for contacting the contracting authority, and
- (c) award procedure to be applied,

in accordance with the standard model notice established by the Commission.

(4) When awarding contracts under this Chapter contracting authorities shall apply Regulation 57 in relation to the exclusion and selection of candidates and tenderers, in the procedures determined under paragraph (1).

(5) In relation to the award of contracts under this Chapter, a contracting authority may take into account any relevant considerations, including—

- (a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services,
- (b) the specific needs of different categories of users, including disadvantaged and vulnerable groups,
- (c) the involvement and empowerment of users, and
- (d) innovation.

(6) All the time limits imposed on economic operators for the purpose of this Regulation, whether for responding to a contract notice or taking any other steps in the relevant procedure, shall be reasonable and proportionate.

(7) Without prejudice to the generality of paragraph (1), and subject to the other requirements of these Regulations, a contracting authority may apply procedures for the purposes of this Regulation which correspond to procedures, techniques or other features otherwise provided for in these Regulations.

*Reserved contracts for certain services*

77. (1) A contracting authority may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Regulation 74, which are covered by the following CPV codes:

- (a) 75121000-0;
- (b) 75122000-7;
- (c) 75123000-4;

- (d) 79622000-0;
- (e) 79624000-4;
- (f) 79625000-1;
- (g) 80110000-8;
- (h) 80300000-7;
- (i) 80420000-4;
- (j) 80430000-7;
- (k) 80511000-9;
- (l) 80520000-5;
- (m) 80590000-6;
- (n) 85000000-9 to 85323000-9;
- (o) 92500000-6;
- (p) 92600000-7;
- (q) 98133000-4;
- (r) 98133110-8.

(2) An organisation referred to in paragraph (1) shall fulfill the following conditions:

- (a) its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph (1);
- (b) its profits are reinvested with a view to achieving the organisation's objective and, where profits are distributed or redistributed, this should be based on participatory considerations;
- (c) the structures of management or ownership of the organisation performing the contract—
  - (i) are based on employee ownership or participatory principles, or
  - (ii) require the active participation of employees, users or stakeholders;
- (d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Regulation within the immediately preceding 3 years.



(3) The duration of a contract under this Regulation shall not be longer than 3 years.

(4) The call for competition in respect of a contract under this Regulation shall make reference to this Regulation.

## Chapter 2

### *Rules governing design contests*

#### *Scope of Chapter*

78. (1) This Chapter applies to the following:

- (a) design contests organised as part of a procedure leading to the award of a public service contract;
- (b) design contests with prizes or payments to participants.

(2) In the cases referred to in paragraph (1)(a), the threshold specified in Regulation 5 shall be calculated on the basis of the estimated value, net of VAT, of the public service contract, including any possible prizes or payments to participants.

(3) In the cases referred to in paragraph (1)(b), the threshold specified in Regulation 5 shall be calculated on the basis of the total amount of the prizes and payments, including the estimated value, net of VAT, of the public service contract which might subsequently be concluded following a negotiated procedure without prior publication in accordance with Regulation 32(7) and (8) where the contracting authority has announced its intention to award such a contract in the contest notice.

#### *Notices*

79. (1) A contracting authority that intends to carry out a design contest shall make known its intention to do so by means of a contest notice.

(2) Where a contracting authority intends to award a subsequent service contract pursuant to Regulation 32(7) and (8), that fact shall be indicated in the contest notice referred to in paragraph (1).

(3) A contracting authority that has held a design contest shall send for publication in accordance with Regulation 51 a notice of the results of the contest and shall be able to prove the date of dispatch.

(4) The publication of the information on the outcome of the contest under this Regulation may be withheld where it—

- (a) would impede law enforcement,
- (b) would be contrary to the public interest,
- (c) would prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or

(d) might prejudice fair competition between economic operators.

(5) The notices referred to in paragraphs (1) to (4) shall be published in accordance with Regulations 51(2), (4), (5) and (6) and 52 and shall include the information set out in Parts 5 and 6 of Schedule 3 in the format of the standard forms.

*Rules on the organisation of design contests and the selection of participants*

80. (1) When organising a design contest, a contracting authority shall apply procedures which are adapted to the provisions of Part 1 and this Chapter.

(2) The admission of participants to a design contest shall not be limited—

(a) by reference to the territory or part of the territory of the State or a Member State, or

(b) on the grounds that the participants are required to be either natural or legal persons.

(3) Where a design contest is restricted to a limited number of participants, a contracting authority shall establish clear and non-discriminatory selection criteria.

(4) Notwithstanding paragraph (3), the number of candidates invited to participate in a design contest shall be sufficient to ensure genuine competition.

