



STATUTORY INSTRUMENTS.

**S.I. No. 286 of 2016**



EUROPEAN UNION (AWARD OF CONTRACTS BY UTILITY  
UNDERTAKINGS) REGULATIONS 2016

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UNDERTAKINGS) REGULATIONS 2016

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## EUROPEAN UNION (AWARD OF CONTRACTS BY UTILITY UNDERTAKINGS) 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 2014/25/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>1</sup>, hereby makes the following regulations:

## Part 1

## SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

## Chapter 1

*Subject matter and definitions**Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Award of Contracts by Utility Undertakings) Regulations 2016.

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

*Interpretation*

2. (1) In these Regulations—

“accelerated open procedure” means an open procedure in which the contracting entity has exercised the power conferred by Regulation 44(3) to fix a time limit for the receipt of tenders that is shorter than the minimum specified in Regulation 44(1)(b);

“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 entities to award public contracts or to conclude framework agreements for works, supplies or services;

(b) advice on the conduct or design of procurement procedures;

<sup>1</sup>OJ L94, 28.3.2014, p.243.

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 7th June, 2016.*

- (c) preparation and management of procurement procedures on behalf and for the account of the contracting entity concerned;

“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 subparagraph (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;

“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 entities;
- (b) the award of contracts or the conclusion of framework agreements for works, supplies or services intended for contracting entities;

“central purchasing body” means a contracting entity within the meaning of Regulation 5(1) or a contracting authority within the meaning of the Public Authority Contracts 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

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

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

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—

- (a) in the case of the activities referred to in Regulations 10, 11 and 12, the Commission for Energy Regulation,
- (b) in the case of the activities referred to in Regulations 13 and 14, other than those relating to the provision of airports or other terminal facilities to carriers by air, the Minister for Transport, Tourism and Sport,
- (c) in the case of the activities referred to in Regulation 14, other than those relating to the provision of maritime or inland ports or other terminal facilities to carriers by sea or inland waterway, the Commission for Aviation Regulation,
- (d) in the case of activities referred to in Regulation 15, the Commission for Communications Regulation, and
- (e) in the case of activities referred to in Regulation 16, the Minister for Communications, Energy and Natural Resources;

“Concessions Directive” means Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts<sup>8</sup>;

“Concessions Regulations” means the regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972) to give effect to the Concessions Directive;

“contracting authority” has the meaning given by Regulation 4;

“contracting entity” has the meaning given by Regulation 5;

<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.

<sup>8</sup>OJ L94, 28.3.2014, p.1.

“corruption” has the meaning given 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>9</sup>;

“contravene” includes fail to comply with;

“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 entity 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 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 2009/72/EC” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC<sup>16</sup>;

“Directive 2009/73/EC” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC<sup>17</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 entities in the fields of defence and security, and

<sup>9</sup>OJ C195, 25.6.1997, p.1.

<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 L211, 14.8.2009, p.55.

<sup>17</sup>OJ L211, 14.8.2009, p.94.

amending Directives 2004/17/EC and 2004/18/EC<sup>18</sup>, as amended by Commission Regulation (EC) No 1177/2009 of 30 November 2009<sup>19</sup>, Commission Regulation (EU) No 1251/2011 of 30 November 2011<sup>20</sup>, Council Directive 2013/16/EU of 13 May 2013<sup>21</sup>, Commission Regulation (EU) No 1336/2013 of 13 December 2013<sup>22</sup> and Commission Regulation (EU) 2015/2340 of 15 December 2015<sup>23</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>24</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>25</sup>;

“Directive 2013/34/EU” means Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC<sup>26</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>27</sup>;

“Directive 94/22/EC” means Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons<sup>28</sup>;

“Directive 97/67/EC” means Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service<sup>29</sup>, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002<sup>30</sup> and Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008<sup>31</sup>;

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

<sup>18</sup>OJ L216, 20.8.2009, p.76.

<sup>19</sup>OJ L314, 1.12.2009, p.64.

<sup>20</sup>OJ L319, 2.12.2011, p.43.

<sup>21</sup>OJ L158, 10.6.2013, p.184.

<sup>22</sup>OJ L335, 14.2.2013, p.17.

<sup>23</sup>OJ L330, 16.12.2015, p.14.

<sup>24</sup>OJ L95, 15.4.2010, p.1.

<sup>25</sup>OJ L343, 14.12.2012, p.32.

<sup>26</sup>OJ L182, 29.6.2013, p.19.

<sup>27</sup>OJ L78, 26.3.1977, p.17.

<sup>28</sup>OJ L164, 30.6.1994, p.3.

<sup>29</sup>OJ L15, 21.1.1998, p.14.

<sup>30</sup>OJ L176, 5.7.2002, p.21.

<sup>31</sup>OJ L52, 27.2.2008, p.3.

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

“dominant influence” shall be construed in accordance with Regulation 5(2)(b);

“dynamic purchasing system” means the system referred to in Regulation 51;

“economic operator” means any natural or legal person, or contracting entity, or a group of such persons or entities, 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;

“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>32</sup>;

“framework agreement” means an agreement between one or more contracting entities 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>32</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 48;

“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 81(1);

“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;

“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 46 or 49;

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

“open procedure” shall be construed in accordance with Regulation 44;

“periodic indicative notice” means the notice referred to in Regulation 74;



“procurement” means the acquisition by means of a supply, works or service contract of supplies, works or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the supplies, works or services are intended for the pursuit of one of the activities referred to in Regulations 10 to 16;

“procurement document” means any document produced or referred to by a contracting entity to describe or determine elements of a procurement or a procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are 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>33</sup>;

"Public Authority Contracts Regulations" means the European Union (Award of Public Authority Contracts) Regulations 2016;

“public contract” has the same meaning as it has in the Public Authority Contracts Regulations;

“public undertaking” has the meaning given by Regulation 5(2);

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

“qualification system” means the system described in Regulation 84;

“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>34</sup>;

“Regulation (EC) No 1370/2007” means Regulation (EC) No. 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos. 1191/69 and 1107/70<sup>35</sup>;

<sup>33</sup>OJ L94, 28.3.2014, p.65.

<sup>34</sup>OJ L154, 21.6.2003, p.1.

<sup>35</sup>OJ L315, 3.12.2007, p.1.

“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>36</sup>, as amended by Commission Regulation (EC) No 2151/2003 of 16 December 2003<sup>37</sup>, Commission Regulation (EC) No 213/2008 of 28 November 2007<sup>38</sup> and Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009<sup>39</sup>;

“Regulations of 2007” means the European Communities (Award of Contracts by Utility Undertakings) Regulations 2007 (S.I. No. 50 of 2007);

“selection criteria” means the criteria established by a contracting entity in accordance with Regulations 85 and 89;

“service contracts” means contracts having as their object the provision of services other than those referred to in the definition of “works contracts”;

“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:

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

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

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

“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 service or 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

<sup>36</sup>OJ L340, 16.12.2002, p.1.

<sup>37</sup>OJ L329, 17.12.2003, p.1.

<sup>38</sup>OJ L74, 15.3.2008, p.1.

<sup>39</sup>OJ L188, 18.7.2009, p.14.

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 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 entity; 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 entity 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;

“Union law” means the law of the European Union;

“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>40</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;

<sup>40</sup>OJ L94, 28.3.2014, p.243.

- (c) the realisation by whatever means of a work corresponding to the requirements specified by the contracting entity exercising a decisive influence on the type or design of the work;

“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 Utilities Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in that Directive.

(3) Procurement carried out by a central purchasing body in order to perform centralised purchasing activities shall be deemed to be procurement for the pursuit of an activity as referred to in Regulations 10 to 16.

(4) Regulation 19 shall not apply to procurement carried out by a central purchasing body in order to perform centralised purchasing activities.

*Subject-matter and scope of these Regulations*

3. (1) These Regulations make provision in respect of the procedures for procurement by a contracting entity with respect to a contract or a design contest—

- (a) the value of which is estimated to be not less than the threshold referred to in Regulation 17, and
- (b) which is not excluded from the scope of these Regulations by any other provision of this Part.

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

*Contracting authorities*

4. In these Regulations, “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 entities*

5. (1) In these Regulations, “contracting entity” means a person which—

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

- (2) (a) In this Regulation, “public undertaking” means any undertaking over which a contracting authority may exercise directly or indirectly a dominant influence by virtue of—
- (i) its ownership of the undertaking,
  - (ii) its financial participation in the undertaking, or
  - (iii) the rules which govern the undertaking.
- (b) For the purposes of subparagraph (a), a contracting authority is presumed to exercise a dominant influence where it directly or indirectly—
- (i) holds a majority of the undertaking’s subscribed capital,
  - (ii) controls a majority of the votes attaching to shares issued by the undertaking, or
  - (iii) can appoint more than half of the undertaking’s administrative, management or supervisory body.
- (3) (a) For the purposes of this Regulation, and subject to subparagraph (b), “special or exclusive rights” means rights granted by a competent authority of a Member State by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercise of activities referred to in Regulations 10 to 16 to one or more persons, and which substantially affects the ability of other persons to carry out such activity.
- (b) Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute special or exclusive rights within the meaning of subparagraph (a).
- (c) The procedures referred to in subparagraph (b) include—
- (i) procurement procedures with a prior call for competition in accordance with the Public Authorities Contracts Directive, Directive 2009/81/EC, the Concessions Directive or the Utilities Directive, and
  - (ii) procedures in accordance with other legal acts of the European Union listed in Schedule 2, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

*Mixed procurement covering the same activity*

6. (1) This Regulation applies to mixed contracts which have as their subject-matter two or more types of procurement (works, services or supplies) all of which are subject to these Regulations.

(2) Contracts to which this Regulation applies 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 to which this Regulation applies consists—

(a) partly of services referred to in Regulation 99 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.

*Mixed procurement covering activities to which these Regulations do not apply*

7. (1) This Regulation applies to mixed contracts which have as their subject-matter procurement to which these Regulations apply and procurement to which these Regulations do not apply.

(2) Where the different parts of a contract to which this Regulation applies are objectively separable and the contracting entity 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.

(3) Subject to Regulation 26, where the different parts of a contract to which this Regulation applies are objectively separable and the contracting entity 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.

(4) Where the different parts of a contract to which this Regulation applies 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 18, is equal to or greater than the relevant threshold specified in Regulation 17.

(5) Where the different parts of a contract to which this Regulation applies are not objectively separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract.

(6) Where part of a contract to which this Regulation applies is subject to Article 346 of the TFEU or Directive 2009/81/EC, Regulation 26 shall apply.

*Procurement covering several activities*

8. (1) Where a contract is intended to cover several activities, a contracting entity may choose to award separate contracts for the purposes of each separate activity or to award a single contract.

(2) Where a contracting entity chooses to award separate contracts for the purpose of separate activities, the decision as to which provisions apply to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(3) Subject to paragraph (6) and notwithstanding Regulations 6 and 7, where a contracting entity chooses to award a single contract for the purpose of separate activities and it is objectively possible to identify the activity for which the contract is principally intended, the provisions applicable to the activity for which the contract is principally intended shall apply to the award of the contract.

(4) Subject to paragraph (6) and notwithstanding Regulations 6 and 7, where a contracting entity chooses to award a single contract for the purpose of separate activities and it is not objectively possible to determine for which activity the contract is principally intended, the contract shall be awarded as follows:

- (a) where one of the purposes of the contract is an activity to which the Public Authority Contracts Regulations apply and the other purpose of the contract is an activity to which these Regulations apply, the contract shall be awarded in accordance with the Public Authority Contracts Regulations;
- (b) where one of the purposes of the contract is an activity to which the Concessions Regulations apply and the other purpose of the contract is an activity to which these Regulations apply, the contract shall be awarded in accordance with these Regulations;
- (c) where one of the purposes of the contract is an activity to which these Regulations apply and the other purpose of the contract is an activity to which neither these Regulations, the Public Authority Contracts Regulations nor the Concessions Regulations apply, the contract shall be awarded in accordance with these Regulations.

(5) Where a contracting entity chooses to award a single contract for the purpose of separate activities and one of the activities is subject to Article 346 of the TFEU or Directive 2009/81/EC, Regulation 27 shall apply.

(6) A contracting entity shall not choose to award a single contract or separate contracts for the purpose of separate activities where the purpose of so choosing is to exclude the award of the contract or contracts from the scope of these Regulations, the Public Authority Contracts Regulations or the Concessions Regulations.

## Chapter 2

### *Activities*

#### *Common provisions*

9. (1) For the purposes of Regulations 10, 11 and 12, supply includes generation, production, wholesale and retail sale, but does not include the production of gas in the form of extraction.



- (2) Regulation 16 applies to the production of gas in the form of extraction.

*Gas and heat*

10. (1) These Regulations apply to—

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat, and
- (b) the supply of gas or heat to such networks.

(2) These Regulations do not apply to the supply, by a contracting entity other than a contracting authority, of gas or heat to fixed networks which provide a service to the public where the following conditions are met:

- (a) the production of gas or heat by that contracting entity is the unavoidable consequence of carrying out an activity other than those referred to in—
  - (i) paragraph (1), or
  - (ii) Regulations 11 to 13;
- (b) the supply to the public network is for the purpose of the economic exploitation of such production only and amounts to not more than 20% of the contracting entity's turnover.

(3) For the purposes of paragraph (2)(b), a contracting entity's turnover is the average of its turnover for the preceding 3 years, including the current year.

