

**S.I. No. 329 of 2006**

**Regulations**

entitled

**European Communities (Award of Public Authorities'  
Contracts) Regulations 2006**

---

**PUBLISHED BY THE STATIONARY OFFICE  
DUBLIN**

**To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE  
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,  
Or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
51 ST. STEPHEN'S GREEN, DUBLIN 2,  
(Tel: 01-6476834/35/36/37; Fax: 01 6476843)  
or through any bookseller.**

Made by the Minister for Finance

PRN: A6/1042

Price. €12.95

# **European Communities (Award of Public Authorities' Contracts) Regulations 2006**

## ARRANGEMENT OF REGULATIONS

### *Regulation*

#### PART 1 PRELIMINARY PROVISIONS

1. Citation and commencement
2. Object of these Regulations
3. Definitions

#### PART 2 SCOPE OF THESE REGULATIONS

4. Threshold amounts for public contracts
5. Contracts subsidised by a contracting authority by more than 50 per cent
6. Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems
7. Application of Regulations to contracts for supply of defence equipment
8. Public contracts and framework agreements awarded by central purchasing bodies
9. Regulations not to apply to contracts relating to the water, energy, transport and postal services sectors

10. Regulations not to apply to certain public contracts relating to telecommunications
11. Regulations not to apply to certain secret contracts and contracts requiring special security measures
12. Regulations not to apply to contracts awarded in accordance with international rules
13. Specific exclusions from these Regulations
14. Regulations not to apply to public service concession contracts
15. Regulations not to apply to service contracts awarded on the basis of an exclusive right
16. Special arrangements for contracts involving sheltered workshops and sheltered employment programs

### PART 3 PRINCIPLES AND RULES FOR AWARD OF PUBLIC SECTOR CONTRACTS

17. Principles for awarding contracts
18. Granting special or exclusive rights: non-discrimination clause
19. Rules relating to acceptance and rejection of economic operators

### PART 4 ARRANGEMENTS FOR PUBLIC SERVICE CONTRACTS

20. Service contracts listed in Part A of Schedule 2
21. Service contracts listed in Part B of Schedule 2
22. Mixed contracts (including services listed in Part A of Schedule 2 and services listed in Part B of that Schedule)

### PART 5 SPECIFIC RULES GOVERNING SPECIFICATIONS AND CONTRACT DOCUMENTS

23. Technical specifications
24. Tenderers may submit variants in certain cases
25. Contracting authority entitled to ask about tenderer's intention to subcontract
26. Conditions for performance of contracts
27. Obligations relating to taxes, environmental protection, employment protection provisions and working conditions

## PART 6 PROCEDURES FOR AWARD OF PUBLIC CONTRACTS

28. Open, restricted and negotiated procedures to be used
29. Competitive dialogue procedure
30. What happens after a competitive dialogue ends
31. When public contract may be awarded by means of negotiated procedure with prior publication of contract notice
32. When public contract may be awarded by negotiated procedure without prior publication of contract notice
33. Contracting party may enter into framework agreements
34. Framework agreement entered into with a single economic operator
35. Framework agreement entered into with several economic operators
36. Dynamic purchasing systems
37. Public works contracts: special rules for subsidised housing schemes

## PART 7 RULES ON ADVERTISING AND TRANSPARENCY

### CHAPTER 1 *Publication of notices*

38. Prior information notices where the estimated value of contracts etc. exceed specified amount
39. Publication of notices: public contracts involving open, restricted or negotiated procedure or competitive dialogue
40. Publication of notices: public contracts based on dynamic purchasing system
41. Contracting authority to send notice of the result of award procedure on entering into public contract or framework agreement
42. Contracting authority to send contract award notice to European Commission on entering into public contract based on dynamic purchasing system
43. Special provision applicable to public contracts for certain services
44. Contracting authority may withhold certain information from publication
45. Publication of notices for the purposes of these Regulations

## CHAPTER 2 *Deadlines*

46. Deadlines for receipt of tenders and requests to participate
47. Use of open procedure: specifications, additional documents and information

## CHAPTER 3 *Information content and means of transmission*

48. Invitations to submit a tender or to participate in dialogue or negotiation
49. How candidates and tenderers are to be informed

## CHAPTER 4 *Communications*

50. Rules applicable to communication of information relating to public contracts

## CHAPTER 5 *Reports*

51. Content of reports

PART 8 HOW THE AWARD PROCEDURE IS TO BE CONDUCTED

CHAPTER 1 *General provisions*

52. Procedure for verifying the suitability of participants, for choosing participants and for awarding public contracts

CHAPTER 2 *Criteria for qualitative selection*

53. Exclusion of certain persons from being considered for awards of public contracts

54. Suitability to pursue the professional activity

55. Economic and financial standing

56. Contracting authority to assess technical and professional ability of economic operators

57. Evidence that an economic operator may provide in relation to a public works contract

58. Evidence that an economic operator may provide in relation to a public supplies contract

59. Evidence that an economic operator may provide in relation to a public service contract

60. Economic operator may be required to produce certificate of payment of outstanding social security contributions and taxes

61. Official lists of registered economic operators and certification of economic operators

62. Economic operator may rely on capacities of other economic operators

63. Quality assurance standards

64. Environmental management standards

65. Additional documentation and information

CHAPTER 3 *Awarding public contracts*

66. Criteria for the award of a public contract
67. Conditions under which contracting authority may hold an electronic auction
68. Procedure for closing an electronic auction
69. Contracting authority may reject abnormally low tenders

## PART 9 RULES ON PUBLIC WORKS CONCESSION CONTRACTS

### CHAPTER 1 *Rules governing public works concessions*

70. Public works concession contracts to which this chapter applies
71. Publication of notices concerning public works concessions
72. Deadline for public works concession contracts offered by a contracting authority
73. Powers of contracting authority with respect to subcontracting under a public works concession contract
74. Awarding of additional works to the concessionaire

### CHAPTER 2 *Rules about public works concession contracts awarded by concessionaires that are contracting authorities*

75. Rules applicable to public works concession contracts

### CHAPTER 3 *Rules applicable to contracts awarded by concessionaires that are not contracting authorities*

76. Advertising rules: threshold and exceptions
77. Certain concessionaires to publish a notice
78. Deadline for the receipt of requests to participate and receipt of tenders

## PART 10 RULES GOVERNING DESIGN CONTESTS

79. Interpretation: Part 10
80. Application of this Part
81. General duty of contracting authority that holds a design contest
82. In what circumstances a design contest can be organised
83. Contracting authority to publish contest notice before holding a design contest
84. How information about design contests may be communicated
85. Selection of competitors
86. Composition of the jury
87. Deliberations and decisions of juries

## PART 11 STATISTICAL OBLIGATIONS, EXECUTIVE POWERS AND FINAL PROVISIONS

88. Statistical obligations
89. Contents of statistical reports
90. Revision of the thresholds and values set out in the Public Authorities Contracts Directive
91. Amendments to the Public Authorities Contracts Directive
92. Compliance mechanisms
93. Revocations
94. Savings and transitional provisions

## SCHEDULE 1 LIST OF CIVIL ENGINEERING AND OTHER ACTIVITIES

## SCHEDULE 2 LIST OF SERVICES



SCHEDULE 3 DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS

SCHEDULE 4 REQUIREMENTS RELATING TO DEVICES FOR ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AND PLANS AND PROJECTS IN CONTESTS

SCHEDULE 5 INFORMATION TO BE INCLUDED IN NOTICES

SCHEDULE 6 FEATURES CONCERNING PUBLICATION

## **EUROPEAN COMMUNITIES (AWARD OF PUBLIC AUTHORITIES' CONTRACTS) REGULATIONS 2006**

I, Brian Cowen, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving effect to Directive 2004/18/EC of the European Parliament and of the Council, dated 31 March 2004, (as amended by Directive 2005/51/EC dated 7 September 2005 and Directive 2005/75/EC dated 16 November 2005) hereby make the following Regulations:

### **PART 1**

#### **PRELIMINARY PROVISIONS**

##### **Citation and commencement**

1. (1) These Regulations may be cited as the European Communities (Award of Public Authorities' Contracts) Regulations 2006.

(2) These Regulations come into operation on 22 June 2006.

##### **Object of these Regulations**

2. The object of these Regulations is to give effect to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts (as amended by

Directive 2005/51/EC dated 7 September 2005 and Directive 2005/75/EC dated 16 November 2005).

## **Definitions**

**3.** (1) In these Regulations, unless the context otherwise requires—

“accelerated procedure” means the procedure set out in Regulation 46(10) and (11);

“Advisory Committee” means the Advisory Committee for Public Contracts set up by Article 1 of Decision 71/306/EEC;

“assess” includes examine;

“associated document”, in relation to a public contract, includes a contract notice, contract document or additional document that is associated with the contract;

“broadcasting” means broadcasting by radio or television transmission;

“business day” means a day other than a Saturday, Sunday or a public holiday;

“candidate” means an economic operator that has sought an invitation to participate in a restricted or negotiated procedure or a competitive dialogue;

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

“central purchasing body” means a contracting authority that—

- (a) acquires products or services, or products and services, for one or more contracting authorities, or
- (b) awards public contracts or enters into framework agreements for carrying out works, or supplying products or services, for one or more such authorities;

“certified economic operator” means an economic operator that holds a certificate of competency issued by a recognised certification body authorised by or under a law in force in a Member State to issue such certificates to economic operators that carry out works, or supply products or services;

“competent authority”—

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

“competitive dialogue” means a procedure, conducted by a contracting authority—

- (a) in which—
  - (i) any economic operator may ask to participate, and
  - (ii) the authority holds a dialogue with those economic operators that are admitted to the procedure as candidates with a view to producing one or more alternatives capable of meeting the authority’s requirements, and
- (b) on the basis of which the candidates chosen are invited to tender;

“concessionaire”, in relation to a public works concession contract, means the person to whom the contract is awarded;

“contract award notice” means a notice by which a contracting authority notifies the award of a public contract;

“contracting authority” means the State, a local authority or a public authority, or an association comprising one or more local authorities or public authorities, or local authorities and public authorities;

“contractor” means a person or group of persons who, on the market, offers to carry out works or a particular work;

“corruption” has the meaning given by the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union promulgated by Council Act of 26 May 1997;

“CPC” means Central Product Classification;<sup>1</sup>

“CPV” means the Common Procurement Vocabulary reference nomenclature applicable to public

---

<sup>1</sup> **Note:** This is a United Nations classification.

contracts as adopted by European Regulation 2195/2002/EC, while at the same time ensuring equivalence with the other existing nomenclatures;

“design contest”, in relation to a contracting authority, means a procedure to enable the authority to acquire (in areas such as town and country planning, architecture and engineering, and data processing) a plan or design selected by a jury after it has been put out to competition, either with or without the award of a prize;

“dynamic purchasing system” means a completely electronic process which is open throughout its validity to any economic operator that

- (a) (i) satisfies the relevant selection criteria, and
- (ii) has submitted an indicative tender that complies with the relevant specifications and
- (b) is designed for the purchase by a contracting authority of commonly used items generally available on the market;

“economic operator” means a person, or a group of persons, that carries out works, or supplies products or services;

“electronic auction” means a repetitive process that—

- (a) involves the use of an electronic device whereby tenderers present new prices (revised downwards), or new values concerning certain elements of tenders, or both, occurring after an initial full evaluation of the tenders, and
- (b) enables the revised tenders to be ranked by the use of automatic evaluation methods;

“electronic means” means making use of electronic equipment to process (including by compressing digitally) and store data that is sent and received by wire, radio, optical means or other electromagnetic process;

“framework agreement” means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a specified period (including the terms relating to price and, where appropriate, the quantity of works to be carried out, or the products or services to be supplied);

“fraud” has the meaning given by the Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities’ financial interests;

“Government Procurement Agreement” means the Agreement on Government Procurement entered into in the framework of the Uruguay Round of Multilateral Trade Negotiations;

“land” includes all buildings and structures constructed on land;

“local authority”, in relation to the State, has the same meaning as in the Local Government Act 2001;

“Minister” means the Minister for Finance;

“money laundering” has the same meaning as in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on preventing the use of the financial system for money laundering;

“NACE” means Classification of Economic Activities in the European Community;

“negotiated procedure”, in relation to a proposed public contract, means a procedure under which the relevant contracting authority consults the economic operators of its choice and negotiates the terms of contract with one or more of those operators;

“network termination point” means all physical connections and their technical access specifications that form part of the public telecommunications network and are necessary for access to, and efficient communication through, that network;

“Office for Official EC Publications” means the Office for Official Publications of the European Communities;

“open procedure” means a procedure under which any interested economic operator may submit a tender;

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

“prescribed criminal organisation” means a criminal organisation within the meaning of Article 1 of Council Joint Action 98/733/JHA;

“prescribed service” means a service of a kind listed in Schedule 2;

“product” means movable personal property of any kind and, in particular, includes document, vessel and aircraft;

“Public Authorities Contracts Directive” means Directive 2004/18/EC, dated 31 March 2004, of the European Parliament and of the Council;

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

- (a) is financed wholly or substantially by the State, a local or regional authority or another public authority; or
- (b) is subject to management supervision by such a body, or
- (c) has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, a local or regional authority or another public authority,

and, in particular, includes any body listed in Annex III to the Public Authorities Contracts Directive;

“public contract” means a public works contract, a public supply contract or a public service contract;

“public service contract” means a public contract (other than a public works or public supply contract) whose object is the supply of a service, and includes—

- (a) a public contract whose object is the supply of both a prescribed service and a product provided the value of the service exceeds that of the product, and
- (b) a public contract whose object is the supply of a prescribed service and involves an activity of a kind listed in Schedule 1 or 2 provided the activity is incidental to the main object of the contract;

“public supply contract” means a public contract (other than a public works contract) whose object is the purchase, lease, hire or hire purchase of a product, and includes such a contract that, incidentally, also covers siting or installation operations or the supply of a service;

“public telecommunications network” means the public telecommunications infrastructure enabling signals to be conveyed between defined network termination points by cable, microwave or optical or other electromagnetic means;

“public telecommunications service” means a telecommunications service the provision of which the Member States have specifically assigned to one or more telecommunications entities;

“Public Utilities Contracts Directive” means Directive 2004/17/EC, dated 31 March 2004, of the European Parliament and of the Council;

“public works concession contract” means a contract of the same kind as a public works contract

except that the consideration to be given for the work to be carried out under the contract consists only of—

- (a) the right to exploit the work, or
- (b) that right together with the payment of money;

“public works contract” means a public contract whose object is the carrying out, or the design and carrying out, of—

- (a) works related to one or more of the activities listed in Schedule 1, or
- (b) a work, or the realisation (by whatever means), of a work corresponding to requirements specified by the contracting authority concerned,

and includes such a contract that, incidentally, also provides for the supply of a product or service;

“restricted procedure” means a procedure under which—

- (a) any economic operator may ask to participate, and
- (b) only those economic operators invited by the relevant contracting authority may submit a tender;

“the Rome Treaty” means the Rome Treaty establishing the European Community, as amended by subsequent European Treaties;

“service concession contract” means a contract of the same kind as a public service contract except that the consideration to be given for supplying the relevant service consists only of—

- (a) the right to exploit the service, or
- (b) that right together with the payment of money;

“supplier” means a person or group of persons who, on the market, offers to supply one or more products or services, or products and services;

“technical specifications” has the meaning given by Schedule 3;

“telecommunications service” means a service the provision of which consists wholly or partly in sending and routing signals on a public telecommunications network by means of telecommunications processes, but does not include a broadcasting or television service;

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

“works” or “work” means the outcome of building or civil engineering works that, when taken as a



whole, is sufficient of itself to fulfil an economic or technical function;

“writing” means any expression consisting of words or figures that can be read, reproduced and subsequently communicated, and includes information that is sent or stored by electronic means.

(2) If interpretations of the scope of these Regulations vary because of possible differences between the CPV and NACE nomenclatures listed in Schedule 1, or between the CPV and CPC (provisional version) nomenclatures listed in Schedule 2, the NACE or the CPC nomenclature respectively take precedence.

(3) If a word or expression used in these Regulations is defined in the Public Authorities Contracts Directive, then, unless the context otherwise requires or these Regulations otherwise provide, the word or expression has the same meaning as it has in that Directive.

(4) If an Article or Annex of a European Commission Directive referred to in these Regulations is amended, the reference is to the Article or Annex as amended.

(5) Notes appearing in the text are provided for information only and do not form part of these Regulations.

## PART 2

### SCOPE OF THESE REGULATIONS

#### **Threshold amounts for public contracts**

4. These Regulations apply to public contracts that are not excluded in accordance with the exceptions provided for in Regulations 9 to 15 and that have a value (exclusive of value-added tax) estimated to be equal to or greater than the following thresholds:

- (a) €137,000 for a public supply or public service contract (other than one covered by paragraph (e)), awarded by a contracting authority that is a central government authority;

- (b) €211,000 for a public contract for the supply of products and a service awarded by a contracting authority that is not a central government authority;
- (c) €211,000 for a public supply contract awarded by a contracting authority that is a central Government authority and operates in the field of defence, but only if the products supplied under the contract are not ones listed in Annex V of the Public Authorities Contracts Directive;
- (d) €137,000 for a public supply contract awarded by a contracting authority that operates in the field of defence, but only if the contract involves the supply of a product listed in Annex V of that Directive;
- (e) €211,000 for a public contract awarded by a contracting authority for the supply of a service listed in one or more of the following:
  - (i) Category 8 of Part A of Schedule 2;
  - (ii) Category 5 of that Part (telecommunications services the positions of which in the CPV are equivalent to CPC reference nos. 7524, 7525 and 7526);
  - (iii) Part B of that Schedule;
- (f) €5,278,000 for a public works contract.

*Note: The CPC reference numbers 7524, 7525 and 7526 mentioned in paragraph (e)(ii) respectively relate to the following kinds of telecommunications services:*

- *programme transmission services;*
- *interconnection services;*
- *integrated telecommunication services.*

### **Contracts subsidised by a contracting authority by more than 50 per cent**

5. (1) These Regulations apply to the award of public contracts of the following kinds:
- (a) a contract that is subsidised directly by a contracting authority by more than 50 per cent if—

- (i) the estimated value of the contract (net of value added tax) is equal to or greater than €5,278,000, and
  - (ii) the contract is to carry out prescribed civil engineering activities, or building work in respect of a hospital, a facility intended to be used for sports, recreation or leisure, a school or university, or a building intended to be used for administrative purposes;
- (b) a contract to supply a service that is subsidised directly by a contracting authority by more than 50 per cent if—
- (i) the estimated value of the contract (net of value added tax) is equal to or greater than €211,000, and
  - (ii) the contract is connected with a works contract of a kind referred to in subparagraph (a)(ii).

(2) A contracting authority that awards such a subsidy shall ensure compliance with these Regulations even if the contract concerned is awarded—

- (a) by one or more entities other than the authority, or
- (b) by the authority on behalf of other entities.

### **Methods for calculating the estimated value of public contracts, framework agreements and dynamic purchasing systems**

6. (1) A contracting authority shall estimate the total amount payable (net of value added tax) in respect of a public contract that it proposes to award. In calculating the total amount, it shall include any form of option and any renewals under the contract.

(2) The estimate must be valid—

- (a) when the contract notice is sent to the Office for Official Publications of the European Communities for publication, or
- (b) if such a notice is not required, when the contracting authority begins the contract awarding procedure.

(3) A contracting authority shall take into account any prizes or payments that it gives to candidates or tenderers when calculating the estimated value of a public contract.