*Composition of the jury*

81. (1) A jury shall, when carrying out its functions under Regulation 82, be composed exclusively of natural persons who are independent of participants in a design contest.

(2) Where a particular professional qualification is required of participants in a design contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

*Decisions of the jury*

82. (1) A jury shall, when carrying out its functions under these Regulations—

(a) be autonomous in its decisions or opinions,

(b) examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice, and

(c) record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

(2) Anonymity shall be observed until the jury has reached its opinion or decision.

(3) A candidate may be invited to, and where invited shall, answer questions that the jury has recorded in the minutes to clarify any aspect of a project.

(4) Minutes shall be drawn up by the jury of the dialogue between jury members and candidates.

#### Part 4

### GOVERNANCE

#### *Retention of contract copies*

83. (1) A contracting authority shall, at least for the duration of the contract, keep copies of all concluded contracts with a value equal to or greater than—

- (a) €1,000,000 in the case of public supply contracts or public service contracts;
- (b) €10,000,000 in the case of public works contracts.

(2) A contracting authority shall grant access to those contracts.

(3) Notwithstanding paragraph (2), access to specific documents or items of information may be denied to the extent and on the conditions provided for in the applicable European Union or national rules on access to documents and data protection.

#### *Reporting and documentation requirements*

84. (1) For every contract or framework agreement covered by these Regulations, and on the establishment of every dynamic purchasing system, a contracting authority shall prepare a written report which shall include at least the following:

- (a) the name and address of the contracting authority and the subject matter and value of the contract, framework agreement or dynamic purchasing system;
- (b) where applicable, the results of the qualitative selection and decision in respect of reduction of numbers pursuant to Regulations 65 and 66, including—
  - (i) the names of the selected candidates or tenderers and the reasons for their selection, and
  - (ii) the names of the rejected candidates or tenderers and the reasons for their rejection;
- (c) the reasons for the rejection of tenders found to be abnormally low;
- (d) the name of the successful tenderer and the reasons why the tender was selected and, where known—

- (i) the share, if any, of the contract or framework agreement which the successful tenderer intends to subcontract to third parties, and
  - (ii) the names of the main contractor's subcontractors;
- (e) for competitive procedures with negotiation and competitive dialogues, the circumstances referred to in Regulation 26 which justify the use of those procedures;
  - (f) for negotiated procedures without prior publication, the circumstances referred to in Regulation 32 which justify the use of those procedures;
  - (g) where applicable, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system;
  - (h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders;
  - (i) where applicable, conflicts of interests detected and subsequent measures taken.

(2) Notwithstanding paragraph (1), the contracting authority shall not be required to prepare a report under that paragraph in respect of contracts based on framework agreements concluded in accordance with Regulation 33(6) and (7) or (8)(a).

(3) To the extent that the contract award notice prepared in accordance with Regulations 50 or 75(3) and (4) contains the information required under this Regulation, a contracting authority may refer to that notice.

(4) A contracting authority shall maintain documentation to record the progress of all procurement procedures, whether or not they are conducted by electronic means, and to justify decisions taken at all stages of the procurement procedure, including the following:

- (a) communications with economic operators and internal deliberations;
- (b) preparation of the procurement documents;
- (c) dialogue or negotiation, if any;
- (d) selection and award of the contract.

(5) The documentation referred to in paragraph (4) shall be maintained, by the authority concerned, for a period of at least 3 years from the date of award of the contract.

(6) Where the Minister so requests, a contracting authority shall send the report referred to in paragraph (1), or its main elements, to—

- (a) the Minister, or

- (b) such bodies as the Minister may direct in connection with any function which that body exercises for the purposes of Article 83 of the Public Authorities Contracts Directive.

(7) Contracting authorities shall send to the Minister a statistical report containing such other information as the Minister may from time to time request in respect of procurement covered by these Regulations.

(8) The report referred to in paragraph (7) shall—

- (a) be forwarded to the Commission by the Minister no later than 18 April 2017 and every 3 years thereafter on the anniversary of that date, and
- (b) contain an estimate of the aggregate value of procurement during the period to which the report relates.

## Part 5

### REVOCATION AND TRANSITIONAL PROVISIONS

#### *Revocation*

85. (1) The Regulations of 2006 are revoked, other than in respect of—

- (a) a contract award procedure or design contest, referred to in Regulation 86(1), or
- (b) the award of a specific contract based on a framework agreement referred to in Regulation 86(3).

(2) Paragraph (1) is subject to Regulation 86(4).