*Electricity*

11. (1) These Regulations apply to—

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity, and
- (b) the supply of electricity to such networks.

(2) These Regulations do not apply to the supply, by a contracting entity other than a contracting authority, of electricity to fixed networks which provide a service to the public where the following conditions are met:

- (a) the electricity is produced by that contracting entity because the consumption of that electricity is necessary for carrying out an activity other than those referred to in—
  - (i) paragraph (1), or
  - (ii) Regulation 10, 12 or 13;



(b) supply of electricity to the public network is only for the purposes of that contracting entity's own consumption of electricity and has not exceeded 30% of that contracting entity's total energy production.

(3) For the purposes of paragraph (2)(b), a contracting entity's total energy production is the average of its energy production for the preceding 3 years, including the current year.

*Water*

12. (1) These Regulations apply to—

(a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water, and

(b) the supply of drinking water to such networks.

(2) These Regulations also apply to contracts or design contests awarded or organised by contracting entities which pursue an activity referred to in paragraph (1) and which are connected with one of the following:

(a) hydraulic engineering projects, irrigation or land drainage, where the volume of water to be used for the supply of drinking water represents more than 20% of the total volume of water made available by such projects or irrigation or drainage installations;

(b) the disposal or treatment of sewage.

(3) These Regulations do not apply to the supply, by a contracting entity other than a contracting authority, of drinking water to fixed networks which provide a service to the public where the following conditions are met:

(a) the contracting entity produces the drinking water because its consumption is necessary for carrying out an activity other than those referred to in Regulations 10 to 13;

(b) the supply to the public network is only for the purposes of that contracting entity's own consumption and has not exceeded 30% of that contracting entity's total drinking water production.

(4) For the purposes of paragraph (3)(b), a contracting entity's total drinking water production is the average of its drinking water production for the preceding 3 years, including the current year.

*Transport services*

13. (1) These Regulations apply to activities relating to the provision or operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

(2) For the purposes of paragraph (1), a network shall be considered to exist where the service is provided under operating conditions specified by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

*Ports and airports*

14. These Regulations apply to activities relating to the exploitation of a geographical area for the purpose of the provision of airports, maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway.

*Postal services*

15. (1) These Regulations apply to activities relating to the provision of—

- (a) postal services, and
- (b) services other than postal services, where such services are provided by an entity which also provides postal services and the conditions specified in Article 34(1) of the Utilities Directive are not satisfied in respect of those postal services.

(2) For the purpose of this Regulation and without prejudice to Directive 97/67/EC:

- (a) “postal item” means an item addressed in the final form in which it is to be carried, irrespective of weight, including—
  - (i) correspondence,
  - (ii) books,
  - (iii) catalogues,
  - (iv) newspapers,
  - (v) periodicals, and
  - (vi) postal packages containing merchandise with or without commercial value, irrespective of weight;
- (b) “postal services” means services consisting of the clearance, sorting, routing and delivery of postal items, including services falling within, as well as services falling outside, the scope of the universal service set up in conformity with Directive 97/67/EC;
- (c) “services other than postal services” means services provided in the following areas:
  - (i) mail service management services, including services both preceding and subsequent to despatch, including mailroom management services;

- (ii) services concerning items that are posted, but are not included within the scope of the definition of “postal items” in subparagraph (a), including direct mail bearing no address.

*Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels*

16. These Regulations apply to activities relating to the exploitation of a geographical area for the purpose of—

- (a) extracting oil or gas, or
- (b) exploring for, or extracting, coal or other solid fuels.

### Chapter 3

#### *Material scope*

#### Thresholds

##### *Threshold amounts*

17. Save where a procurement is excluded in accordance with Regulations 19 to 24 or Regulation 34, these Regulations apply to procurements with a value, net of VAT, estimated to be equal to or greater than the following thresholds:

- (a) €418,000 for supply and service contracts as well as for design contests;
- (b) €5,225,000 for works contracts;
- (c) €1,000,000 for service contracts for social and other specific services listed in Annex XVII to the Utilities Directive.

##### *Methods for calculating the estimated value of procurement*

18. (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 entity, including any form of option and any renewal of a contract as explicitly specified in the procurement documents.

(2) Where the contracting entity 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 entity is comprised of separate operational units, account shall be taken of the total estimated value for all of 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 entity 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) For the purposes of Regulation 17, contracting entities shall include in the calculation of the estimated value of a works contract both the cost of the works and the total estimated value of any supplies or services that are made available to the economic operator by the contracting entity where those supplies and services are necessary for the execution of 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 referred to in subparagraph (a) is equal to or greater than the relevant threshold specified in Regulation 17, 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 paragraphs (b) and (c) of Regulation 17.

(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 17, these Regulations shall apply to the awarding of each lot.

(13) Notwithstanding paragraphs (11) and (12), a contracting entity 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 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 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 contracts—
  - (i) 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
  - (ii) where the term of the contract is greater than 12 months, the total value including the estimated residual value;
- (b) in the case of 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 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 a design contract, the fees, commissions payable and other forms of remuneration payable under the contract.

(17) In the case of 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.

Excluded contracts and design contests; special provisions for procurement involving defence and security aspects

*Contracts awarded for purposes of resale or lease to third parties*

19. (1) These Regulations do not apply to contracts awarded for purposes of resale or lease to third parties where—

- (a) the contracting entity enjoys no special or exclusive right to sell or lease the subject of such contracts, and
- (b) other entities are free to sell or lease the subject of such contracts under the same conditions as the contracting entity.

(2) A contracting entity shall notify the Commission, if so requested, of all the categories of products or activities which it considers to be excluded under paragraph (1).

*Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country*

20. (1) These Regulations do not apply to contracts awarded or design contests organised by a contracting entity for purposes other than the pursuit of their activities, as described in Regulations 10 to 16, or for the pursuit of such activities in a third country, in conditions not involving the physical use of a network or geographical area within the European Union.

(2) A contracting entity shall notify the Commission, if so requested, of any activities which it considers to be excluded under paragraph (1).

*Contracts awarded and design contests organised pursuant to international rules*

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

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

(4) (a) Paragraphs (1) to (3) do 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 28 applies to contracts and design contests referred to in subparagraph (a).

*Specific exclusions for service contracts*

22. (1) These Regulations do not apply to 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) arbitration or conciliation services,

(c) 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 the 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,

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,

(d) 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 and operations conducted with the European Financial Stability Facility and the European Stability Mechanism,

(e) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments,

(f) employment contracts,

(g) public passenger transport services by rail or metro,

(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, or

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

(2) For the purposes of paragraph (1)(i)—

“media service providers” has the same meaning as it has in point (d) of Article 1(1) of Directive 2010/13/EU;

“programme” means a programme within the meaning of point (b) of Article 1(1) of Directive 2010/13/EU, or a radio programme.



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

23. These Regulations do not apply to service contracts awarded to an entity 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.

*Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy*

24. These Regulations do not apply—

- (a) to contracts for the purchase of water if awarded by contracting entities engaged in one or both of the activities relating to drinking water referred to in Regulation 12(1), or
- (b) to contracts awarded by contracting entities themselves being active in the energy sector by being engaged in an activity referred to in Regulation 10(1), 11(1) or 16 for the supply—
  - (i) of energy, or
  - (ii) of fuels for the production of energy.

*Defence and security*

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

- (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 contracts awarded and design contests organised in the fields of defence and security 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 entity makes available in a contract award procedure as provided for in 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 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, such as those referred to in paragraph (2).

*Mixed procurement covering the same activity and involving defence or security aspects*

26. (1) This Regulation applies to mixed contracts covering the same activity which have as their subject-matter procurement to which these Regulations apply and procurement or other elements to which Article 346 of the TFEU or the Defence Contract Regulations apply.

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

(3) Where a contracting entity 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 entity 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 for objective reasons;
- (c) where both subparagraph (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 entity 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—

- (a) the contract may be awarded without applying these Regulations where the contract includes elements to which Article 346 of the TFEU applies, and

- (b) the contract may be awarded in accordance with the Defence Contract Regulations where the contract does not include elements to which Article 346 of the TFEU applies.

*Procurement covering several activities and involving defence or security aspects*

27. (1) This Regulation applies to a contract intended to cover several activities and involving defence or security aspects.

(2) A contracting entity may, in respect of a contract to which this Regulation applies, award separate contracts for the purposes of each separate activity or award a single contract.

(3) Where, in respect of a contract to which this Regulation applies, a contracting entity chooses to award separate contracts for separate activities, 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 activity concerned.

(4) Where, in respect of a contract to which this Regulation applies—

- (a) a contracting entity chooses to award a single contract covering an activity which is subject to these Regulations and another which is subject to the Defence Contract Regulations,
- (b) the award of a single contract is justified for objective reasons, and
- (c) the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these Regulations,

the contract may be awarded in accordance with the Defence Contract Regulations, subject to any exclusions and thresholds specified in those Regulations.

(5) Where, in respect of a contract to which this Regulation applies—

- (a) a contracting entity chooses to award a single contract covering an activity which is subject to these Regulations and another which is covered by Article 346 of the TFEU,
- (b) the award of a single contract is justified for objective reasons, and
- (c) the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these Regulations,

the contract may be awarded without applying these Regulations.

(6) Where, in respect of a contract to which this Regulation applies—

- (a) a contracting entity—
  - (i) chooses to award a single contract covering an activity which is subject to these Regulations and another which is subject to the Defence Contract Regulations, and

- (ii) includes procurement or other elements which are covered by Article 346 of the TFEU,
- (b) the award of a single contract is justified for objective reasons, and
- (c) the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these Regulations,

the contract may be awarded without applying these Regulations.

(7) A contracting entity shall not choose between awarding a single contract and awarding a number of separate contracts where the purpose of so choosing is to exclude the contract or contracts from the scope of either these Regulations or the Defence Contract Regulations.

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

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

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

*Contracts between contracting authorities*

29. (1) A 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 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 that 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 for the purposes of paragraph (1)(a) where—

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

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

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

provided that 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 over the controlled legal person.

(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 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 several or all of the participating contracting authorities.
- (7) A contract concluded exclusively between two 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 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 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.

*Contracts awarded to an affiliated undertaking*

30. (1) In this Regulation, “affiliated undertaking” means—

- (a) in the case of an entity which is subject to Directive 2013/34/EU, any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of that Directive, and
- (b) in the case of an entity which is not subject to Directive 2013/34/EU, any undertaking that—
  - (i) may be, directly or indirectly, subject to a dominant influence by the contracting entity,
  - (ii) may exercise a dominant influence over the contracting entity, or
  - (iii) in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation or the rules which govern it.

(2) Notwithstanding Regulation 29 and provided that the conditions in paragraph (3) are met, these Regulations shall not apply to contracts awarded—

- (a) by a contracting entity to an affiliated undertaking, or
- (b) by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities described in Regulations 10 to 16, to an affiliated undertaking of one of its members.

(3) The conditions referred to in paragraph (2) are that—

- (a) in respect of service contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all services provided by that undertaking, derives from the provision of services to the contracting entity or one or more of its affiliated undertakings,
- (b) in respect of supply contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all supplies provided by that undertaking, derives from the provision of supplies to the contracting entity or one or more of its affiliated undertakings, and
- (c) in respect of works contracts, at least 80% of the average total turnover of the affiliated undertaking over the preceding 3 years, taking into account all works provided by that undertaking, derives from the

provision of works to the contracting entity or one or more of its affiliated undertakings.

(4) Where, because of the date on which an affiliated undertaking was created or commenced activities, the turnover referred to in paragraph (3)(a), (b) or (c) is not available for the preceding 3 years, it shall be sufficient for that undertaking to show that the turnover is credible, in particular by means of business projections.

(5) Where more than one affiliated undertaking provides the same or similar services, supplies or works to the contracting entity with which they form an economic group, the percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

*Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture*

31. Notwithstanding Regulation 29, these Regulations shall not apply to contracts awarded by—

(a) a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Regulations 10 to 16, to one of those contracting entities, or

(b) a contracting entity to such a joint venture of which it forms part,

provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least 3 years and the instrument setting up the joint venture stipulates that the contracting entities, which form it, will be part of the joint venture for at least the same period.

*Notification of information*

32. A contracting entity shall notify to the Commission, if so requested, the following information regarding the application of paragraphs (1)(b) and (2) of Regulation 30 and Regulation 31:

(a) the names of the undertakings or joint ventures concerned;

(b) the nature and value of the contracts involved;

(c) proof, deemed necessary by the Commission, that the relationship between the undertaking or joint venture to which the contracts are awarded and the contracting entity complies with the requirements of Regulation 30 or 31.



*Research and development services*

33. These Regulations shall only apply to 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—

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

*Applicability of Article 34 of Utilities Directive*

34. (1) Where—

- (a) the Minister or,
- (b) a contracting entity,

considers that, on the basis of the criteria specified in Article 34(2) and (3) of the Utilities Directive, a given activity is directly exposed to competition on markets to which access is not restricted, the Minister or, where applicable, the contracting entity may submit a request to the Commission to establish that the Utilities Directive does not apply to the award of contracts or the organisation of design contests for the pursuit of that activity.

(2) Where a competent authority has adopted a position in relation to the activity referred to in paragraph (1), the position may, where appropriate, be sent together with the request referred to in paragraph (1).

(3) A request referred to in paragraph (1) may concern activities which are part of a larger sector or which are exercised only in certain parts of the State.