(4) A contracting authority shall not subdivide a works project, or a proposed purchase of a specified quantity of supplies or specified services, so as to prevent the project or purchase from coming within the scope of these Regulations.

(5) In calculating the estimated value of a public works contract, a contracting authority shall take account of both the cost of the works and the total estimated value of the supply of products necessary for carrying out the works.

(6) If a proposed work or purchase of a service could result in contracts being awarded at the same time in the form of separate lots, the contracting authority shall take account of the total estimated value of all the lots.

(7) Subject to paragraph (8), these Regulations apply to the awarding of each lot if the aggregate value of all of the lots is equal to or exceeds the threshold specified in Regulation 4.

(8) A contracting authority may decide that these Regulations should not apply in respect of lots if the estimated value of which (net of value added tax) is less than €1,000,000 for carrying out works, or €80,000 for supplying a service, so long as the aggregate value of those lots does not exceed 20 per cent of the aggregate value of all of the lots.

(9) If a contracting authority proposes to acquire supplies of a similar kind and the acquisition could result in contracts being awarded at the same time in the form of separate lots, the authority shall take account of the total estimated value of all the lots when applying Regulation 4.

(10) If a public supply contract relates to the leasing, hire, rental or hire purchase of a product for a fixed term, the value to be taken as a basis for calculating the estimated contract value is as follows:

(a) if that term is less than or equal to 12 months, the total estimated value for the term of the contract;

(b) if the term of the contract is greater than 12 months, the total value of the contract, including its estimated residual value.

(11) If a public supply contract relates to the leasing, hire, rental or hire purchase of a product that is for a term that is not fixed or that cannot be defined, the value to be taken as a basis for calculating the estimated contract value is the monthly value multiplied by 48.

(12) If a public supply contract, or a public service contract, that is of a recurring nature, or is likely to be renewed within a specified period, the contracting authority shall determine the estimated contract value on the basis of one of the following criteria:

- (a) the total actual value of the successive contracts of the same kind awarded during the preceding relevant period, adjusted (so far as possible) to take account of the changes in quantity or value that are likely to occur during the 12 months following the initial contract;
- (b) the total estimated value of the successive contracts awarded during the 12-month period following the first supply of products or a service under the contract, or if the financial year of the authority is longer than 12 months, during that financial year.

In subparagraph (a), “the relevant period” means either a period of 12 months or the financial year of the contracting authority, according to whichever of those periods that authority chooses.

(13) A contracting authority may not choose a method for calculating the estimated value of a public contract in order to exclude the contract from the scope of these Regulations.

(14) When a public contract to supply a service specifies a total price, the contracting authority concerned shall use the following as a basis for calculating the estimated value of the contract:

- (a) if the contract is to provide insurance, the premium and other forms of remuneration payable for the service;
- (b) if the contract is for a financial service (such as banking), the fee, commission, interest or other form of remuneration payable for the service;
- (c) if the contract is for the supply of a design, the fee, commission or other form of remuneration payable for the service.

(15) If a public contract to supply a service is for a fixed term but does not specify or provide for a total price, the contracting authority concerned shall use the following as a basis for calculating the estimated value of the contract:

- (a) if the contract is for a fixed term of 48 months or less, the total value of the contract for the full term;
- (b) if the contract is for a fixed term of longer than 48 months or no term is fixed, the monthly value of the contract multiplied by 48.

(16) If a contracting authority enters into a framework agreement or uses a dynamic purchasing system, the authority shall take into account the maximum estimated value (free of value added tax) of all contracts that it envisages for the total period during which it expects the agreement or system to remain in operation.

### **Application of Regulations to contracts for supply of defence equipment**

7. These Regulations apply to public contracts awarded by a contracting authority for defence purposes, subject to Article 296 of the Rome Treaty.

### **Public contracts and framework agreements awarded by central purchasing bodies**

8. (1) A contracting authority may enter into a contract or framework agreement for works, products or a service with or through a central purchasing body.

(2) A contracting authority that enters into a contract or framework agreement for works, products or a service through a central purchasing body is taken to have complied with these Regulations to the extent that the body has complied with these Regulations.

**Regulations not to apply to contracts relating to the water, energy, transport and postal services sectors**

9. (1) These Regulations do not apply to—

- (a) a public contract that, in accordance with the Public Utilities Contracts Directive, is awarded by a contracting authority that carries on an activity of a kind specified in Articles 3 to 7 of that Directive and is awarded for the purpose of enabling the authority to carry out that activity, or
- (b) a public contract that is excluded from the scope of that Directive by Article 5(2), and Articles 19, 26 and 30, of that Directive.

(2) Despite paragraph (1), these Regulations continue to apply to a public contract that was awarded by a contracting authority that carries on an activity specified in Article 6 of the Public Utilities Contract Directive and was awarded in respect of that activity, if the State has deferred the application of that Directive in accordance with the second subparagraph of Article 71 of that Directive.

**Regulations not to apply to certain public contracts relating to telecommunications**

10. These Regulations do not apply to a public contract the principal purpose of which is to enable a contracting authority to provide or exploit a public telecommunications network or to supply a public telecommunications service.

**Regulations not to apply to certain secret contracts and contracts requiring special security measures**

11. These Regulations do not apply to a public contract if—

- (a) the performance of the contract is accompanied by special security measures in accordance with the laws or administrative provisions in force in the State, or

- (b) the protection of the essential interests of the State so requires it.

**Regulations not to apply to contracts awarded in accordance with international rules**

**12.** (1) These Regulations do not apply to a public contract the award of which is governed by special procedural rules prescribed—

- (a) under a relevant international agreement, or
- (b) under an agreement relating to the stationing of armed forces and involving authorities of the State or a third country, or
- (c) in accordance with a particular procedure established by an international organisation.

(2) A contracting authority that claims that these Regulations do not apply to a public contract because of paragraph (1) shall notify the relevant international agreement to the Minister, who in turn shall inform the European Commission of the agreement.

(3) For the purposes of this paragraph, an agreement is a relevant international agreement if it—

- (a) is entered into between the State and the governments of one or more third countries, and
- (b) provides—
  - (i) for carrying out works, or supplying or products or a service, intended for the joint implementation or exploitation of a work by the State and those governments, or
  - (ii) for supplying a service intended for the joint implementation or exploitation of a project by the State and those governments, and
- (c) accords with the Rome Treaty.



### **Specific exclusions from these Regulations**

**13.** (1) These Regulations do not apply to any of the following kinds of contracts:

- (a) a public contract for acquiring land or existing buildings, or a right or interest in or over land or existing buildings;
- (b) a public contract for acquiring, developing, producing or co-producing program material intended for broadcasting by broadcasters or for the use of broadcasting time;
- (c) a public contract to provide an arbitration or conciliation service;
- (d) a public contract entered into by a contracting authority for the provision of a financial service involving the issue, sale, purchase or transfer of securities or, subject to paragraph (2), other financial instruments to raise money or capital for the authority;
- (e) a service provided by the Central Bank and Financial Services Authority of Ireland;
- (f) a contract of employment;
- (g) a contract for supplying a service involving research and development, other than such a service in relation to which the benefits accrue exclusively to a contracting authority for its use in the conduct of its own affairs, on condition that the service supplied is wholly paid for by the authority.

(2) A contract for providing a financial service is subject to these Regulations if it is directly connected to a contract of a kind referred to in paragraph (1)(a).

(3) In this Regulation—

“acquiring” includes acquiring by lease;

“broadcaster” includes a person who supplies a television service;

“broadcasting” includes television.

**Regulations not to apply to public service concession contracts**

**14.** These Regulations do not apply to a public service concession contract.

**Regulations not to apply to service contracts awarded on the basis of an exclusive right**

**15.** These Regulations do not apply to a public service contract that is awarded by a contracting authority to another contracting authority, or to an association of contracting authorities, on the basis of an exclusive right that the parties enjoy under a law or administrative provision that is compatible with the Rome Treaty.

**Reserving contracts for participants in sheltered workshops and sheltered employment programs**

**16.** (1) A contracting authority may—

- (a) reserve the right to participate in the award of a public contract to sheltered workshops, or
- (b) provide for such a contract to be performed only by participants in a sheltered employment program,

if a majority of the employees involved are disabled persons who, because of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions.

(2) A contracting authority that reserves a contract under this Regulation shall specify the reservation in the relevant contract notice.

**PART 3**

**PRINCIPLES AND RULES FOR AWARD OF PUBLIC SECTOR CONTRACTS**

**Principles for awarding contracts**

17. In awarding a public contract, a contracting authority shall—

- (a) treat all economic operators equally and without discrimination, and
- (b) act in a transparent way.

### **Granting special or exclusive rights: non-discrimination clause**

18. A contracting authority that grants special or exclusive rights to carry out a public service activity to an entity other than another contracting authority shall ensure that the act by which those rights are granted provides that, in relation to public supply contracts that the authority awards to third parties as part of its activities, the entity must not discriminate on the basis of nationality.

### **Rules relating to acceptance and rejection of economic operators**

19. (1) If a candidate or tenderer for a public service contract is, under the law of the Member State in which the candidate or tenderer is established, entitled to supply a particular service, a contracting authority shall not reject the candidate or tenderer only on the ground that, under the law of the Member State in which the contract is awarded, the candidate or tenderer would be required to be either a natural person or a body corporate.

(2) However, in the case of a public service contract or a public works contract, or a public supply contract that also provides for the supply of a service or for siting or installation operations, the contracting authority may require tenderers that are not natural persons to indicate in their tenders or their requests to participate the names and relevant professional qualifications of the staff who would be responsible for performing the contract.

(3) A group of economic operators may submit a tender or present itself as a candidate.

(4) A contracting authority may not require a group of economic operators to assume a particular legal form as a condition of being allowed to submit to the authority a tender or a request to participate in a tender. However, if the authority awards a public contract to such a group, it may require the group to assume such a form, but only if it is of the opinion that the imposition of the requirement is necessary for the satisfactory performance of the contract.

## PART 4

### ARRANGEMENTS FOR PUBLIC SERVICE CONTRACTS

#### **Service contracts listed in Part A of Schedule 2**

**20.** A contracting authority that proposes to award a contract whose object is the supply of a service listed in Part A of Schedule 2 shall ensure that Parts 3 to 8 of these Regulations are complied with in respect of the award.

#### **Service contracts listed in Part B of Schedule 2**

**21.** A public contract to supply a service listed in Part B of Schedule 2 is subject only to Regulations 23 and 41.

#### **Mixed contracts (including services listed in Part A of Schedule 2 and services listed in Part B of that Schedule)**

**22.** (1) A contracting authority shall not award a contract to supply a service listed in both Part A and Part B of Schedule 2 otherwise than in accordance with Parts 3 to 8 of these Regulations if the value of the service listed in Part A of that Schedule is greater than the value of the service listed in Part B of that Schedule.

(2) In the case of a public contract to supply any other kind of service, the contracting authority shall ensure that the contract is awarded in accordance with Regulations 23 and 41.

## PART 5

### SPECIFIC RULES GOVERNING SPECIFICATIONS AND CONTRACT DOCUMENTS

#### **Technical specifications**

**23.** (1) A contracting authority shall set out the relevant technical specifications in the appropriate documents such as the contract notice, or the documents inviting expressions of interest or the submission of tenders.

(2) In awarding a public contract, a contracting authority shall, as far as practicable, ensure that the technical specifications for the contract take account of the need to prescribe accessibility criteria for all persons who are likely to use the relevant works, products or service, particularly those who have disabilities.

(3) The contracting authority shall ensure that the technical specifications for a public contract provide tenderers with equal access to the award process and do not hinder competition among potential tenderers.

(4) Subject to paragraphs (5) to (12), the contracting authority shall formulate the technical specifications for a public contract in one of the following ways:

- (a) by reference to technical specifications and (in order of preference)—
  - (i) to a national standard that transposes a relevant European standard, or
  - (ii) to a European technical approval, or
  - (iii) to a relevant international standard, or

- (iv) to a relevant common technical specification, or
- (v) to some other relevant technical reference system established by a European standardisation body;
- (b) in terms of performance or functional requirements (which may include environmental characteristics);
- (c) in terms of performance or functional requirements (as referred to in subparagraph (b)) with reference to specifications of the kind referred to in subparagraph (a) as a means of presuming conformity with those requirements;
- (d) by reference to specifications of the kind referred to in subparagraph (a) for certain characteristics and by reference to the performance or functional requirements of the kind referred to in subparagraph (b) for other characteristics.

(5) If there is no standard, approval, specifications or system of the kind referred to in subparagraph (4)(a), the technical specifications may be formulated by reference to a national standard or national technical approval, or national technical specifications, relating to the design, calculation and carrying out of the works, or the use of the products, concerned.

(6) Each reference under paragraph (4)(a) or (5) must be accompanied by the words “or equivalent”.

(7) If environmental characteristics are involved, the contracting authority shall ensure that those characteristics are specified with sufficient precision to allow tenderers to determine the subject matter of the contract and to allow the contract to be awarded. That authority may formulate the technical specifications for a public contract by reference to the specifications referred to in paragraph (4).

(8) This Regulation does not affect the operation of mandatory national technical rules, to the extent that they are compatible with European Community law.

(9) A contracting authority that chooses the option referred to in paragraph (4)(a) or (5) may not reject a tender on the ground that the products or service for which tenders have been invited do not comply with the technical specifications to which the authority has referred provided the tenderer has, by appropriate means, satisfied that authority that the solutions that the

tenderer proposes in the tender meet in an equivalent manner the requirements of the technical specifications.

(10) If, in accordance with paragraph (4), a contracting authority has formulated the technical specifications for a public contract in terms of performance or functional requirements that it has prescribed, the authority may not reject a tender that complies with—

- (a) a national standard that transposes a European standard, or
- (b) a European technical approval, or
- (c) an international standard, or
- (d) a common technical specification, or
- (e) a technical reference system established by a European standardisation body,

if those specifications address those performance or functional requirements.

(11) In submitting a tender for a public contract in respect of which the contracting authority has formulated the technical specifications for a public contract in terms of performance or functional requirements that it has prescribed as referred to in paragraph (4)(b), the tenderer shall, by appropriate means, satisfy that authority that the works, products or services concerned comply with the requisite standard, system, approval or specification and so meet those performance or functional requirements.

(12) A contracting authority that prescribes environmental characteristics in terms of performance or functional requirements as referred to in paragraph (4)(b) may use the detailed specifications, or (if necessary) a part of those specifications, as defined by a European or multi-national eco-label, or any other kind of eco-label, but only if—

- (a) those specifications are appropriate to define the characteristics of the products or service to be supplied under the contract, and
- (b) the requirements for the label are drawn up on the basis of scientific information, and
- (c) the eco-labels are adopted using a procedure in which all stakeholders, such as

government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and

- (d) the specifications are accessible to all interested parties.

(13) A contracting authority may specify that a product bearing the eco-label is presumed to comply with the technical specifications prescribed by the contract or an associated document. However, the authority shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

(14) A contracting authority shall accept a certificate issued by a recognised body established in another Member State.

(15) Unless the contracting authority concludes that the subject matter of the contract justifies otherwise, it shall ensure that technical specifications do not refer to—

- (a) a specific make or source, or
- (b) a particular process, or
- (c) a specific trade mark, patent, or type, or
- (d) a specific origin or production,

if to do so would have the effect of favouring or eliminating a particular undertaking or product. However, a contracting authority may include such a reference in an exceptional case, but only if a sufficiently precise and intelligible description of the subject matter of the contract (as provided by this Regulation) is not possible. Each reference under this paragraph must be accompanied by the words “or equivalent”.

(16) In this Regulation—

- (a) “appropriate means” includes (but is not limited to) a technical dossier prepared by or on the instructions of the manufacturer (if any) or a test report prepared a recognised body, and
- (b) “recognised body” means a test and calibration laboratory or certification and inspection body that complies with the relevant European standards.



### **Tenderers may submit variants in certain cases**

**24.** (1) If a public contract is to be awarded on the basis of the most economically advantageous tender, the contracting authority may authorise tenderers for the contract to submit variants.

(2) The contracting authority shall specify in the relevant contract notice whether or not variants are authorised. A tenderer may submit a variant only if the contract notice specifically authorises variants.

(3) A contracting authority that authorises variants shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.

(4) In awarding a public contract, a contracting authority may take into consideration only variants that satisfy the minimum requirements specified in the relevant contract documents.

(5) A contracting authority that has authorised variants in relation to the award of a public supply contract or public service contract may not reject a variant submitted by a tenderer only because the variant would, if successful, result in the award of a public service contract instead of a public supply contract or a public supply contract instead of a public service contract.

### **Contracting authority entitled to ask about tenderer's intention to subcontract**

**25.** In the contract documents that it gives to tenderers for a public contract, the contracting authority is entitled to ask each tenderer to state in its tender whether it intends to subcontract any share of the contract to subcontractors should the contract be awarded to it. The expression of such an intention in a tender does not affect the successful tenderer's primary liability under the contract.

### **Conditions for performance of contracts**

**26.** A contracting authority may prescribe special conditions relating to the performance of a public contract that is to be awarded by the authority, provided the conditions—

- (a) are compatible with European Community law, and
- (b) are specified in the relevant contract notice or contract specifications.

In particular, those conditions may deal with social and environmental matters.

### **Obligations relating to taxes, environmental protection, employment protection provisions and working conditions**

**27.** (1) A contracting authority that proposes to award a public contract that will involve carrying out works or supplying a service shall specify in the contract documents the persons from whom a candidate or tenderer may obtain information about the obligations that will, during the performance of the contract, apply in relation to taxation, environmental protection, employment protection and working conditions. This paragraph does not affect the operation of Regulation 69 regarding the examination of abnormally low tenders.

(2) The contracting authority—

- (a) shall require the candidates or tenderers concerned to state that, in preparing their tenders for the contract, they have taken account of the obligations relating to employment protection and working conditions that are in force in the place where the works are to be carried out or the service is to be supplied, and
- (b) shall disregard the tender of any candidate or tenderer that fails to comply with that requirement.

## PART 6

### PROCEDURES FOR AWARD OF PUBLIC CONTRACTS

#### **Open, restricted and negotiated procedures to be used**

**28.** (1) Except as provided by paragraphs (2), (3), and (4), a contracting authority shall award a public contract by means of an open procedure or a restricted procedure.

(2) In the circumstances set out in Regulations 29 and 30, a contracting authority may award a public contract by means of a competitive dialogue.

(3) In the circumstances set out in Regulation 31, a contracting authority may award a public contract by means of a negotiated procedure in conjunction with publication of a contract notice.

(4) In the circumstances set out in Regulation 32, a contracting authority may award a public contract by means of a negotiated procedure without the need for publication of a contract notice.

#### **Competitive dialogue procedure**

**29.** (1) A contracting authority may award a public contract by means of a competitive dialogue in accordance with this Regulation if it considers—

- (a) that the contract is particularly complex, and
- (b) that the use of an open or restricted procedure would not allow the contract to be awarded.

(2) A contracting authority can regard a public contract as being particularly complex for the purposes of paragraph (1) if—

- (a) it is not objectively able to define, in accordance with Regulation 23(4)(b), (c) or

(d), the technical means capable of satisfying its needs or objectives, or

(b) it is not objectively able to specify the legal or financial make-up, or both the legal and financial make-up, of a project.

(3) If a contracting authority decides to award a public contract by means of a competitive dialogue, it shall do the following:

(a) define its requirements in a contract notice or in a separate document accompanying the notice;

(b) publish the notice and any such document;

(c) award the contract to the tenderer that makes the most economically advantageous tender.