#### *Transitional provisions*

86. (1) Subject to paragraph (4), these Regulations do not apply to—

- (a) a contract award procedure, or
- (b) a design contest, commenced by a contracting authority before 18 April 2016.

(2) For the purposes of paragraph (1), a contract award procedure or design contest has been commenced by a contracting authority before 18 April 2016 if, before that date—

- (a) the contracting authority has sent a notice to the Publications Office in accordance with the Regulations of 2006 in order to invite tenders or requests to be selected to tender for, or to negotiate in respect of, a proposed public contract or framework agreement,
- (b) the contracting authority has published any form of advertisement seeking offers or expressions of interest in a proposed public contract or framework agreement,

- (c) the contracting authority has contacted any economic operator in order to—
    - (i) seek expressions of interest or offers in respect of a proposed public contract or framework agreement, or
    - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed public contract or framework agreement, or
  - (d) the contracting authority has sent a notice to the Official Journal in accordance with the Regulations of 2006 in order to publicise its intention to hold a design contest.
- (3) Subject to paragraph (4), these Regulations do not apply to the award of a specific contract based on a framework agreement where the framework agreement was concluded—
- (a) before 18 April 2016, or
  - (b) on or after 18 April 2016 following a contract award procedure to which these Regulations, by virtue of paragraph (1), do not apply.
- (4) Regulation 72 applies, and Regulation 32(1)(d) and (5)(e) of the Regulations of 2006 do not apply, to a contract or framework agreement to which these Regulations would otherwise not apply by virtue of paragraph (1) or (3).
- (5) In this regulation, “contracting authority”, “design contest”, “framework agreement” and “public contract” have the same meanings, respectively, as in the Regulations of 2006.

## SCHEDULE 1

## Regulation 2

## List of activities for public works contracts

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE <sup>43</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
45			Construction	This division includes: construction of new buildings and works, restoring and common repairs.	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	This class includes: — demolition of buildings and other structures, — clearing of building sites, — earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. — site preparation for mining: — overburden removal and other development and preparation of mineral properties and sites. This class also includes: — building site drainage. — drainage of agricultural or forestry land.	45110000
		45.12	Test drilling and boring	This class includes: — test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: — drilling of production oil or gas wells, see 11.20. — water well drilling, see 45.25, — shaft sinking, see 45.25, — oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20.	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000

<sup>43</sup>Council Regulation (EEC) No 3037/90 of 9 October 1990 (OJ L293, 24.10.1990, p.1.).

NACE <sup>43</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.21	General construction of buildings and civil engineering works	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of all types of buildings construction of civil engineering constructions,</li> <li>— bridges, including those for elevated highways, viaducts, tunnels and subways,</li> <li>— long-distance pipelines, communication and power lines,</li> <li>— urban pipelines, urban communication and power lines,</li> <li>— ancillary urban works,</li> <li>— assembly and erection of prefabricated constructions on the site. This class excludes:</li> <li>— service activities incidental to oil and gas extraction, see 11.20,</li> <li>— erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23,</li> <li>— building installation, see 45.3,</li> <li>— building completion, see 45.4,</li> <li>— architectural and engineering activities, see 74.20,</li> <li>— project management for construction, see 74.20.</li> </ul>	45210000 Except: — 45213316 45220000 45231000 45232000
		45.22	Erection of roof covering and frames	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— erection of roofs,</li> <li>— roof covering,</li> <li>— waterproofing.</li> </ul>	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	<p>This class includes:</p> <ul style="list-style-type: none"> <li>— construction of highways, streets, roads, other vehicular and pedestrian ways,</li> <li>— construction of railways,</li> <li>— construction of airfield runways,</li> <li>— construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, — painting of markings on road surfaces and car parks.</li> </ul> <p>This class excludes:</p> <ul style="list-style-type: none"> <li>— preliminary earth moving, see 45.11.</li> </ul>	45212212 and DA03 45230000 except: — 45231000 — 45232000 — 45234115



NACE <sup>43</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.24	Construction of water projects	This class includes — construction of: — waterways, harbour and river works, pleasure ports (marinas), locks, etc., — dams and dykes, — dredging, — subsurface work.	45240000
		45.25	Other construction work involving special trades	This class includes: — construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment, — construction of foundations, including pile driving, — water well drilling and construction, shaft sinking, — erection of non-self-manufactured steel elements, — steel bending, — bricklaying and stone setting, — scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms, — erection of chimneys and industrial ovens. This class excludes: — renting of scaffolds without erection and dismantling, see 71.32	45250000 45262000
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	This class includes: installation in buildings or other construction projects of: — electrical wiring and fittings, — telecommunications systems, — electrical heating systems, — residential antennas and aerials, — fire alarms, — burglar alarm systems, — lifts and escalators, — lightning conductors, etc.	45213316 45310000 Except: — 45316000
		45.32	Insulation work activities	This class includes: — installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes: — waterproofing, see 45.22.	45320000
		45.33	Plumbing	This class includes:	45330000