(4) In the request referred to in paragraph (1), the Minister or contracting entity concerned shall inform the Commission of all relevant facts, and in particular any law, regulation, administrative provision or agreement concerning compliance with the conditions specified in Article 34(1) of the Utilities Directive.

(5) Where a request coming from a contracting entity is not accompanied by a reasoned and substantiated position, adopted by a competent authority, which thoroughly analyses the conditions for the possible applicability of Article 34(1) of the Utilities Directive to the activity concerned in accordance with paragraphs (2) and (3) of that Article, and the Commission so informs the State, the Minister shall inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions specified in Article 34(1).

(6) After the submission of a request under paragraph (1), the Minister or the contracting entity concerned may, with the Commission's agreement, substantially modify its request, in particular as regards the activities or the geographical areas concerned.

(7) Where an activity in the State is already the subject of—

- (a) a request under paragraph (1),
- (b) a submission of additional facts under paragraph (5), or
- (c) a modified request under paragraph (6),

further requests concerning the same activity in the State submitted before the expiry of the period provided for in Annex IV to the Utilities Directive (as adjusted in accordance with Article 35(4) of the Utilities Directive, where applicable) in respect of the first request shall not be considered as new requests and shall be treated in the context of the first request concerning that activity.

(8) A contract intended to enable an activity to be carried out and design contests that are organised for the pursuit of such an activity shall cease to be subject to these Regulations where the Commission has in respect of the activity—

- (a) adopted an implementing act establishing the applicability of Article 34(1) of the Utilities Directive in accordance with Article 35(3) of that Directive within the period provided for in Annex IV to that Directive (as adjusted in accordance with Article 35(4) of that Directive, where applicable), or
- (b) not adopted any implementing act in accordance with Article 35(3) of the Utilities Directive within the period provided for in Annex IV to the Utilities Directive (as adjusted in accordance with Article 35(4) of the Utilities Directive, where applicable).

## Chapter 4

### *General principles*

#### *Principles of procurement*

35. (1) A contracting entity 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

Union law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 11.

- (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*

36. (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 service and works contracts as well as 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 entity to have a specific legal form in order to submit a tender or a request to participate.

(4) Where necessary, contracting entities may clarify in the procurement documents how groups of economic operators are to meet the criteria and requirements for qualification and qualitative selection referred to in Regulations 84 to 90 provided that this is justified by objective reasons and is proportionate.

(5) Any conditions for the performance of a contract by such groups of economic operators which 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 entity 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*

37. (1) Contracting entities 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,

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

(2) Where paragraph (1) applies, the call for competition shall make reference to Article 38 of the Utilities Directive.

#### *Confidentiality*

38. (1) A contracting entity 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 provisions of these Regulations, including the obligations relating to the advertising of awarded contracts and the information to candidates and tenderers specified in Regulations 77 and 82 respectively, and

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

(3) A contracting entity may impose on an economic operator requirements aimed at protecting the confidential nature of information which the contracting entity makes available throughout the procurement procedure, including information made available in connection with the operation of a qualification system, whether or not this has been the subject of a notice on the existence of a qualification system used as a means of calling for competition.

#### *Rules applicable to communication*

39. (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 entities 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 entity,

- (c) the use of electronic means of communication would require specialised office equipment that is not generally available to contracting entities, 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 entities 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 entity 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 108 the reasons for this requirement.
- (b) Where applicable, contracting entities shall indicate in the information kept in accordance with Regulation 108 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 and 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 the communication.
- (8)
  - (a) Contracting entities 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 entities 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 entity 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 entity requires the use of specific electronic tools in accordance with subparagraph (a), the contracting entity 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 entity may, where necessary, require the use of tools which are not generally available, provided that the contracting entity offers alternative means of access.
  - (b) A contracting entity 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—
      - (I) the date of publication of the notice in accordance with Schedule 6, or
      - (II) the date 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 3, 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 entity 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 entity concludes that the level of risk, assessed in accordance with paragraphs (13) and (14), is such that an advanced electronic signature is required, the contracting entity 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 entity 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 entity 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 entity 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 issuing 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 entity 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 entity 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 51(11), 54(9), 61, 62(5), 78(2) or 80.

(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 62(5) until 18 April 2017.

#### *Nomenclatures*

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



*Conflicts of interest*

41. (1) A contracting authority 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 of 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 APPLICABLE TO CONTRACTS

## Chapter 1

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

42. In so far as it is covered by Annexes 3, 4 and 5 and the General Notes to the European Union’s Appendix I to the GPA and by the other international agreements by which the European Union is bound, a contracting entity within the meaning of Regulation 5(1)(a) 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*

43. (1) A contracting entity shall apply procedures that conform to these Regulations when awarding supply, works or service contracts where, without prejudice to Regulation 46, a call for competition has been published in accordance with these Regulations.

(2) Contracting entities may apply open or restricted procedures or negotiated procedures with prior call for competition as provided for in these Regulations.

(3) Contracting entities may apply competitive dialogues and innovation partnerships as provided for in these Regulations.

(4) A call for competition may be made by one of the following means:

(a) a periodic indicative notice pursuant to Regulation 74, where the contract is awarded by restricted or negotiated procedure;

- (b) a notice on the existence of a qualification system pursuant to Regulation 75, where the contract is awarded by restricted or negotiated procedure or by a competitive dialogue or an innovation partnership;
- (c) by means of a contract notice pursuant to Regulation 76.

(5) Where—

- (a) a call for competition is made in accordance with paragraph (4)(a), and
- (b) an economic operator has expressed its interest following the publication of the periodic indicative notice,

the economic operator shall subsequently be invited to confirm their interest in writing by means of an invitation to confirm interest.

*Open procedure*

44. (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 entity.

(2) Where a contracting entity using the open procedure has published a periodic indicative 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 periodic indicative notice included, in addition to the information required by paragraphs 1 to 5 of Part 1 of Schedule 4, all the information required by paragraphs 6 to 21 of Part 1 of Schedule 4, insofar as the latter information was available at the time the periodic indicative notice was published, and
- (b) the periodic indicative 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 a contracting entity renders impracticable the time limit specified in paragraph 1(b), the contracting entity may fix a time limit which shall not be less than 15 days from the date on which the contract notice was sent.

(4) A contracting entity 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 39(9), (10) and (11).

*Restricted procedure*

45. In a restricted procedure—

- (a) an economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by a contracting entity,
- (b) the minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at not less than 30 days from the date on which the contract notice or the invitation to confirm interest was sent and shall in any event not be less than 15 days,
- (c) only those economic operators invited to do so by the contracting entity following its assessment of the information provided may submit a tender,
- (d) a contracting entity may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 85(3) and (4),
- (e) the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, where all selected candidates have the same time to prepare and submit their tenders, and
- (f) in the absence of agreement on the time limit for the receipt of tenders, the time limit shall be not less than 10 days from the date on which the invitation to tender was sent.

*Negotiated procedure with prior call for competition*

46. In a negotiated procedure with prior call for competition—

- (a) an economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting entity,
- (b) the minimum time limit for the receipt of requests to participate shall, as a general rule, be fixed at not less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent and shall in any event not be less than 15 days,
- (c) only those economic operators invited by the contracting entity following its assessment of the information provided may participate in the negotiations,
- (d) contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 85(3) and (4),

- (e) the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, where they all have the same time to prepare and submit their tenders, and
- (f) in the absence of agreement on the time limit for the receipt of tenders, the time limit shall be not less than 10 days from the date on which the invitation to tender was sent.

*Competitive dialogue*

47. (1) In a competitive dialogue—

- (a) an economic operator may submit a request to participate in response to a call for competition in accordance with Regulation 43(4)(b) or (c) by providing the information for qualitative selection that is requested by the contracting entity,
- (b) the minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at not less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used as a means of calling for competition, the invitation to confirm interest was sent and shall in any event not be less than 15 days,
- (c) only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the dialogue,
- (d) a contracting entity may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 85(3) and (4),
- (e) the contract shall be awarded on the sole basis of the award criterion of the tender presenting the best price-quality ratio in accordance with Regulation 91(2), (3) and (4),
- (f) a contracting entity shall specify and define its needs and requirements either in the call for competition or in a descriptive document or in both the call for competition and a descriptive document,
- (g) a contracting entity shall, at the same time specify and define its needs and requirements and in the same document, specify and define the chosen award criteria and specify an indicative timeframe in respect of the dialogue,
- (h) a contracting entity—
  - (i) shall open, with the participants selected in accordance with the relevant provisions of Regulations 83 to 90, 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 entity shall ensure equality of treatment among all participants,
  - (j) during the dialogue referred to in subparagraph (h), a contracting entity shall not provide information in a discriminatory manner which may give some participants an advantage over others,
  - (k) in accordance with Regulation 38, contracting entities shall not reveal to the other participants solutions proposed or other confidential information communicated by a participating candidate or tenderer in the dialogue referred to in subparagraph (h) without the agreement of that candidate or tenderer, and
  - (l) the agreement referred to in subparagraph (k) shall not take the form of a general waiver but shall instead 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 specified in the call for competition or in the descriptive document.
- (b) In the call for competition or the descriptive document, the contracting entity shall indicate whether it will use the option specified in subparagraph (a).
- (3) In a competitive dialogue, the contracting entity shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.
- (4) (a) Where a contracting entity has declared that a dialogue is concluded and has so informed the remaining participants, the contracting entity 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 entity, but such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the procurement, including the needs and requirements specified in the call for competition 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 entity shall assess the tenders received on the basis of the award criteria specified in the call for competition or in the descriptive document, and
- (b) at the request of the contracting entity, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with Regulation 91(2), (3) and (4) 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 procurement, including the needs and requirements specified in the call for competition or in the descriptive document, or
  - (ii) risk distorting competition or causing discrimination.

(6) In a competitive dialogue, a contracting entity may specify prizes or payments to the participants in the dialogue.

*Innovation partnership*

48. (1) In an innovation partnership—

- (a) an economic operator may submit a request to participate in response to a call for competition in accordance with Regulation 43(4)(b) or (c) by providing the information for qualitative selection that is requested by the contracting entity.
- (b) in the procurement documents, the contracting entity 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 entity 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, as a general rule, be fixed at not less than 30 days from the date on

which the contract notice is sent and shall in any event not be less than 15 days,

- (f) only those economic operators invited by the contracting entity following the assessment of the information provided may participate in the procedure,
- (g) contracting entities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with Regulation 85(3) and (4),
- (h) the contracts shall be awarded on the sole basis of the award criterion of the tender presenting the best price-quality ratio in accordance with Regulation 91(2), (3) and (4), and
- (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 purchase by the contracting entity 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 entity 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) The 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 entity 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 entity has indicated in the procurement documents that such action may be taken and the conditions under which such action would be taken.

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

- (7) During the negotiations referred to in paragraph (6), a contracting entity 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 38, a contracting entity 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 instead 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 entity 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 entity 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 a contracting entity following its assessment of the requested information may submit research and innovation projects aimed at meeting the needs identified by the contracting entity that cannot be met by existing solutions.
- (12) In the procurement documents relating to an innovation partnership, the contracting entity shall define the arrangements applicable to intellectual property rights.
- (13) (a) In accordance with Regulation 38, in the case of an innovation partnership with several partners, the contracting entity 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 instead be given with reference to the intended communication of specific information.

(14) A contracting entity 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 to the investment required for their development.

*Use of the negotiated procedure without prior call for competition*

49. (1) A contracting entity may only use a negotiated procedure without prior call for competition in 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 a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;
- (b) where a contract is solely for the purpose of research, experiment, study or development, and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which are, in particular, for the purpose of securing a profit or of recovering research and development costs;
- (c) 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;
- (d) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting entity, the time limits specified for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with;

- (e) in the case of supply contracts 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 entity to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
  - (f) for new works or services consisting of the repetition of similar works or services assigned to the economic operator to which the same contracting entity awarded an earlier contract, where such works or services conform to a basic project for which a first contract was awarded under a procedure in accordance with Regulation 43(1);
  - (g) for supplies quoted and purchased on a commodity market;
  - (h) where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
    - (i) for purchases of supplies or services under particularly advantageous conditions from—
      - (I) a supplier which is definitively winding up its business activities, or
      - (II) the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;
    - (j) where the service contract concerned follows a design contest organised in accordance with these Regulations and is to be awarded, under the rules provided for in the design contest, to the winner or to one of the winners of that contest.
- (2) For the purposes of paragraph (1)(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 entity's needs and requirements as specified in the procurement documents, and
  - (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 85(1) and (2) or 89(1) and (2), or
    - (ii) does not meet the selection criteria specified by the contracting entity pursuant to Regulation 85 or 89.

(3) The exceptions specified in paragraph (1)(c)(ii) and (iii) only apply when 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) Paragraph (1)(d) shall not apply where the circumstances invoked to justify extreme urgency are attributable to the contracting entity.

(5) Where paragraph (1)(f) applies—

(a) the basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded,

(b) the possible use of the negotiated procedure without prior call to competition shall be disclosed, as soon as the first project is put up for tender, and

(c) the total estimated cost of subsequent works or services shall be taken into consideration in applying Regulations 17 and 18.

(6) Where paragraph (1)(j) applies and the service contract is to be awarded to one of the winners of the contest, all the winners shall be invited to participate in the negotiations.