(4) The contracting authority shall open a dialogue with the candidates selected in accordance with the relevant provisions of Chapters 2 and 3 of Part 7. The aim of the dialogue must be to identify and define the means best suited to satisfying the authority's requirements.

(5) During the dialogue, the contracting authority may discuss all aspects of the contract with the chosen candidates, but in doing must treat all candidates equally and without discrimination. In particular, the contracting authority shall not provide information in a discriminatory manner that may result in some candidates having an advantage over others.

(6) If a candidate that is participating in the dialogue has (whether orally or in writing) proposed a solution, or provided confidential information, to the contracting authority, that authority shall not, without the candidate's consent, disclose the solution or information to the other candidates.

(7) A contracting authority that uses the competitive dialogue procedure to award a public contract may opt to provide for the competitive dialogue to be conducted in successive stages in order to reduce the number of solutions to be discussed during the dialogue. The authority must specify in the relevant contract notice or descriptive document that recourse may be had to that option and, if the authority decides to exercise that option, it shall apply the award criteria set out in that notice or document.

(8) A contracting authority that uses the competitive dialogue procedure shall continue the dialogue until it finds the solution or solutions (if necessary after comparing them) that will satisfy its requirements.

### **What happens after a competitive dialogue ends**

**30.** (1) As soon as practicable after a competitive dialogue has ended, a contracting authority shall declare the dialogue to be ended and inform the candidates accordingly. The authority shall then ask the candidates to submit final tenders on the basis of the solution or solutions that were presented during the dialogue.

(2) A candidate that submits a tender following a competitive dialogue shall include in the tender all of the elements required for the performance of the proposed contract.

(3) If the contracting authority so requires, a candidate that has submitted a tender following a competitive dialogue shall clarify the tender or provide additional information. Such a requirement must not—

(a) involve changes to the fundamentals of the tender or the call for tender, or

(b) distort competition or have a discriminatory effect.

(4) As soon as practicable after the deadline for the receipt of tenders following a competitive dialogue, the contracting authority shall—

(a) assess the tenders received on the basis of the award criteria specified in the relevant contract notice or descriptive document, and

(b) select from those tenders the most economically advantageous tender in accordance with Regulation 66.

(5) If asked to do so by the contracting authority, the candidate identified as having submitted the most economically advantageous tender shall clarify aspects of the tender or confirm commitments contained in the tender, but only in so far as the clarification will not have the effect of—

- (a) significantly modifying the tender or the call for tenders, or
- (b) risking distorting competition or causing discrimination.

(6) A contracting authority may specify that payments may be made to participants in respect of expenses incurred by them in participating in the competitive dialogue procedure.

(7) The power conferred by paragraph (6) may be exercised only in a manner consistent with any direction or guideline notified by or with the authority of the Minister.

### **When public contract may be awarded by means of negotiated procedure with prior publication of contract notice**

**31.** (1) A contracting authority may award a public contract by means of a negotiated procedure following publication of a contract notice in the following cases:

- (a) when tenders submitted in response to an open or restricted procedure, or a competitive dialogue, are irregular, or are unacceptable because they do not comply with rules of tendering prepared in accordance with these Regulations or the Public Authorities Contracts Directive, but only if the original terms of the proposed contract are not substantially altered;
- (b) when, in an exceptional case, the nature of the works to be carried out, or the products or service to be supplied, or the risks involved in carrying out the works or supplying the products or service, do not permit prior overall pricing;
- (c) in the case of the supply of a service, in particular a service within category 6 of Part A of Schedule 2 or an intellectual service (such as a service involving the design of works), insofar as the nature of the service to be supplied is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;
- (d) in the case of a public contract to carry out works solely for purposes of research, testing or development and not with the aim of ensuring profitability or

recovering research and development costs.

(2) A contracting authority need not publish a contract notice in a case specified in paragraph (1)(a) if the authority includes in the negotiated procedure all of (and only) the tenderers that—

- (a) have satisfied the criteria set out in Chapter 2 of Part 8, and
- (b) during the relevant prior open or restricted procedure or competitive dialogue, have submitted tenders in accordance with the formal requirements of the tendering procedure.

(3) If a contracting authority decides to use a negotiated procedure in a case referred to in paragraph (1), it shall negotiate with tenderers the tenders submitted by them in order—

- (a) to adapt those tenders to the requirements that were specified in the contract notice, the specifications and the additional documents (if any), and
- (b) to seek out the best tender in accordance with Regulation 66.

(4) During the negotiations, a contracting authority—

- (a) shall treat all tenderers equally and without discrimination, and
- (b) shall not provide information in a manner that could give some tenderers an advantage over others.

(5) In order to reduce the number of tenders to be negotiated, a contracting authority may provide for a negotiated procedure to be conducted in successive stages. The reduction must be achieved on the basis of the published award criteria.

(6) A contracting authority shall indicate in the contract notice or the specifications whether recourse will be had to the option referred to in paragraph (5).

**When public contract may be awarded by negotiated procedure without prior publication of contract notice**

**32. (1)** A contracting authority may award a public works contract by a negotiated procedure without prior publication of a contract notice in the following cases:

- (a) when no tenders or no suitable tenders, or no applications, have been submitted in response to an open procedure or a restricted procedure, but only if—
  - (i) the initial conditions of contract have not been substantially altered, and
  - (ii) on being requested to do so by the European Commission, the authority provides it with a written report specifying the circumstances necessitating the use of the procedure;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
- (c) when, because of extreme urgency attributable to an event that the contracting authority could not foresee, the deadline for the open, restricted or negotiated procedure with publication of a contract notice cannot be met (but only in so far as it is strictly necessary for the procedure to be used);
- (d) when additional works that were not included in the project when considered initially, or were not included in the original contract, have, through unforeseen circumstances, become necessary in order to carry out the works specified in the contract, but only if the award is made to the contractor who is carrying out the original works, and—
  - (i) the additional works cannot be technically or economically separated from the original contract without major inconvenience to the authority, or
  - (ii) the additional works, although separable from the performance of the original contract, are strictly necessary for its completion;
- (e) when new works that repeat similar works are entrusted to the contractor to whom the authority awarded an original contract by means of the open or restricted procedure, provided the works conform to a basic project for which the original contract was awarded.



(2) A contracting authority may award a public supply contract by a negotiated procedure without prior publication of a contract notice in the following cases:

- (a) when no tenders or no suitable tenders, or no applications, have been submitted in response to an open procedure or a restricted procedure, but only if—
  - (i) the initial conditions of contract have not been substantially altered, and
  - (ii) on being requested to do so by the European Commission, the authority provides it with a written report specifying the circumstances necessitating the use of the procedure;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
- (c) when, because of extreme urgency attributable to an event that the contracting authority could not foresee, the deadline for the open, restricted or negotiated procedure with publication of a contract notice cannot be met (but only in so far as it is strictly necessary for the procedure to be used);
- (d) when the products involved are manufactured purely for the purpose of research, experimentation, study or development;
- (e) when additional deliveries of products by the original supplier are intended—
  - (i) as a partial replacement for normal supplies of the products, or
  - (ii) as the extension of existing supplies of the products in circumstances where a change of supplier would oblige the authority to acquire material having different technical characteristics that would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (f) when the products are quoted and purchased on a commodity market;
- (g) when the products are purchased on particularly advantageous terms—
  - (i) from a supplier whose business activities are being wound up, or

- (ii) from the receiver or liquidator of a supplier who has been adjudicated bankrupt, or in respect of whom a winding up order under the Companies Acts has been made, or who has entered into an arrangement with creditors.

(3) Paragraph (2)(d) does not extend to quantity production to establish commercial viability or to recover research and development costs.

(4) The duration of a contract for additional deliveries of products referred to in paragraph (2)(e), or a recurrent contract, must not normally exceed 3 years.

(5) A contracting authority may award a public service contract by a negotiated procedure without prior publication of a contract notice in the following cases:

- (a) when no tenders or no suitable tenders, or no applications, have been submitted in response to an open procedure or a restricted procedure, provided but only if—
  - (i) the initial conditions of contract have not been substantially altered, and
  - (ii) on being requested to do so by the European Commission, the authority provides it with a written report specifying the circumstances necessitating the use of the procedure;
- (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
- (c) when, because of extreme urgency attributable to an event that the contracting authority could not foresee, the deadline for the open, restricted or negotiated procedure with publication of a contract notice cannot be met (but only in so far as it is strictly necessary for the procedure to be used);
- (d) when the contract follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates;
- (e) when an additional service that was not included in the project when it was initially considered, or in the original contract, has, through unforeseen circumstances, become necessary to supply the service specified in the contract, but only if the award is made to the supplier of the service so specified, and—

- (i) the additional service cannot be technically or economically separated from the original contract without major inconvenience to the authority,  
or
  - (ii) the additional service, although separable from the performance of the original contract, is strictly necessary for its completion;
- (f) when a new service or services repeats a similar service entrusted to the supplier to whom the authority awarded an original contract, provided that the new service or services conform to a basic project for which the original contract was awarded where that contract was awarded according to the open or restricted procedure.

(6) If, in the case of a public service contract that follows a design contest, the contract must, under the applicable rules, be awarded to one of the successful candidates, the contracting authority concerned shall invite all successful candidates to participate in the negotiations.

(7) The aggregate value of contracts awarded for additional works referred to in paragraph (1)(d) or an additional service referred to in paragraph (5)(e) may not exceed 50 per cent of the amount of the original contract.

(8) In applying paragraph (1)(c), (2)(c) or (5)(c), the circumstances invoked to justify extreme urgency must not be attributable to the contracting authority concerned.

(9) In applying paragraph (1)(e) and (5)(f)

- (i) when a contracting authority offers the first project for tender, it shall disclose the possible use of the negotiated procedure without prior publication of a contract notice for the additional works and services. In so doing, the authority shall take into account the estimated cost of subsequent works or services when it applies Regulation 4
- (ii) a contracting authority may use the negotiated procedure without prior publication of a contract notice only during the 3 years following the date on which the original contract was entered into.

### **Contracting party may enter into framework agreements**

**33.** (1) A contracting authority may enter into a framework agreement as provided by this Regulation.

(2) In entering into a framework agreement, a contracting authority shall follow the rules of procedure prescribed by these Regulations for all phases up to the award of contracts based on the agreement. The parties to the framework agreement are to be determined by applying the award criteria set in accordance with Regulation 66.

(3) A contracting authority that proposes to award a contract by means of a framework agreement shall award the contract in accordance with the procedures specified in Regulations 34 and 35. Those procedures are applicable only between the contracting authority and the economic operators that were originally parties to the agreement.

(4) In awarding a contract on the basis of a framework agreement, the parties may not make substantial amendments to the terms specified in the agreement, in particular in the case referred to in Regulation 34.

(5) The duration of a framework agreement may exceed 4 years only in an exceptional case that is justified by factors such as the subject matter of the contract.

(6) A contracting authority may not use framework agreements in such a way as to prevent, restrict or distort competition.

#### **Framework agreement entered into with a single economic operator**

**34.** (1) A contracting authority may award a contract on the basis of a framework agreement with a single economic operator within the limits of the terms specified in the agreement.

(2) In deciding whether to award such a contract to a single economic operator, the contracting authority may in writing request the operator to supplement its tender to such extent as it requires. The contracting authority may decide not to award the contract on the ground that the operator has failed to comply with such a request to that authority's satisfaction.

### **Framework agreement entered into with several economic operators**

**35.** (1) A contracting authority may enter into a framework agreement with several economic operators, but in that case the number of economic operators must be not less than 3, unless there is—

- (a) an insufficient number of economic operators to satisfy the relevant selection criteria, or
- (b) an insufficient number of admissible tenders that satisfy the relevant award criteria.

(2) A contracting authority may award a contract based on a framework agreement entered into with several economic operators either—

- (a) by applying the terms specified in the agreement without reopening competition, or
- (b) if not all the terms are specified in the agreement, when the parties are again in competition on the basis of the same terms (which may, if necessary, be more precisely formulated), and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the appropriate procedure.

(3) For the purposes of paragraph (2)(b), the appropriate procedure is as follows:

- (a) for each contract to be awarded, the contracting authority shall consult in writing the economic operators that appear to the authority to be capable of performing the contract;
- (b) the contracting authority shall fix a time limit that is sufficiently long to allow tenders for the contract to be submitted and, in particular, shall take into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders;
- (c) economic operators must submit their tenders in writing;
- (d) the contracting authority shall keep the content of the tenders confidential until

the deadline for receiving tenders has expired;

- (e) the contracting authority shall award the contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

### **Dynamic purchasing systems**

**36.** (1) A contracting authority may award a public contract by means of a dynamic purchasing system, but only as provided by this Regulation.

(2) In awarding a public contract by means of a dynamic purchasing system, a contracting authority—

- (a) shall comply with the rules prescribed for the use of an open procedure in all phases of the system up to the award of the contract, and
- (b) may use only electronic means as provided by Regulation 50.

(3) In awarding a public contract by means of a dynamic purchasing system, a contracting authority shall admit to the system all tenderers that satisfy the relevant selection criteria and have submitted an indicative tender that complies with the requisite specification and any additional documents that the authority has required.

(4) A tenderer may improve an indicative tender at any time, but only if it continues to comply with the requisite specification.

(5) In awarding a public contract by means of a dynamic purchasing system, a contracting authority shall—

- (a) publish a contract notice that makes it clear that such a system is involved in the contract award process and specifies an internet address at which persons may inspect the documents referred to in subparagraph (c), and
- (b) indicate in the contract specifications (among other matters) the nature of the

purchases envisaged under the system, as well as all the necessary information concerning the system, the electronic equipment used and the technical connection arrangements and specifications, and

- (c) on publication of the notice and up to the expiry of the system, offer by electronic means unrestricted, direct and full access to the contract specifications and any relevant additional documents.

(6) In awarding a public contract by means of a dynamic purchasing system, a contracting authority shall give all economic operators the opportunity of submitting an indicative tender and of being admitted to the system under the conditions referred to in paragraphs (2) and (3).

(7) A contracting authority shall evaluate each indicative tender within such period, not exceeding 15 days from the date of submission of the indicative tender, as is specified in the relevant contract notice. However, the authority may extend the evaluation period, but only if no invitation to tender is issued in the meantime.

(8) As soon as practicable after completing the evaluation of the indicative tenders, the contracting authority shall inform each of the tenderers concerned whether the tenderer has been admitted to the dynamic purchasing system or has had its indicative tender refused.

(9) A contracting authority shall invite tenders for each specific contract that is to be awarded by the authority by means of a dynamic purchasing system. Before issuing an invitation to tender, the authority shall publish a simplified contract notice inviting all interested economic operators to submit indicative tenders, in accordance with paragraphs (6) to (8), within such period as is specified in the notice. The period must not exceed 15 days from the date of publication.

(10) A contracting authority may not proceed with the tendering process until it has completed the evaluation of the indicative tenders received by the deadline.

(11) A contracting authority shall invite all tenderers admitted to the system to submit a tender for each specific contract to be awarded under the system. The invitation must specify a deadline for the receipt of tenders.

(12) A contracting authority shall award the contract to the tenderer that submits the best tender on the basis of the award criteria specified for the establishment of the dynamic purchasing

system in the contract notice. However, the authority may, if appropriate, formulate those criteria more precisely in the invitation to submit tenders.

(13) The period during which a dynamic purchasing system may remain in operation may not exceed 4 years, except in circumstances determined by the contracting authority as exceptional. If that authority determines that there are exceptional circumstances justifying an extension of the period beyond 4 years, it must record and publish the reasons for its determination.

(14) A contracting authority shall not use a dynamic purchasing system to prevent, restrict or distort competition.

(15) A contracting authority shall not charge interested economic operators or parties for access to a dynamic purchasing system operated by the authority.

### **Public works contracts: special rules for subsidised housing schemes**

**37.** (1) This Regulation applies to the award of a public contract relating to the design and construction of a subsidised housing scheme if the size and complexity of the scheme and the estimated duration of the work involved require that planning be based from the outset on close collaboration within a team that consists of—

- (a) representatives of a contracting authority, and
- (b) experts, and
- (b) the contractor who is to be responsible for constructing the scheme.

(2) A contracting authority that proposes to award a public contract to which this Regulation applies may adopt a special award procedure for selecting the contractor most suitable for integration into the team concerned.

(3) The contracting authority shall—

- (a) include in the contract notice, as accurately as possible, a description of the works to be carried out under the contract that will enable interested contractors to form



a realistic vision of those works, and

- (b) specify in the notice, in accordance with the qualitative selection criteria referred to in Chapter 2 of Part 8, the personal, technical, economic and financial conditions to be fulfilled by candidates for the contract.

(4) In adopting a special award procedure for public contracts to which this Regulation applies, a contracting authority shall comply with Regulations 17, 38 to 47, 49, 50 and 51 and Chapter 2 of Part 8.

## PART 7

### Rules on advertising and transparency

#### CHAPTER 1

##### *Publication of notices*

#### **Prior information notices where the estimated value of contracts etc. exceed specified amount**

**38.** (1) If a contracting authority intends to award public contracts, or to enter into framework contracts, for carrying out works the estimated value of which is equal to or greater than the threshold specified in Regulation 4 (taking into account Regulation 6), it shall, by means of a prior information notice published by the European Commission or by the relevant contracting authority on its buyer profile, make known the essential characteristics of those contracts or framework agreements.

(2) If a contracting authority intends to award public contracts, or to enter into framework agreements, for the supply of products and the estimated total value (taking into account Regulations 4 and 6) of the contracts or the framework agreements that it intends to award during the 12 months following the relevant date is equal to or greater than €750,000, it shall, by means of a prior information notice published by the European Commission or by the relevant contracting authority on its buyer profile, make known the estimated total value of those contracts or

framework agreements by product area. The product area must be established by reference to the relevant CPV nomenclature.

(3) If a contracting authority intends to award public contracts, or enter into framework agreements, for the supply of a service and the estimated total value (taking into account Regulations 4 and 6) of the contracts or the framework agreements that it intends to award in each category of service listed in Part A of Schedule 2 during the 12 months following the relevant date is equal to or greater than €750,000, it shall, by means of a prior information notice published by the European Commission or by the relevant contracting authority on its buyer profile, make known the estimated total value of those contracts or framework agreements.

(4) In the case of a notice referred to in paragraph (1), the contracting authority shall send the notice to the European Commission as soon as possible after the decision to approve the planning of the relevant public works contracts or framework agreements is made.

(5) In the case of a notice referred to in paragraph (2) or (3), the contracting authority shall, as soon as practicable after the beginning of its financial year, either send the notice to the European Commission or publish the notice on its buyer profile.

(6) As soon as practicable after a contracting authority has published a prior information notice on its buyer profile, it shall notify the European Commission of the publication by electronic means. The notification under this paragraph must comply with the format and detailed procedures for sending notices indicated in paragraph 3 of Schedule 6.

(7) Publication of a prior information notice in accordance with this Regulation entitles the contracting authority concerned to reduce, in accordance with Regulation 46(4), the deadlines for the receipt of tenders.

(8) In this Regulation, “relevant date”, in relation to a prior information notice, means the date on which the notice is sent to the Office for Official EC Publications for publication or the date on which it is published in the authority’s buyer profile, whichever first occurs.

**Publication of notices: public contracts involving open, restricted or negotiated procedure or competitive dialogue**

**39.** A contracting authority that proposes to award a public contract or enter into a framework agreement by means of—

- (a) the open or restricted procedure, or
- (b) a competitive dialogue in accordance with the conditions prescribed by Regulations 29 and 30, or
- (c) the negotiated procedure with the prior publication of a contract notice in accordance with the conditions prescribed by Regulation 31,

shall make its intention known by means of a contract notice.