NACE <sup>43</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
				<ul style="list-style-type: none"> <li>— installation in buildings or other construction projects of:</li> <li>— plumbing and sanitary equipment,</li> <li>— gas fittings,</li> <li>— heating, ventilation, refrigeration or air-conditioning equipment and ducts,</li> <li>— sprinkler systems.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— installation of electrical heating systems, see 45.31.</li> </ul>	
		45.34	Other building installation	This class includes: <ul style="list-style-type: none"> <li>— installation of illumination and signalling systems for roads, railways, airports and harbours,</li> <li>— installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: <ul style="list-style-type: none"> <li>— application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</li> </ul>	45410000
		45.42	Joinery installation	This class includes: <ul style="list-style-type: none"> <li>— installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials,</li> <li>— interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> This class excludes: <ul style="list-style-type: none"> <li>— laying of parquet and other wood floor coverings, see 45.43.</li> </ul>	45420000
		45.43	Floor and wall covering	This class includes: <ul style="list-style-type: none"> <li>— laying, tiling, hanging or fitting in buildings or other construction projects of:</li> <li>— ceramic, concrete or cut stone wall or floor tiles,</li> <li>— parquet and other wood floor coverings carpets and linoleum floor coverings,</li> <li>— including of rubber or plastic,</li> <li>— terrazzo, marble, granite or slate floor or wall coverings,</li> <li>— wallpaper.</li> </ul>	45430000
		45.44	Painting and	This class includes:	45440000

NACE <sup>43</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
			glazing	— interior and exterior painting of buildings, — painting of civil engineering structures, — installation of glass, mirrors, etc. This class excludes: — installation of windows, see 45.42,	
		45.45	Other building completion	This class includes: — installation of private swimming pools, — steam cleaning, sand blasting and similar activities for building exteriors, — other building completion and finishing work n.e.c. This class excludes: — interior cleaning of buildings and other structures, see 74.70.	45212212 and DA04 45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	This class excludes: — renting of construction or demolition machinery and equipment without operators, see 71.32.	45500000

## SCHEDULE 2

*Regulation 22(10) and (11)*

Requirements relating to tools and devices for the electronic receipt of tenders, requests for participation as well as plans and projects in design contests

Tools and devices for the electronic receipt of tenders, requests for participation as well as plans and projects in design contests must at least guarantee, through technical means and appropriate procedures, that—

- (a) the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely,
- (b) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under those requirements,
- (c) only authorised persons may set or change the dates for opening data received,
- (d) during the various stages of the qualification procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons,
- (e) only authorised persons shall give access to data transmitted and only after the prescribed date,
- (f) data received and opened in accordance with these requirements shall remain accessible only to persons authorised to acquaint themselves therewith, and
- (g) where the access prohibitions or conditions referred to under subparagraphs (b) to (f) are infringed or there is an attempt to do so, it may be reasonably ensured that the infringements or attempts are clearly detectable.

## SCHEDULE 3

*Regulations 28(2)(a), 29(1), 48(2), (4)(b) and (5)(c), 49(2), 50(2), 51(1), 72(3)(a), 75(1)(a) and (b) and (3), 76(3) and 79(5)*

## Information to be included in notices

## Part 1 — Information to be included in notices of the publication of a prior information notice on a buyer profile

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Type of contracting authority and main activity exercised.
3. Where appropriate, indication that the contracting authority is a centralised purchasing body; or that any other form of joint procurement is or may be involved.
4. CPV codes.
5. Internet address of the 'buyer profile' (URL).
6. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.

## Part 2 — Information to be included in prior information notices

## Information to be included in all cases

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Regulation 53(3) to (5), an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a centralised purchasing body or that any other form of joint procurement is or may be involved.
5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.

6. Address of main location of works in case of works contracts or address of place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.

7. Brief description of the procurement: the nature and extent of works, nature and quantity or value of supplies, nature and extent of services.

8. Where this notice is not used as a means of calling for competition, estimated date for publication of a contract notice or contract notices in respect of the contract referred to in this prior information notice.

9. Date of dispatch of the notice.

10. Any other relevant information.

11. Indication whether the contract is covered by the GPA.

Additional information to be supplied where the notice is used as a means of calling for competition

12. A reference to the fact that interested economic operators shall advise the authority of their interest in the contract or contracts.