## Chapter 2

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

#### *Framework agreements*

50. (1) A contracting entity 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 8 years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

(3) Contracts based on a framework agreement shall be awarded on the basis of objective rules and criteria, which may include reopening the competition among those economic operators party to the framework agreement as concluded.

(4) The rules and criteria referred to in paragraph (3) shall—

(a) be specified in the procurement documents for the framework agreement, and

(b) ensure equal treatment of the economic operators who are parties to the agreement.

(5) Where the rules of a framework agreement include reopening the competition among those economic operators party to the framework agreement as concluded, the contracting entity shall—

- (a) set a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, and
  - (b) award each contract to the tenderer that has submitted the best tender on the basis of the award criteria specified in the specifications of the framework agreement.
- (6) Contracting entities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

*Dynamic purchasing systems*

51. (1) A contracting entity 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 entity.

(2) When procuring under a dynamic purchasing system, a contracting entity 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—

(a) be operated as a completely electronic process, and

(b) be 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 who satisfy 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 85(3) and (4).

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

(9) The following time limits shall apply to a procurement under a dynamic purchasing system:

(a) the minimum time limit for receipt of requests to participate shall, as a general rule, be fixed at not less than 30 days from the date on which the contract notice or, where a periodic indicative notice is used

as a means of calling for competition, the invitation to confirm interest is sent and shall in any event not be less than 15 days;

- (b) 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;
- (c) the time limit for the receipt of tenders may be set by mutual agreement between the contracting entity and the selected candidates, where all selected candidates have the same time to prepare and submit their tenders;
- (d) in the absence of agreement on the time limit for the receipt of tenders, the time limit shall be not less than 10 days from the date on which the invitation to tender was sent.

(10) 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.

(11) All communications in the context of a dynamic purchasing system shall be made only by electronic means in accordance with Regulation 39(1), (2), (3), (4), (5), (6), (8), (10), (11) and (12).

(12) For the purposes of awarding contracts under a dynamic purchasing system, a contracting entity 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—
  - (i) the nature and estimated quantity of the purchases envisaged, and
  - (ii) 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 80.

(13) A contracting entity 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 paragraph (2) and paragraphs (6) to (10).

(14) A contracting entity shall finalise its assessment of a request made under paragraph (13) in accordance with the selection criteria within 10 working days following the receipt of the request.

(15) The time limit referred to in paragraph (14) 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.

(16) Notwithstanding paragraphs (13) to (15), a contracting entity may extend the period for assessment of a request made under paragraph (13) 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.

(17) Where a contracting entity intends to extend the evaluation period in accordance with paragraph (16), the entity shall indicate, in the procurement documents, the length of the extended period it intends to apply.

(18) A contracting entity 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 the dynamic purchasing system.

(19) A contracting entity shall invite all admitted participants to submit a tender for each specific procurement under a dynamic purchasing system, in accordance with Regulation 81.

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

(21) A contracting entity 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, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender.

(22) The criteria referred to in paragraph (21) may, where appropriate, be formulated more precisely in the invitation to tender.

(23) A contracting entity who, pursuant to Regulation 89, applies exclusion grounds and selection criteria provided for under the Public Authorities Contracts Directive, 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) of the Public Authority Contracts Regulations, within 5 working days from the date on which that request is transmitted.

(24) Regulation 59(7) to (10) of the Public Authority Contracts Regulations shall apply throughout the entire period of validity of the dynamic purchasing system.

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

(26) A contracting entity shall notify the Commission of any change in the period of validity referred to in paragraph (25), 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;
- (b) where the dynamic purchasing system is terminated, a contract award notice referred to in Regulation 77.

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

*Electronic auctions generally*

52. (1) Subject to paragraph (3), a contracting entity 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 entity shall structure an 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) Service contracts and 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 object of electronic auctions.

*Open, restricted or negotiated procedures in electronic auctions*

53. (1) In—

- (a) open, or
- (b) restricted procedures or negotiated procedures with a prior call for competition,

a contracting entity may decide that the award of a contract shall be preceded by an electronic auction where the content of the procurement documents, in particular the technical specifications, can be established with precision.

(2) In procurements where the content of 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 50(3) to (6), or
- (b) on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Regulation 51.

*General procedures in electronic auctions*

54. (1) 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 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.

(2) A contracting entity that decides to hold an electronic auction shall state that fact in—

- (a) the contract notice,
- (b) the invitation to confirm interest, or
- (c) where a notice on the existence of a qualification system is used as a means of calling for competition, the invitation to tender.

(3) Where a contracting entity has decided to hold an electronic auction, the procurement documents shall include at least the information specified in Schedule 5.

(4) Prior to proceeding with an electronic auction, a contracting entity shall make a full initial evaluation of the tenders in accordance with the award criterion or criteria and with the weighting fixed for them.

(5) A tender shall be considered admissible where—

- (a) it has been submitted by a tenderer who—



- (i) has not been excluded pursuant to Regulation 85(1) and (2) or 89(1), and
- (ii) meets the selection criteria under Regulations 85 and 89,  
and
- (b) it is in conformity with the technical specifications and is not irregular, unacceptable or unsuitable.

(6) Tenders—

- (a) that do not comply with the procurement documents,
- (b) that were received late,
- (c) that have been found by the contracting entity to be abnormally low,  
or
- (d) where there is evidence of collusion or corruption,

shall be considered irregular for the purposes of paragraph (5)(b).

(7) Tenders—

- (a) submitted by tenderers that do not have the required qualifications, or
- (b) whose price exceeds the contracting entity's budget as determined and documented prior to the launching of the procurement procedure,

shall be considered as unacceptable for the purposes of paragraph (5)(b).

(8) For the purposes of paragraph (5)(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 entity'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 85(1) and (2) or 89(1), or
  - (ii) does not meet the selection criteria under Regulation 85 or 89.

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

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

*Invitations and criteria for electronic auctions*

55. (1) An electronic auction shall not start sooner than 2 working days after the date on which the invitations referred to in Regulation 54(9) are sent out.

- (2) An invitation referred to in paragraph (1) 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 91(9), and

(b) state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices or new values submitted, or both.

(3) Except where the most economically advantageous offer is identified on the basis of price alone, the formula referred to in paragraph (2)(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.

(4) For the purposes of paragraph (3), any ranges shall be reduced beforehand to a specified value.

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

*Communications in electronic auctions*

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

(2) Notwithstanding paragraph (1), a contracting entity may communicate other information concerning other prices or values submitted, provided that this is stated in the specifications.

(3) A contracting entity may during any phase of electronic auction announce the number of participants in that phase.

(4) Notwithstanding paragraphs (1), (2) and (3), a contracting entity shall not disclose the identity of a tenderer to any other tenderer during any phase of an electronic auction.

*Closing of electronic auctions*

57. (1) A contracting entity shall close an electronic auction in one or more of the following manners:

- (a) at the previously indicated date and time;

- (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences, provided that they have previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
- (c) when the previously indicated number of phases in the auction has been completed.

(2) Where a contracting entity intends to close an electronic auction in accordance with paragraph (1)(c), including where it is intended to close the auction in combination with paragraph (1)(b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

(3) After closing an electronic auction, the contracting entity shall award the contract in accordance with Regulation 91 on the basis of the results of the electronic auction.

#### *Use of electronic catalogues*

58. (1) Where the use of electronic means of communication is required, a contracting entity 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.

#### *Procedures for electronic catalogues*

59. (1) 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 entity, and
- (b) comply with—
  - (i) the requirements for electronic communication tools specified in, and
  - (ii) any additional requirements set by the contracting entity in accordance with, Regulation 39.

(2) Where the presentation of tenders in the form of electronic catalogues is accepted or required, a contracting entity shall—

- (a) state that fact in the contract notice, in the invitation to confirm interest, or, where the means of calling for competition is a notice on the existence of a qualification system, in the invitation to tender or negotiate, and
- (b) indicate in the procurement documents all the necessary information relating to the matters in Regulation 39(11) and (12) in so far as they concern—

- (i) the format,
- (ii) the electronic equipment used, and
- (iii) the technical connection arrangements and specifications for the catalogue.

*Reopening of competition when using electronic catalogues*

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

(2) In the case of a reopening of competition under paragraph (1), a contracting entity shall use one of the following methods:

- (a) invite tenderers to resubmit their electronic catalogues, adapted to the requirements of the contract in question;
- (b) notify tenderers that they intend to collect from the electronic catalogues that have already been submitted, the information needed to constitute tenders adapted to the requirements of the contract in question, provided that the use of that method has been indicated in the procurement documents for the framework agreement.

(3) Where a contracting entity reopens competition for specific contracts in accordance with paragraph (2)(b), it shall—

- (a) notify the tenderers of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question, and
- (b) afford to the tenderers concerned the possibility to refuse such collection of information.

(4) A contracting entity shall allow for an adequate period between the notification under paragraph (3) and the collection of information.

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

*Dynamic purchasing systems using electronic catalogues*

61. (1) A contracting entity 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.

(2) A contracting entity may award contracts based on a dynamic purchasing system in accordance with Regulation 60(2)(b) and paragraphs (3) to (5) of that Regulation, provided that 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 entity.

(3) For the purposes of paragraph (2), the electronic catalogue shall be completed by the candidates after they are informed of the contracting entity's intention to constitute tenders by means of the procedure specified in Regulation 60(2)(b).

*Centralised purchasing activities and central purchasing bodies*

62. (1) A contracting entity may acquire works, supplies and 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”, or

(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 entities, that fact shall be mentioned in any call for competition setting up that dynamic purchasing system.

(3) A contracting entity 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”, or

(b) where it acquires works, supplies or services by using—

(i) contracts awarded by the central purchasing body,

(ii) dynamic purchasing systems 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”.

(4) Notwithstanding paragraph (3), the contracting entity concerned shall be responsible for fulfilling the obligations imposed by these Regulations in respect of any parts of the procedure that it conducts itself including—

- (a) awarding a contract under a dynamic purchasing system which is operated by a central purchasing body, and
  - (b) conducting a reopening of competition under a framework agreement that has been concluded by a central purchasing body.
- (5) 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 39.
- (6) A contracting entity may, without applying the procedures provided for in these Regulations, award a service contract for the provision of centralised purchasing activities to a central purchasing body.
- (7) Service contracts awarded in accordance with paragraph (6) may include the provision of ancillary purchasing activities.

*Occasional joint procurement*

63. (1) Two or more contracting entities may agree to perform certain specific procurements jointly.
- (2) Where the conduct of the procurement procedure in its entirety is carried out jointly in the name and on behalf of all the contracting entities concerned, they shall be jointly responsible for fulfilling their obligations under these Regulations.
- (3) The joint responsibility referred to in paragraph (2) applies where one contracting entity manages the procurement procedure on its own behalf and on the behalf of the other contracting entities 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 entities concerned—
- (a) they shall be jointly responsible only for those parts carried out jointly, and
  - (b) each contracting entity 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 entities from different Member States*

64. (1) Without prejudice to Regulations 29 to 32 and subject to paragraph (2), contracting entities in the State may act jointly with contracting entities from other Member States in the award of contracts in accordance with this Regulation.
- (2) A contracting entity shall not use this Regulation for the purpose of avoiding the application of mandatory Union law.
- (3) A contracting entity 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 by a central purchasing body located in another Member State under paragraph (3) shall be conducted in accordance with the national provisions of that other Member State.

(5) The national provisions of that 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.

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

- (a) from—
  - (i) awarding a contract,
  - (ii) concluding a framework agreement, or
  - (iii) operating a dynamic purchasing system, jointly with a contracting entity from another Member State, or
- (b) 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 entities 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 States 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 entity fulfils its obligations pursuant to these Regulations when it purchases works, supplies and services from a contracting entity 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 entity 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 entity in the State has set up a joint entity (including European Groupings of territorial cooperation under Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006<sup>41</sup>, or other entities established under Union law) with one or more contracting entities from other Member States, that contracting entity 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 State where the joint entity has its registered office;
- (b) the national provisions of the Member State 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) 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*

65. (1) Before commencing a procurement procedure, a contracting entity may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

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

<sup>41</sup>OJ L210, 31.07.2006, p.19.



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

- (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*

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

- (a) has advised the contracting entity, whether in the context of Regulation 65 or not, or
- (b) has otherwise been involved in the preparation of the procurement procedure,

the contracting entity shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.

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

- (a) the 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 paragraph (1), in the preparation of the procurement procedure, and
- (b) the 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 35(1) to (3).

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

(5) The measures taken under this Regulation shall be documented in accordance with Regulation 108.

*Technical specifications*

67. (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 the specific process or method of production or provision of the requested works, supplies or services or to a specific process for another stage of its life

cycle even where such factors do not form part of their material substance, provided that 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 entity, 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 technical rules in the State, to the extent that they are compatible with 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, provided that the parameters are sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow a contracting entity 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 entity uses the option of referring to the technical specifications referred to in paragraph (7)(b), it shall not reject a tender on the ground 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 69, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

(11) Where a contracting entity 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 established by a European standardisation body, 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 69, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting entity.

#### *Labels*

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

- (a) the label requirements only concern 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 entity does not require the works, supplies or services to meet all of the label requirements, it shall indicate which label requirements are required.

(3) A contracting entity 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 entity, or an equivalent label, within the relevant time limits for reasons that are not attributable to that economic operator, the contracting entity shall accept other appropriate means of proof, which may include a technical dossier of the manufacturer, provided that 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 entity.