#### **Publication of notices: public contracts based on dynamic purchasing system**

**40.** (1) A contracting authority that proposes to establish a dynamic purchasing system shall make its intention known by means of a contract notice.

(2) A contracting authority that proposes to enter into a public contract based on a dynamic purchasing system shall make its intention known by means of a simplified contract notice.

#### **Contracting authority to send notice of the result of award procedure on entering into public contract or framework agreement**

**41.** (1) A contracting authority that has entered into a public contract or a framework agreement shall send a notice of the result of the award procedure to the Office for Official EC Publications within 48 days after the date on which the contract was awarded or the framework agreement was entered into.

(2) A contracting authority that enters into a framework agreement in accordance with Regulation 33 is not required to send a notice of the result of the award procedure for each contract based on the agreement.

**Contracting authority to send contract award notice to European Commission on entering into public contract based on dynamic purchasing system**

42. (1) A contracting authority that enters into a public contract based on a dynamic purchasing system shall send to the Office for Official EC Publications a notice notifying the result of the award of the contract within 48 days after the date on which the contract is entered into.

(2) As an alternative to complying with paragraph (1), the contracting authority may group contract award notices on a 3-monthly basis, in which case, it shall send the grouped notices to the Office for Official EC Publications within 48 days after the end of each period of 3 months following the date on which the first contract under the dynamic purchasing system was awarded.

**Special provision applicable to public contracts for certain services**

43. In the case of a public contract for a service of a kind listed in Part B of Schedule 2, the contracting authority shall indicate in the notice whether it agrees to the publication.

**Contracting authority may withhold certain information from publication**

44. A contracting authority may withhold from publication certain information relating to entry into a public contract or framework agreement if, in its opinion, release of the information—

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

## **Publication of notices for the purposes of these Regulations**

**45.** (1) A contracting authority shall ensure that every notice that it sends to the Office for Official EC Publications for publication—

- (a) includes the information mentioned in Part A of Schedule 5 and, when appropriate, any other information that the authority considers relevant, and
- (b) accords with the format of standard forms adopted by the European Commission in accordance with the procedure referred to in Article 77 of the Public Authorities Contracts Directive.

(2) If, in complying with a requirement of these Regulations, a contracting authority sends by electronic means a notice to the Office for Official EC Publications for publication, it shall ensure that the notice complies with the format and procedures for transmission specified in paragraph 3 of Schedule 6.

(3) A contracting authority that has recourse to an accelerated procedure shall send the relevant notice either by telefax or by electronic means and ensure that the notice complies with the format and procedures for transmission specified in paragraph 3 of Schedule 6.

(4) When sending to the Office for Official EC Publications a notice for publication required by these Regulations, a contracting authority shall comply with the technical requirements for publication specified in paragraph 1(1) and (2) of Schedule 6.

(5) A contracting authority shall not send a contract notice for publication unless the full text of the notice is in an official language of the European Community chosen by the authority.

(6) A contracting authority shall not publish a contract notice, or any of its contents, before a copy of the notice has been sent to the Office for Official EC Publications.

(7) When issuing a notice within the State for the purposes of these Regulations or the Public Authorities Contracts Directive, a contracting authority shall ensure that the notice specifies only—

- (a) information contained in the copy of the notice that was sent to the European Commission or was published on its buyer profile, and

(b) the date on which that copy was so sent or published.

(8) A contracting authority shall publish a prior information notice on its buyer profile only if—

(a) notice of its publication has been sent to the Office for Official EC Publications in the same form as that in which it is proposed to be published, and

(b) it specifies the date on which it was sent to that Office.

(9) A contracting authority shall ensure that the content of a notice does not exceed 650 words if it is not sent by electronic means in the format and procedures for transmission specified in paragraph 3 of Schedule 6.

(10) A contracting authority shall ensure that it is able to provide proof of the dates on which copies of notices were sent to the Office for Official EC Publications for publication. A confirmation of the publication given by a person purporting to be employed in that Office, mentioning the date of publication is proof of publication.

(11) A contracting authority may send to the Office for Official EC Publications for publication in the Official Journal of the European Union a copy of a notice relating to a public contract for which publication is not mandatory under these Regulations.

*Note: The European Commission publishes a summary of the important elements of this kind of notice in the other official languages of the European Community, but the version of the notice published in the chosen language is the sole authentic text.*

## CHAPTER 2

### *Deadlines*

#### **Deadlines for receipt of tenders and requests to participate**

**46.** (1) When fixing the deadline for the receipt of tenders or requests to participate in an award of a public contract, a contracting authority shall take particular account of the complexity of the

contract and the time needed for drawing up tenders. Nothing in this paragraph affects the minimum time limits prescribed by this Regulation.

(2) In awarding a public contract by means of an open procedure, a contracting authority shall fix a deadline for the receipt of tenders that is no less than 52 days from the date on which it sent the contract notice for publication.

(3) In awarding a public contract by means of a restricted procedure, a negotiated procedure with the prior publication of a contract notice or a competitive dialogue, a contracting authority shall—

- (a) fix a deadline for receipt of requests to participate that is no less than 37 days from the date on which the contract notice is sent for publication, and
- (b) in the case of a restricted procedure, fix a deadline for the receipt of tenders that is no less than 40 days from the date on which the invitation is sent.

(4) A contracting authority that has published a prior information notice in accordance with Regulation 38 may reduce the deadline for the receipt of tenders fixed in accordance with paragraphs (2) and (3)(b) to not less than 22 days.

(5) For the purposes of paragraph (4)—

- (a) when a public contract is to be awarded by means of an open procedure, a deadline is to be calculated from the date on which the contract notice is sent for publication, and
- (b) when a public contract is to be awarded by means of a restricted procedure, a deadline for receipt of tenders is to be calculated from the date on which the invitation to tender is sent to the selected candidates.

(6) The reduction referred to in subparagraph (4) is permitted only if—

- (a) the relevant prior information notice has included all the information required for the contract notice in Part A of Schedule 5, in so far as that information was available when the prior information notice was published, and
- (b) that prior information notice was sent for publication not less than 52 days and

not more than 12 months before the date of publication of the contract notice.

(7) If, in awarding a public contract by means of a restricted procedure, a negotiated procedure with publication of a contract notice, or a competitive dialogue, a contracting authority has sent to the Office for Official EC Publications by electronic means a notice in accordance with the format and procedures for transmission specified in paragraph 3 of Schedule 6, the authority may reduce by not more than 7 days—

- (a) the deadline for the receipt of tenders referred to in paragraphs (2) and (4), and
- (b) the deadline for the receipt of requests to participate referred to in paragraph (3)(a).

(8) A contracting authority may reduce by not more than 5 days the deadlines referred to in paragraphs (2) and (3)(b) if the authority—

- (a) offers, from the date on which the relevant notice is published in accordance with Schedule 6, unrestricted and full direct access by electronic means to the contract documents and to any supplementary documents, and
- (b) specifies in that notice an internet address at which those documents can be accessed.

Such a reduction may be added to that referred to in paragraph (7).

(9) If—

- (a) for any reason the specifications and the supporting documents or additional information, although requested in good time, are not supplied before the deadline for the receipt of tenders referred to in Regulation 47 or 48, or
- (b) tenders can be made only after a visit to a site where the contract is to be performed or after an on-the-spot inspection of documents supporting the contract documents,



the contracting authority shall extend the deadline so that all of the economic operators concerned may become aware of all of the information needed to prepare tenders.

(10) If, in awarding a public contract by means of a restricted procedure or a negotiated procedure following publication of a contract notice, urgency makes it impracticable for the contracting authority to comply with the deadlines prescribed by this Regulation, it may fix another deadline for the receipt of requests to participate, but, if it does so, the deadline must—

- (a) except as provided by subparagraph (b), be not less than 15 days from the date on which the copy of the notice inviting requests to participate was sent to the Office for Official EC Publications for publication, or
- (b) if the notice was sent to that Office by electronic means in accordance with the format and procedure specified in paragraph 3 of Schedule 6, be not less than 10 days from that date.

(11) If, when awarding a public contract by means of a restricted procedure, urgency makes it impracticable for the contracting authority to comply with the deadlines prescribed by this Regulation, it may fix another deadline for the receipt of tenders, but that deadline must be not less than 10 days from the date on which the authority invites tenders.

#### **Use of open procedure: specifications, additional documents and information**

**47.** (1) If, when awarding a public contract by means of an open procedure, a contracting authority—

- (a) receives a request to participate from an economic operator within a reasonable time before the deadline for receiving tenders, and
- (b) does not offer unrestricted and full direct access by electronic means to the specifications and any supporting documents in accordance with Regulation 46(8),

it shall send the specifications and supplementary documents to the operator within 6 days after receiving the request.

(2) If an economic operator requests additional information about the specifications and any supporting documents a reasonable time before the deadline for the receipt of tenders, the contracting authority shall provide the requested information to the operator without delay but, in any case, no later than 6 days before that deadline.

## CHAPTER 3

### *Information content and means of transmission*

#### **Invitations to submit a tender or to participate in dialogue or negotiation**

**48.** (1) When awarding a public contract by means of a restricted procedure, a competitive dialogue procedure or a negotiated procedure with publication of a contract notice, a contracting authority shall simultaneously and in writing invite the selected candidates—

- (a) to submit their tenders, or
- (b) to negotiate, or
- (c) in the case of a competitive dialogue, to participate in the dialogue,

as provided by this Regulation.

(2) The invitation must—

- (a) include a copy of the relevant specifications or descriptive document and of each of the supporting documents (if any), or
- (b) if the specifications and other documents are made directly available by electronic means in accordance with Regulation 46(8), specify how access to the specifications and the other documents can be obtained.

(3) If a person other than the contracting authority responsible for the award procedure is in possession of the document containing the specifications, the descriptive document or any supporting document, the invitation must specify—

- (a) the address from which the document may be obtained, and
- (b) if appropriate—
  - (i) the deadline for requesting the document, and
  - (ii) the fee (if any) payable for obtaining the document from the person and any payment procedure.

As soon as practicable after receiving a request for such a document from an economic operator, the person having possession of the document shall send it to the economic operator.

(4) On receiving a request for additional information about the document containing the specifications, the descriptive document or any supporting document within a reasonable time before the deadline for the receipt of tenders, the person concerned shall provide the additional information to the economic operator concerned—

- (a) not less than 6 days, or
- (b) when a restricted or an accelerated procedure is used, not less than 4 days,

before the deadline.

(5) The invitation must, as a minimum, also contain the following:

- (a) a reference to the publication of the contract notice;
- (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be prepared;
- (c) in the case of competitive dialogue, the date and the address specified for the start of consultation and the language or languages used;
- (d) a reference to any possible accompanying documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Regulation

53, or to supplement the information referred to in that Regulation, and under the conditions prescribed by Regulations 54 and 55;

- (e) if not specified in the contract notice, specifications or descriptive document, the relative weighting of criteria for the award of the contract or, if appropriate, the descending order of importance for such criteria.

(6) When awarding a contract in accordance with the rules prescribed by Regulations 29 and 30, a contracting authority shall ensure that the information referred to in paragraph (5)(b) appears in the invitation to submit a tender and not in the invitation to participate in the dialogue.

#### **How candidates and tenderers are to be informed**

**49.** (1) As soon as practicable after reaching a decision about entering into a public contract or framework agreement or admission to a dynamic purchasing system, a contracting authority shall inform candidates and tenderers of the decision by the most rapid means of communication possible (such as by electronic mail or by telefax). If the authority notifies its decision by electronic mail or telefax, it shall confirm the decision in writing if a candidate or tenderer so requests.

(2) If a contracting authority decides—

- (a) not to enter into a framework agreement or a contract for which there has been a call for competition, or
- (b) to restart the procedure, or
- (c) not to implement a dynamic purchasing system,

the authority shall include in the decision the grounds on which it is based.

(3) As soon as possible, and in any event no later than 15 days after the date on which a contracting authority receives a request to do so, the authority shall inform—

- (a) a candidate whose application is rejected of the reasons for the rejection, or

- (b) a tenderer whose tender is rejected of the reasons for the rejection (including, in a case referred to in Regulation 23(9) or (10), the reasons for the authority's decision of non-equivalence or that the works, supplies or service do not meet the authority's performance or functional requirements), or
- (c) a 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.

(4) However, a contracting authority may decide not to disclose information referred to in paragraph (3) relating to entry into a public contract or framework agreement, or to admission to a dynamic purchasing system, if the release of the information—

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

(5) A contracting authority shall not enter into a public contract with a successful tenderer unless at least 14 days have elapsed since the date on which tenderers were informed of the contract award decision in accordance with paragraph (1).

(6) A contracting authority may reduce the 14-day period referred to in paragraph (5) to 7 days if an accelerated procedure has been used. However, if within this 7-day period, the authority is notified in writing of the intention of a tenderer to seek a review of the contract award decision, it shall not enter a public contract until at least 10 days have elapsed since tenderers were informed of the contract award decision in accordance with paragraph (1).

## CHAPTER 4

### *Communications*

#### **Rules applicable to communication of information relating to public contracts**

**50.** (1) A contracting authority may give or send any information, notice or other communication for a purpose connected with entry into a public contract, or require candidates or tenderers to submit information or tenders, by such of the following means as it chooses:

- (a) by post or personal delivery;
- (b) subject to paragraphs (5) and (6), by electronic means;
- (c) subject to paragraph (7), by telephone or facsimile machine;
- (d) by a combination of any 2 or more of those means.

(2) A contracting authority shall choose a means of communication that is generally available to economic operators so as to enable them to gain access to the authority's tendering procedure.

(3) A contracting authority shall communicate and store information in connection with awarding public contracts in a way that maintains the integrity of data and the confidentiality of tenders and preserves requests to participate.

(4) A contracting authority shall ensure that the content of tenders remains unopened and confidential until the deadline for the receipt of tenders or requests to participate has expired.

(5) The equipment used for communicating by electronic means must be—

- (a) non-discriminatory, and
- (b) generally available, and
- (c) interoperable with information and communication equipment that is currently in general use.

(6) The following provisions apply to equipment used for sending and receiving tenders, and for receiving requests to participate, by electronic means:

- (a) information regarding the specifications necessary for the electronic submission of tenders and requests to participate (including encryption) must be made available to candidates and tenderers;

- (b) equipment used for electronically receiving tenders and requests to participate must comply with Schedule 4;
- (c) tenderers or candidates must undertake to submit, before the deadline for submission of tenders or requests to participate, all relevant documents that do not exist in electronic form.

In subparagraph (c), “relevant documents” means the documents, certificates and declarations referred to in Regulations 53 to 63 and Regulation 64.

(7) The following provisions apply to the sending of requests to participate in a procedure for the award of a public contract by a contracting authority:

- (a) a person who makes such a request by telephone shall confirm the request in writing before the deadline set for receiving requests;
- (b) a person who sends such a request by fax shall confirm the request by post or by electronic means, but only if required to do so by the authority for the purpose authenticating the request.

The authority shall specify those provisions in the contract notice, together with the deadline for sending confirmation by post or electronic means.

## CHAPTER 5

### *Reports*

#### **Content of reports**

**51.** (1) A contracting authority shall prepare a written report for every contract or framework agreement that it enters into, and for every dynamic purchasing system that it establishes. The report must, as a minimum, include the following particulars:

- (a) the name and address of the authority, the subject matter and value of the

contract, framework agreement or dynamic purchasing system;

- (b) the names of the successful candidates or tenderers and the reasons for their selection;
- (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (d) the reasons for rejecting tenders that are found to be abnormally low;
- (e) the name of the successful tenderer and the reasons why that tenderer's tender was selected and, if known, the share of the contract or framework agreement that that tenderer intends to subcontract to third parties;
- (f) if a competitive dialogue procedure is used, such of the circumstances referred to in Regulation 29 as justify the use of the procedure;
- (g) if a negotiated procedure is used, such of the circumstances referred to in Regulations 30 and 31 as justify the use of the procedure;
  
- (h) when appropriate, the reasons why the contracting authority has decided not to award a contract, enter into a framework agreement or establish a dynamic purchasing system.

(2) If the European Commission so requests, the contracting authority shall send to it a copy of the report, or such parts of the report as it specifies.

(3) A contracting authority shall keep a proper record of the progress of a public contract award procedure conducted by electronic means.



## PART 8

### HOW THE AWARD PROCEDURE IS TO BE CONDUCTED

#### CHAPTER 1

##### *General provisions*

#### **Procedure for verifying the suitability of participants, for choosing participants and for awarding public contracts**

**52.** (1) A contracting authority shall award a public contract on the basis of the criteria prescribed by Regulation 66 after having checked the suitability of the economic operators (other than those excluded under Regulations 53 and 54) in accordance with—

- (a) the criteria of economic and financial standing referred to in Regulation 55, and
- (b) the criteria of professional and technical knowledge or ability referred to in Regulations 56 to 59, and
- (c) if appropriate, the non-discriminatory rules and criteria referred to in paragraphs (3) to (7).

(2) In awarding a public contract on the basis of those criteria, a contracting authority shall take into account Regulation 24.

(3) A contracting authority can require candidates and tenderers to meet minimum capacity levels in accordance with Regulations 55 to 59.

(4) A contracting authority—

- (a) shall ensure that the extent of the information referred to in Regulations 55 to 59 and the minimum levels of ability required for a specific contract are related to, and are proportionate to, the subject matter of the contract, and
- (b) shall specify those minimum levels in the contract notice.

(5) A contracting authority that uses a restricted procedure, negotiated procedure with publication of a contract notice or a competitive dialogue procedure can limit the number of suitable candidates that it will invite to tender, negotiate or conduct a dialogue with, provided a sufficient number of suitable candidates is available. In such a case, the contracting authority shall specify in the contract notice—

- (a) the objective and non-discriminatory criteria or rules that it proposes to apply, and
- (b) the minimum number and, if that authority considers it appropriate to do so, the maximum number of candidates that it proposes to invite.

(6) A contracting authority—

- (a) shall—
  - (i) if it uses a restricted procedure, invite no fewer than 5 candidates, or
  - (ii) if it uses a negotiated procedure with prior publication of a contract notice or a competitive dialogue procedure, invite no fewer than 3 candidates, and
- (b) shall in any case invite sufficient candidates to ensure genuine competition, and
- (c) shall invite a number of candidates at least equal to the minimum number that the authority has set in advance (assuming a sufficient number of suitable candidates is available).

(7) If the number of candidates satisfying the selection criteria and the minimum stated levels of capability required is less than the minimum number, the contracting authority may continue the tendering process by inviting those candidates that have the capabilities required to perform the contract. However, the contracting authority may not invite—

- (a) other economic operators that have not made requests to participate in the tendering process, or
- (b) candidates that do not have the requisite capabilities.

(8) A contracting authority that decides to reduce the number of solutions to be discussed, or tenders to be negotiated, as provided for by Regulations 29(7) and 31(5), shall do so by applying

the award criteria specified in the relevant contract notice, specifications or descriptive document, but in any case shall ensure that the number of solutions arrived at is consistent with genuine competition (assuming enough solutions or suitable candidates are available).

## CHAPTER 2

### *Criteria for qualitative selection*

#### **Exclusion of certain persons from being considered for awards of public contracts**

**53.** (1) In considering whether or not to award a public contract, a contracting authority shall exclude from consideration any person who, to the knowledge of the authority, has been convicted of an offence involving—

- (a) participation in a prescribed criminal organisation, or
- (b) corruption, or
- (c) fraud, or
- (d) money laundering.