13. Type of award procedure (restricted procedures, whether or not involving a dynamic purchasing system, or competitive procedures with negotiation).

14. Where appropriate, indication whether—

(a) a framework agreement is involved, or

(b) a dynamic purchasing system is involved.

15. As far as already known, time-frame for delivery or provision of products, works or services and duration of the contract.

16. As far as already known, conditions for participation, including the following:

(a) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;

(b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession;

(c) brief description of selection criteria.

17. As far as already known, brief description of criteria to be used for award of the contract.

18. As far as already known, estimated total magnitude for contract(s); where the contract is divided into lots, this information shall be provided for each lot.
19. Time limits for receipt of expressions of interest.
20. Address where expressions of interest shall be transmitted.
21. Language or languages authorised for the presentation of candidatures or tenders.
22. Where appropriate, indication whether—
  - (a) electronic submission of tenders or requests to participate will be required or accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be used, or
  - (d) electronic payment will be accepted.
23. Information whether the contract is related to a project or programme financed by European Union funds.

24. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning time limits for review procedures, or, if need be, the name, address, telephone number, fax number and e-mail address of the service from which this information may be obtained.

### Part 3 — Information to be included in contract notices

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Regulation 53(3) to (5), an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication that the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.

6. Address of main location of works in case of works contracts or address for the main place of delivery or performance in supply and service contracts; where the contract is divided into lots, this information shall be provided for each lot.

7. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.

8. Estimated total order of magnitude of contract(s); where the contract is divided into lots, this information shall be provided for each lot.

9. Admission or prohibition of variants.

10. Time-frame for delivery or provision of supplies, works or services and, as far as possible, duration of the contract.

(a) In the case of a framework agreement, indication of the planned duration of the framework agreement, stating, where appropriate, the reasons for any duration exceeding four years; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded, number and, where appropriate, proposed maximum number of economic operators to participate.

(b) In the case of a dynamic purchasing system, indication of the planned duration of that system; as far as possible, indication of value or order of magnitude and frequency of contracts to be awarded.

11. Conditions for participation, including the following:

(a) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;

(b) where appropriate, indication whether the provision of the service is reserved by law, regulation or administrative provision to a particular profession; reference to the relevant law, regulation or administrative provision;

(c) a list and brief description of criteria regarding the personal situation of economic operators that may lead to their exclusion and of selection criteria; minimum level(s) of standards possibly required; indication of required information (self-declarations, documentation).

12. Type of award procedure; where appropriate, reasons for use of an accelerated procedure (in open and restricted procedures and competitive procedures with negotiation).

13. Where appropriate, indication whether—



- (a) a framework agreement is involved,
- (b) a dynamic purchasing system is involved, or
- (c) an electronic auction is involved (in the event of open or restricted procedures or competitive procedures with negotiation).

14. Where the contract is to be subdivided into lots, indication of the possibility of tendering for one, for several or for all of the lots; indication of any possible limitation of the number of lots that may be awarded to any one tenderer. Where the contract is not subdivided into lots, indication of the reasons therefor, unless this information is provided in the individual report.

15. In the case of a restricted procedure, a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, where recourse is made to the option of reducing the number of candidates to be invited to submit tenders, to negotiate or to engage in dialogue: minimum and, where appropriate, proposed maximum number of candidates and objective criteria to be used to choose the candidates in question.

16. In the case of a competitive procedure with negotiation, a competitive dialogue or an innovation partnership, indication, where appropriate, of recourse to a staged procedure in order gradually to reduce the number of tenders to be negotiated or solutions to be discussed.

17. Where appropriate, particular conditions to which performance of the contract is subject.

18. Criteria to be used for award of the contract or contracts. Except where the most economically advantageous offer is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting shall be indicated where they do not appear in the specifications or, in the event of a competitive dialogue, in the descriptive document.

19. Time limit for receipt of tenders (open procedures) or requests to participate (restricted procedures, competitive procedures with negotiation, dynamic purchasing systems, competitive dialogues, innovation partnerships).

20. Address to which tenders or requests to participate shall be transmitted.

21. In the case of open procedures—

- (a) time frame during which the tenderer must maintain its tender,
- (b) date, time and place for the opening of tenders, and
- (c) persons authorised to be present at such opening.

22. Language or languages in which tenders or requests to participate must be drawn up.

23. Where appropriate, indication whether—

- (a) electronic submission of tenders or requests to participate will be accepted,
- (b) electronic ordering will be used,
- (c) electronic invoicing will be accepted, and
- (d) electronic payment will be used.