(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 entity 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, certification and other means of proof*

69. (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 the Council of 9 July 2008<sup>42</sup>.

(2) A contracting entity 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 entity requires the submission of certificates drawn up by a specific conformity assessment body, certificates from equivalent other conformity assessment bodies shall be accepted by the contracting entity concerned.

(4) A contracting entity 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, provided that—

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

*Communication of technical specifications*

70. (1) On request from economic operators interested in obtaining a contract, a contracting entity shall make available—

- (a) the technical specifications regularly referred to in their supply, works or service contracts, or

<sup>42</sup>OJ L218, 13.08.2008, p.30.

(b) the technical specifications which they intend to apply to contracts for which the call for competition is a periodic indicative notice.

(2) Subject to paragraph (3), the technical specifications referred to in paragraph (1) shall be made available by electronic means of communication through unrestricted and full direct access free of charge.

(3) Technical specifications shall be transmitted by means other than electronic means where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered—

(a) for one of the reasons specified in Regulations 39(3), or

(b) because the contracting entity concerned intends to apply Regulation 38(3).

(4) Where the technical specifications are based on documents available by electronic means, through unrestricted and full direct access, free of charge to interested economic operators, the inclusion of a reference to those documents shall be sufficient.

#### *Variants*

71. (1) A contracting entity may authorise or require tenderers to submit variants which meet the minimum requirements specified by that contracting entity.

(2) A contracting entity shall indicate in the procurement documents whether or not it authorises or requires variants.

(3) A contracting entity authorising or requiring variants shall indicate 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.

(4) Where variants are authorised or required, a contracting entity 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.

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

#### *Division of contracts into lots*

72. (1) A contracting entity 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 entity shall indicate whether tenders may be submitted for one, for several or for all of the lots—

- (a) in the relevant contract notice,
- (b) in the relevant invitation to confirm interest, or
- (c) where the means of calling for competition is a notice on the existence of a qualification system, in the relevant invitation to tender or to negotiate.

(3) A contracting entity may, where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer provided that the maximum number of lots per tenderer is stated in—

- (a) the contract notice, or
- (b) the invitation to confirm interest, to tender or to negotiate.

(4) A contracting entity shall indicate in the procurement documents the objective and non-discriminatory criteria or rules it 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.

(5) Where more than one lot may be awarded to the same tenderer, a contracting entity may award a contract combining several or all lots where it has specified in the contract notice, or invitation to confirm interest, to tender or to negotiate, that they reserve the possibility of doing so and indicate the lots or groups of lots that may be combined.

#### *Setting time limits*

73. (1) Without prejudice to the minimum time limits specified in Regulations 44 to 48, when fixing the time limits for requests to participate and for the receipt of tenders, a contracting entity 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 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 44 to 48, shall be fixed so that all economic operators concerned may be aware of all the information necessary to produce tenders.

(3) A contracting entity 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 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 open procedure, the period referred to in paragraph (3)(a) shall be 4 days.

(6) A contracting entity 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

##### *Periodic indicative notices*

74. (1) A contracting entity may make known the intentions of the entity with respect to planned procurements through the publication of a notice (in this Regulation referred to as a “periodic indicative notice”).

(2) A periodic indicative notice shall contain the information specified in paragraphs 1 to 5 of Part 1 of Schedule 4.

(3) A periodic indicative notice shall be published—

- (a) by arrangement with the Publications Office, or
- (b) on the contracting authority’s buyer profile in accordance with paragraph 2 of Part 2 of Schedule 6.

(4) Where a periodic indicative notice is published by the contracting entity on its buyer profile—

- (a) the contracting entity concerned shall send a notice of the publication of the periodic indicative notice on their buyer profile to the Publications Office in accordance with Part 3 of Schedule 6, and
- (b) the periodic indicative notice shall contain the information specified in Part 2 of Schedule 4.

(5) When a call for competition is made by means of a periodic indicative notice in respect of a restricted procedure or a negotiated procedure with prior call for competition, the notice shall meet the following requirements:

- (a) it shall refer specifically to the supplies, works or services that will be the subject of the contract to be awarded;
- (b) it shall indicate that the contract will be awarded by restricted or negotiated procedure 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 5 of Part 1 of Schedule 4, the information specified in paragraphs 6 to 21 of Part 1 of Schedule 4;

(d) it shall be sent for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent.

(6) A periodic indicative notice shall not be published on a buyer profile.

(7) Notwithstanding paragraph (6), the additional publication in the State under Regulation 79, if any, may be made on the buyer profile of the contracting entity concerned.

(8) The period in respect of which a periodic information notice applies shall be not more than 12 months from the date on which the notice is transmitted for publication.

(9) In the case of contracts for social and other specific services, the periodic indicative notice referred to in Regulation 100(1)(b) may apply for a period which is longer than 12 months.

*Notices on the existence of a qualification system*

75. (1) Where a contracting entity chooses to set up a qualification system in accordance with Regulation 84, the system shall be the subject of a notice which shall include the information specified in Schedule 7, indicating the purpose of the qualification system and how to have access to the rules concerning its operation.

(2) A contracting entity shall indicate the period of validity of the qualification system referred to in paragraph (1) in the notice on the existence of the system.

(3) A contracting entity shall notify the Publications Office of any change in the period of validity referred to in paragraph (2), using the following standard forms:

(a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems;

(b) where the system is terminated, a contract award notice referred to in Regulation 77.

*Contract notices*

76. (1) Contract notices may 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 the relevant part of Schedule 8 and shall be published in accordance with Regulation 78.

*Contract award notices*

77. (1) 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, a contracting entity shall send for publication a contract award notice on the results of the procurement procedure.

(2) Contract award notices under paragraph (1) shall contain the information specified in Schedule 9 and shall be sent for publication in accordance with Regulation 78.

(3) Where a call for competition for the contract concerned has been made in the form of a periodic indicative notice and a contracting entity has decided that it will not award further contracts during the period for which the periodic indicative notice applies, the relevant contract award notice shall contain a specific indication to that effect.

(4) In the case of a framework agreement concluded in accordance with Regulation 50, a contracting entity 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 entity shall send a contract award notice not later than 30 days after the award of each contract based on a dynamic purchasing system and may group those notices on a quarterly basis subject to the entity concerned sending those grouped notices not later than 30 days after the end of each quarter.

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

- (a) would impede law enforcement or would 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.

(7) In the case of contracts for research and development services, the information concerning the nature and quantity of the services may be limited to the following:

- (a) the indication “R & D services” where the contract has been awarded by a negotiated procedure without a call for competition in accordance with Regulation 49(1)(b);
- (b) information at least as detailed as was indicated in the notice that was used as a means of calling for competition.

*Form and manner of sending notices for publication at European Union level*

78. (1) The notices referred to in Regulations 74 to 77 shall include the information specified in Schedules 4, 7, 8 and 9 in the format of standard forms established by the Commission, including standard forms for corrigenda.

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

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

(b) published in accordance with Schedule 6 not later than 5 days after they are transmitted under subparagraph (a).

(3) A contracting entity 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 those dates where required.

(4) A confirmation of the publication of a notice under this Regulation given by the Publications Office under Article 71(5) of the Utilities Directive shall constitute proof of publication.

(5) A contracting entity may publish notices for public contracts that are not subject to the publication requirements specified in these Regulations provided that those notices are sent to the Publications Office by electronic means in accordance with the format and procedures for transmission referred to in this Regulation.

(6) The notices referred to in paragraph (1) 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 entity and that language version or those language versions shall constitute the sole authentic text or texts.

*Publication in the State*

79. (1) A notice referred to in Regulations 74 to 77 and the information contained therein shall not be published in the State or another Member State before the publication by the Publications Office in accordance with Article 71 of the Utilities Directive.

(2) Notwithstanding paragraph (1), publication of the notice in the State or another Member State may take place where a contracting entity has not received confirmation of publication of the notice from the Publications Office under Article 71(5) of the Utilities Directive within 48 hours after receipt of confirmation of the receipt of the notice in accordance with Article 71(5) of the Utilities Directive.

(3) When published in the State, a notice referred to in Regulations 74 to 77 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 periodic indicative 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*

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

- (a) date of publication of a notice in accordance with Regulation 78, or
  - (b) date on which an invitation to confirm interest is sent.
- (2) Where the means of calling for competition is a notice on the existence of a qualification system, the access referred to in paragraph (1) shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent.

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

(4) 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 39(3), a contracting entity may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by means other than electronic means in accordance with paragraphs (7) and (8).

(5) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because a contracting entity intends to apply Regulation 38(3), the contracting entity shall indicate in the notice or the invitation to confirm interest or, where the means of calling for competition is a notice on the existence of a qualification system, in the procurement documents which measures aimed at protecting the confidential nature of the information it requires and how access can be obtained to the documents concerned.

(6) In each of the cases referred to in paragraphs (4) and (5), the time limit for the submission of tenders shall be extended by 5 days, other than—

- (a) in cases of duly substantiated urgency referred to in Regulation 44(3), and
- (b) where the time limit is set by mutual agreement in accordance with Regulation 45(e) or 46(e).

(7) Provided that it has been requested in good time, a contracting entity shall supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents not later than 6 days before the time limit fixed for the receipt of tenders.

(8) In the case of an accelerated open procedure, the period referred to in paragraph (7) shall be 4 days.

*Invitations to candidates*

81. (1) In—

- (a) restricted procedures,
- (b) competitive dialogue procedures,
- (c) innovation partnerships, or
- (d) negotiated procedures with prior call for competition,

a contracting entity shall simultaneously and in writing invite the selected candidates to, as the case may be, submit their tenders, take part in the dialogue or negotiate.

(2) Where a periodic indicative notice is used as a call for competition in accordance with Regulation 43(4)(a), a contracting entity 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) include the information in Schedule 10, and
- (c) 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 80(4) or (5) and have not been made otherwise available.

*Informing applicants for qualification, candidates and tenderers*

82. (1) A contracting entity 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) On request from the candidate or tenderer concerned, the contracting entity shall as soon as possible, and in any event not later than 15 days from receipt of a written request, 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 67(10), 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, and
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

(3) A contracting entity may decide to withhold certain information referred to in this Regulation, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system, where the release of that 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.

(4) A contracting entity which establishes and operates a system of qualification shall inform applicants of their decision as to qualification within a period of 6 months of such establishment.

(5) Where a decision will take longer than 4 months from the presentation of an application, the contracting entity shall inform the applicant, not later than 2 months after the presentation of the application, of the reasons justifying the

longer period and of the date by which the application will be accepted or refused.

(6) Applicants whose qualification is refused shall be informed of the refusal decision and the reasons for that decision as soon as possible and, in any case, not later than 15 days after the date of the refusal decision.

(7) The reasons referred to in paragraph (6) shall be based on the criteria for qualification referred to in Regulation 84(3).

(8) A contracting entity which establishes and operates a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in Regulation 84(3).

(9) Any intention to bring the qualification of an economic operator to an end under paragraph (8) shall be notified in writing to the economic operator concerned not later than 15 days before the date on which the qualification is due to end, together with the reason or reasons justifying the termination of qualification.

#### Choice of participants and award of contracts

##### *General principles*

83. (1) For the purpose of selecting participants in their procurement procedures, the following shall apply:

- (a) a contracting entity which has provided rules and criteria for the exclusion of tenderers or candidates in accordance with Regulation 85(1) and (2) or 89(1) and (2) shall exclude economic operators identified in accordance with such rules and fulfilling such criteria;
- (b) a contracting entity shall select tenderers and candidates in accordance with the objective rules and criteria referred to in Regulations 85 and 89;
- (c) a contracting entity shall, where appropriate and in accordance with Regulation 85(3) and (4), reduce the number of candidates selected in accordance with paragraphs (a) and (b) in—
  - (i) restricted procedures,
  - (ii) negotiated procedures with a call for competition,
  - (iii) competitive dialogues, and
  - (iv) innovation partnerships.

(2) Where a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, a contracting entity shall—

- (a) qualify economic operators in accordance with Regulation 84,
  - (b) apply to such qualified economic operators those provisions of paragraph (1) that are relevant to—
    - (i) restricted or negotiated procedures,
    - (ii) competitive dialogues, or
    - (iii) innovation partnerships.
- (3) When—
- (a) selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership,
  - (b) reaching their decision as to qualification, or
  - (c) updating the rules and criteria, referred to in Regulation 84,
- a contracting entity shall not—
- (i) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others, or
  - (ii) require tests or evidence which would duplicate objective evidence already available.
- (4) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous, or where specific documents are missing, a contracting entity may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.
- (5) A contracting entity shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria specified in Regulations 91 and 93, taking into account Regulation 71.
- (6) A contracting entity may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with the applicable obligations referred to in Regulation 35(4).
- (7) In open procedures, a contracting entity may examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of Regulations 84 to 93 and this Regulation are observed, including the rule that the contract shall not be awarded to a tenderer who should have been excluded pursuant to Regulation 89 or who does not meet the selection criteria specified by the contracting entity in accordance with Regulation 85(1) and (2) and Regulation 89.



*Qualification systems*

84. (1) A contracting entity may establish and operate a system of qualification of economic operators, which may involve different qualification stages.

(2) A contracting entity that establishes or operates a system of qualification shall ensure that economic operators are at all times able to request qualification.