(2) In order to give effect to paragraph (1), the contracting authority—

- (a) shall, whenever appropriate, ask a candidate or tenderer to supply the documents referred to in paragraph (6), and
- (b) may, if it has doubts concerning the personal situation of the candidate or tenderer, also seek information that it considers relevant from an appropriate competent administrative or judicial authority.

(3) If the information referred to in paragraph (2)(b) concerns a candidate or tenderer established in another Member State, the contracting authority may request the co-operation of the competent authority of that other State. Such a request may extend to any agent of the person and,

in the case of a body (whether incorporated or unincorporated), extend to any person who is concerned in the direction or management of the body.

(4) In considering whether to award a public contract, a contracting authority may exclude from consideration any person—

- (a) who is subject to a bankruptcy or insolvency procedure or process of a kind specified in paragraph (5), or
- (b) who has been found guilty of professional misconduct by a competent authority that is authorised by law to hear and determine allegations of professional misconduct against persons that include the operator, or
- (c) who has committed grave professional misconduct provable by means that the authority can demonstrate, or
- (d) who has not fulfilled an obligation to pay a social security contribution as required by a law of the country or territory—
  - (i) where the person ordinarily resides or carries on business, or
  - (ii) where the authority is established, or
- (e) who has not fulfilled an obligation to pay a tax or levy imposed by or under a law of the country or territory—
  - (i) where the person ordinarily resides or carries on business, or
  - (ii) where the authority is established, or
- (f) who has provided a statement or information to the authority or another contracting authority knowing it to be false or misleading, or has failed to provide to the authority or another such authority a statement or information that is reasonably required by the authority for the purpose of awarding the public contract concerned.

(5) A person is subject to a bankruptcy or insolvency procedure or process for the purpose of paragraph (4) if —

- (a) the person is bankrupt or the subject of a bankruptcy petition, or
- (b) the person, being a body corporate, is being wound up or the subject of proceedings for compulsory winding up, or
- (c) the person's affairs are being administered by a court, or the person is the subject of proceedings in which it is sought to have the person's affairs so administered, or
- (d) the person has entered into an arrangement with creditors, or
- (e) the person has suspended business activities, or
- (f) the person is, in the opinion of the contracting authority concerned, in any situation analogous to any of those mentioned in subparagraphs (a) to (e) under a law of the State, another Member State or a third country relating to bankruptcy or insolvency.

(6) A contracting authority shall accept as sufficient evidence that a person is not liable to be excluded under paragraph (1) or under subparagraph (a), (b), (d) or (e) of paragraph (4)—

- (a) a copy of the relevant judicial record, or
- (b) in the absence of such a copy, a certificate issued by a competent judicial or administrative authority in the country or territory where the person ordinarily resides or carries on business, or the authority is established,

showing that the particular subparagraph does not apply to the person.

(7) Without limiting paragraph (6), a contracting authority shall accept as sufficient evidence that a person is not liable to be excluded under subparagraph (d) or (e) of paragraph (4) a certificate issued by the Collector General of the Office of the Irish Revenue Commissioners showing that the relevant subparagraph does not apply to the person.

(8) If a question arises as to whether paragraph (1), or subparagraph (a) or (b) of paragraph (4), applies to a person and either—

- (a) the relevant judicial or administrative or competent authority in the country or

territory in question does not issue documents of the kind referred to in paragraph (6), or (7), or

- (b) although it issues documents of that kind, they do not cover the case in question,

the contracting authority concerned shall accept instead a declaration made by the person on oath or, in the case of a Member State where there is no provision for making a declaration on oath, a solemn declaration made by the person before a person authorised for the purpose under a law of that Member State.

- (9) The following are authorised authorities for the purposes of paragraph (8):

- (a) a competent judicial or administrative authority of the country or territory where the person ordinarily resides or carries on business or where the contracting authority is established;
- (b) a notary or a competent professional or trade body located in that country or territory.

#### **Suitability to pursue the professional activity**

**54.** (1) An economic operator that wishes to participate in a public contract shall, if requested to do so by the contracting authority concerned, provide—

- (a) evidence to the satisfaction of that authority that it is enrolled on one of the professional or trade registers, or
- (b) a declaration on oath or a certificate,

as described in the relevant Part of Annex IX to the Public Authorities Contracts Directive.

(2) For the purposes of paragraph (1), the relevant Part of Annex IX to the Public Authorities Contracts Directive is—

- (a) in the case of a public works contract, Part A, and
- (b) in the case of a public supply contract, Part B, and

- (c) in the case of a public service contract, Part C.

(3) If, in relation to the award of a public service contract, candidates or tenderers are required to be holders of a particular qualification in order to be able to carry on the kind of activity to which the contract relates in the country or territory where their principal place of business is located, those candidates or tenderers shall, if required to do so by the contracting authority, provide evidence that they hold such a licence or authority or that they are members of that organisation.

- (4) In paragraph (3), “qualification” includes—

- (a) a licence or other form of authorisation, and
- (b) membership of a specified organisation.

### **Economic and financial standing**

**55.** (1) A contracting authority may accept as proof of an economic operator’s economic and financial standing one or more of the following references:

- (a) an appropriate statement from a bank or, where appropriate, evidence that the operator has relevant professional risk indemnity insurance;
- (b) the presentation of a financial statement relating to the business of the operator, or a copy of such a statement, but only if the statement is required to be published under a law of the country in which the operator is established or carries on business;
- (c) a statement showing—
  - (i) the operator’s overall turnover, and
  - (ii) if appropriate, the turnover in the kind of business covered by the proposed contract,

for a specified period normally not exceeding the preceding 3 years.

(2) An economic operator may, if appropriate and in relation to a particular contract, rely on the services of other persons, regardless of the legal nature of the links that the operator has with them. In such a case, the operator shall satisfy the contracting authority that the operator will have available the resources necessary to perform the contract (for example, by producing an undertaking by those other persons that they have available the necessary resources).

(3) Under the same conditions, a group of economic operators may rely on the capacities of participants within the group.

(4) A contracting authority shall specify, in the relevant contract notice or invitation to tender—

- (a) which reference or references mentioned in paragraph (1) they have chosen, and
- (b) which other references must be provided.

(5) An economic operator that, for any valid reason, is unable to provide the references requested by a contracting authority may prove its economic and financial standing by any other document acceptable to the authority.

### **Contracting authority to assess technical and professional ability of economic operators**

**56.** In considering whether to award a public contract, a contracting authority shall, so far as relevant, assess the technical and professional abilities of the economic operators in accordance with—

- (a) Regulation 57, if the contract is to carry out public works, or
- (b) Regulation 58, if the contract is to supply products, or
- (c) Regulation 59, if the contract is to supply a service.

### **Evidence that an economic operator may provide in relation to a public works contract**



57. (1) In relation to a public works contract, an economic operator may provide evidence of the operator's technical ability by producing to the relevant contracting authority one or more of the following references:

- (a) a list of the works that the operator has carried out over the immediately preceding 5 years, accompanied by certificates or other evidence that the operator has completed the relevant works satisfactorily;
  - (b) a list of the technical persons—
    - (i) who are or have been responsible for controlling the quality of, or are or have been otherwise involved in, works carried out by the operator, or
    - (ii) whose services the operator can call on in order to assist the operator in carrying out works;
  - (c) the educational and professional qualifications of persons employed to manage works carried out by the operator and of persons who carry out works as subcontractors of the operator;
  - (d) when appropriate, a specification of the environmental management measures (if any) that the operator would observe in performing the contract;
  - (e) a statement specifying—
    - (i) the average number of persons employed by the operator in carrying out works contracts, and
    - (ii) the number of persons employed by the operator in managerial positions, during the immediately preceding 3 years;
  - (f) a statement specifying the tools, plant and other technical equipment that would be available to the operator for carrying out the contract.
- (2) The certificates or evidence referred to in paragraph (a) must specify—
- (a) the value, date and site of the works, and
  - (b) whether the works were carried out in accordance with the rules of the relevant

trade and were properly completed.

Whenever appropriate to do so, the persons responsible for issuing those certificates or other evidence shall submit them directly to the contracting authority concerned.

(3) For the purposes of paragraph (1)(b), a person can be regarded as being or having been involved in works carried out by an operator even though the person is not an employee of the operator.

(4) In awarding a public works contract, a contracting authority may evaluate the capacity of an economic operator to carry out the works by reference to the operator's skills, efficiency, experience and reliability.

(5) The contracting authority shall specify, in the contact notice or in the invitation to tender for the contract, which references under paragraph (1) it wishes to receive.

#### **Evidence that an economic operator may provide in relation to a public supplies contract**

**58.** (1) In relation to a public supply contract, an economic operator may provide evidence of the operator's technical ability by producing to the relevant contracting authority one or more of the following:

- (a) a list of the principal contracts to supply products effected during the immediately preceding 3 years, together with particulars of—
  - (i) the amounts of consideration given, and
  - (ii) the dates on which, or the periods over which, the contracts were performed, and

- (iii) the persons to whom the products were supplied;
- (b) a list of the technical persons who are or have been responsible for controlling the quality of, or are or have been otherwise involved in, the supply or manufacture of products by the operator;
- (c) a description of—
  - (i) the technical facilities and measures used by the operator for ensuring the quality of products supplied by the operator, and
  - (ii) the operator's study and research facilities;
- (d) if the products to be supplied are complex or are required for a special purpose, a report of an examination carried out by the contracting authority or, on its behalf, by a competent official body located in the country or territory in which the operator is established, concerning—
  - (i) the production capacity of the operator, and,
  - (ii) when appropriate, the means of study and research that are available to the operator and the quality control measures that it would operate;
- (e) the educational and professional qualifications of persons employed to manage the production of the products to be supplied by the operator and of persons who have undertaken to work as subcontractors of the operator;
- (f) a statement specifying—
  - (i) the average number of persons employed by the operator, and
  - (ii) the number of persons employed for that purpose by the operator in managerial positions,

during the immediately preceding 3 years;
- (g) a statement specifying the tools, plant and other technical equipment that would be available to the operator for carrying out the contract;
- (h) samples, descriptions or photographs of the products proposed to be supplied, the

authenticity of which must be certified if the contracting authority so requests;

- (i) certificates prepared by an official quality control institute or agency of recognised competence attesting the conformity of the products, clearly identified by reference to specifications or standards.

(2) For the purposes of paragraph (1)(b), a person can be regarded as being or having been involved in the supply or manufacture of products by an operator even though the person is not an employee of the operator.

(3) An economic operator shall provide evidence of the supply of products—

- (a) if the recipient of the products was a contracting authority, in the form of a certificate issued or countersigned by the authority, or
- (b) if the recipient was a private purchaser, by a certificate given by the purchaser or, in the absence of such certificate, by a declaration made by the economic operator.

(4) The contracting authority shall specify, in the contact notice or in the invitation to tender for the contract, which references under paragraph (1) it wishes to receive.

### **Evidence that an economic operator may provide in relation to a public service contract**

**59.** (1) In relation to the award of a public service contract, an economic operator may provide evidence of the operator's technical ability by producing to the relevant contracting authority one or more of the following:

- (a) a list of the main services supplied by the operator during the immediately preceding 3 years, together with particulars of—
  - (i) the amounts of consideration given, and
  - (ii) the dates on which, or the periods over which, the contracts were performed, and

- (iii) the persons to whom the services were supplied;
- (b) a list of the technical persons who have been or are responsible for controlling the quality of, or are or have been otherwise involved in, the supply of services by the operator;
- (c) a description of—
  - (i) the technical facilities and measures used by the operator for ensuring the quality of services that are supplied by the operator, and
  - (ii) the operator's study and research facilities;
- (d) if the services to be supplied are complex or are required for a special purpose, a report of an examination carried out by the contracting authority or, on its behalf, by a competent official body located in the country or territory in which the operator is established, concerning—
  - (i) the technical capacity of the operator to supply the services, and,
  - (ii) when appropriate, the means of study and research that are available to the operator and the quality control measures that it would operate;
- (e) the educational and professional qualifications of persons employed to manage the supply of the service by the operator and of persons who have undertaken to work as subcontractors of the operator;
- (f) when appropriate, a specification of the environmental management measures that the operator would be able to apply when performing the contract;
- (g) a statement specifying the average number of persons employed by the operator to supply the service and the number of persons employed for that purpose by the operator in managerial positions, over the immediately preceding 3 years;
- (h) a statement specifying the tools, plant and other technical equipment that would be available to the operator for carrying out the contract;
- (i) a specification of the proportion of the contract that the supplier proposes to subcontract.

(2) For the purposes of paragraph (1)(b), a person can be regarded as being or having been involved in the supply of services by an operator even though the person is not an employee of the operator.

(3) An economic operator shall provide evidence of the supply of services—

(a) if the recipient of the services was a contracting authority, in the form of certificates issued or countersigned by the authority, or

(b) if the recipient was a private purchaser, by a certificate given by the purchaser or, in the absence of such certificate, by a declaration made by the economic operator.

(4) In relation to awarding a public contract to supply a service, a contracting authority may evaluate the capacity of an economic operator to supply the service by reference to the operator's skills, efficiency, experience and reliability.

(5) The contracting authority shall specify, in the contact notice or in the invitation to tender for the contract, which references under paragraph (1) it wishes to receive.

**Economic operator may be required to produce certificate of payment of outstanding social security contributions and taxes**

**60.** (1) When deciding whether or not to award a public contract to a particular approved or certified economic operator, a contracting authority is entitled to require the operator to produce to the authority an additional certificate certifying that the operator has no social security contributions or taxes outstanding.

(2) An economic operator that fails, within such period as is specified by the contracting authority (or within such extended period as that authority allows), to comply with a requirement made in accordance with paragraph (1) is taken to have withdrawn its tender or to have withdrawn from participating in the restricted or negotiated procedure or competitive dialogue concerned.

## **Official lists of registered economic operators and certification of economic operators**

**61.** (1) If an economic operator registered on an official list kept under a law of another Member State proposes to tender for a public contract to be awarded by a contracting authority established in the State, the operator may submit to the authority either the certificate of registration or a certificate issued by a competent certifying body of that other Member State certifying that the operator's name appears on the a list.

(2) However, the fact that an economic operator is registered on an official list, or holds a certificate certifying that the operator's name appears on such a list, does not create a presumption that the operator is suitable for the purposes of carrying out the relevant works, or supplying the relevant products or service, under a public contract, except as regards the operation of Regulations 53, 54 and 55, and—

- (a) Regulation 57 in the case of a public works contract, or
- (b) Regulation 58 in the case of a public supply contract, or
- (c) Regulation 59 in the case of a public service contract.

(3) A contracting authority is not, without justification, entitled to question information that can be deduced from registration on an official list or certification.

(4) Paragraphs (2) and (3) apply to an economic operator registered on an official list kept in another Member State only if the operator is established in that other Member State.

(5) If an economic operator is registered on an official list kept in another Member State, or holds a certificate issued by a competent certifying body established in that other State, a contracting authority is not entitled to require further proof or statements other than those that it can ask an economic operator established in the State to provide. The authority may not in any case require the operator to provide proof and statements other than those provided for under Regulations 53 to 60, 62 and 63 and, where appropriate, Regulation 64.

(6) A contracting authority established in the State cannot require an economic operator established in another Member State in which an official list is kept to become registered on that list or to obtain a certificate from a competent certifying body of that other Member State.

(7) A contracting authority established in the State shall recognise certificates issued by certifying bodies established in other Member States and shall also accept other equivalent means of proof. However, those bodies must be ones that comply with European certification standards.

### **Economic operator may rely on capacities of other economic operators**

**62.** (1) When it is appropriate to do so in relation to a particular contract, an economic operator may rely on the capacities of other persons or groups of economic operators, irrespective of the links that it has with them.

(2) A group of economic operators may also rely on the capacities of members of the group or of other persons or groups.

(3) In making use of the capacities of other persons, the operator or group shall satisfy the contracting authority concerned that it will have at its disposal the resources necessary for perform the contract, for example, by producing an undertaking from those persons that they are willing and able to place the necessary resources at the disposal of the operator or group.

### **Quality assurance standards**

**63.** When requiring the production of certificates issued by independent bodies attesting to the extent to which an economic operator has complied with certain quality assurance standards, a contracting authority shall—

- (a) refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series for certification, and
- (b) recognise equivalent certificates issued by recognised bodies established in other Member States, and



- (c) accept evidence of equivalent quality assurance measures provided by other economic operators.

### **Environmental management standards**

**64.** When requiring the production of certificates issued by independent bodies attesting to the extent to which an economic operator has complied with environmental management standards as provided by Regulation 57(1)(d) or 59(1)(f), a contracting authority shall—

- (a) refer to the Community Eco-Management and Audit Scheme (EMAS), or to environmental management standards based on the relevant European or international standards certified by bodies conforming to European Community law or the relevant European or international standards concerning certification, and
- (b) recognise certificates of competency issued by recognised bodies established in other Member States, and
- (c) accept evidence of equivalent environmental management measures provided by other economic operators.

### **Additional documentation and information**

**65.** (1) A contracting authority may require an economic operator to supplement or clarify, within a period or before a date specified in the request, the certificates and documents that it has submitted in accordance with the requirements of this Chapter.

(2) An economic operator that fails, within such period as is specified by the contracting authority (or within such extended period as that authority allows), to comply with a requirement made in accordance with paragraph (1) is taken to have withdrawn its tender or to have withdrawn from participating in the restricted or negotiated procedure or competitive dialogue concerned.

## CHAPTER 3

### *Awarding public contracts*

#### **Criteria for the award of a public contract**

66. (1) A contracting authority shall, in awarding a public contract on the basis of the tender that is most economically advantageous to it, adopt criteria linked to the subject matter of the contract.

(2) Except as provided by paragraph (1), a contracting authority shall award a public contract on the basis of the lowest price.

(3) For the purpose of paragraph (1), the criteria may include (but are not limited to)—

- quality,
- price,
- technical merit,
- aesthetic and functional characteristics,
- environmental characteristics,
- running costs,
- cost-effectiveness,
- after-sales service and technical assistance, and
- delivery date and delivery period or period of completion.

(4) The contracting authority shall specify in the relevant contract notice or contract documents or, in the case of a competitive dialogue, in the relevant descriptive document, the relative weighting that it gives to each of the criteria chosen to determine the most economically advantageous tender. That weighting can be expressed by providing for a range within an appropriate maximum spread.

(5) If weighting is not possible for reasons that the contracting authority can demonstrate, that authority shall specify in the relevant contract notice or contract documents or, in the case of a competitive dialogue, in the relevant descriptive document, the criteria in descending order of importance.

(6) Nothing in this Regulation affects any law of the State relating to remuneration for a service supplied under contract of employment or for services.

### **Conditions under which contracting authority may hold an electronic auction**

**67.** (1) A contracting authority may award a public contract by means of an electronic auction, but only in accordance with this Regulation and Regulation 68.

(2) A contracting authority shall not—

- (a) have improper recourse to electronic auctions, or
- (b) use an electronic auction in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract, as put up for tender in the published contract notice and defined in the contract specifications.

(3) In awarding a public contract by means of an open or restricted procedure, or negotiated procedure in accordance with Regulation 31(1), a contracting authority may decide that the award should be preceded by an electronic auction, but only if the contract specifications can be established with precision.

(4) Provided the contract specifications can be established with precision, a contracting authority may also hold an electronic auction—

- (a) on the reopening of competition among the parties to a framework agreement as provided for in Regulation 35(2)(b), and
- (b) on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Regulation 36.