24. Information whether the contract is related to a project or programme financed by European Union funds.

25. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning deadlines for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

26. Date(s) and reference(s) of previous publications in the Official Journal relevant to the contract(s) advertised in this notice.

27. In the case of recurrent procurement, estimated timing for further notices to be published.

28. Date of dispatch of the notice.

29. Indication whether the contract is covered by the GPA.

30. Any other relevant information.

#### Part 4 — Information to be included in contract award notices

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.

2. Type of contracting authority and main activity exercised.

3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.

4. CPV codes.

5. Address for the main location of works in case of works contracts or address for the main place of delivery or performance in supply and service contracts.

6. Description of the procurement: nature and extent of works, nature and quantity or value of supplies, nature and extent of services. Where the contract is divided into lots, this information shall be provided for each lot. Where appropriate, description of any options.

7. Type of award procedure; in the case of negotiated procedure without prior publication, justification.
8. Where appropriate, indication whether—
  - (a) a framework agreement was involved, or
  - (b) a dynamic purchasing system was involved.
9. Criteria referred to in Regulation 67 which were used for award of the contract or contracts. Where appropriate, indication whether the holding of an electronic auction was involved (in the event of open or restricted procedures or competitive procedures with negotiation).
10. Date of the conclusion of the contract(s) or of the framework agreement(s) following the decision to award or conclude it/them.
11. Number of tenders received with respect of each award, including the following:
  - (a) number of tenders received from economic operators which are an SME;
  - (b) number of tenders received from another Member State or from a third country;
  - (c) number of tenders received electronically.
12. For each award, name, address, telephone, fax number, email address and internet address of the successful tenderer(s) including the following:
  - (a) information whether the successful tenderer is small and medium enterprise;
  - (b) information whether the contract was awarded to a group of economic operators (joint venture, consortium or other).
13. Value of the successful tender (tenders) or the highest tender and lowest tender taken into consideration for the contract award or awards.
14. Where appropriate, for each award, value and proportion of contract likely to be subcontracted to third parties.
15. Information whether the contract is related to a project and/or programme financed by European Union funds.
16. Name and address of the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.

17. Date(s) and reference(s) of previous publications in the Official Journal relevant to the contract(s) advertised in this notice.
18. Date of dispatch of the notice.
19. Any other relevant information.

Part 5 — Information to be included in design contest notices

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.

2. Email or internet address at which the procurement documents will be available for unrestricted and full direct access, free of charge.

Where unrestricted and full direct access, free of charge, is not available for the reasons set out in Regulation 53(3) to (5), an indication of how the procurement documents can be accessed.

3. Type of contracting authority and main activity exercised.
4. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.
5. CPV codes; where the contract is divided into lots, this information shall be provided for each lot.
6. Description of the principal characteristics of the project.
7. Number and value of any prizes.
8. Type of design contest (open or restricted).
9. In the event of an open design contest, time limit for the submission of projects.
10. In the event of a restricted design contest:
  - (a) number of participants contemplated;
  - (b) names of the participants already selected, if any;
  - (c) criteria for the selection of participants;
  - (d) time limit for requests to participate.
11. Where appropriate, indication that the participation is restricted to a specified profession.
12. Criteria to be applied in the evaluation of the projects.

13. Indication whether the jury's decision is binding on the contracting authority.

14. Payments to be made to all participants, if any.

15. Indication whether any contracts following the design contest will or will not be awarded to the winner or winners of the design contest.

16. Date of dispatch of the notice.

17. Any other relevant information.

Part 6 — Information to be included in notices of the results of a design contest

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.

2. Type of contracting authority and main activity exercised.

3. Where appropriate, indication whether the contracting authority is a central purchasing body or that any other form of joint procurement is involved.

4. CPV codes.

5. Description of the principal characteristics of the project.

6. Value of the prizes.

7. Type of design contest (open or restricted).

8. Criteria which were applied in the evaluation of the projects.

9. Date of the jury decision.

10. Number of participants, including the following:

(a) number of participants that are a small or medium enterprise;

(b) number of participants from abroad.

11. Name, address, telephone, fax number, email address and internet address of the winner(s) of the contest and indication whether the winner(s) are small and medium enterprises.

12. Information whether the design contest is related to a project or programme financed by European Union funds.

13. Date(s) and reference(s) of previous publications in the Official Journal relevant to the project(s) concerned by this notice.