(3) In a system of qualification, a contracting entity shall establish objective rules and criteria for—

- (a) the exclusion and selection of economic operators requesting qualification, and
- (b) the operation of the qualification system, covering matters including—
  - (i) inscription in the system,
  - (ii) periodic updating of the qualifications, if any, and
  - (iii) the duration of the system.

(4) Where the rules and criteria referred to in paragraph (3) include technical specifications, Regulations 67 to 69 shall apply and these rules and criteria may be updated as required.

(5) The rules and criteria referred to in paragraph (3)—

- (a) shall be made available to economic operators upon request, and
- (b) shall be communicated to interested economic operators.

(6) Where a contracting entity considers that the qualification system of certain other contracting entities or other bodies meets its requirements, it shall communicate the names of those contracting entities and bodies to interested economic operators.

(7) A written record of qualified economic operators shall be kept and may be divided into categories according to type of contract for which the qualification is valid.

(8) When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services to which the qualification system applies shall be awarded by restricted procedures or negotiated procedures in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.

(9) Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification in accordance with the system shall be proportionate to the generated costs.

(10) In this Regulation, “system of qualification” means the system of qualification established and operated under paragraph (1).

*Criteria for qualitative selection*

85. (1) A contracting entity may establish objective rules and criteria for the exclusion and selection of tenderers or candidates.

(2) The rules and criteria referred to in paragraph (1) shall be available to interested economic operators.

(3) Where a contracting entity needs to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted and negotiated procedures, in competitive dialogues or in innovation partnerships establish objective rules and criteria that reflect that need to reduce the number of candidates that will be invited to tender or to negotiate.

(4) A contracting entity shall take account of the need to ensure adequate competition when selecting the number of candidates.

*Reliance on the capacities of other entities: economic operators requesting qualification*

86. (1) Where the objective rules and criteria for the exclusion and selection of economic operators requesting qualification in a qualification system established under Regulation 84 include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities.

(2) With regard to criteria relating to the educational and professional qualifications of a service provider or contractor or those of an undertaking’s managerial staff or to the relevant professional experience of the provider, contractor or undertaking, economic operators may only rely on the capacities of other entities where the latter 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 entity that those resources will be available to it throughout the period of the validity of the qualification system, including where required by the contracting entity producing a commitment by those other entities to that effect.

(4) Where, pursuant to Regulation 89, a contracting entity has referred to exclusion or selection criteria provided for under the Public Authority Contracts Regulations, the contracting entity concerned shall verify in accordance with paragraph (4) of that Regulation whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the contracting entity has referred, pursuant to Regulation 57 of the Public Authority Contracts Regulations and in such case—

- (a) the contracting entity shall require that the economic operator replaces an entity in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred, and
- (b) the contracting entity may require that the economic operator replaces an entity in respect of which there are non-compulsory grounds for exclusion to which the contracting entity has referred.

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

(6) A group of economic operators within the meaning of Regulation 36(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 to an economic operator.

*Reliance on the capacities of other entities: candidates and tenderers*

87. (1) Where the objective rules and criteria for the exclusion and selection of candidates and tenderers in—

- (a) open, restricted or negotiated procedures,
- (b) competitive dialogues, or
- (c) innovation partnerships,

include requirements relating to the economic and financial capacity of the economic operator, or to its technical and professional abilities, the economic operator may where necessary and for a particular contract rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities.

(2) With regard to criteria relating to the educational and professional qualifications of a service provider or contractor or those of an undertaking's managerial staff or to the relevant professional experience of the provider, contractor or undertaking, economic operators may only rely on the capacities of other entities where the latter 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 entity that the necessary resources will be available to it including, if required by the contracting entity, by delivering a commitment by those entities to that effect.

(4) Where, pursuant to Regulation 89, a contracting entity has referred to exclusion or selection criteria provided for under the Public Authority Contracts Regulations the contracting entity concerned shall verify in accordance with paragraph (3) of that Regulation whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or

whether there are grounds for exclusion, to which a contracting entity has referred, pursuant to Regulation 57 of the Public Authority Contracts Regulations and in such case—

- (a) the contracting entity shall require that the economic operator replaces an entity in respect of which there are compulsory grounds for exclusion to which the contracting entity has referred, and
- (b) the contracting entity may require that the economic operator replaces an entity in respect of which there are non-compulsory grounds for exclusion to which the contracting entity has referred.

(5) Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the contracting entity 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 36(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 to an economic operator.

*Reliance on the capacities of other entities: general*

88. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, a contracting entity 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 36(3), by a participant in that group.

*Use of exclusion grounds and selection criteria provided for under the Public Authority Contracts Regulations*

89. (1) The objective rules and criteria for the exclusion and selection of—

- (a) economic operators requesting qualification in a qualification system, and
- (b) candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships,

may include the exclusion grounds listed in Regulation 57 of the Public Authority Contracts Regulations on the terms and conditions specified in that Regulation.

(2) Where the contracting entity is a contracting authority within the meaning of the Public Authority Contracts Regulations, the rules and criteria referred to in paragraph (1) shall include the exclusion grounds listed in Regulation 57(1) to (3) of the Public Authority Contracts Regulations on the terms and conditions specified in that Regulation.

(3) The rules and criteria referred to in paragraph (1) may include the selection criteria specified in Regulation 58 of the Public Authority Contracts Regulations on the terms and conditions specified in that Regulation, including as regards the limits to requirements concerning yearly turnovers, as provided for under paragraph (9) of that Regulation.

(4) For the purposes of applying paragraphs (1) to (3), Regulations 59 to 61 of the Public Authority Contracts Regulations apply.

*Quality assurance standards and environmental management standards*

90. (1) A contracting entity shall, where it requires the production of certificates drawn up by independent bodies attesting that an 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 entity shall recognise equivalent certificates from bodies established in other Member States.

(3) A contracting entity 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, provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

(4) Where a contracting entity 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 as 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>43</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 entity shall accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

<sup>43</sup>OJ No. L 342, 22.12.2009, p.1

*Contract award criteria*

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

(2) The most economically advantageous tender from the point of view of the contracting entity shall be identified on the basis of the price or cost, using a cost-effectiveness approach, including life-cycle costing in accordance with Regulation 92, 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 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, and
- (c) after-sales service and technical assistance, delivery conditions (including delivery date, delivery process and delivery period or period of completion) and commitments with regard to parts and security of supply.

(4) The cost element under this Regulation may 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 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 such 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 entity 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 entity shall verify effectively the accuracy of the information and proof provided by the tenderers.

(9) A contracting entity 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, except 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 in paragraph (9) is not possible for objective reasons, the contracting entity shall indicate the criteria in descending order of importance.

#### *Life-cycle costing*

92. (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 entity 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, it 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 entity assesses the costs using a life-cycle costing approach, it shall indicate in the procurement documents—

- (a) the data to be provided by the tenderers, and
- (b) the method which the contracting entity will use to determine the life-cycle costs on the basis of those 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 12, that common method shall be applied for the assessment of life-cycle costs.

*Abnormally low tenders*

93. (1) A contracting entity shall require economic operators to explain the price or costs proposed in a tender where the tender 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, including 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 the applicable obligations referred to in Regulation 35(4);
- (e) compliance with obligations referred to in Regulation 96;
- (f) the possibility of the tenderer obtaining State aid.

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

(4) A contracting entity 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 matters referred to in paragraph (2).



(5) A contracting entity 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 35(4).

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

(a) after consultation with the tenderer concerned, and

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

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

Tenders comprising products originating in third countries and relations with those countries

*Tenders comprising products originating in third countries*

94. (1) This Regulation shall apply to tenders covering products originating in third countries with which the European Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for European Union undertakings to the markets of those third countries and shall be without prejudice to the obligations of the European Union or its Member States in respect of third countries.

(2) Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013<sup>44</sup>, exceeds 50% of the total value of the products constituting the tender.

(3) For the purposes of this Regulation, software used in telecommunications network equipment shall be regarded as products.

(4) Subject to paragraph (5), where 2 or more tenders are equivalent in the light of the contract award criteria specified in Regulation 91, preference shall be given to those tenders which may not be rejected pursuant to paragraph (2) or (3) and the prices of those tenders shall be considered equivalent for the purposes of this Regulation, if the price difference does not exceed 3%.

(5) A tender shall not be preferred to another pursuant to paragraph (4) where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in—

(a) incompatibility,

<sup>44</sup>OJ L269, 10.10.2013, p.1.

- (b) technical difficulties in operation and maintenance, or
- (c) disproportionate costs.

(6) For the purposes of this Regulation, those third countries to which the benefit of the Utilities Directive has been extended by a Council Decision shall not be taken into account for determining the proportion, referred to in paragraph (2), of products originating in third countries.

## Chapter 4

### *Contract performance*

#### *Conditions for performance of contracts*

95. (1) A contracting entity may lay down special conditions relating to the performance of a contract, provided that those conditions are—

- (a) linked to the subject matter of the contract within the meaning of Regulation 91(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*

96. (1) In procurement documents, a contracting entity 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 entity, after the award of the contract and no later than when the performance of the contract commences, the contracting entity shall require the main contractor to indicate to the contracting entity 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 entity shall require the main contractor to notify the contracting entity 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 (7)(b), the required information shall be accompanied by the subcontractors' self-declarations as provided for in Regulation 89(4) 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 entity 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,
- (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 35(4), contracting authorities may take appropriate measures by, amongst other things, verifying in accordance with Regulation 57 of the Public Authority Contracts Regulations whether there are grounds for exclusion of subcontractors under Regulation 64 of those Regulations.

(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 an 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*

97. (1) Contracts and framework agreements, including contracts awarded in accordance with Regulation 99, 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, provided that 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, software, services or installations procured under the initial procurement, and
    - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting entity;
  - (c) where the following conditions are fulfilled:
    - (i) the need for modification has been brought about by circumstances which a diligent contracting entity could not have foreseen;
    - (ii) the modification does not alter the overall nature of the contract;
  - (d) where a new contractor replaces the one to which the contracting entity 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, provided that 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 (6).
- (2) A contracting entity 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 Schedule 13, and
  - (b) be published in accordance with Regulation 78.
- (3) Furthermore, and without any need to verify that the conditions specified under paragraph (6)(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 modification is less than either of the following values:

- (a) the thresholds specified in Regulation 17;
- (b) 10% of the initial contract value for service and supply contracts or 15% of the initial contract value for works contracts.

(4) For the purposes of paragraph (3), 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.

(5) For the purpose of the calculation of the initial contract value referred to in paragraph (3)(b), the updated value shall be the reference value when the contract includes an indexation clause.

(6) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where the modification renders the contract or the framework agreement, as the case may be, materially different in character from the one initially concluded and, in any event, without prejudice to paragraphs (1) to (4) 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 the 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 entity had initially awarded the contract in cases other than those specified in paragraph (1)(d).

(7) A new procurement procedure in accordance with these Regulations shall be required for other modifications of the provisions of a works, supply or service contract or a framework agreement during its term in circumstances other than those provided for under paragraphs (1) to (4).

*Termination of contracts*

98. A contracting entity shall ensure that every contract which it awards contains provisions enabling it to terminate a works, supply or service contract during its term, where—

- (a) the contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to Regulation 97,
- (b) the contractor has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) and (2) of the Public Authority Contracts Regulations and should therefore have been excluded from the procurement procedure pursuant to Regulation 89(1), or
- (c) the 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*

99. Contracts for social and other specific services, listed in Annex XVII to the Utilities 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 17(c).

*Publication of notices*

100. (1) Subject to paragraph (2), a contracting entity intending to award a contract for the services referred to in Regulation 99 shall make known its intention—

- (a) by means of a contract notice,
- (b) by means of a periodic indicative notice, which shall—
  - (i) be published continuously,
  - (ii) refer specifically to the types of services that will be the subject of the contract to be awarded, and
  - (iii) indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing, or

(c) by means of a notice on the existence of a qualification system, which shall be published continuously.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior call for competition could have been used, in accordance with Regulation 49, for the award of a service contract.

(3) A contracting entity that has awarded a contract for the services referred to in Regulation 99 shall make known the results by means of a contract award notice.

(4) A contracting entity may group the notices referred to in paragraph (3) on a quarterly basis, in which case it shall send the grouped notices for publication in accordance with Regulation 78 not later than 30 days after the end of the quarter concerned.

(5) The notices referred to in paragraphs (1) and (3) shall contain the information referred to in the relevant part of Schedule 14 in accordance with the standard model notice established by the Commission.

(6) A contracting entity shall send the notices referred to in this Regulation for publication in accordance with Regulation 78.

#### *Principles of awarding contracts*

101. (1) A contracting entity 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 100, a contract notice or periodic indicative notice has been published in relation to a given procurement, the contracting entity shall conduct the procurement, and award any resulting contract, in conformity with the information contained in the relevant notice, as required by the Utilities Directive and these Regulations including—

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

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

(4) When awarding contracts under this Chapter, contracting entities shall apply Regulation 89, 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 subject to this Chapter, a contracting entity 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, contracting authorities may apply procedures for the purposes of this Regulation which correspond to procedures, techniques or other features provided for elsewhere in these Regulations.

*Reserved contracts for certain services*

102. (1) A contracting entity which is 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 99, 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) from 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 fulfil 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

### *Provisions governing design contests*

#### *Scope of Chapter*

103. This Chapter applies to the following:

- (a) design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract (net of VAT) including any possible prizes or payments to participants is equal to or greater than the threshold in Regulation 17(a);

- (b) design contests where the total amount of contest prizes and payments to participants including the value (net of VAT) of the service contract, which might subsequently be concluded following a negotiated procedure without prior call for competition in accordance with Regulation 49(1)(j) where the contracting entity does not exclude such an award in the contest notice, is equal to or greater than the threshold in Regulation 17(a).