(5) An electronic auction must—

- (a) if the contract is awarded to the most economically advantageous tender, be based on price and the new values of the features of the tenders indicated in the specification, or on both price and those new values, or

- (b) if the contract is to be awarded to the tenderer of the lowest price, be based solely on price.

(6) On deciding to hold an electronic auction, a contracting authority shall state that fact in the relevant contract notice, together with details of the auction. Those details must include (but are not limited to) the following:

- (a) the weightings of award criteria to be used in the auction (so long as the criteria can be expressed in figures or percentages);
- (b) any limits imposed on the values that can be submitted (in so far as they result from the specifications relating to the subject matter of the contract);
- (c) the information that the authority will make available to tenderers in the course of the auction and, if appropriate, when the information will be made available to them;
- (d) all information relevant to the auction process;
- (e) the conditions under which tenderers will be able to bid and, in particular, the minimum amounts by which tenderers must reduce their bids in the tendering process;
- (f) all relevant information concerning the electronic equipment to be used and the arrangements and technical specifications for communicating while the auction is in progress.

(7) Before proceeding with an electronic auction, a contracting authority shall make a full initial evaluation of the candidates or tenders in accordance with the specified criteria and any weighting fixed for those criteria.

(8) In holding an electronic auction, a contracting authority shall—

- (a) simultaneously by electronic means, invite all tenderers that have submitted admissible tenders to the authority to submit new prices or new values, or both new prices and new values, and
- (b) include in the invitation all relevant information concerning individual electronic

connection to the electronic equipment being used, and

- (c) state the date and time of the start of the auction.

(9) A contracting authority may hold an electronic auction in a number of successive phases, but may not begin the auction earlier than 2 business days after the date on which invitations were sent.

(10) In awarding a public contract on the basis of the most economically advantageous tender, a contracting authority shall ensure—

- (a) that the invitation is accompanied by the outcome of a full evaluation of the relevant tenderer, carried out in accordance with the weighting provided for in Regulation 66(4), and
- (b) that the invitation specifies the mathematical formula to be used in the electronic auction to determine automatic re-rankings of tenderers on the basis of the new prices or new values (or both) submitted by them, and
- (c) that that formula incorporates the weighting of all the criteria that have been fixed to determine the most economically advantageous tender (as specified in the relevant contract notice or specifications for that purpose).

(11) Before beginning an electronic auction, an contracting authority concerned shall ensure that any weightings expressed as being within a range are specified as precise figures.

(12) When holding an electronic auction, a contracting authority shall, throughout each phase of the auction, instantaneously communicate to each tenderer sufficient information to enable the tenderer to discover what its relative ranking is at any particular time. The authority may also—

- (a) communicate other information concerning other prices or values submitted, so long as it is stated in the specifications, and
- (b) at any time announce the number of tenderers that are participating in that phase of the auction.

However, the authority shall not disclose the identities of the tenderers at any time during the course of the auction.

### **Procedure for closing an electronic auction**

**68.** (1) A contracting authority shall close an electronic auction in one or more of the following ways:

- (a) by specifying in the invitation to participate in the auction the date and time of the closure;
- (b) when it is no longer receiving any further new offers or prices that comply with the rules regulating the circumstances in which tendered amounts can be reduced during the tender process;
- (c) when the number of phases in the auction (as specified in the invitation to participate in the auction) has been completed.

(2) A contracting authority shall not close an electronic auction under paragraph (1)(b) unless it has specified in the invitation to participate in the auction the period that it will allow to elapse, after receiving the last submission, before it closes the auction.

(3) A contracting authority shall not close an electronic auction under with paragraph (1)(c), unless it has specified in the invitation to participate in the auction the timetable for each phase of the auction.

(4) After closing an electronic auction, a contracting authority shall award the contract in accordance with the criteria referred to in Regulation 66 and on the basis of the result of the auction.

### **Contracting authority may reject abnormally low tenders**

**69.** (1) If a tender for the award of a public contract to carry out works, or to supply products or a service, appears to the contracting authority concerned to be abnormally low, that authority shall, by notice in writing and before rejecting the tender, request the tenderer to provide written details of such of the constituent elements of the tender as are specified in the notice. Those details may relate to (but are not limited to) any of the following:

- (a) the economics of the construction method to be used to carry out the work, the manufacturing process to be used to produce the products or the means to be used to supply the service;
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer to carry out the work, or to supply the products or service, or both;
- (c) the originality of the work to be carried out, or the products or service to be supplied, by the tenderer;
- (d) the extent to which the provisions for employment protection and working conditions applicable to the place where the work is to be carried out, or where the products or service are or is to be supplied, are being complied with;
- (e) whether there is a possibility that the tenderer may receive aid from the State or other Member State.

(2) The contracting authority shall, as far as practicable, verify the constituent elements—

- (a) by consulting the tenderer, and
- (b) by taking account of the evidence that the tenderer provides about those elements.

(3) The contracting authority can reject a tender on being satisfied that the only reason for the tender being abnormally low is that the tenderer has received aid from the State or other Member States, but only after—

- (a) that authority has consulted the tenderer about the matter, and
- (b) the tenderer has failed, by a deadline specified by that authority, to satisfy it that the aid was granted lawfully.

(4) A contracting authority that rejects a tender in accordance with paragraph (3) shall, by notice in writing, inform the European Commission of the rejection and the reason for it.

## PART 9

### RULES ON PUBLIC WORKS CONCESSION CONTRACTS

#### CHAPTER 1

##### *Rules governing public works concessions*

##### **Public works concession contracts to which this chapter applies**

**70.** (1) This Chapter applies to every public works concession contract that is entered into by a contracting authority where the value of the contract is equal to or greater than €5,278,000. That value is to be calculated in accordance with the rules applicable to public works contracts.

(2) This Part does not apply to a public works concession contract that—

- (a) is a public works contract of a kind referred to in Regulation 10, 11 or 12, or
- (b) is to be awarded by a contracting authority that carries on an activity of a kind referred to in Articles 3 to 7 of the Public Utilities Contract Directive and the relevant concession is to be awarded for carrying out that activity.

##### **Publication of notices concerning public works concessions**

**71.** (1) A contracting authority that proposes to award a public works concession contract shall make its intention known by publishing a notice in accordance with paragraph (2) and Regulation 45 (paragraph (1) excepted).

(2) Such a notice—

- (a) must contain—
  - (i) the information referred to in Part C of Schedule 5, and



- (ii) if appropriate, any other information that the contracting authority considers useful, and
- (b) must be in accordance with the standard forms adopted by the European Commission under the procedure under Article 77 of the Public Authorities Contracts Directive.

### **Deadline for public works concession contracts offered by a contracting authority**

**72.** (1) In awarding a public works concession contract, a contracting authority shall not impose a deadline for lodging applications for the contract that is less than 52 days from the date on which the relevant contract notice was sent for publication in the Official Journal of the European Union except when Regulation 46(6) applies.

- (2) Regulation 46(9) also applies to such a contract.

### **Powers of contracting authority with respect to subcontracting under a public works concession contract**

**73.** (1) In awarding a public works concession contract, a contracting authority may require that the successful tenderer must award to third parties subcontracts that represent a minimum of 30 per cent of the total value of the work to be carried out under the contract, while at the same time giving candidates for the contract the option to increase that percentage. The contracting authority shall specify that minimum percentage in the contract.

(2) Alternatively, the contracting authority may require the candidates for the contract to specify in their tenders the percentage (if any) of the total value of the work under the contract that it intends to award to third parties.

(3) An economic operator that fails, within such period as is specified by the contracting authority (or within such extended period as that authority allows), to comply with a requirement imposed under this Regulation is taken to have withdrawn its tender.

### **Awarding of additional works to the concessionaire**

**74.** (1) These Regulations do not apply to additional works that become necessary through unforeseen circumstances in order to complete the work under a public works concession contract if—

- (a) those works were not specified in the contract or in any project proposals leading to the contract, and either those works—
  - (i) cannot be technically or economically separated from the initial contract without major inconvenience to the contracting authority, or
  - (ii) although separable from the performance of the contract, are strictly necessary for its completion, and
- (b) the contracting authority concerned has awarded the additional works to the concessionaire on condition that the award for those works is made to the economic operator that is carrying out the work under the contract.

(2) However, the contracting authority may not award contracts for any such additional works to the extent that the aggregate value of the contracts would exceed 50 per cent of the value of the consideration given for the original public works concession contract.

## CHAPTER 2

### *Rules about public works concession contracts awarded by concessionaires that are contracting authorities*

#### **Rules applicable to public works concession contracts**

75. If a contracting authority is the concessionaire for a public works concession contract, it shall comply with such of the provisions of these Regulations as apply to and in relation to public works contracts under which some or all of the works are to be carried out by third parties.

## CHAPTER 3

*Rules applicable to contracts awarded by concessionaires that are not contracting authorities*

### **Advertising rules: threshold and exceptions**

76. (1) When inviting tenders for a public works contract from third parties, a concessionaire that is not a contracting authority shall comply with the advertising rules prescribed by Regulation 77, unless the value of the consideration given for carrying out the contract is less than €5,278,000. That value is to be calculated in accordance with the rules specified in Regulation 6.

(2) However, such a concessionaire is not required to comply with those rules in relation to a public works contract that satisfies the conditions set out in Regulation 32.

(3) For the purposes of this Regulation, a group of economic operators formed for the purpose of seeking the award of a public works concession contract, or any undertaking related to the group, is not to be regarded as a third party.

(4) For the purpose of paragraph (3), an undertaking is related to a group of economic operators if—

- (a) the group can exert a dominant influence over the undertaking, whether directly or indirectly, or
- (b) the undertaking can exert a dominant influence over the group, or
- (c) the group is subject to the dominant influence of the undertaking as a result of ownership, financial participation or the rules that govern it.

(5) An undertaking is presumed to have a dominant influence for the purpose of paragraph (4) if, directly or indirectly in relation to another undertaking—

- (a) it holds a majority of the other undertaking's subscribed capital, or
- (b) it controls a majority of the votes attached to the shares issued by the other undertaking, or
- (c) it can appoint more than half of the body responsible for administering, managing or supervising the other undertaking.

(6) A group of economic operators that has tendered for the award of a public works concession contract shall—

- (a) include in the application an exhaustive list of the undertakings (if any) that are related to it, and
- (b) update the list as soon as practicable after any change occurs in the relationship between the undertakings.

(7) A group of economic operators that fails, within such period as is specified by the contracting authority (or within such extended period as that authority allows), to comply with a requirement made in accordance with paragraph (6) is taken to have withdrawn its tender.

### **Certain concessionaires to publish a notice**

77. (1) If a concessionaire that is not a contracting authority proposes to award a public works concession contract to a third party, the concessionaire shall make its intention known by publishing a notice to that effect in accordance with paragraph (2) and Regulation 45 (paragraph (1) excepted).

(2) Such a notice must—

- (a) contain—
  - (i) the information referred to in Part C of Schedule 5, and
  - (ii) if appropriate, any other information that the concessionaire considers relevant, and

- (b) be in accordance with the standard forms adopted by the European Commission under the procedure prescribed by Article 77(2) of the Public Authorities Contracts Directive.

### **Deadline for the receipt of requests to participate and receipt of tenders**

**78.** (1) In awarding a public works concession contract, a concessionaire which is not a contracting authority shall not, —

- (a) impose a deadline for the receipt of requests to participate in the award process for the contract that is less than 37 days from the date on which the relevant contract notice was sent for publication, or
  - (b) impose a deadline for the receipt of tenders that is less than 40 days from the date on which the relevant contract notice was sent for publication or the date on which the invitation to submit tenders was sent.
- (2) Paragraphs (8) to (10) of Regulation 46 apply to such a contract.

## PART 10

### RULES GOVERNING DESIGN CONTESTS

#### **Interpretation: Part 10**

**79.** In this Part, “jury” means a jury appointed to judge a design contest.

#### **Application of this Part**

**80.** (1) This Part applies to—

- (a) a design contest organised as part of a procedure leading to the award of a public service contract, and
  - (b) a design contest involving an award of prizes to participants in the contest.
- (2) This Part does not apply to—
- (a) a design contest within the meaning of the Public Utilities Contracts Directive if the contest is organised by a contracting authority engaged in an activity referred to in Articles 3 to 7 of that Directive in order to carry out the activity, or
  - (b) a design contest for a contract excluded from the scope of these Regulations, or
  - (c) a design contest for a contract referred to in Regulation 10, 11 or 12.

### **General duty of contracting authority that holds a design contest**

- 81.** (1) In organising a design contest for the award of a public contract, a contracting authority shall ensure—
- (a) that the contest conforms to the rules prescribed by this Part, and
  - (b) that those rules are communicated to those interested in participating in the contest.
- (2) A contracting authority shall not limit the admission of participants to such a contest—
- (a) by reference to the territory or part of the territory of a Member State, or
  - (b) on the grounds that, under the law of the Member State in which the contest is organised, the participants would be required to be either natural or legal persons.

### **In what circumstances a design contest can be organised**

**82.** (1) The following authorities can organise a design contest, but in doing so shall comply with the rules prescribed by this Part:

- (a) a contracting authority that is listed as a central government authority in Annex IV of the Public Authorities Contracts Directive, for a public contract starting from a threshold of not less than €137,000;
- (b) a contracting authority not listed in that Annex, for a public contract starting from a threshold of not less than €211,000;
- (c) in the case of a service specified in paragraph (2), any contracting authority, for a public contract starting from a threshold not less than €211,000.

(2) For the purpose of paragraph (1)(c), the following services are specified:

- (a) a service listed in category 8 of Part A of Schedule 2;
- (b) a service listed in category 5 of that Part (telecommunications services, the positions of which in the CPV are equivalent to reference numbers CPC 7524, 7525 and 7526);
- (c) a service listed in Part B of that Schedule.

(3) In the case of a design contest of the kind referred to in Regulation 80(1)(a), the threshold refers to the estimated value of the public service contract concerned, disregarding value added tax (if any) but including any prizes that could be awarded to participants in the contest.

(4) In the case of a design contest of the kind referred to in Regulation 80(1)(b), the threshold refers to the total amount of the prizes that could be awarded to participants in the contest, including the estimated value (net of value added tax) payable in respect of any public service contract that is subsequently entered into under Regulation 32 (5) (d) (unless the relevant contracting authority excludes such an award in the contest notice).

(5) In this Regulation, “prize” includes a payment of money.

### **Contracting authority to publish contest notice before holding a design contest**

**83.** (1) A contracting authority that proposes to hold a design contest shall make its intention to do so known by publishing a contest notice.

(2) As soon as practicable after a contracting authority has held a design contest, it shall send a notice of the result of the contest to the Office for Official EC Publications in accordance with Regulation 45. The authority shall ensure that it is able to prove the date on which the notice was sent to the Office for Official EC Publications for publication.

(3) The notices referred to at (1) and (2) must contain the information referred to in Part D of Schedule 5 in accordance with the standard model notices adopted by the European Commission under Article 77(2) of the Public Authorities Contracts Directive.

(4) A contracting authority may withhold information on the outcome of the contest if the disclosure of the information—

- (a) would impede law enforcement, or
- (b) would be contrary to the public interest, or
- (c) would prejudice the legitimate commercial interests of a particular enterprise, whether public or private, or
- (d) might prejudice fair competition between suppliers of services.

#### **How information about design contests may be communicated**

**84.** (1) Paragraphs (1) to (3) of Regulation 50 apply to all communications relating to a design contest.

(2) A contracting authority that holds a design contest shall—

- (a) communicate and store information in connection with the contest in a way that maintains the integrity of data and the confidentiality of information provided by participants in the contest, and
- (b) take all reasonably practicable steps to ensure that the jury established to judge



the contest ascertains the contents of plans and projects only after the deadline for their submission to the authority.

- (3) If, in holding a design contest, a contracting authority makes use of devices for the electronic receipt of plans and projects, it shall—
- (a) make available to the parties concerned information relating to the specifications that is necessary for the presentation of plans and projects by electronic means, including encryption, and
  - (b) ensure that all such devices comply with the requirements of Schedule 4.

### **Selection of competitors**

**85.** (1) A contracting authority that restricts a design contest to a limited number of participants shall prescribe clear and non-discriminatory selection criteria for the contest.

(2) Such an authority shall ensure that the number of candidates invited to participate in the contest is sufficient to ensure genuine competition.

### **Composition of the jury**

**86.** (1) A jury may consist only of natural persons who are independent of participants in the contest.

(2) If the participants in a design contest are required to hold a particular professional qualification, at least one-third of the members of the jury must have that qualification or an equivalent qualification.

(3) The failure of a jury to comply with a requirement of this Regulation with respect to a design contest renders the deliberations and decision of the jury void.

### **Deliberations and decisions of juries**

87. (1) This Regulation applies whenever a jury has been appointed to judge a design contest.
- (2) Before judging a design contest, the jury shall appoint one of its members to be the chairperson of the jury.
- (3) A person shall not, without lawful excuse, interfere with the deliberations or decision of a jury unless the person is a member of the jury.
- (4) The jury shall examine the designs and the projects of the candidates submitted anonymously to the jury, solely on the basis of the criteria indicated in the contest notice.
- (5) The chairperson of the jury shall record the jury's ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any matters that require clarification.
- (6) A jury may, if it thinks necessary, invite candidates to answer questions concerning matters in respect of which the jury requires clarification, but only if those matters are recorded in the minutes of its deliberations.
- (7) The chairperson of the jury shall ensure that complete minutes are kept recording the dialogue between jury members and the candidates.

## **PART 11**

### **STATISTICAL OBLIGATIONS, EXECUTIVE POWERS AND FINAL PROVISIONS**

#### **Statistical obligations**

**88.** Not later than 31 October in each year, the Minister shall send to the European Commission an annual statistical report, prepared in accordance with Regulation 89. The report must deal separately with public works contracts, public supply contracts and public service contracts awarded by contracting authorities during the immediately preceding financial year of the State.

### **Contents of statistical reports**

**89.** (1) In the annual statistical report, the Minister shall specify, for each contracting authority listed in Annex IV to the Public Authorities Contracts Directive—

- (a) the number and value of public contracts that the authority has awarded, and
- (b) the number and total value of public contracts that the authority has awarded under derogations to the Government Procurement Agreement.

(2) As far as practicable and so far as relevant, the Minister shall segregate the data referred to in paragraph (1)(a) by reference to—

- (a) the contract award procedures that contracting authorities have used, and
- (b) for each of those procedures, works (as provided by Schedule 1) and products and services (as provided by Schedule 2) identified by category of the CPV nomenclature, and
- (c) the nationality of the economic operator or group of economic operators to which the contract was awarded.

(3) In the case of public contracts that have been entered into by means of the negotiated procedure, the Minister shall—

- (a) segregate the data referred to paragraph (1)(a) according to the circumstances referred to in Regulations 31 and 32, and
- (b) specify the number and value of contracts awarded by reference to the Member State or third country where the successful contractors are located.

(4) For each category of contracting authorities that is not specified in Annex IV to the Public Authorities Contracts Directive in relation to Ireland, the Minister shall specify in the annual statistical report—

- (a) the number and value of the contracts awarded, segregated in accordance with the paragraph (1)(b), and
- (b) the total value of contracts awarded in accordance with derogations to the Government Procurement Agreement.

(5) The Minister—

- (a) shall specify in the annual statistical report any other statistical information that is required under the Government Procurement Agreement, and
- (b) may include in that report such other information as the Minister considers appropriate, so long as it is not inconsistent with these Regulations or the information specified in accordance with subparagraph (a).