14. Date of dispatch of the notice.
15. Any other relevant information.

Part 7 — Information to be included in notices of modifications of a contract during its term

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting authority and, where different, of the service from which additional information may be obtained.
2. CPV codes.
3. Address for the main location of works in case of works contracts or address for the main place of delivery or performance in supply and service contracts;
4. Description of the procurement before and after the modification: nature and extent of the works, nature and quantity or value of supplies, nature and extent of services.
5. Where applicable, increase in price caused by the modification.
6. Description of the circumstances which have rendered necessary the modification.
7. Date of contract award decision.
8. Where applicable, the name, address, telephone, fax number, email address and internet address of the new economic operator or operators.
9. Information whether the contract is related to a project and /or programme financed by European Union funds.
10. Name and address of the oversight body and the body responsible for review and, where appropriate, mediation procedures. Precise information concerning the deadline for review procedures, or if need be, the name, address, telephone number, fax number and email address of the service from which this information may be obtained.
11. Date(s) and reference(s) of previous publications in the Official Journal relevant to the contract(s) concerned by this notice.
12. Date of dispatch of the notice.
13. Any other relevant information.

Part 8 — Information to be included in contract notices concerning contracts for social and other specific services

1. Name, company number and registered business name (if any), address, email and internet address of the contracting authority.
2. Address for the main location of works in the case of works or address for the main place of delivery or performance in the case of supplies and services.
3. Brief description of the contract in question including CPV codes.
4. Conditions for participation, including the following:
  - (a) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;
  - (b) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession.
5. Time limit(s) for contacting the contracting authority in view of participation.
6. Brief description of the main features of the award procedure to be applied.

Part 9 — Information to be included in prior information notices for social and other specific services

1. Name, company number and registered business name (if any), address, email and internet address of the contracting authority.
2. Brief description of the contract in question including the estimated total value of the contract and CPV codes.
3. As far as already known, the following:
  - (a) Address for the main location of works in case of works or address for the main place of delivery or performance in case of supplies and services;
  - (b) time-frame for delivery or provision of supplies, works or services and duration of the contract;
  - (c) conditions for participation, including the following:
    - (i) where appropriate, indication whether the public contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes;

(ii) where appropriate, indication whether the execution of the service is reserved by law, regulation or administrative provision to a particular profession;

(d) brief description of the main features of the award procedure to be applied.

4. A reference to the fact that interested economic operators shall advise the contracting authority of their interest in the contract or contracts and time limits for receipt of expressions of interest and address to which expressions of interest shall be transmitted.

Part 10 — Information to be included in contract award notices concerning contracts for social and other specific services

1. Name, company number and registered business name (if any), address, email and internet address of the contracting authority.

2. Brief description of the contract in question including CPV codes.

3. Address for the main location of works in case of works or address for the main place of delivery or performance in case of supplies and services.

4. Number of tenders received.

5. Price or range of prices (maximum and minimum) paid.

6. For each award, name, address, email address and internet address of the successful economic operator or operators.

7. Any other relevant information.



## SCHEDULE 4

*Regulation 35(8)*

Information to be included in the procurement documents relating to electronic auctions

Where a contracting authority has decided to hold an electronic auction, the procurement documents shall include at least the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

## SCHEDULE 5

*Regulations 22(10)(b)(i)(I), 48(3)(b) and (4)(a) and 51(2)(b) and (6)*

## Features concerning publication

## Part 1 — Publication of notices

1. The notices referred to in Regulations 48, 49, 50, 75 and 79 shall be sent by a contracting authority to the Publications Office and published in accordance with the following rules:

- (a) Notices referred to in Regulations 48, 49, 50, 75 and 79 shall be published by the Publications Office or by a contracting authority in the event of a prior information notice published on a buyer profile in accordance with Regulation 48(3);
- (b) A contracting authority may publish the information referred to in subparagraph (a) on the internet on a 'buyer profile' as referred to in paragraph 2 of Part 2.

2. The Publications Office will give the contracting authority the confirmation of the—

- (a) receipt of the notice transmitted under Regulation 51(2), and
- (b) publication (including the date of publication) of the information contained in the notice referred to in subparagraph (a).

## Part 2 — Publication of complementary or additional information

1. Except where otherwise provided for in Regulation 53(3) to (5), a contracting authority shall publish the procurement documents in their entirety on the internet.

2. The buyer profile may include prior information notices as referred to in Regulation 48, information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, including a contact point, a telephone and a fax number, a postal address and an e-mail address. The buyer profile may include prior information notices used as a means of calling for competition, which are published, in the State, pursuant to Regulation 52.

## Part 3 — Format and procedures for sending notices electronically

The format and procedure for sending notices electronically as established by the Commission are made accessible at the internet address <http://simap.europa.eu>.