*Notices*

104. (1) A contracting entity that intends to organise a design contest shall call for competition by means of a design contest notice.

(2) Where a contracting entity under paragraph (1) intends to award a subsequent service contract pursuant to Regulation 49(1)(j), this fact shall be indicated in the design contest notice.

(3) A contracting entity that has held a design contest shall make the results known by means of a notice.

(4) A call for competition under this Regulation shall include the information specified in Schedule 15 and the notice of the results of a design contest shall include the information specified in Schedule 16 in the format of standard forms established by the Commission.

(5) The notice of the results of a design contest under this Regulation shall be forwarded to the Publications Office not later than 30 days after the date of closure of the design contest.

(6) 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 economic operator, whether public or private, or
- (d) might prejudice fair competition between economic operators.

(7) Regulation 78(2) to (6) shall apply to notices relating to design contests.

*Organisation of design contests and the selection of participants and the jury*

105. (1) When organising design contests, contracting authorities shall apply procedures which are adapted to the provisions of Part 1 and this Chapter.

(2) The admission of participants to design contests 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 entity 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.

(5) The jury shall be composed exclusively of natural persons who are independent of participants in the contest.

(6) Where a particular professional qualification is required of participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

#### *Decisions of the jury*

106. (1) A jury, when carrying out its functions under these Regulations, shall—

- (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 on candidates.

(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 the 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*

107. (1) A contracting entity 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 supply contracts or service contracts, and
- (b) €10,000,000 in the case of works contracts.

(2) Subject to paragraph (3), a contracting entity shall grant access to the contracts referred to in paragraph (1).

(3) 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 law or law of the State on access to documents and data protection.

*Individual reports on procedures for the award of contracts*

108. (1) Contracting entities shall keep appropriate information on—

- (a) each contract or framework agreement under these Regulations, and
- (b) each time a dynamic purchasing system is established.

(2) The appropriate information referred to in paragraph (1) shall be sufficient to permit a contracting entity at a later date to justify decisions taken in connection with the following:

- (a) the qualification and selection of economic operators and the award of contracts;
- (b) the use of negotiated procedures without a call for competition by virtue of Regulation 49;
- (c) the non-application of Chapters 2 to 4 of Part 2 by virtue of the derogations provided for in Chapters 2 and 3 of Part 1;
- (d) where necessary, the reasons why means of communication, other than electronic means, for the electronic submission have been used.

(3) To the extent that the contract award notice drawn up pursuant to Regulation 77 or 100(3) and (4) contains the information required under paragraph (2), contracting entities may refer to that notice.

(4) Contracting entities shall document the progress of all procurement procedures, whether or not the procedures are conducted by electronic means and, to that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, including documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract.

(5) The documentation referred to in paragraph (4) shall be kept for at least 3 years from the date of award of the contract concerned.

*Reports*

109. (1) Where the Minister so requests, a contracting entity shall send a report on the information kept under Regulation 108(1), or its main elements, to—

- (a) the Minister, or

- (b) such body as the Minister may direct in connection with any function which that body exercises for the purposes of Article 99 of the Utilities Directive.

(2) Contracting entities 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.

(3) The report referred to in paragraph (2) shall—

- (a) be forwarded to the Commission by the Minister not 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*

110. (1) The Regulations of 2007 are revoked, other than in respect of—

- (a) a contract award procedure or design contest, referred to in Regulation 111(1), or
- (b) the award of a specific contract based on a framework agreement referred to in Regulation 111(3).

(2) Paragraph (1) is subject to Regulation 111(4).

#### *Transitional provisions*

111. (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 entity before 18 April 2016.

(2) For the purposes of paragraph (1), a contract award procedure or design contest has been commenced by a contracting entity before 18 April 2016 if, before that date—

- (a) the contracting entity has sent a notice to the Publications Office in accordance with the Regulations of 2007 in order to invite tenders or requests to be selected to tender for, or to negotiate in respect of, a proposed contract or framework agreement,

- (b) the contracting entity has published any form of advertisement seeking offers or expressions of interest in a proposed contract or framework agreement,
  - (c) the contracting entity has contacted any economic operator in order to—
    - (i) seek expressions of interest or offers in respect of a proposed 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 contract or framework agreement, or
  - (d) the contracting entity has sent a notice to the Official Journal in accordance with the Regulations of 2007 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 97 shall apply, and Regulation 42(3)(f) of the Regulations of 2007 shall 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 entity”, “design contest” and “framework agreement” have the same meanings, respectively, as in the Regulations of 2007.

## SCHEDULE 1

## Regulation 2

## List of activities for works contracts

In the event of any difference of interpretation between the CPV and the NACE, the CPV nomenclature will apply.

NACE <sup>45</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>45</sup>Council Regulation (EEC) No 3037/90 of 9 October 1990 (OJ L293, 24.10.1990, p.1.).

NACE <sup>45</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>45</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

NACE <sup>45</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.33	Plumbing	This class includes: — installation in buildings or other construction projects of: — plumbing and sanitary equipment, — gas fittings, — heating, ventilation, refrigeration or air-conditioning equipment and ducts, — sprinkler systems. This class excludes: — installation of electrical heating systems, see 45.31.	45330000
		45.34	Other building installation	This class includes: — installation of illumination and signalling systems for roads, railways, airports and harbours, — installation in buildings or other construction projects of fittings and fixtures n.e.c.	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	This class includes: — application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.	45410000
		45.42	Joinery installation	This class includes: — installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials, — interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: — laying of parquet and other wood floor coverings, see 45.43.	45420000
		45.43	Floor and wall covering	This class includes: — laying, tiling, hanging or fitting in buildings or other construction projects of: — ceramic, concrete or cut stone wall or floor tiles, — parquet and other wood floor coverings carpets and linoleum floor coverings, — including of rubber or plastic, — terrazzo, marble, granite or slate floor or wall coverings, — wallpaper.	45430000

NACE <sup>45</sup>					CPV code
SECTION F			CONSTRUCTION		
Division	Group	Class	Subject	Notes	
		45.44	Painting and glazing	This class includes: — 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,	45440000
		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 5(3)(c)(ii)*

## List of European Union legal acts referred to in Regulation 5(3)(c)(ii)

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria do not constitute “special or exclusive rights” within the meaning of Regulation 5(3). The following lists procedures, ensuring adequate prior transparency, for granting authorisations on the basis of other legal acts of the European Union which do not constitute “special or exclusive rights” within the meaning of Regulation 5(3):

- (a) granting authorisation to operate natural gas installations in accordance with the procedures specified in Article 4 of Directive 2009/73/EC;
- (b) authorisation or an invitation to tender for the construction of new electricity production installations in accordance with Directive 2009/72/EC;
- (c) the granting in accordance with the procedures specified in Article 9 of Directive 97/67/EC of authorisations in relation to a postal service which is not or shall not be reserved;
- (d) a procedure for granting an authorisation to carry on an activity involving the exploitation of hydrocarbons in accordance with Directive 94/22/EC;
- (e) public service contracts within the meaning of Regulation (EC) No 1370/2007 for the provision of public passenger transport services by bus, tramway, rail or metro which have been awarded on the basis of a competitive tendering procedure in accordance with Article 5(3) thereof, provided that its length is in conformity with Article 4(3) or (4) of that Regulation.

## SCHEDULE 3

*Regulation 39(11)*

Requirements relating to tools and devices for the electronic receipt of tenders, requests to participate, application for qualification as well as plans and projects in contests

Tools and devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests must guarantee, through technical means and appropriate procedures, at least that—

- (a) the exact time and date of the receipt of tenders, requests to participate, applications for qualification as well as 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, the procurement procedure or 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 those 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 4

*Regulations 44(2)(a), 74(2) and (5)(c) and 78(1)*

## Part 1 — Information to be included in a periodic indicative notice

*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 entity and, where different, of the service from which additional information may be obtained;
2. Main activity exercised;
3. (a) For supply contracts, the nature and quantity or value of the services or products to be supplied (CPV codes);  
  
(b) For works contracts, the nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work (CPV codes);  
  
(c) For service contracts, the intended total procurement in each of the service categories envisaged (CPV codes);
4. Date of dispatch of the notice or of dispatch of the notice of the publication of this notice on the buyer profile;
5. Any other relevant information.

*Additional information to be supplied where the notice is used as a means of calling for competition or permits the reduction of the time limits for the receipt of tenders*

6. A reference to the fact that interested economic operators shall advise the entity of their interest in the contract or contracts;
7. E-mail or internet address at which the specifications 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 specified in Regulation 80(1) to (6), an indication of how the procurement documents can be accessed;
8. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes;
9. Time limit for the receipt of applications for an invitation to tender or to negotiate;

10. Nature and quantity of the products to be supplied or general nature of the work or category of service and description, stating if one or more framework agreements are envisaged, including any options for further procurement and the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, an estimate of the timing of the subsequent calls for competition. State whether purchase, lease, rental or hire-purchase or any combination of those is involved;

11. Address of the main location of works in case of works or the address of the main place of delivery or performance in supplies and service; if the contract is divided into lots, this information shall be provided for each lot;

12. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting;

13. Address to which interested undertakings shall send their expressions of interest in writing;

14. Time limit for receipt of expressions of interest;

15. Language or languages authorised for the presentation of candidatures or tenders;

16. Economic and technical conditions, and financial and technical guarantees required of suppliers;

17. (a) Estimated date for initiating the procurement procedures in respect of the contract or contracts (if known);

(b) Type of procurement procedure (restricted procedures, whether or not involving a dynamic purchasing system, or negotiated procedures);

18. Where appropriate, particular conditions to which the performance of the contract is subject;

19. 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;

20. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, 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;

21. Where known, criteria referred to in Regulation 91 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be mentioned, where they do not appear in the specifications, or will not be indicated in the invitation to confirm interest referred to in Regulation 74(5)(b) or in the invitation tender or to negotiate.

Part 2 — Information to be included in notice of publication of a periodic indicative notice on a buyer profile not used as a means of calling for competition

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. CPV Codes.

4. Internet address of the 'buyer profile' (URL).

5. Date of dispatch of the notice of the publication of the prior information notice on the buyer profile.



## SCHEDULE 5

*Regulation 54(3)*

Information to be included in the procurement documents relating to electronic auctions

Where a contracting entity has decided to hold an electronic auction, the procurement documents shall include at least the following details:

- (a) the features whose values will be the subject of electronic auction, provided that those 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 6

*Regulations 39(10), 74(3)(b) and (4)(a) and 78(2)*

## Features concerning publication

## Part 1 — Publication of notices

1. The notices referred to in Regulations 74, 75, 76, 77, 100 and 104 shall be sent by a contracting entity to the Publications Office to be published in accordance with the following:

- (a) notices referred to in Regulations 74, 75, 76, 77, 100 and 104 shall be published by the Publications Office or by a contracting entity in the event of a periodic indicative notice published on a buyer profile in accordance with Regulation 74(1) to (4);
- (b) a contracting entity 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;
- (c) the Publications Office will give the contracting entity confirmation of the—
  - (i) receipt of the notice transmitted under Regulation 79(2), and
  - (ii) publication (including the date of publication) of the information contained in the notice referred to in clause (i).

## Part 2 — Publication of complementary or additional information

1. Except where otherwise provided for in Regulation 80(4) to (6), a contracting entity shall publish the procurement documents in their entirety on the internet.

2. The buyer profile may include periodic indicative notices as referred to in Regulation 74(1), 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 periodic indicative notices used as a means of calling for competition, which are published in the State pursuant to Regulation 79.

## Part 3 — Format and procedures for the electronic transmission of notices

The format and procedure for sending notices electronically as established by the Commission are made accessible at the internet address <http://simap.eu.int>.

## SCHEDULE 7

*Regulations 75 and 78(1)*

Information to be included in a notice on the existence of a qualification system

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Purpose of the qualification system (description of the products, services or works or categories thereof to be procured through the system — CPV codes), main location of works in case of works or main place of delivery or performance in supplies and service.
5. Conditions to be fulfilled by the economic operators in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of those conditions and verification methods is voluminous and based on documents available to interested economic operators, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
6. Period of validity of the qualification system and the formalities for its renewal.
7. Reference to the fact that the notice acts as the call for competition.
8. Address where further information and documentation concerning the qualification system can be obtained (where different from the addresses referred to in paragraph 1).
9. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, 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.
10. Where known, criteria referred to in Regulation 91 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria, shall be mentioned where they do not appear in

the specifications or will not be indicated in the invitation to tender or to negotiate.

11. Where appropriate, indication whether—
  - (a) electronic submission of tenders or requests to participate will be required and accepted,
  - (b) electronic ordering will be used,
  - (c) electronic invoicing will be used, or
  - (d) electronic payment will be accepted.
12. Any other relevant information.

## SCHEDULE 8

*Regulations 76(2) and 78(1)*

## Information to be included in contract notices

## Part 1 — Open procedures

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.

4. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement or a dynamic purchasing system), description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.

5. Address for the main location of works in case of works or address for the main place of delivery or performance in supplies and service.

6. For supplies and works:

- (a) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, where possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
- (b) indication of whether the suppliers may tender for some or all the products required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

- (c) for works contracts: information concerning the purpose of the work or the contract where the latter involves the drawing-up of projects.