(6) The information required to be included in a report referred to in this Regulation is the information determined by the Advisory Committee in accordance with Articles 3, 7 and 8 of Decision 1999/468/EC.<sup>2</sup>

#### **Revision of the thresholds and values set out in the Public Authorities Contracts Directive**

**90.** (1) As soon as practicable after the European Commission has published revised thresholds and their corresponding values in the national currencies in the Official Journal of the European Union in accordance with Article 78 of the Public Authorities Contracts Directive, the Minister shall, by notice in writing, inform contracting authorities of the revised thresholds and values set out in the provisions of these Regulations that correspond to the relevant provisions of that Directive.

---

<sup>2</sup> Official Journal L 184 , 17/07/1999 P. 0023 - 0026

(2) On publication of revised thresholds and values as referred to in paragraph (1), the corresponding thresholds and values set out in the provisions of these Regulations are adjusted accordingly.

### **Amendments to the Public Authorities Contracts Directive**

- 91.** (1) As soon as practicable after the European Commission, in accordance with the procedure referred to in Article 77(2) of the Public Authorities Contracts Directive, amends—
- (a) the technical procedures for the calculation methods specified in the second subparagraph of Article 78(1) and in Article 78(3) of that Directive, or
  - (b) the procedures for the drawing-up, sending, receipt, translation, collection and distribution of the notices referred to in Articles 35, 58, 64 and 69 of that Directive and the statistical reports provided for in the fourth subparagraph of Articles 35(4), and Articles 75 and 76, of that Directive, or
  - (c) the procedures for specific reference to specific positions in the CPV nomenclature in the notices, or
  - (d) the reference numbers in the nomenclature set out in Annex I to that Directive (so far as the amendment does not change the material scope of that Directive), and the procedures for reference to particular positions of this nomenclature in the notices, or
  - (e) the reference numbers in the nomenclature set out in Annex II to that Directive (so far as the amendment does not change the material scope of that Directive), and the procedures for reference in the notices to particular positions in this nomenclature within the categories of services listed in that Annex, or
  - (f) the procedure for sending and publishing data referred to in Annex VIII to that Directive, on grounds of technical progress or for administrative reasons, or
  - (g) the technical details and characteristics of the devices for electronic receipt

referred to in points (a), (f) and (g) of Annex X to that Directive,

the Minister shall, by a further Regulation, make corresponding amendments to the corresponding provisions of these Regulations.

### **Compliance mechanisms**

**92.** In conformity with Council Directive 89/665/EEC of 21 December 1989 on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, the Minister shall ensure that these Regulations are implemented by means of effective, available and transparent mechanisms.

### **Revocations**

**93.** The following Regulations are revoked:

- (a) the European Communities (Award of Public Works Contracts) Regulations 1992 (S.I. No. 36 of 1992);
- (b) the European Communities (Award of Public Supply Contracts) Regulations 1992 (S.I. No. 37 of 1992);
- (c) the European Communities (Award of Public Supply Contracts)(Amendment) Regulations 1994 (S.I. No. 292 of 1994);
- (d) the European Communities (Award of Public Works Contracts)(Amendment) Regulations 1994 (S.I. No. 293 of 1994);
- (e) the European Communities (Award of Public Service Contracts) Regulations 1998 (S.I. No. 378 of 1998);
- (f) the European Communities (Award of Public Supply Contracts) (Amendment) Regulations 1998 (S.I. No. 379 of 1998);
- (g) the European Communities (Award of Public Works Contracts) (Amendment)

Regulations 1998 (S.I. No. 380 of 1998);

- (h) the European Communities (Award of Public Service Contracts) (Amendment) Regulations 2001 (S.I. No. 334 of 2001);
- (i) the European Communities (Award of Public Service Contracts) (Amendment) Regulations 2001 (S.I. No. 611 of 2001);
- (j) the European Communities (Award of Public Works Contracts) (Amendment) Regulations 2001 (S.I. No. 612 of 2001);
- (k) the European Communities (Award of Public Contract Notices) (Standard Forms) Regulations 2002 (S.I. No. 343 of 2002).

#### **Savings and transitional provisions**

**94.** (1) Despite the revocation of the Regulations referred to in Regulation 93, those Regulations, so far as relevant, continue to apply to and in relation to public contracts for which a contracting authority has invited tenders or expressions of interest before the commencement of these Regulations.

(2) Expressions used in paragraph (1) have the same meanings as they have in the revoked Regulations.

**SCHEDULE 1**

**LIST OF CIVIL ENGINEERING AND OTHER ACTIVITIES (1)**

NACE <sup>(2)</sup>					
<i>CPV code</i>			<i>Section F</i>		<i>Construction</i>
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	
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— <ul style="list-style-type: none"> <li>• demolition of buildings and other                             <ul style="list-style-type: none"> <li>• structures;</li> </ul> </li> <li>• clearing of building sites;</li> <li>• earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.;</li> <li>• site preparation for mining,</li> </ul>	45110000



				<p>including overburden removal and other development and preparation of mineral properties and sites.</p> <p>This class also includes:</p> <ul style="list-style-type: none"> <li>• building site drainage</li> <li>• drainage of agricultural or forestry land.</li> </ul>	
		45.12	Test drilling and boring	<p>This class includes test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes.</p> <p>This class excludes—</p> <ul style="list-style-type: none"> <li>• drilling of production oil or gas wells; (See 11.20)</li> <li>• water well drilling; (See 45.25)</li> <li>• shaft sinking; (See 45.25) <ul style="list-style-type: none"> <li>• oil and gas field exploration, geophysical, geological and seismic surveying. (See 74.20)</li> </ul> </li> </ul>	45120000
	45.2		Building of complete constructions or parts of constructions; civil engineering		45200000
		45.21	General construction of	<p>This class includes—</p> <ul style="list-style-type: none"> <li>• construction of all types of</li> </ul>	45210000

			<p>buildings and civil engineering works</p>	<p>buildings and the construction of civil engineering constructions;</p> <ul style="list-style-type: none"> <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.</li> </ul> <p>This class excludes—</p> <ul style="list-style-type: none"> <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> </ul>	
--	--	--	--	--	--

				<ul style="list-style-type: none"> <li>• building completion; (See 45.4) <ul style="list-style-type: none"> <li>• architectural and engineering activities; (See 74.20)</li> </ul> </li> <li>• project management for construction. (See 74.20)</li> </ul>	
		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>	45220000
		45.23	Construction of highways, roads, airfields and sports facilities	<p>This class includes—</p> <ul style="list-style-type: none"> <li>• construction of highways (including streets, roads and 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);</li> <li>• painting of markings on road surfaces and car parks</li> </ul> <p>This class excludes preliminary earth moving. (See 45.11)</p>	45230000

		45.24	Construction of water projects	<p>This class includes construction of—</p> <ul style="list-style-type: none"> <li>• waterways, harbour and river works, pleasure ports (marinas), locks, etc.;</li> <li>• dams and dykes; <ul style="list-style-type: none"> <li>• dredging;</li> </ul> </li> <li>• subsurface work.</li> </ul>	45240000
		45.25	Other construction work involving special trades	<p>This class includes—</p> <ul style="list-style-type: none"> <li>• construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment; <ul style="list-style-type: none"> <li>• construction of foundations, including pile driving, water well drilling and construction, shaft sinking;</li> </ul> </li> <li>• erection of non-self-manufactured steel elements <ul style="list-style-type: none"> <li>• steel bending;</li> </ul> </li> <li>• bricklaying and stone setting;</li> <li>• scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms;</li> <li>• erection of chimneys and industrial ovens.</li> </ul>	45250000

				This class excludes renting of scaffolds without erection and dismantling. (See 71.32)	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>This class includes installation in buildings or other construction projects of—</p> <ul style="list-style-type: none"> <li>• electrical wiring and fittings;</li> <li>• telecommunications systems;</li> <li>• electrical heating systems;</li> <li>• residential antennas and aerials; <ul style="list-style-type: none"> <li>• fire alarms;</li> </ul> </li> <li>• burglar alarm systems;</li> <li>• lifts and escalators;</li> <li>• lightning conductors, etc.</li> </ul>	45310000
		45.32	Insulation work activities	<p>This class includes installation in buildings or other construction projects of thermal sound or vibration insulation.</p> <p>This class excludes waterproofing. (See 45.22)</p>	45320000
		45.33	Plumbing	This class includes installation in buildings or other construction	45330000

				<p>projects of—</p> <ul style="list-style-type: none"> <li>• plumbing and sanitary equipment;</li> <li>• gas fittings;</li> <li>• heating, ventilation, refrigeration or air conditioning equipment and ducts;</li> <li>• sprinkler systems.</li> </ul> <p>This class excludes installation of electrical heating systems. (See 45.31)</p>	
		45.34	Other building installation	<p>This class includes—</p> <ul style="list-style-type: none"> <li>• installation of illumination and signalling systems for roads, railways, airports and harbours;</li> <li>• installation in buildings or other construction projects of fittings and fixtures n.e.c.</li> </ul>	45340000
	45.4		Building completion		45400000
		45.41	Plastering	<p>This class includes application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials.</p>	45410000

		45.42	Joinery installation	<p>This class includes—</p> <ul style="list-style-type: none"> <li>• installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, made of wood or other materials;</li> <li>• interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</li> </ul> <p>This class excludes laying of parquet and other wood floor coverings. (See 45.43)</p>	45420000
		45.43	Floor and wall covering	<p>This class includes laying, tiling, hanging or fitting in buildings or other construction projects of—</p> <ul style="list-style-type: none"> <li>• ceramic, concrete or cut stone wall or floor tiles;</li> <li>• parquet and other wood floor coverings;</li> <li>• carpets and linoleum floor coverings, including of rubber or plastic;</li> <li>• terrazzo, marble, granite or slate floor or wall coverings;</li> <li>• wallpaper.</li> </ul>	45430000
		45.44	Painting and	This class includes—	45440000

			glazing	<ul style="list-style-type: none"> <li>interior and exterior painting of buildings;</li> <li>painting of civil engineering structures;</li> <li>installation of glass, mirrors, etc.</li> </ul> <p>This class excludes installation of windows. (See 45.42)</p>	
		45.45	Other building completion	<p>This class includes—</p> <ul style="list-style-type: none"> <li>installation of private swimming pools;</li> <li>steam cleaning, sand blasting and similar activities for building exteriors;</li> <li>other building completion and finishing work n.e.c.</li> </ul> <p>This class excludes interior cleaning of buildings and other structures. (See 74.70)</p>	45450000
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator	<p>This class excludes renting of construction or demolition machinery and equipment without operators. (See 71.32)</p>	



---

--	--	--	--	--	--

---

*Notes: (1) If the interpretation between the CPV and the NACE differs, the NACE nomenclature is to apply*

*(2) See Council Regulation (EEC) No. 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community (OJ L 293, 24.10.1990, p. 1). Regulation as amended by Commission Regulation (EEC) No. 761/93 of 24 March 1993 (OJ L 83, 3.4.1993, p. 1).*

---

## SCHEDULE 2

### LIST OF SERVICES <sup>(1)</sup>

#### PART A

<i>Category No.</i>	<i>Subject</i>	<i>CPC Reference No.</i> <sup>(2)</sup>	<i>CPV Reference No.</i>
1	Maintenance and repair services	6112, 6122, 633, 886	From 50100000 to 50982000 (except 50310000 to 50324200; 50116510-9; 50190000-3; 50229000-6; and 50243000-0).
2	Land transport services, <sup>(3)</sup> including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304	From 60112000-6 to 60129300-1 (except 60121000 to 60121600; 60122200-1; and 60122230-0). From 64120000-3 to 64121200-2.
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)	From 62100000-3 to 62300000-5 (except 62121000-6; and 62221000-7)
4	Transport of mail by land <sup>(4)</sup> and by air	71235; 7321	60122200-1; 60122230-0; 62121000-6; 62221000-7.

5	Telecommunications services	752	From 64200000-8 to 64228200-2; 72318000-7. From 72530000-9 to 72532000-3.
6	Financial services: (a) insurance services (b) banking and investment services. <sup>(5)</sup>	ex 81, 812, 814	From 66100000-1 to 66430000-3. From 67110000-1 to 67262000-1. <sup>(4)</sup>
7	Computer and related services.	84	From 50300000-8 to 50324200-4 From 72100000-6 to 72591000-4 (except 72318000-7) From 72530000-9 to 72532000-3).
8	Research and development services <sup>(6)</sup>	85	From 73000000-2 to 73300000-5 (except 73200000-4; 73210000-7; and 7322000-0).
9	Accounting, auditing and bookkeeping services	862	From 74121000-3 to 74121250-0.
10	Market research and public opinion polling services	864	From 74130000-9 to 74133000-0; 74423100-1; and 74423110-4.
11	Management consulting services (7) and related services	865; 866	From 73200000-4 to 73220000-0. From 74140000-2 to 74150000-5 (except 74142200-8); 74420000-9; 74421000-6; 74423000-0; 74423200-2; 74423210-5; 74871000-5; 93620000-0.

12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	From 74200000-1 to 74276400-8. From 74310000-5 to 74323100-0; 74874000-6.
13	Advertising services	871	From 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6).
14	Building-cleaning services and property management services	874; 82201 to 82206	From 70300000-4 to 70340000-6. From 74710000-9 to 74760000-4.
15	Publishing and printing services on a fee or contract basis	88442	From 78000000-7 to 78400000-1.
16	Sewage and refuse disposal services; sanitation and similar services	94	From 90100000-8 to 90320000-6; 50190000-3; 50229000-6; 50243000-0.

(1) If the interpretation between the CPV and the CPC differs, the CPC nomenclature is to apply.

- (2) CPC Nomenclature (provisional version) is used to define the scope of Directive 92/50/EEC.
- (3) Except for rail transport services covered by category 18.
- (4) Except for rail transport services covered by category 18.
- (5) Except financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and services supplied by the Central Bank and Financial Services Authority of Ireland. Also excluded are services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights over the property. Nevertheless, financial services supplied at the same time as, before or after the contract of acquisition or rental, in whatever form, are subject to these Regulations.
- (6) Except research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs on condition that the service supplied is wholly remunerated by the contracting authority.
- (7) Except an arbitration or conciliation service.

**PART B**

<i>Category No.</i>	<i>Subject</i>	<i>CPC Reference No.</i>	<i>CPV Reference No.</i>
19	Water transport services	72	From 61000000-5 to 61530000-9. From 63370000-3 to 63372000-7.
20	Supporting and auxiliary transport services	74	62400000-6; 62440000-8; 62441000-5; 62450000-1. From 63000000-9 to 63600000-5 (except 63370000-3; 63371000-0; 63372000-7); 74322000-2; 93610000-7.

21	Legal services	861	From 74110000-3 to 74114000-1.
22	Personnel placement and supply services <sup>(1)</sup>	872	From 74500000-4 to 74540000-6 (except 74511000-4). From 95000000-2 to 95140000-5.
23	Investigation and security services, except armoured car services	873 (except 87304)	From 74600000-5 to 74620000-1.
24	Education and vocational education services	92	From 80100000-5 to 80430000-7.
25	Health and social services	93	74511000-4. From 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2).
26	Recreational, cultural and sporting services	96	From 74875000-3 to 74875200-5. From 92000000-1 to 92622000-7 (except 92230000-2).
27	Other services <sup>(2)</sup>		

Notes: (1) Except employment contracts.

*(2) Except contracts for the acquisition, development, production or co-production of programmes by broadcasting organisations and contracts for broadcasting time.*

### **SCHEDULE 3**

#### **DEFINITION OF CERTAIN TECHNICAL SPECIFICATIONS**

For the purposes of these Regulations—

“common technical specification” means a technical specification prescribed in accordance with a procedure that is recognised by the Member States and has been published in the Official Journal of the European Union;

“European technical approval” means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use; <sup>(1)</sup>

“prescribed standard” means a technical specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

- (a) international standard, which is a standard adapted by an international standards organisation and made available to the general public;
- (b) European standard, which is a standard adopted by a European standards organisation and made available to the general public;
- (c) national standard, which is a standard adopted by a national standards organisation and made available to the general public;

“technical reference” means any product produced by European standardisation bodies (other than official standards) according to procedures adopted for the development of market needs;

“technical specification”, when used in relation to a public works contract, means the totality of the technical prescriptions contained (in particular) in the tender documents, defining the characteristics required of a material, product or supply, that permits the material, product or supply to be described in a manner so that it can be used for the purpose for which it is intended



by the relevant contracting authority. Those characteristics include—

- (a) levels of environmental 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 and production processes and methods, and
- (b) 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 that the contracting authority is able to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts that they involve;

“technical specification”, when used in relation to a public supply or service contract, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions (including requirements relevant to the product as regards the name under which the product is sold), terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures.

(1) **Note:** *European technical approvals are issued by an approval body designated for this purpose by the Member State concerned. In relation to the State, the Minister for Finance is responsible for designating approved bodies.*

## **SCHEDULE 4**

### **REQUIREMENTS RELATING TO DEVICES FOR ELECTRONIC RECEIPT OF TENDERS, REQUESTS FOR PARTICIPATION AND PLANS AND PROJECTS IN CONTESTS**

1. Devices for the electronic receipt of tenders, requests for participation and plans and projects in contests must ensure, through technical means and appropriate procedures—
  - (a) that electronic signatures relating to tenders, requests to participate and the forwarding of plans and projects comply with the Electronic Commerce Act 2000, and
  - (b) that the exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely, and
  - (c) that, as far as reasonably practicable, no one can gain access to data sent electronically in accordance with these Regulations before the deadline for submitting data to the contracting authority concerned, and
  - (d) that, if a person does gain unauthorised access to any such data, there is a reasonable probability that that access will be detected, and
  - (e) that only authorised persons are able to set or change the dates for opening data that is received, and
  - (f) that, during the different stages of the contract award procedure or of the contest, access to the data submitted by tenderers can be gained only through simultaneous action by authorised persons, and
  - (g) that authorised persons may allow access to data sent by tenderers only after the deadline for the close of tenders, and
  - (h) that data received and opened in accordance with the requirements set out in this Schedule remain accessible only to persons authorised to have access to the data.

2. In paragraph 1, “authorised persons” means persons authorised by the contracting authority concerned.

## **SCHEDULE 5**

### **INFORMATION TO BE INCLUDED IN NOTICES**

#### **PART A**

##### **INFORMATION THAT MUST BE INCLUDED IN PUBLIC CONTRACT NOTICES**

###### **Notice of publication of prior information notice on contracting authority's buyer profile**

1. The following is the information that must be included in a notice of publication of a prior information notice published on a contracting authority's buyer profile:
  - (a) the name of the contracting authority;
  - (b) the country in which the contracting authority is established;
  - (c) the Internet address of the buyer profile (URL);
  - (d) the relevant CPV nomenclature reference numbers.

###### **Information to be included in prior information notice**

2. (1) The following is the information that must be included in a prior information notice:
  - (a) the name, address, fax number and email address of the contracting authority, and, if different, of the service from which additional information may be obtained;
  - (b) in the case of a public contract to carry out works or to supply a service, particulars of the sources (such as the relevant government internet site) from which information can be obtained concerning the general regulatory framework for taxes,

environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed.