## SCHEDULE 6

*Regulation 54(3)(c)*

Contents of the invitation to submit a tender, to participate in the dialogue or to confirm interest under Regulation 54

1. The invitation to submit a tender or to participate in the dialogue provided for under Regulation 54 must contain at least the following:

- (a) a reference to the call for competition published;
- (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
- (c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
- (d) a reference to any possible adjoining documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Regulations 59 and 60 and, where appropriate, Regulation 62 or to supplement the information referred to in those Regulations, and under the conditions laid down in Regulations 59, 60 and 62;
- (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, where they are not given in the contract notice, in the invitation to confirm interest, in the technical specifications or the descriptive document.

However, in the case of contracts awarded through a competitive dialogue or an innovation partnership, the information referred to in point (b) shall not appear in the invitation to participate in the dialogue or to negotiate but it shall appear in the invitation to submit a tender.

2. When a call for competition is made by means of a prior information notice, contracting authorities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations. That invitation shall include at least the following information:

- (a) nature and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) type of procedure: restricted procedure or competitive procedure with negotiation;

- (c) where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- (e) the address of the contracting authority which is to award the contract;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;
- (g) the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these;
- (h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the prior information notice or the technical specifications or in the invitation to tender or to negotiate.

## SCHEDULE 7

*Regulation 18(4)(a)*

List of international, social and environmental conventions referred to in  
Regulation 18(4)(a)

- (a) ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
- (b) ILO Convention 98 on the Right to Organise and Collective Bargaining;
- (c) ILO Convention 29 on Forced Labour;
- (d) ILO Convention 105 on the Abolition of Forced Labour;
- (e) ILO Convention 138 on Minimum Age;
- (f) ILO Convention 111 on Discrimination (Employment and Occupation);
- (g) ILO Convention 100 on Equal Remuneration;
- (h) ILO Convention 182 on Worst Forms of Child Labour;
- (i) Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
- (j) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
- (k) Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
- (l) Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (The PIC Convention) Rotterdam, 10/09/1998 and its 3 regional Protocols.

## SCHEDULE 8

*Regulations 60(1), (6) and (8) and 63(2)*

## Means of proof of selection criteria

## Part 1 — Economic and financial standing

Proof of the economic operator's economic and financial standing may, as a general rule, be furnished by one or more of the following references:

- (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- (b) the presentation of financial statements or extracts from the financial statements, where publication of financial statements is required under the law of the country in which the economic operator is established;
- (c) a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last 3 financial years available, depending on the date on which the undertaking was set up or the economic operator started trading, as far as the information on these turnovers is available.

## Part 2 — Technical ability

Means providing evidence of the economic operators' technical abilities, as referred to in Regulation 58:

- (a) the following lists:
  - (i) a list of the works carried out over at the most the past 5 years, accompanied by certificates of satisfactory execution and outcome for the most important works; where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant works carried out more than 5 years before will be taken into account;
  - (ii) a list of the principal deliveries effected or the main services provided over at the most the past 3 years, with the sums, dates and recipients, whether public or private, involved. Where necessary in order to ensure an adequate level of competition, contracting authorities may indicate that evidence of relevant supplies or services delivered or performed more than 3 years before will be taken into account;
- (b) an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of

public works contracts, those upon whom the contractor can call in order to carry out the work;

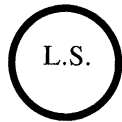
- (c) a description of the technical facilities and measures used by the economic operator for ensuring quality and the undertaking's study and research facilities;
- (d) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;
- (e) where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authorities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body's agreement, on the production capacities of the supplier or the technical capacity of the service provider and, where necessary, on the means of study and research which are available to it and the quality control measures it will operate;
- (f) the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff, provided that they are not evaluated as an award criterion;
- (g) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract;
- (h) a statement of the average annual manpower of the service provider or contractor and the number of managerial staff for the last 3 years;
- (i) a statement of the tools, plant or technical equipment available to the service provider or contractor for carrying out the contract;
- (j) an indication of the proportion of the contract which the economic operator intends possibly to subcontract;
- (k) with regard to the products to be supplied:
  - (i) samples, descriptions or photographs, the authenticity of which must be certified where the contracting authority so requests;
  - (ii) certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to technical specifications or standards.

SCHEDULE 9

*Regulation 68(5)*

List of European Union legal acts referred to in Regulation 68(5)

1. Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009<sup>44</sup>.



GIVEN under the Official Seal of the Minister for Public Expenditure and Reform,  
5 May 2016.

BRENDAN HOWLIN,  
Minister for Public Expenditure and Reform.

<sup>44</sup>OJ L 120, 15.05.2009, p.5



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