7. For services:

- (a) the nature and quantity of the services to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of

renewals, if any. In the case of recurring contracts, where possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;

- (b) indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
- (c) reference of the law, regulation or administrative provision;
- (d) indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
- (e) indication of whether service providers may tender for a part of the services concerned.

8. Where known, indication of whether authorisation to submit variants exists or not.

9. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.

10. E-mail 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 specified in Regulation 80(4) to (6), an indication of how the procurement documents can be accessed.

- 11. (a) Final date for receipt of tenders or indicative tenders where a dynamic purchasing system is introduced;
- (b) Address to which they shall be sent;
- (c) Language or languages in which they shall be drawn up.
- 12. (a) Where applicable, the persons authorised to be present at the opening of tenders;
- (b) Date, time and place of such opening.

13. Where applicable, any deposits and guarantees required.

14. Main terms concerning financing and payment or references to the provisions in which those are contained.

15. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

16. Minimum economic and technical conditions required of the economic operator to whom the contract is awarded.

17. Period during which the tenderer is bound to keep open his tender.
18. Where appropriate, particular conditions to which the performance of the contract is subject.
19. Criteria referred to in Regulation 91 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications.
20. Where appropriate, the date and reference of publication in the Official Journal of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
21. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, or, if need be, the name, address, telephone number, fax number and e-mail address of the department from which this information may be obtained.
22. Date of dispatch of the notice by the contracting entity.
23. Any other relevant information.

#### Part 2 — Restricted procedures

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement), description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.
5. Address for the main location of works in case of works or address for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the

number of renewals, if any. In the case of recurring contracts, where possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);

- (b) indication of whether the suppliers may tender for some or all the products required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;

- (c) information concerning the purpose of the work or the contract where the latter involves the drawing-up of projects.

7. For services:

- (a) the nature and quantity of the products to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, where possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
- (b) indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
- (c) reference of the law, regulation or administrative provision;
- (d) indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
- (e) indication of whether service providers may tender for a part of the services concerned.

8. Where known, indication of whether authorisation to submit variants exists or not.

9. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.

10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.

- 11. (a) Final date for receipt of requests to participate;
- (b) Address to which they shall be sent;
- (c) Language or languages in which they shall be drawn up.

12. Final date for dispatch of invitation to tender.



13. Where applicable, any deposits and guarantees required.
14. Main terms concerning financing and payment or references to the provisions in which those are contained.
15. Information concerning the economic operator's position and the minimum economic and technical conditions required of the operator.
16. Criteria referred to in Regulation 91 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the date and reference of publication in the Official Journal of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, 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.
20. Date of dispatch of the notice by the contracting entity.
21. Any other relevant information.

### Part 3 — Negotiated procedures

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
4. Nature of the contract (supplies, works or services, where appropriate, state if it is a framework agreement), description (CPV codes). Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of those.

5. Address for the main location of works in case of works or address for the main place of delivery or performance in supplies and service.
6. For supplies and works:
  - (a) nature and quantity of the products to be supplied (CPV codes), including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, where possible, an estimate of the timing of the subsequent calls for competition for the products to be procured or the nature and extent of the services to be provided and general nature of the work (CPV codes);
  - (b) indication of whether the suppliers may tender for some or all the products required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
  - (c) for works contracts, information concerning the purpose of the work or the contract where the latter involves the drawing-up of projects.
7. For services:
  - (a) the nature and quantity of the services to be supplied, including any options for further procurement and, if possible, the estimated time available for exercising those options as well as the number of renewals, if any. In the case of recurring contracts, where possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
  - (b) indication of whether the performance of the service is reserved by law, regulation or administrative provision to a particular profession;
  - (c) reference of the law, regulation or administrative provision;
  - (d) indication of whether legal persons shall indicate the names and professional qualifications of the staff to be responsible for the performance of the service;
  - (e) indication of whether service providers may tender for a part of the services concerned.
8. Where known, indication of whether authorisation to submit variants exists or not.
9. Time limits for delivery or completion or duration of the contract and, as far as possible, for starting.

10. Where appropriate, the legal form to be taken by the grouping of economic operators to whom the contract is awarded.
11.
  - (a) Final date for receipt of requests to participate;
  - (b) Address to which they shall be sent;
  - (c) Language or languages in which they shall be drawn up.
12. Where applicable, any deposits and guarantees required.
13. Main terms concerning financing and payment or references to the provisions in which those are contained.
14. Information concerning the economic operator's position and the minimum economic and technical conditions required of the operator.
15. Criteria referred to in Regulation 91 to be used for award of the contract. Except where the most economically advantageous tender is identified on the basis of price alone, criteria representing the most economically advantageous tender as well as their weighting or, where appropriate, the order of importance of those criteria shall be indicated where they do not appear in the specifications or will not be indicated in the invitation to negotiate.
16. Where appropriate, the names and addresses of the economic operators already selected by the contracting entity.
17. Where appropriate, particular conditions to which the performance of the contract is subject.
18. Where appropriate, the date and reference of publication in the Official Journal of the periodic information notice or of the notice of the publication of this notice on the buyer profile to which the contract refers.
19. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning time limits for lodging appeals, 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.
20. Date of dispatch of the notice by the contracting entity.
21. Any other relevant information.

## SCHEDULE 9

*Regulations 77(2) and 78(1)*

Information to be included in the contract award notice

## Part 1 — Information for publication in the Official Journal of the European Union

Information in paragraphs 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.

2. Main activity exercised.

3. Nature of the contract (supplies, works or services and CPV codes; where appropriate state if it is a framework agreement).

4. At least a summary indication of the nature and quantity of the products, works or services provided.

5. (a) Form of the call for competition (notice on the existence of a system of qualification; periodic notice; call for tenders);

(b) The date and reference of publication of the notice in the Official Journal;

(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Regulation 49.

6. Procurement procedure (open, restricted or negotiated).

7. Number of tenders received, specifying—

(a) the number of tenders received from economic operators which are an SME,

(b) the number of tenders received from abroad, and

(c) the number of tenders received electronically.

In the case of multiple awards (lots, multiple framework agreements), this information shall be given for each award.

8. Date of the conclusion of the contract or of the framework agreement concerned following the decision to award or conclude it.

9. Price paid for bargain purchases pursuant to Regulation 49(1)(h).
10. For each award, name, address, telephone, fax number, e-mail address and internet address of each successful tenderer including—
  - (i) information whether the successful tenderer is an SME, and
  - (ii) information whether the contract was awarded to a consortium.
11. State, where appropriate, whether the contract has been, or may be, sub-contracted.
12. Price paid or the prices of the highest and lowest tenders taken into account in the award of the contract.
13. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, 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.
14. The following optional information:
  - (a) the value and share of the contract which has been or may be sub-contracted to third parties;
  - (b) the award criteria.

#### Part 2 — Information not intended for publication

1. Number of contracts awarded (where an award has been split between several suppliers).
2. Value of each contract awarded.
3. Country of origin of the product or service (European Union origin or non-European Union origin and, if the latter, broken down by third country).
4. Which award criteria were used?
5. Was the contract awarded to a tenderer who submitted a variant, in accordance with Regulation 71(1) to (4)?
6. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Regulation 93?
7. Date of transmission of the notice by the contracting entity.

## SCHEDULE 10

*Regulation 81(3)(b)*

Contents of invitation to submit a tender, participate in dialogue, to negotiate or to confirm interest under Regulation 81

1. The invitation to submit a tender, to participate in the dialogue or to negotiate provided for under Regulation 81 shall contain the following information:

- (a) the final date for receipt of tenders, the address to which they are to be sent, and the language or languages in which they are to be drawn up;

In the case of contracts awarded through a competitive dialogue or an innovation partnership, this information shall not appear in the invitation to negotiate but it shall appear in the invitation to submit a tender.

- (b) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
- (c) a reference to any published call for competition;
- (d) an indication of any documents to be attached;
- (e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;
- (f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

2. When a call for competition is made by means of a periodic indicative notice, a contracting entity 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 and 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 those 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: whether restricted or negotiated;

- (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 entity;
- (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 those;
- (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 indicative notice or the specifications or in the invitation to tender or to negotiate.

## SCHEDULE 11

*Regulation 35(4)(a)*

List of international, social and environmental conventions referred to in Regulation 35(4)(a)

1. ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise;
2. ILO Convention 98 on the Right to Organise and Collective Bargaining;
3. ILO Convention 29 on Forced Labour;
4. ILO Convention 105 on the Abolition of Forced Labour;
5. ILO Convention 138 on Minimum Age;
6. ILO Convention 111 on Discrimination (Employment and Occupation);
7. ILO Convention 100 on Equal Remuneration;
8. ILO Convention 182 on Worst Forms of Child Labour;
9. Vienna Convention for the protection of the Ozone Layer and its Montreal Protocol on substances that deplete the Ozone Layer;
10. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);
11. Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention);
12. 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 12

*Regulation 92(5)*

List of European Union legal acts referred to in Regulation 92(5)

1. Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009<sup>46</sup>;

<sup>46</sup>OJ L120, 15.05.2009, p.5.

## SCHEDULE 13

*Regulation 97(2)(a)*

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 entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. CPV codes.
4. Address of the main location of works in case of works or the address of the main place of delivery or performance in supplies and service.
5. 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.
6. Where applicable, increase in price caused by the modification.
7. Description of the circumstances which have rendered necessary the modification.
8. Date of contract award decision.
9. Where applicable, the name, address, telephone, fax number, e-mail address and internet address of the new economic operator or operators.
10. Information whether the contract is related to a project or programme financed by European Union funds.
11. 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 e-mail address of the service from which this information may be obtained.

## SCHEDULE 14

*Regulation 100(5)*

Information to be included in notices concerning contracts for social and other specific services

## Part 1 — Contract notice

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Description of the services or categories thereof and where applicable, incidental works and supplies to be procured, including an indication of the quantities or values involved, including CPV codes.
4. Address of the main place of performance of the services.
5. Where appropriate, state whether the contract is reserved for sheltered workshops or whether its performance is reserved in the context of sheltered employment programmes.
6. Main conditions to be fulfilled by the economic operators in view of their participation, or, where appropriate, the electronic address where detailed information may be obtained.
7. Time limit for contacting the contracting entity in view of participation.
8. Any other relevant information.

## Part 2 — Periodic indicative notice

1. Name, company number and registered business name (if any), address, e-mail and internet address of the contracting entity.
2. Brief description of the contract in question including CPV codes.
3. As far as already known, the following:
  - (a) address of the main location of works in case of works or the address of 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—

- (i) where appropriate, indication whether the contract is restricted to sheltered workshops, or whether its execution is restricted to the framework of protected job programmes, and
  - (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 entity 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 3 — Notice on the existence of a qualification system

1. Name, company number and registered business name (if any), address, e-mail and internet address of the contracting entity.
2. Brief description of the contract in question including CPV codes.
3. As far as already known the following:
  - (a) address of the main location of works in case of works or the address of 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—
    - (i) where appropriate, indication whether the contract is restricted to a sheltered workshop, or whether its execution is restricted to the framework of protected job programmes, and
    - (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 entity 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.
5. Period of validity of the qualification system and the formalities for its renewal.

Part 4 — Contract award notice

1. Name, company number and registered business name (if any), address, e-mail and internet address of the contracting entity.
2. Main activity exercised.
3. At least a summary indication of the nature and quantity of the services and where applicable, incidental works and supplies provided.
4. Reference of publication of the notice in the Official Journal.
5. Number of tenders received.
6. Name and address of the chosen economic operator or operators.
7. Any other relevant information.

## SCHEDULE 15

*Regulation 104(4)*

## Information to be included in the design contest notice

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Project description (CPV codes).
4. Nature of the contest, including whether open or restricted.
5. In the case of open contests, the final date for receipt of projects.
6. In the case of restricted contests, the following information:
  - (a) the number of participants envisaged, or range;
  - (b) where applicable, the names of participants already selected;
  - (c) criteria for the selection of participants;
  - (d) final date for receipt of requests to participate.
7. Where applicable, indication of whether participation is reserved to a particular profession.
8. Criteria to be applied in the evaluation of projects.
9. Where applicable, names of the selected members of the jury.
10. Indication of whether the decision of the jury is binding on the authority.
11. Where applicable, number and value of prizes.
12. Where applicable, details of payments to all participants.
13. Indication of whether the prize-winners are permitted any follow-up contracts.
14. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, 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.
15. Date of dispatch of the notice.
16. Any other relevant information.

## SCHEDULE 16

*Regulation 104(4)*

## Information to be included in the results of design contest notice

1. Name, company number and registered business name (if any), address, telephone, fax number, e-mail and internet address of the contracting entity and, where different, of the service from which additional information may be obtained.
2. Main activity exercised.
3. Project description (CPV codes).
4. Total number of participants.
5. Number of foreign participants.
6. Winner of the contest.
7. Where applicable, the prize.
8. Other information.
9. Reference of the design contest notice.
10. Name and address of the body responsible for the appeal and, where appropriate, mediation procedures. Precise information concerning the time limit for lodging appeals, 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.
11. Date of dispatch of the notice.



GIVEN under the Official Seal of the Minister for Public Expenditure and Reform,  
5 May 2016.

BRENDAN HOWLIN,  
Minister for Public Expenditure and Reform.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
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