- (2) Whenever appropriate, the notice must indicate whether the public contract is restricted to sheltered workshops, or whether its performance is restricted to the framework of a protected job program.
- (3) In the case of a public works contract, the notice must specify—
  - (a) the nature and extent of the works and the place of performance, and
  - (b) if the work is to be subdivided into several lots, the essential characteristics of those lots by reference to the work and, if available, an estimate of the range of the cost of the proposed works, and
  - (c) nomenclature reference number or numbers.
- (4) In the case of a public supply contract, the notice must specify the nature and quantity or value of the products to be supplied and nomenclature reference number or numbers.
- (5) In the case of a public service contract, the notice must specify the total value of the proposed purchases in each of the service categories in Part A of Schedule 2, and the relevant nomenclature reference number or numbers.
- (6) The notice must also specify an estimated date for initiating the award procedures in respect of the contract or contracts concerned (and, in the case of a public service contract, by category).
- (7) Whenever appropriate, the notice must indicate whether a framework agreement is involved.
- (8) The notice must also contain such other information as is appropriate in the circumstances.
- (9) The notice must also specify the date on which it was sent, or on which the notice of publication of the prior information notice was published on the buyer profile.

- (10) The notice must also indicate whether or not the contract is covered by the Government Procurement Agreement.

### **Contract notices for the open and restricted procedure, competitive dialogue procedure and negotiated procedure**

3. (1) If a public contract is to be awarded by means of the open and restricted procedure, the competitive dialogue procedure or a negotiated procedure, the contract notice must specify the name and address and the telephone and fax numbers, and the email address (if any) of the contracting authority.
- (2) When appropriate, the notice must specify whether the relevant public contract is restricted to sheltered workshops or whether the performance of the contract is restricted to the framework of protected job programs.
- (3) The notice must also specify the award procedure that is chosen. When appropriate, the reasons for use of an accelerated procedure (in restricted and negotiated procedures) must be specified.
- (4) When appropriate, the notice must specify whether a framework agreement is involved.
- (5) When appropriate, the notice must indicate whether the dynamic purchasing system is involved.
- (6) If the contracting authority decides that the award of a public contract is to be preceded by an electronic auction in the case referred to in Regulation 31, the notice must indicate that the award of the contract is to be preceded by such an auction.

### **General requirements for contract notices**

4. (1) The contract notice must specify the form of the contract.

- (2) The contract notice must specify the place where the works are to be carried out, the products are to be delivered or the service is to be performed.
- (3) In the case of a public works contract, the contract notice must—
  - (a) specify the nature and extent of the works and general nature of the work, and
  - (b) in particular, indicate the options (if any) concerning supplementary works, and, if known, the provisional timetable for recourse to those options as well as the number of possible renewals (if any), and
  - (c) if the work or the contract is subdivided into several lots, specify the sizes of the different lots, together with all relevant Nomenclature Reference Numbers, and
  - (d) specify relevant information concerning the purpose of the work or the contract when the work or contract also involves the preparation of one or more projects, and
  - (e) if a framework agreement has been entered into, indicate—
    - (i) the planned duration of the agreement, and
    - (ii) the estimated total value of the works for the duration of the agreement, and
    - (iii) as far as possible, the value and the frequency of the contracts to be awarded.
- (4) In the case of a public supply contract, the contract notice must—
  - (a) specify the nature of the products to be supplied, indicating in particular whether tenders are requested with a view to purchase, lease rental, hire or hire purchase or a combination of them, and the relevant nomenclature reference number or numbers, and
  - (b) specify the quantity of products to be supplied, indicating in particular the options (if any) concerning supplementary purchases and, if known, the provisional timetable for recourse to those options as well as the number of renewals (if any) and the relevant nomenclature reference number or numbers, and
  - (c) if regular or renewable contracts may be awarded during a specified period, indicate

(if known) the timetable for subsequent contracts for purchase of supplies that the contracting authority intends to purchase, and

- (d) if a framework agreement has been entered into, indicate—
  - (i) the planned duration of the agreement,
  - (ii) the estimated total value of the supplies for the entire duration of the framework agreement, and
  - (iii) as far as possible, the value and the frequency of the contracts to be awarded.
- (5) In the case of a public service contract, the contract notice must—
  - (a) specify the category and description of the service to be supplied and the relevant nomenclature reference number or numbers, and
  - (b) specify the quantity of services to be supplied and, in particular, the options (if any) concerning supplementary purchases and (if known) the provisional timetable for recourse to those options, as well as the number of renewals (if any), and
  - (c) if renewable contracts may be awarded over a specified period, indicate the estimated time frame (if known) for subsequent public contracts for services that the contracting authority intends to purchase, and
  - (d) if a framework agreement has been entered into, indicate—
    - (i) the planned duration of the framework agreement, and
    - (ii) the estimated total value of the services for the entire duration of the agreement, and
    - (iii) as far as possible, the value and the frequency of the contracts to be awarded, and
  - (e) indicate whether the provision of the service is reserved to a particular profession by any law, regulation or administrative provision, and
  - (f) if, in a case where the provision of the service is so reserved, the service is to be provided by a body, indicate the names and professional qualifications of the staff



who are to be responsible for providing the service.

- (6) If the contracts are divided into lots, the contract notice must indicate whether there is any the possibility of tendering for one lot, or for several or all of the lots.
- (7) If any deadline is specified in a public contract for completing the works, or supplying the products or service, or any period is specified for the duration of the contract, the contract notice must, whenever possible, specify—
  - (a) the deadline (if any) for completing the works, or the supply of the products or service, or the duration of the contract, and
  - (b) the deadline (if any), for beginning the works, or the supply of the products or service.
- (8) The contract notice must indicate whether variants will be admitted or are prohibited.
- (9) If the performance of a public contract is subject to particular conditions, the contract notice must specify those conditions.
- (10) When appropriate, the contract notice must specify any deposit and guarantees that must be provided.
- (11) The contract notice must specify the main terms concerning financing and payment under the proposed contract or references to the texts in which those terms are contained.
- (12) The contract notice must specify—
  - (a) the name and address of the body responsible for hearing and determining appeals and, where appropriate, conducting mediation procedures, and
  - (b) precise information concerning deadlines for lodging appeals, or if necessary, the name, address, telephone number, fax number and email address of the person from whom that information can be obtained.

- (13) The contract notice must specify the date or dates of publication of the prior information notice in accordance with the technical specifications of publication indicated in Schedule 6 or state that no such publication was made.
- (14) The contract notice must specify the date on which it is sent to the Official Journal of the EU for publication.
- (15) The contract notice must indicate whether the contract is covered by the Government Procurement Agreement.

**Special provisions for contract notices relating to public contracts to be awarded by means of open procedure**

- 5. (1) When a public contract is to be awarded by means of an open procedure, the contract notice must specify—
  - (a) the name, address, telephone and telefax number and electronic address from which contract documents and additional documents can be requested, and
  - (b) where appropriate, the deadline for making such requests, and
  - (c) where appropriate, the cost of and payment conditions for obtaining these documents.
- (2) If a public contract is to be awarded by means of an open procedure, the contract notice must specify—
  - (a) the persons who are authorised to be present at the opening of tenders, and
  - (b) the date, time and place for the opening.

**Special provisions for contract notices relating to public contracts to be awarded by means of dynamic purchasing system**

6. When a public contract is to be awarded by means of the dynamic purchasing system (open procedure), the contract notice must specify—
  - (a) the deadline for receipt of tenders or indicative tenders, and
  - (b) the deadline for receipt of requests to participate (in the case of restricted and negotiated procedures), and
  - (c) the address to which those documents must be sent, and
  - (d) the language or languages in which those documents must be written.

#### **Special provisions applicable when groups of economic operators are involved**

7. (1) If a public contract will or could be awarded to a group of economic operators and the contract requires the group to be in a particular legal form, the contract notice must specify the form that the group is required to take.
- (2) The contract notice must specify—
  - (a) any selection criteria regarding the personal situation of economic operators that may lead to their exclusion, and the information (if any) that they are required to provide in order to prove that they do not fall within the cases justifying exclusion, and
  - (b) any selection criteria and information concerning the economic operators' reputation, character and professional standing, information and any necessary formalities for assessment of the minimum technical standards required of the economic operator, and
  - (c) the minimum level of standards that may be required to be considered for the contract.
- (3) If a framework agreement involves a group of economic operators, the contract notice must specify—

- (a) the number of members of the group and, where appropriate, the proposed maximum number of economic operators that will be members of it, and
- (b) the duration of the agreement and, if the agreement is to be for more than 4 years, the reasons for the agreement being for more than that period.

**Special provisions for contract notices relating to public contracts to awarded by means of competitive dialogue or negotiated procedure**

- 8. (1) If a public contract is to be awarded by means of a competitive dialogue or the negotiated procedure with the prior publication of a contract notice, the contract notice must indicate (if appropriate) that the contracting authority will have recourse to a staged procedure in order to gradually reduce the number of solutions to be discussed or tenders to be negotiated.
- (2) If a public contract is to be awarded by means of a negotiated procedure and the contracting authority has selected economic operators to participate in the negotiations, the contract notice must specify the names and addresses of those operators.

**Special provisions for contract notices relating to public contracts to be awarded by means of restricted procedure, competitive dialogue or negotiated procedure**

- 9. If a public contract is to be awarded by means of the restricted procedure, a competitive dialogue or the negotiated procedure with the prior publication of a contract notice, and the contracting authority is to have recourse to the option of reducing the number of candidates to be invited to submit tenders, to engage in dialogue or to negotiate, the contract notice must specify—
  - (a) the minimum number and (if appropriate) the proposed maximum number of candidates that will be allowed to participate in the process, and
  - (b) the objective criteria to be used to choose that number of candidates.

**Special provisions for contract notices relating to public contracts to be awarded by means of open procedure**

10. If a public contract is to be awarded by means of an open procedure, the contract notice must specify the time frame during which the tenderer must maintain its tender.

**Special provisions for contract notices relating to public contracts to be awarded on basis of Regulation 66 criteria**

11. If a public contract is to be awarded on the basis of criteria referred to in Regulation 66 (“lowest price” or “most economically advantageous tender”), the contract notice must specify the criteria representing the most economically advantageous tender as well as their weighting, unless they appear in the specifications or, in the case of a competitive dialogue, in the descriptive document.

**Simplified contract notice for use in dynamic purchasing system**

12. (1) A contracting authority that proposes to award a public contract by means of a dynamic purchasing system may use a simplified contract notice.
- (2) Such a notice must contain the following information:
  - (a) the country in which the contracting authority is established;
  - (b) the name and e-mail address of that authority;
  - (c) the publication reference of the contract notice;
  - (d) the e-mail address at which the technical specification and additional documents relating to the dynamic purchasing system are available;

- (e) the subject of the contract and a description by reference number or numbers of “CPV” nomenclature and the quantity or extent of the contract to be awarded;
- (f) the deadline for submitting indicative tenders.

### **Contract award notices**

13. The following is the information that a contracting authority must include in a contract award notice notifying the award of a public contract:

- (a) the name and address of that authority;
- (b) the kind of award procedure chosen;
- (c) in the case of negotiated procedure without prior publication of a contract notice, the justification for the use of the procedure;
- (d) in the case of a public works contract, the nature and extent of the contract and the general characteristics of the work to be carried out;
- (e) in the case of a public supply contract—
  - (i) the nature and quantity of products to be supplied, where appropriate, under the contract, and
  - (ii) the relevant nomenclature reference number;
- (f) in the case of a public service contract—
  - (i) the category and description of the service, and
  - (ii) the relevant nomenclature reference number, and
  - (iii) the quantity of services purchased;
- (g) the date on which the contract was awarded;
- (h) the criteria for the award of the contract;
- (i) the number of tenders received;

- (j) the name and address of the economic operator to whom the contract was awarded;
- (k) the price or range (minimum and maximum) of prices to be paid under the contract;
- (l) the value of the tender or tenders retained, or the highest tender and lowest tender taken into consideration for the award of the contract;
- (m) if part of the works to be carried out, or part of the products or service to be supplied, under the contract is to be subcontracted, the value and proportion of the contract that are likely to be subcontracted;
- (n) the date of publication of the tender notice in accordance with the technical specifications for publication in Schedule 6;
- (o) the date on which the contract award notice is sent for publication in the Official Journal of the European Union;
- (p) the name and address of the body responsible for conducting appeals arising from the award of the contract and, where appropriate, mediation procedures;
- (q) precise information concerning the deadline for lodging such appeals, or if appropriate, the name, address, telephone number, fax number and email address of the service from which that information can be obtained.

## PART B

### INFORMATION THAT MUST APPEAR IN PUBLIC WORKS CONCESSION NOTICES

The following is the information that must be specified in a public works concession notice:

- (a) the name, address, fax number and email address of the contracting authority concerned;
- (b) the place where the works are to be carried out or the service is to be supplied;

- (c) the subject matter of the concession, or the nature and extent of the services to be supplied;
- (d) the deadline for submitting applications;
- (e) the address to which applications must be sent;
- (f) the language or languages in which the applications must be written;
- (g) the personal, technical and financial conditions (if any) to be met by the candidates;
- (h) the criteria that will be applied in the award of the contract;
- (i) if appropriate, the minimum proportion of the works that will be subcontracted;
- (j) the date on which the notice is sent;
- (k) the name and address of the body responsible for hearing and determining appeals, and conducting mediation procedures, relating to the award of a concession;
- (l) precise information concerning the deadline for lodging those appeals or, if necessary, the name, address, telephone number, fax number and e-mail address of the person from whom that information may be obtained.

## PART C

### INFORMATION REQUIRED FOR CERTAIN CONTRACT NOTICES

The following is the information that must be included in a public works concession notice when the concessionaire is not a contracting authority:

- (a) the place where the works are to be carried out;
- (b) the nature and extent of the services and the general characteristics of the works;
- (c) any deadline that has been set for completion of the works;
- (d) the name and address of the person from whom the specifications and the additional



documents (if any) may be requested;

- (e) the deadline for receiving applications to participate, or for receiving tenders;
- (f) the address to which applications or tenders must be sent;
- (g) the language or languages in which applications or tenders must be written;
- (h) details of any deposits or guarantees that are required;
- (i) the economic and technical conditions (if any) to be met by the contractor;
- (j) criteria that will be applied in awarding the contract;
- (k) the date on which the notice is sent.

## PART D

### INFORMATION REQUIRED FOR NOTICES RELATING TO DESIGN CONTESTS

#### **Design contest notices**

1. The following is the information that must be included in a design contest notice:
  - (a) the name, address, fax number and email address of the contracting authority and those of the service from which the additional documents may be obtained;
  - (b) a description of the project;
  - (c) a statement as to whether the contest is open or restricted;
  - (d) if the contest is to be an open one, the deadline for submitting projects;
  - (e) if the contest is to be a restricted one—
    - (i) the number of participants contemplated, and
    - (ii) the names of the participants (if any) that have already been selected, and
    - (iii) the criteria for selecting participants, and

- (iv) the deadline for submitting requests to participate;
- (f) if applicable, a statement indicating that the participation is restricted to a specified profession;
- (g) the criteria that will be applied in evaluating the projects;
- (h) the names of any members of the jury who have already been selected;
- (i) a statement indicating whether the jury's decision is to be binding on the contracting authority;
- (j) the number and value of prizes to be awarded (if any);
- (k) details of payments (if any) that are to be made to all participants;
- (l) a statement indicating whether any contracts following the contest will or will not be awarded to the winner or winners of the contest;
- (m) the date on which the notice is sent to the Office for Official EC Publications for publication.

### **Notice of the results of a design contest**

2. The following is the information that must be included in a notice notifying the result of a design contest:
  - (a) the name, address, fax number and email address of the contracting authority concerned;
  - (b) a description of the project;
  - (c) the total number of participants;
  - (d) the total number of non-Irish participants;
  - (e) the name of the winner of the contest;

- (f) details of any prizes that were awarded;
- (g) the date on which the notice was sent;
- (h) reference of the contest notice.

## SCHEDULE 6

### FEATURES CONCERNING PUBLICATION

#### **Publication of notices by contracting authorities**

1. (1) In sending a notice referred to in 38, 39, 40, 41, 42 , 43, 71, 77 or 83 for publication, a contracting authority shall ensure that the notice is in the format required by the implementing measures adopted by the European Commission in accordance with Article 77 (2) of the Public Authorities Contracts Directive.
- (2) A contracting authority shall also ensure that a prior information notice published on its buyer profile and the notice of publication are also in the same format.
- (3) A notice of the kind referred to in Regulations 38-44, 71, 77 and 83 is published by the Office for Official EC Publications or, in the case of a prior information notice, on the relevant contracting authority's buyer profile.

#### **2. Publication of complementary or additional information**

- (1) Each contracting authority is encouraged to publish contract notices, specifications and additional documents in their entirety on the Internet on the contracting authority's buyer profile.
- (2) In addition to a prior information notice, a contracting authority may publish in its buyer profile information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled and any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

***Note:** The format and procedure for sending notices electronically are accessible at the Internet address "<http://simap.eu.int>".*

GIVEN under my Official Seal,

22 June 2006.

L.S.

**Brian Cowen**

Minister for Finance.

### ***Explanatory Note***

*(This note, and the Correlation Table following, are not part of the Instrument and do not purport to be a legal interpretation).*

*These Regulations implement (i) EU Directive 2004/18/EC which updates, restructures and consolidates earlier Directives governing the procedures for awarding works, supplies and services contracts by contracting authorities (ii) EU Directive 2005/51/EC (in regard to contracting authorities covered by Directive 2004/18/EC) which relates to standard notices to be used when publishing notices in the Official Journal of the EU and (iii) EU Directive 2005/75/EC which clarifies the threshold for certain services contracts subsidised 50% or more by contracting authorities in the central government sector and awarded by third parties.*

*National Public Procurement Policy Unit*

***Correlation Table – EC (Award of Public Authorities’ Contracts) Regulations 2006 and the Public Contracts Directive 2004/18/EC***

<b>Regulation or Schedule</b>	<b>Corresponding Article or Annex of the Directive</b>
1	No equivalent
2	No equivalent
3	Article 1
4	Article 7
5	Article 8
6	Article 9
7	Article 10
8	Article 11
9	Article 12
10	Article 13
11	Article 14
12	Article 15
13	Article 16
14	Article 17
15	Article 18
16	Article 19
17	Article 2
18	Article 3
19	Article 4
20	Article 20
21	Article 21
22	Article 22
23	Article 23
24	Article 24
25	Article 25
26	Article 26
27	Article 27
28	Article 28
29	Article 29
30	Article 29
31	Article 30

32	Article 31
33	Article 32
34	Article 32
35	Article 32
36	Article 33
37	Article 34
38	Article 35
39	Article 35
40	Article 35
41	Article 35
42	Article 35
43	Article 35
44	Article 35
45	Article 36 and 37
46	Article 38
47	Article 39
48	Article 40
49	Article 41
50	Article 42
51	Article 43
52	Article 44
53	Article 45
54	Article 46
55	Article 47
56	Article 48
57	Article 48
58	Article 48
59	Article 48
60	Article 51
61	Article 52
62	Article 48 (3) and (4)
63	Article 49
64	Article 50
65	Article 51
66	Articles 53
67	Article 54
68	Article 54
69	Article 55
70	Article 56 and 57



71	Article 58
72	Article 59
73	Article 60
74	Article 61
75	Article 62
76	Article 63
77	Article 64
78	Article 65
79	No equivalent
80	Articles 67 and 68
81	Article 66
82	Article 67
83	Articles 69 and 70
84	Article 71
85	Article 72
86	Article 73
87	Article 74
88	Article 75
89	Article 76
90	Article 78
91	Article 79
92	Article 81
93	Article 82
94	No equivalent
Schedule 1	Annex I
Schedule 2	Annex II
Schedule 3	Annex VI
Schedule 4	Annex X
Schedule 5	Annex VII
Schedule 6	Annex VIII